

THE PONTIFICAL LAW OF THE ROMAN REPUBLIC

by

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ABSTRACT OF THE DISSERTATION

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This dissertation investigates the guiding principle of arguably the most important religious authority in ancient Rome, the pontifical college. Chapter One introduces the subject and discusses the hypothesis the dissertation will advance. Chapter Two examines the place of the college within Roman law and religion, giving particular attention to disproving several widely held notions about the relationship of the pontifical law to the civil and sacral law.

Chapter Three offers the first detailed examination of the duties of the pontifical college as a collective body. I spend the bulk of the chapter analyzing two of the three collegiate duties I identify: the issuing of documents known as decrees and responses and the supervision of the Vestal Virgins. I analyze all decrees and responses from the point of view their content, treating first those that concern dedications, then those on the calendar, and finally those on vows. In doing so my goal is to understand the reasoning behind the decree and the major theological doctrines underpinning it. In documenting the pontifical supervision of Vestal Virgins I focus on the college's actions towards a Vestal accused of losing her chastity. I first reconstruct a typical trial from suspicion to condemnation. In doing so, one of my more important conclusions is that, *pace* Mommsen, the *pontifex maximus* did not possess the power to condemn a Vestal on his

own without consulting his colleagues. After this I turn to a detailed analysis of the two decrees issued in connection with these trials. Most important is my contention that it was not so much the Vestal's lost chastity as her performance while unchaste of certain religious rites that gravely jeopardized the *pax deorum*, Rome's relationship with its gods.

Chapter Four contains a summary of my findings and outlines future directions for fruitful research on the pontiffs and pontifical law. The work ends with an appendix in which I reproduce and translate all known passages in Latin that refer to the pontifical law. This appendix should be a useful and convenient reference tool for other scholars working on the pontiffs and pontifical law.

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DEDICATION

For Max

TABLE OF CONTENTS

ABSTRACT OF THE DISSERTATION	ii
ACKNOWLEDGMENTS	iv
DEDICATION	vii
TABLE OF CONTENTS	viii
LIST OF TABLES	xi
1. INTRODUCTION	1
1.1 Plan of study	6
1.2 Sources for the pontifical law	15
1.3 Review of scholarship	17
2. THE PONTIFICAL LAW AND ROMAN RELIGION	21
2.1 Defining the pontifical law	23
2.1.1 Berger's definition	24
2.2 The pontiffs and the civil law	28
2.2.1 " <i>pontificem bonum neminem esse, nisi qui ius ciuile cognosset</i> "	30
2.2.2 Conclusions	46
2.3 The pontiffs and Roman religion	48
2.3.1 Latin terms for 'pontifical law'	49
2.3.2 The pontiffs and the state religion	64
2.3.3 <i>pontifices praesunt</i>	71
2.3.4 <i>sacra et caerimoniae</i>	75
2.3.4.1 The pontiffs and the <i>ius sacrum</i>	85
2.3.4.2 The pontiffs and the <i>ius sacrorum</i>	90

2.3.4.3 The pontiffs and the <i>ius caerimoniarum</i>	108
2.3.4.4 Summarizing comments	112
2.4 Additional areas of the pontifical law	113
2.5 Conclusion: defining the pontifical law, part II	117
3. THE DUTIES OF THE PONTIFICAL COLLEGE	120
3.1 Individual vs. collegiate duties	123
3.2 Keeping the pontifical discipline	128
3.3 <i>decreta et responsa</i>	132
3.3.1 <i>decreta</i> initiated by the college	134
3.3.1.1 <i>decretum de feriis praecidaneis</i>	135
3.3.1.2 Another possibly self-initiated <i>decretum</i>	142
3.3.2 <i>decreta</i> initiated by outside agent	143
3.3.2.1 Procedural observations	143
3.3.2.2 The location of meetings of the pontifical college	151
3.3.2.3 Participation	155
3.3.2.4 Deliberation	160
3.3.2.5 Summary remarks	161
3.3.3 The contents of the <i>responsa</i>	163
3.3.3.1 <i>responsa de dedicationibus</i>	165
3.3.3.2 <i>responsa</i> on the calendar	181
3.3.3.3 <i>responsa</i> on vows	191
3.4 The pontifical college and the Vestal Virgins	204
3.4.1 <i>incestus</i> trials: initiated by the college	205

3.4.2 A typical trial: from suspicion to condemnation or acquittal	207
3.4.2.1 Suspicion and accusation	208
3.4.2.2 Place, duration, and length of trial	211
3.4.2.3 Participation	215
3.4.2.4 Determining guilt or innocence	217
3.4.2.5 Voting and verdict	218
3.4.2.6 The development of the pontifical supervision of <i>incestus</i> trials ...	223
3.4.3 <i>decreta de incesto uirginum Vestalium</i>	236
3.4.3.1 <i>familiam in potestate habere</i>	237
3.4.3.2 <i>sacris abstinere</i>	241
3.4.4 Summary remarks	253
4. CONCLUSIONS AND DIRECTIONS FOR FURTHER STUDY	255
APPENDIX I: Passages mentioning the pontifical law	262
BIBLIOGRAPHY	342
CURRICULUM VITAE	357

LIST OF TABLES

TABLE 2.1.	Frequency and distribution of Latin terms for 'pontifical law'	53
TABLE 3.1a.	Attested <i>incestus</i> trials of Vestals	228
TABLE 3.1b.	Vestals punished for extinction of fire	235

CHAPTER ONE: INTRODUCTION

On September 29, 57 B.C., the pontifical college convened in the *Regia* at Rome to hear the opposing arguments in a case involving the most famous politician of the day, his arch nemesis, and a fundamental question of Roman religious law. At issue was the restoration to Cicero of his property and house on the Palatine Hill. Through the machinations of Cicero's bitter enemy Publius Clodius, both had been confiscated, the house razed to the ground, and in its place a shrine to *Libertas* erected and consecrated. By this last act Clodius sought to prevent Cicero from ever regaining his property or rebuilding his house: if he did either, he would be desecrating the area and thus jeopardizing Rome's relationship with its gods. Consequently, if Cicero was to recover his house, he had to show that it could be restored to him without religious offense. As the issue concerned a ceremony of the Roman state religion, the case fell to the pontifical college, for they alone were authoritative in that field. After hearing the arguments of both sides, the college determined that Clodius' consecration was invalid. Cicero's land and house could be restored and Rome's relationship with its gods left undisturbed.

The case well illustrates the power of the pontiffs and their importance to Roman religion: creators, interpreters, and guardians of what may be called sacral law, they oversaw the correct performance of every ceremony and rite of Roman state cult, and thereby ensured Rome's continued correct relationship with its gods and the well-being of Rome itself.¹ The duties, powers, and obligations of the pontiffs were governed by what was known as the pontifical law (*ius pontificium*), defined by one modern scholar as "the laws governing the life and activity of the pontiffs of which they are both creators and

¹ Takács 2000, 302.

guardians."² This topic, fundamentally important to both Roman religion and law, has not received scholarly attention in some time: this dissertation is the first treatment of the subject in almost 170 years.³ Numerous works have discussed various aspects of the *pontifices*—their books and influence on civil law are the two most frequently treated topics—but none have taken a synoptic view of the subject, or even investigated the principles governing pontiffs' public lives and actions.

The neglect is perhaps owed to the extensive range of the pontiffs' powers and the diverse make-up of their college. As creators, interpreters, and guardians of sacral law "the *pontifices* were responsible for all the duties of the state's regular service to and care for the gods of the oldest order."⁴ They alone knew the correct names by which the gods and goddesses must be addressed, as well as the correct formulae for all prayers, sacrifices, and vows. Consequently, they not only oversaw the correct performance of every ceremony of Roman state religion (e.g., consecration, dedication, vows), either officiating themselves or assisting the presiding magistrate, but also were routinely consulted by the senate, individual magistrates, and even private citizens for their expert advice on these matters.⁵ Furthermore, the *pontifices* had complete control over the Roman calendar, a responsibility that gave them wide-ranging civic and religious power. In addition to fixing and announcing the dates for most of the festivals⁶ and games of Roman state cult, the *pontifices* also established the character of each day, and

² Berger 1953, 531, s.v. *ius pontificium*.

³ Cf. Hüllmann 1837.

⁴ Wissowa 1912, 501: "...fallen den Pontifices alle Obliegenheiten des regelmäßigen staatlichen Gottesdienstes ältester Ordnung (sic) zu..."

⁵ Wissowa 1912, 513.

⁶ Michels 1967, 20, 27, 69-73, 83.

determining when the intercalary month would fall.⁷ Their powers also extended beyond the public state cult to what we might term "private" religion. Their responsibilities here encompassed certain forms of adoption, wills, inheritance (especially of the familial or clan based religious duties),⁸ the proper performance of burials and the regulation of tomb laws.⁹

Finally, the fact that the *collegium pontificum* consisted of not only the pontiffs proper (including the head priest, the *pontifex maximus*), but also the *rex sacrorum*, the flamens (fifteen in all), and the Vestal Virgins means that any treatment of the *pontifices* and the *ius pontificium* must also examine the powers, prerogatives, and duties of these other religious bodies and their relation to both the pontiffs and the pontifical law. One readily observes that the role of the *collegium pontificum* is the most complex of the four great priestly colleges,¹⁰ its powers the most extensive. Not without reason has one scholar written, "[t]hose who set out to write on the Roman priesthood may find that they are writing on nothing less than Roman religion in general."¹¹

Not just Roman religion, but Roman government, too. The Romans made no distinction between the secular and religious; the demarcation was foreign to them and meaningless. Religion pervaded every aspect of their life, public no less than private, and typically the same men governed both the *religio* and the *res publica*. No ancient passage

⁷ Michels 1967, 8, 120-123, 160-172; also Wissowa 1912, 437, 513.

⁸ Wissowa 1912, 512 n. 5.

⁹ Wissowa 1912, 239-240, 400-401, 515.

¹⁰ The others are the augures, quindecimviri sacris faciundis, and the tresviri epulones.

¹¹ Beard 1990a, 28, adducing as an example the book by Bouché-Leclercq 1871.

better illustrates the lack of separation between church and state in the Roman world than Cicero's opening address to the pontifical college in the case concerning his house:

Members of the pontifical college, many of our ancestors' institutions and practices were divinely inspired, but nothing was more splendid than their wish that the same men control both the religious observances of the immortal gods and the governance of the Republic, so that the most distinguished and renowned citizens might preserve religion by governing the Republic well and the Republic by interpreting religious matters wisely.¹²

Such words of praise would undoubtedly discomfit a modern American jury accustomed to the oft-repeated phrase "separation of church and state", but Cicero's audience must have responded with nods of approval and agreement—and not just because many of them were both priest and politician. Rome had never had a priestly caste; care of the gods had almost always rested in the same hands that guided the government. And rightly so, for the state religion of Rome did not deal in sin or saved souls, but the success, growth, and preservation of Rome and its people: who better to govern, then, than those who administered to the gods, and who better to administer to the gods than those who governed?

It is thus unsurprising to find in ancient Rome heated competition for religious office. The pontificate in particular was always an office much esteemed by wealthy, aristocratic males, and, beginning in 104 B.C. when the *Lex Domitia* made it an elective office,¹³ one for which they competed as eagerly as the consulate or praetorship. The desire is understandable, for not only did a *pontifex* wield the weighty powers described above, but he did so for life. A consul, by contrast, held office only for one year. Election

¹² Cic. *Dom.* 1: *cum multa, diuinitus, pontifices, a maioribus nostris inuenta atque instituta sunt, tum nihil praeclarius quam quod eosdem et religionibus deorum immortalium et summae rei publicae praeesse uoluerunt, ut amplissimi et clarissimi ciues rem publicam bene gerendo religiones, religiones sapienter interpretando rem publicam conseruarent.* Text Maslowski 1981; all translations are mine unless otherwise noted.

¹³ The *lex Domitia* was rescinded by Sulla and restored in 63 by a *lex Labiena*.

to the office of *pontifex maximus* meant even more power and prestige; this office was arguably the highest in Roman religion, for its holder was considered "judge and arbiter of matters human and divine".¹⁴

How Roman nobles competed for these offices and what they did with them once they had them has been the subject of many works, most notably those of Lily Ross Taylor, who devoted a sizeable portion of her impressive *oeuvre* to investigating the identity of Rome's priests and the intersection between religion and politics.¹⁵ The prosopography of the pontifical college has also received significant scholarly attention, beginning with the work of Bardt and continuing through the massive three tomes of Rüpke.¹⁶

Prosopography and the intersection of politics and religion are worthy subjects of study, but so too are the religious doctrines of the pontiffs and the inner-workings of their college. On these subjects there has been relatively little written. This dissertation aims to fill part of this gap by providing the first detailed treatments of these subjects. Broadly speaking its purposes are 1) to examine the place of the pontiffs and the pontifical college within Roman religion and 2) to define the duties, prerogatives, and obligations of the pontifical college. Though my real interest is in the Republic, in order to take account of all pertinent ancient evidence, I have not imposed arbitrary chronological limits on my study, though undoubtedly much of the evidence will come from and pertain to the late Republic and early Empire. The modern bibliography on the pontiffs or matters

¹⁴ Festus 200 L.: *iudex atque arbiter...rerum divinarum humanarumque*.

¹⁵ See both of her articles from 1942, and chapter 4, "The Manipulation of the State Religion," of her 1949 book. Szemler 1972 is in a similar vein, but makes no significant advances on the information in Broughton 1951-1986.

¹⁶ Bardt 1871; Rüpke 2005.

pertaining to the same is massive and ever growing. To avoid becoming overwhelmed by a mass of suppositions I have tried to write this dissertation directly from the ancient sources. In doing so, I also aspire to adopt a fresher perspective on the material, as I approach the subject from the inner viewpoint of the ancients themselves.

As the first attempt to understand the place and duties of the pontifical college in Roman state religion, this study will be of interest and use to students of Roman religion primarily, but students of law and history, too, will find it useful. It is hoped that those interested in Latin language and literature will profit from the discussion of terms for pontifical law as well as the various discussions of selected terms of Roman religion, which show, among other things, the extent to which religious vocabulary and terminology pervade the works of a surprising number and range of Latin authors. And finally, students of comparative religion may find this study helpful for comparing the role of the *pontifices* in Roman religion with the powers and prerogatives of priests in other societies, modern and ancient.

1.1 Plan of study

In this first chapter I introduce the subject, outline the approach of my dissertation, describe the ancient sources on the pontifical law, and review briefly the relevant modern bibliography on the subject. The study proper begins in earnest with chapter two. Here I situate the *pontifices* and pontifical college in their religious context by examining their places within Roman Religion, both state and private. I first discuss the only modern attempt to define the pontifical law. I try to show that it accords to the pontifical law far too much influence over the civil law of the Roman Republic. In my judgment, scholars have traditionally misread the few passages that suggest that the pontifical law embraced

the civil law. In particular I demonstrate that a crucial passage from Cicero's *De Legibus* has routinely been taken out of context and mistranslated to give a distorted view of the relationship between the pontifical and the civil law. With the aid of a few representative passages and building on a view first advanced by Jerzy Linderski, I then clarify that relationship and show that the pontifical law consisted of the public pontifical law, which embraced the public law of religious acts, and the pontifical law proper, which embraced the ritual elements of those acts.

The next section consists of a word-study. I collect all references in Latin literature to terms for pontifical law. In addition to uncovering the frequency and distribution of the various terms, I also attempt to show that the terms most frequently refer to religious rituals or concepts, although a few refer to matters of what I call the public pontifical law.

I then move on to an investigation of the place of the pontiffs within Roman religion. Of crucial importance are several passages similar to the following from the ideal religious constitution that Cicero constructs in Book 2 of *De Legibus*:

Let there be some priests for some gods, others for others; let there be pontiffs for the gods all together, and *flamines* for individual gods. In the city let the Vestal Virgins guard the eternal fire of the public hearth. And let those who do not know how these things in public and in private should be done and in what way and by what ritual be taught by the public priests. Of these, moreover, let there be three: one that is in charge of the ceremonies and sacred rites (*quod praesit caerimoniis et sacris*), another that interprets the unfamiliar utterances of soothsayers and prophets whom the Senate and people have employed. Furthermore, the interpreters of Jove Best and Greatest, the public augurs....¹⁷

Most important for the purpose of this chapter is Cicero's threefold division of priestly authority. Cicero mentions only the augurs by name, but the *sacerdotes* in charge of the

¹⁷ Cic. Leg. 2.20: *diisque aliis alii sacerdotes, omnibus pontifices, singulis flamines sunt. uirgines Vestales in urbe custodiunt ignem foci publici sempiternum. quoque haec priuatim et publice modo ritumque fiant, discunt ignari a publicis sacerdotibus. eorum autem genera sunt tria: unum, quod praesit caerimoniis et sacris, alterum, quod interpretetur fatidicorum et uatium ecfata incognita, quorum senatus populusque ascuerit. interpretes autem Iouis optimi maximi, publici augures....* Text Ziegler 1974.

caerimoniis et sacris are obviously the pontiffs. Now the *De Legibus* is a mix of fact and fiction—part real Roman law and custom, part Ciceronian fantasy—yet so many other authors (including Cicero) report the same division in nearly identical language in decidedly non-hypothetical works, that we may consider that division as a fact of Roman religion.¹⁸ I thus conclude that Roman religion was divided into three areas (*auspicial*, *caerimoniae et sacra*, and the *haruspices* and *Sibyllae interpretes*), and that the pontiffs oversaw the *caerimoniae et sacra*.

This observation (elementary, though ignored by modern treatments) raises an important question: are the lesser members of the pontifical college included in this definition of pontifical authority? Wissowa apparently thought so;¹⁹ but he seems to have been misled by what I believe is the tendency of the ancient sources to use the term *pontifices* to refer both to the pontiffs proper and the pontifical college as a whole. Note that in the above passage from *De Legibus* Cicero makes a clear distinction between the duties of the *flamines*, *Virgines Vestales*, and the *pontifices*, all of whom are members of the *collegium pontificum*. By itself this distinction implies that the duties of the lesser members did not belong to the *caerimoniae et sacra* of which the pontiffs were in charge. One might conclude then that the actions of these lesser members were not circumscribed by the pontifical law. Yet we know that the *pontifex maximus* had great authority over

¹⁸ Wissowa 1912, 501 n. 3, cites only this passage from *De Legibus* and the one at *De Haruspicum Responso* 18. Others exist. See *De Domo Sua* 41 and 42; *De Natura Deorum* 1.14, 3.5, and 1.122; *de Legibus* 2.30-31; Valerius Maximus 1.1.1; Augustine *De Civitate Dei* 6.3. On the threefold division in general see Linderski 1986, 2148 n. 3. It would appear from Keyes 1921, 312-320, that Cicero made no innovations to the religious 'laws' of *De Legibus*, but contributed original elements to the political 'laws' only.

¹⁹ Wissowa 1912, 501: "Das *collegium pontificum* in seiner Gesamtheit stellt diejenige priesterliche Behörde dar, welcher die Wahrnehmung der *caerimoniae et sacra* im ganzen Umfange des *patrius ritus* obliegt."

these lesser members. For example, he appointed (at least in the earliest times) the *flamines*, *rex sacrorum*, and *Uirgines Uestales*, even against their wishes, and at all times he had the power to fine the *rex sacrorum*²⁰ and the *flamines*²¹ and to inflict corporal or capital punishment on the Vestal Virgins.²² Furthermore, the duties of the *rex sacrorum* and *flamen Dialis* could (in at least one case) be performed by a *pontifex*.²³ Thus it would seem that the pontifical law *did* embrace (in some way) the life and activities of the pontifical college's lesser members. I examine the relevant evidence and demonstrate that indeed all members of the pontifical college could pronounce on matters of pontifical law. Thus, when ancient authors use the term *pontifices* we should realize that they often mean the *collegium pontificum* and not just the pontiffs proper.

The next sections involve an investigation of the use and meaning of the terms *ius sacrum*, *ius sacrorum*, and *ius caerimoniarum*. Though scholars routinely use the first term, which in fact has its own entry in our discipline's standard encyclopedia, the second and third are the ones that the Romans actually used and the ones that have a readily demonstrable relationship to the pontifical law.

I end this chapter by briefly recounting some additional areas covered by the pontifical law before offering a new definition of the *ius pontificium*, one based on the results of this chapter. It is hoped that from this chapter a reader will gain a clearer and

²⁰ Wissowa 1912, 510-511 citing Livy 40.42.9, which he has misconstrued. The *pontifex maximus* did not impose a *multa* on the *rex sacrorum* (who had recently died), but on a *duumvir navalis* for refusing to resign his office in order to be inaugurated as *rex sacrorum*. I discuss the full passage below in the text.

²¹ Wissowa 1912, 510-511.

²² Wissowa 1912, 508.

²³ Cf. Wissowa 1912, 504 n. 6, who mentions the fragmentary passage from Festus (310 L.):...*si quis alius pro rege...<pon>tifex, tum is dies*, and cites Tacitus *Annales* 3.58: *saepe pontifices Dialis sacra fecisse, si flamen ualeitudine aut munere publico impediretur*.

more accurate understanding of the relationship of the civil to the pontifical law, the place of the pontifical law within the Roman state religion, and the contents of the pontifical law.

The third chapter contains the first detailed, scholarly examination of the duties and prerogatives of the pontifical college. This examination is perforce necessary for a proper estimation of the pontifical law, but is made even more pressing by the fact that the most recent treatments²⁴ of the pontiffs are inadequate and in one important aspect completely mistaken as to the place of the pontiffs within Roman religion.²⁵ Van Haeperen, for example, in her monograph-length treatment does not attempt to situate the pontiffs and the college within the broader context of Roman religion before she begins listing and describing some of the duties of the *pontifices* and the other members of the *collegium pontificium*. Beard makes such an attempt, but her discussion of the place of the *pontifices* within Roman religion is mostly a discussion of their place within Roman society and government, while the many interesting and useful insights that she offers are vitiated by her erroneous conclusion that real religious authority in the Roman Republic was vested in the Senate, and that this was the principal 'priestly body' in Rome.²⁶ Note, for example, the following excerpt:

The pontifical college stood between the Senate and the individual Roman citizen; it looked both inwards towards the centre of Roman religious mediation and outwards, fulfilling different functions according to its different perspectives. On the one hand, in relation to the individual citizen, the *pontifices* acted as representatives of the central religious power; they played the part of intermediaries, determining the religious conduct of private citizens on behalf of the state. On the other, in relation to the Senate, they provided a pool of religious

²⁴ Beard 1990a and Van Haeperen 2002.

²⁵ For critiques of Beard see the reviews of Bodel 1992 and Brennan 1991.

²⁶ Beard 1990a, 30-34.

expertise, at the service of the central religious power.²⁷

In this chapter I attempt to correct this misconception by examining the duties the college performed as a collective body, and investigating how it performed them.

I begin by demonstrating the necessity of distinguishing between the duties of the college and those of its individual members. I identify three collegiate duties: the keeping of the pontifical discipline, the issuing of decrees and responses, and the supervision of the Vestal Virgins.

In discussing each of these duties my focus is on determining exactly what the pontifical college did and how and why it did it. Because the college's main duty was the issuing of *decreta* and *responsa*, I shall spend the bulk of this chapter analyzing these. Cohee has collected 169 *decreta* and *responsa*, but his comments on them are often too brief.²⁸ In my analysis I try to focus on the reasoning behind the decree and the major theological doctrines revealed by it. As for methodology, I make two important distinctions. First I divide all collegiate actions into two groups: those in which the college had the initiative (*decreta*) and those in which the initiative lay with an outside group or person (*responsa*), such as the Senate or a magistrate. Secondly, I analyze all *decreta* and *responsa* from the point of view their content, treating first those which concerned dedications, then those which concerned the calendar, and finally those which concerned vows. In doing so I follow the approach adopted by Linderski in his investigation of the augural law; I believe that it can produce similarly fruitful results with respect to the *ius pontificium*.²⁹

²⁷ Beard 1990a, 39.

²⁸ Cohee 1994.

To demonstrate the want of such a dedicated analysis of the pontifical decrees and responses, I need only point to a work that has rapidly attained much influence over the study of the pontiffs. Beard, in her investigation of the *loci* of religious power at Rome, asserts that real religious authority and power at Rome lay not with the priests, but with the Senate,³⁰ and that "[t]he people in assembly were perceived to have some power of decision over public dedications to the gods."³¹ Beard bases both of these statements on several pontifical decrees on dedications. Now, the first statement is patently false, contradicting basic facts about Roman religion and government. It has received deserved criticism.³² The second can be shown to be equally erroneous, but deserves a closer look, for it not only illustrates the insufficiency of Beard's approach to the pontiffs, but also reveals a promising way of approaching the analysis of pontifical authority versus senatorial authority.

To support her second claim Beard discusses the Vestal Virgin Licinia's dedication of an *ara*, *aedicula*, and *puluinar* on the Aventine in 123 B.C. The urban praetor, Sextus Julius Caesar, acting upon the authority of the senate, contested the dedication and referred the matter to the pontifical college. It in turn issued a *responsum* invalidating the dedication because it had been performed *iniussu populi*.³³ The senate then passed a *senatus consultum* directing Sex. Julius *ut curaret ne id sacrum esset, et ut, si quae essent*

²⁹ Linderski 1986, 2151 and 2155.

³⁰ Beard 1990a, 30-33.

³¹ Beard 1990a, 34.

³² Bodel 1992, 397-399 and Brennan 1991.

³³ Cic. *Dom.* 136-138.

*incisae aut inscriptae litterae, tollerentur*³⁴ ("to make sure that no sacred character should attach and that any engraving or inscription should be removed").³⁵ From this information Beard concludes, "[o]nce again it seems that the final decision lay with the senate; but the authority of the people (or, in this case, the lack of it) was also an element in determining the religious status of the dedication" (34). Yet her conclusion is wrong, for as Linderski explains:

[T]he *ius publicum dedicandi* was a cross between the *caerimoniae pontificum* and the *iussa populi*.³⁶ The latter concerned the status of a dedication in public law, the former the religious ritual. Legally valid were only those dedications performed *iussu populi*; religiously valid were only those performed according to the prescribed ritual.³⁷

In fact, the people played no part in determining a dedication's religious status; they helped determine only its legal validity. For this reason we can distinguish between "the *ius pontificium publicum*, which dealt with legal aspects of sacral acts, and the *ius pontificium* proper, which was concerned with the ritual."³⁸ This dichotomy provides a promising avenue for research into the relationship between the pontifical and public law, but no modern treatment of the pontiffs has adopted it. My investigations in the third chapter, however, will be informed by it, in the belief that it will yield significant conclusions concerning the pontifical decrees and responses.

³⁴ Ibid. 137.

³⁵ The translation of Shackleton Bailey 1991, 96. Beard is also incorrect to say that the senate "ordered the destruction of the monument" (34).

³⁶ As proof of this statement he adduces Cicero *de Domo Sua* 136: *ius publicum dedicandi, quod ipsi pontifices semper non solum ad suas caerimonias sed etiam populi iussa accomodauerunt*.

³⁷ Linderski 1985, 216.

³⁸ Linderski 1985, 216.

In documenting the pontifical involvement at the trials of Vestal Virgins accused of *incestus* I first attempt to reconstruct a typical trial from suspicion to condemnation. In doing so, one of my more important conclusions is that, *pace* Mommsen, the *pontifex maximus* did not possess the power to condemn a Vestal on his own without consulting his colleagues. After this I turn to a detailed analysis of the two *decreta* whose issuance in an *incestus* trial is attested. I show first that the college must have issued these *decreta* every time a Vestal was accused of *incestus* and immediately upon suspicion that she was no longer chaste. More importantly I call attention to the emphasis the ancient sources place on the unchaste Vestal's performance of *sacra*. I try to show that it was this and not just the loss of virginity that gravely jeopardized the *pax deorum*. Thus from this section emerges a better understanding of the relationship between the pontifical college, the Vestal Virgins and the *pax deorum*.

Chapter four contains a summary of the findings of this dissertation and outlines what might be the future directions for fruitful research on the pontiffs and pontifical law.

The work ends with an appendix in which I reproduce (with appropriate contextualization) and translate all known passages in Latin that refer to the pontifical law. This appendix ostensibly complements the word-study in chapter two, but in reality has been useful for this entire work. But it is also my hope that other scholars working on the pontifical law will also find it a useful and convenient reference tool.

1.2 Sources for the pontifical law

The first thing that must be said about the ancient sources for the pontifical law is that we do not possess any work written by a *pontifex*. This is a crucial loss, for it means we are without an insider's view of the pontiffs' powers, procedures and guiding concepts.

In this respect students of the augural law enjoy a decisive advantage, for they have the writings of a Roman augur, Cicero, whose many works on Roman religion are undoubtedly colored by his knowledge of the augural law.

The lack of ancient works does not, however, indicate an ancient lack of interest, but the vicissitudes of text survival. The Romans were very interested in pontifical law and wrote many treatises on it. The most important ones are the books on the pontifical law by Antistius Labeo and Ateius Capito. A sizeable number of useful fragments of these works survive, but they are only a paltry representation of their original bounty.

Most lamentable is the loss of nearly all of Marcus Terentius Varro's staggering output on Roman religion. The foremost scholar and student of Roman religion of any era, Varro wrote numerous books in which he doubtless discussed matters of relevance to the *ius pontificium*. We view with particular regret the loss of his *Antiquitates Rerum Humanarum et Diuinarum*, a monumental work in forty-one books, of which we possess meager scraps. Nearly nothing survives of what would be the most important section for this study, book twenty-seven, in which Varro wrote *de pontificibus*.³⁹ And yet the loss is ameliorated somewhat by the fact that Varro's works were widely read and quoted. Undoubtedly, much of the antiquarian pontifical lore reported by Servius, Macrobius, Festus, and Aulus Gellius has Varro (and perhaps this work) as its ultimate source.

Of authors whose works are substantially extant the most important are Cicero and Livy. Of the former's writings the most important are the speech *De Domo Sua* and the second book of *De Legibus*. As the only preserved speech delivered before the pontifical college the *De Domo Sua* has a particular claim on our attention. Mommsen called it the

³⁹ On the structure of this work and the title of its individual books see Augustine *Ciu. Dei* 6.3-4.

most important speech for constitutional law,⁴⁰ but it is as equally significant for the *ius pontificium*, for in it Cicero discusses the proper performance of a dedication, reports the text of two pontifical *responsa*, and outlines some of the fundamental concepts of Roman religion and pontifical law. The second book of *De Legibus* is useful as the only surviving example of a Roman author's attempt to offer a religious constitution. Of course Cicero's dispensation is not an exact copy of Rome's religious 'constitution', but he, by and large, presents a picture of the state religion as he knew it in his day. Although we must always be aware that Cicero may deviate from actual Roman religion, his constitution is valuable, nonetheless, for delimiting the place of the pontiffs in Roman religion and for providing useful comments on the laws themselves.

Livy's *Ab Urbe Condita* is at least as important as Cicero's works, for the thirty-five extant books of this monumental history preserve the names of many pontiffs, the date of their cooptation and death, as well as many of the actions they performed as a group and individually. The majority of all preserved *responsa* and *decreta* of the college can be found in the pages of Livy, and though he himself was not a pontiff, his work is a valuable guide to an understanding of Roman religion, for he preserves unchanged much from the accounts of his better informed annalistic sources.

The epigraphical sources for the pontifical law are neither meager nor substantial. We possess a fair number of inscriptions recording the college's action in the area of tomb and burial law,⁴¹ but we possess nothing like the rich fund of stones available to the

⁴⁰ Mommsen 1887-1888 3.1038.

⁴¹ E.g., *CIL* 10.8259 = *ILS* 8381: [d.] m. [s.] [c]ollegi[um] pon[tif]icum d[e]creuit si ea ita sunt que libello [c]ontinentur, placere per...re puella [de] q. agatu[r s]acelo [eximere et i]ter[um ex] pra[escr]ipto [d]eponere et scripturam tituli at pristinam formam restituere, piaculo prius dato operis faciendi oue atra.

students of the Arval Brethren,⁴² which give detailed accounts of the rituals performed by that priesthood, or the stones from Bantia which have shed valuable light on the understanding of the augural discipline.⁴³

1.3 Review of scholarship

The bibliography on the pontiffs is massive; here I discuss only the most important works. Modern study begins with 1612 publication of J. Gutherius' *De ueteri iure pontificio urbis Romae libri quattuor*. In the course of over two hundred closely printed pages of double columns, Gutherius discusses almost every aspect of the institution of the pontiffs, but also propounds several adventurous theses such as that there were two *pontifices maximi*. Needless to say, his work is also woefully out of date.

The acme of pontifical studies came in the nineteenth century, which saw the publication of the studies of K. Hüllmann's *Ius Pontificium der Römer* (Bonn, 1837), J. Cauvet's *Le droit pontifical chez les anciens Romains dans ses rapports avec le droit civil: études sur les antiquités juridiques de Rome* (Caen, 1869), and A. Bouché-Leclercq's *Les pontifes de l'ancienne Rome* (Paris, 1871). Valuable though these works are, the first two are flawed in their devotion to examining, almost exclusively, the influence of the pontifical law on the civil law. The third is still a very helpful and useful work, but is in many respects outdated, and its focus is primarily antiquarian.

The same century saw the publication of several important works on the books of the pontiffs. The first of these was by J. A. Ambrosch, *Observationum de sacris romanorum*

⁴² See W. Henzen *Acta Fratrum Arvalium Quae Supersunt* (Berlin, 1874), and J. Scheid *Romulus et ses frères. Le collège des frères arvaux, modèle du culte dans la Rome des empereurs* (Rome, 1990).

⁴³ M. Torelli, "Un Templum augurale d'età repubblicana a Bantia." *Rendiconti dell' Accademia dei Lincei* 21 (1966 [1967]) 293-315; idem, "Contributi al supplemento del CIL IX." *Rendiconti dell' Accademia dei Lincei* 24 (1969) 39-48.

libris particula prima (Vratislaviae, 1840), and the next two P. Preibisch's *Quaestiones de libris pontificiis* (Diss. Vratislaviae, 1874) and *Fragmenta librorum pontificiorum* (Tilsit 1878), followed by R. Peter's *Quaestionum pontificalium specimen* (Diss. Argentorati, 1886). These were followed at the turn of the century by several works that are still very valuable both as collections and as concise evaluations of the evidence for pontifical statutes and vocabulary. These are M. Kretzer's *De Romanorum vocabulis pontificalibus* (Diss. Halis Saxonum, 1903), G. Rowoldt's *Librorum pontificiorum Romanorum de caerimoniis sacrificiorum reliquiae* (Diss. Halis Saxonum, 1906), and, thirty years later, G. Rohde's *Die Kultsatzungen der römischen pontifices* (Berlin, 1936). Most recently the books of the pontiffs have been treated by B. Frier, *Libri Annales Pontificum Maximorum* (2nd ed.; Ann Arbor, 1999), F. Sini, *Documenti sacerdotali di Roma antica. I. "Libri" e "Commentarii"* (Sassari, 1981), and J. Linderski ("The Libri Reconditi", *HSCP* 1985).

As mentioned above, the pontiffs have been the subject of much prosopographical attention. The first, and still very useful, treatment of the subject is Bardt's *Die Priester der vier grossen Collegien aus römisch-republikanischer Zeit* (Berlin, 1871). Much of value can be found in Broughton's epochal *The Magistrates of the Roman Republic. Vols. I-III* (New York, 1951-1952, 1986). Less felicitous is the treatment given the pontiffs by G. J. Szemler in *The Priests of the Roman Republic: a Study of Interactions Between Priesthoods and Magistracies* (Bruxelles, 1972).⁴⁴ And now we have the three weighty tomes of J. Rüpke et al. *Fasti sacerdotum. Die Mitglieder der Priesterschaften und das sakrale Funktionspersonal römischer, griechischer, orientalischer und jüdisch-christlicher Kulte in der Stadt Rom von 300 v. Chr. bis 499 n. Chr.* (Stuttgart, 2005),

⁴⁴ See the blistering review of Wiseman in *JRS* 63 (1973) 266-267.

which promises to be the definitive prosopographical treatment of all priests at Rome for the foreseeable future.⁴⁵

But undoubtedly the most important works for the pontifical college are the relevant pages in Th. Mommsen's *Römisches Staatsrecht* (Leipzig, 1887-1888) and the second edition of Wissowa's *Religion und Kultus der Römer* (Munich, 1912). In brief compass these authors manage to convey an understanding not only of the totality of the activities of the pontifical college and its individual members but also shed light on the fundamental concepts behind the actions and structure of that body. In writing this dissertation both works have been constantly before my eyes.

Most recently there is the book by Françoise van Haepere *Le collège pontifical (3ème s. a. C. - 4ème s. p. C.): Contribution à l'étude de la religion publique romaine* (Rome, 2002). This work is valuable and useful and replaces Bouché-Leclercq; but it differs from the present study in that it is more concerned with presenting the relevant evidence for the pontiffs in one convenient place than with analyzing the theology and concepts underlying pontifical action.

Also useful is P. Cohee's 1994 dissertation *Decrees and Responses of the Roman Priesthoods during the Republic* (Diss. University of Colorado, Boulder, 1994), which collects and analyzes the decrees and responses of the pontifical college. Cohee performed an invaluable service in writing this work, as his collection is a mine of useful information and his comments are illuminating. But the most useful scholarly work on

⁴⁵ But see also M. W. Hoffman Lewis, *The Official Priests of Rome under the Julio-Claudians. Papers and Monographs of the American Academy in Rome* 16. Rome, 1995. L. Schumacher, *Prosopographische Untersuchungen zur Besetzung der vier hohen römischen Priesterkollegien im Zeitalter der Antonine und der Severer* (Diss. Mainz, 1973) and Idem, "Die vier hohen römischen Priesterkollegien unter den Flaviern, den Antoninen und den Severern (69-235 A.D.)." *ANRW* II.16.1 (Berlin & New York, 1978) 655-819.

the pontiffs is, in fact, not a work on the pontiffs at all: Linderski's *The Augural Law*.⁴⁶ In this work Linderski effectively inhabits the mind of an augur, so to speak, and uncovers and explains the most fundamental concepts of the augurs' discipline. In doing so he present a valuable model for analyzing the pontifical college, too, which, after all, was structured and operated in a manner very similar to the augural college. I make no claim to do in the following pages for the pontifical law what Linderski did for the augural law. Nevertheless, I freely admit that I have looked to his work, along with that of Mommsen and Wissowa, at every turn for guidance and structure. It is the approach of these scholars to which I am drawn by historical methodology and which I feel offers the most rewarding insights into the Roman *religio*. This approach does risk becoming (as one scholar has recently written) "remarkably nineteenth-century *Staatsrecht* oriented,"⁴⁷ but I have followed it nonetheless, in deliberate indifference to more fashionable and ultimately, I believe, ephemeral anthropological and sociological theories.

⁴⁶ *ANRW* II.16.3 (1986) 2147-2132.

⁴⁷ Rüpke 2004, 194 n. 3.

CHAPTER TWO: THE PONTIFICAL LAW AND ROMAN RELIGION

In this chapter I attempt to situate the pontifical law and the pontiffs in their proper religious context by examining their place within the state religion of Rome. The examination is necessary before dealing in the next chapters with the pontiffs' corporate and individual duties, but is made even more pressing by the inadequacy of existing treatments of the subject, which consistently overlook or underestimate the importance of the pontiffs and pontifical law for Roman religion. The most recent work on the pontifical law,⁴⁸ for example, provides much information on the legal activity of the pontiffs, but does not describe—indeed, it barely mentions—their many religious duties. On the other hand, a recent influential article on pontifical religious power portrays the pontiffs as little more than a toothless advisory board to the senate, which wielded the real religious power in Rome (so it is claimed).⁴⁹ One of my central concerns in this chapter is to correct these and other misconceptions by giving the pontifical law and the pontiffs the investigation they deserve and demand, but have yet to receive; in doing so, I hope to offer a better definition of the pontifical law and a better understanding of the pontiffs' importance for the state religion of Rome.

I begin by briefly summarizing the standard works on the pontifical law. Though helpful, they view their subject primarily from a legal standpoint and consequently give a distorted picture of its scope and powers. The most recent attempt⁵⁰ to define the pontifical law I examine in detail, showing that it accords the pontiffs excessive power

⁴⁸ Berger 1919b.

⁴⁹ Beard 1990a; similar remarks at eadem 1994, 730-731, "The principal religious authority was the Senate.... The active religious power of the Senate outweighed that of any other body."

⁵⁰ Berger 1919b.

over developed Roman civil law and not enough over Roman religion. The limited evidence for the relation between the pontifical and civil law simply cannot support the claim of deep influence of the one over the other. I analyze this evidence (too often taken out of context), and offer a more precise understanding of the relation between the *ius pontificium* and the *ius ciuile*.

The most glaring insufficiency in scholarship on the pontiffs and pontifical law is the absence of a study that would try to understand the pontifical law by collecting and analyzing all occurrences of Greek and Latin terms for the concept. In this section I attempt to fill that void. The number of occurrences is small—around eighty in Latin, none securely attested in Greek—but from them one can draw the significant conclusion that the pontifical law dealt almost exclusively with matters of Roman religion. I provide a chart that shows the distribution of the various terms among and within those ancient authors who use them. The result of this *Wortstudie* is a better understanding of the powers of the pontifical law and the extent of its application.

The next section forms what might be called the 'real world' counterpart to the preceding word-study. Here I investigate the structure of the state religion of Rome, paying particular attention to the place of the pontiffs within it. I am not so much concerned with examining if and how the pontiffs interacted with other religious authorities (augurs, haruspices, *et al.*), as with understanding over which fields of Roman religion the pontiffs exercised sole authority and what the procedural and spatial limits of that authority were. I also investigate the power of the pontiffs over members of their own college (*collegium pontificum*) and the part those members played in shaping and

interpreting the pontifical law. The results of this section confirm those of the preceding one.

Related to the pontiffs and pontifical law is the sacral law. The nature of the relationship, however, is poorly understood—scholars often use the two terms interchangeably—and the terms themselves are ill defined. In the final section of this chapter I attempt to explain the relationship by first showing that the concept that scholars most closely associate with the pontifical law, the so-called *ius sacrum* ('sacral law'), is a phantom: the term that the Romans used was *ius sacrorum*, and, though a subsection of the pontifical law, its scope was much more limited than that which scholars customarily attribute to the *ius sacrum*.

2.1 Defining the pontifical law

Although numerous articles and books on the pontiffs or aspects thereof appear annually, the pontifical law has not received detailed scholarly treatment since the 19th century monographs of Hüllmann (*Ius Pontificium der Römer* [1837]), and Cauvet (*Le droit pontifical chez les anciens Romains dans ses rapports avec le droit civil* [1869]), works that treat the pontifical law primarily from a legal standpoint—note the title of Cauvet's work in particular—and glance but cursorily at its religious aspects, their primary concern being the activity of the pontiffs in certain areas of Roman civil law, not the pontifical law as a principle of Roman religion. In order to find a work dedicated to this latter topic, one must go back almost 400 years to the dense antiquarian work of Gutherius (1612), valuable as a collection of evidence, but lacking in interpretation and critical insight: note, for example, his proposal that the pontifical college had two

pontifices maximi;⁵¹ needless to say this work is also outdated. The works of Bouché-Leclercq (1871, 1877) and the handbooks of Marquardt (1881-1885), Mommsen (1887-1888), and Wissowa (1912) offer invaluable insights into many aspects of Roman religion and the pontiffs, but make only scattered (though invariably helpful) remarks on the *ius pontificium* and present no synthetic treatment of the concept. Berger's 1919 article on the *ius pontificium* in the *Real-Encyclopädie* remains, after nearly a century, the only modern attempt to define the pontifical law; it therefore deserves careful scrutiny.

2.1.1 Berger's definition

In his entry on *ius pontificium* Adolf Berger distinguishes two types of pontifical law.⁵² I shall analyze them in turn. The first he defines as

...that law whose knowledge and administration lay with the *pontifices*: it is the 'priestly law' (*Priesterrecht*), the 'holy law' (*geistliches Recht*), with which the pontiffs deal in their administration. The name thus derives only from an external appearance in that it originates from the subject that governs this area of law as the expert, guardian, and creator of it.⁵³

This definition suffers from three problems. First, its meaning is nearly opaque. Second, it is not so much a definition as an explanation of what the adjective *pontificium* means. Third, it is much too broad and vague to help in understanding the scope and definition of the pontifical law, since it essentially claims that the pontifical law is whatever law the

⁵¹ On this work and others like it, see also the comment of Wissowa (1912, 10), "Antiquitäten des Kultus und des Sakralrechtes fanden ihre Darstellung in den mehr sammelnden als sichtenden Monographien der Gelehrten des 16. und 17. Jahrhunderts über das *ius pontificium*, über Insignien und Rechte einzelner Priesterschaften, über Auspicien und Augurien usw...."

⁵² Berger 1953, 531, s.v. *ius pontificium*, is a much condensed version of the same author's article in the *Real-Encyclopädie*; it adds nothing new.

⁵³ Berger 1919b, 1286.1-10, "**Ius pontificium.** So wird jenes Recht bezeichnet dessen Kenntnis und Handhabung bei den Pontifices liegt: es ist das 'Priesterrecht', das 'geistliche Recht', mit dem die Pontifices in ihrer Amtswaltung zu tun haben. Die Bezeichnung kommt also nur von einer äußeren Erscheinung her, indem sie von jenem Subjekt, das das betreffende Rechtsgebiet als Kenner, Hüter und wohl auch Schöpfer desselben beherrscht, ihren Ursprung nimmt."

pontiffs administer, but does not list, discuss or briefly describe the areas to which the pontifical administration applied. Furthermore, in the sentences following this definition, Berger does not differentiate sufficiently between certain concepts related to the pontifical law, for he claims that its contents overlap to a considerable extent with those of the *ius diuinum* and *ius sacrum*. Indeed, he seems to assume that these three terms are interchangeable, for in one place he asserts that the *ius diuinum* and *ius pontificium* are nearly identical⁵⁴ and in another maintains that the *ius sacrum* forms the main contents of the *ius pontificium*.⁵⁵ Because Berger provides little evidence to support his statements it is difficult to know if he is correct, and he leaves his reader uncertain about the precise relationship of these three concepts. Most importantly, because his treatment does not discuss or even mention the numerous religious duties and prerogatives of the pontiffs, both it and the attendant discussion are of limited use for a thorough understanding of the pontifical law.

Berger's second definition reads as follows:

...the term *ius pontificium* denotes the law that pertains to the *pontifices* in their relationship to the state and its institutions, the—so to speak—pontifical canon law

⁵⁴ Idem, 1286.46-52, "Daß man auch andererseits zwischen den Begriffen *ius diuinum* und *i. p.* keinen Unterschied machte, bezeugen zwei auf den Juristen Capito bezugnehmenden Stellen, die ihn als einen ausgezeichneten Kenner des heiligen Rechts hinstellen;..." But the passages to which Berger refers (Tac. *Ann.* 3.70 and Mac. *Sat.* 7.13.11) can hardly support this claim. Tacitus states in passing that Ateius Capito was knowledgeable in 'human and divine law' (*Capito ...humani diuiniq[ue] iuris sciens*), and in Macrobius one of the interlocutors, Caecina Albinus, calls Capito (again, in passing) among the most knowledgeable of pontifical law (*...Ateium Capitonem pontificii iuris inter primos peritum...*). Surely more proof is needed than these two *obiter dicta* to show that the Romans made no distinction between the *ius diuinum* and *ius pontificium*.

⁵⁵ Idem, 1286.17-22, "Verwandt ist die Bezeichnung *ius sacrum*...weil auch dieses das Verhältnis der Menschen zu den Göttern regelt, die Satzungen des Kult- und Opferritus festlegt, was ja auch den Hauptinhalt des Pontificalrechts ausmacht." In this entry it is not clear whether Berger means that the *ius sacrum* is related to (*verwandt*) the *ius diuinum*, which he has just discussed, or to the *ius pontificium*. Either way it is clear that he views the three concepts as nearly identical.

(*das pontificale Kirchenrecht*) that governs the legal affairs (*Rechtsverhältnisse*) of the *pontifices*.⁵⁶

The definition is vague and confusing, primarily because Berger does not make clear what he means by the phrase 'das pontificale Kirchenrecht'. 'Kirchenrecht' (canon law) should denote the law that deals with religious matters, but Berger denies the phrase any religious significance and instead imparts to it a strictly legal sense by claiming that the 'Kirchenrecht' governs the pontiffs' legal affairs (*Rechtsverhältnisse*). His lack of interest in any religious aspect of the pontifical law emerges more fully in the sentences immediately following wherein he does not discuss any of the religious laws—or any of the *Rechtsverhältnisse*, for that matter—that the pontiffs created or governed, but ends his discussion of this definition by touching briefly on the relationship of the pontifical law to the civil law, asserting that although they were separate fields, they often overlapped in many areas of Roman law, hence the famous statement in Cicero's *de Legibus* that "no one is a good pontiff, unless he knows the civil law (*pontificem bonum neminem esse, nisi qui ius ciuile cognosset*)."⁵⁷

Berger provides a useful guide to scholarly opinion on the topic, and his article deals well with certain aspects of the pontifical law; but his definitions are too confusing and vague to provide a detailed understanding. For example, it is difficult to see the point of his distinction between two types of *ius pontificium*. As Berger admits, the ancient sources offer abundant evidence for the first definition, but the second is a modern

⁵⁶ Idem, 1286.66-1287.2, "...bezeichnet *i. p.* das Recht, das die *pontifices* in ihrem Verhältnis zum Staat und seinen Einrichtungen betrifft, sozusagen das pontificale Kirchenrecht, das die Rechtsverhältnisse der Pontifices regelt."

⁵⁷ Cic. *Leg.* 2.47.

invention.⁵⁸ Also, Berger's preoccupation with the 'legal' aspects of the pontifical law—indeed, most of his article is an investigation of the pontiffs' influence on the development of Roman legal science—leads him to disregard the importance of the *ius pontificium* for Roman religion,⁵⁹ an area over which the pontiffs wielded extensive power for centuries longer than they did over Roman law. In focusing on the pontiffs' influence on civil law, Berger follows in the footsteps of the many scholars before him, who, perhaps under the influence of Mommsen,⁶⁰ viewed the pontifical law (and the relevant ancient sources) with a jurist's eyes instead of a pontiff's, or, we might say, with the eyes of a Capito or Labeo instead of a Varro. A close look at the ancient evidence reveals that the pontifical law did not influence the civil law as extensively as Berger assumes nor in the way that he and other scholars suppose. The first step, then, in properly understanding and defining the *ius pontificium* is to clarify its influence on and relationship to the *ius civile*.

⁵⁸ Berger 1919, 1286.56-62.

⁵⁹ This preoccupation reveals itself most clearly in three places: 1) 1287.47-53, "Der Inhalt des *i. p.* ist mit jenem des *ius sacrum*...verwandt. Dieses Gebiet war in den Anfängen der Entwicklung der römischen Rechtswissenschaft besonders umfangreich, was durchaus erklärlich ist, wenn man beachtet, welchen großen Einfluß die *pontifices* auf die Entwicklung der römischen Rechtswissenschaft hatten," 2) 1288.17-27, "Der Einfluß des Pontificalrechts machte sich dann, *abgesehen von rein sakralen Gebieten*, nur in jenen bereits erwähnten Rechtsinstituten geltend, die durch ihren engen Zusammenhang mit religiösen Begriffen und Vorstellungen sich von den durch das göttliche Recht festgesetzten nie lossagen konnten, oder wo durch Mitwirkung geistlicher Personen (z.B. Priester, Vestalinnen) schon aus diesem Grunde die Berücksichtigung der Grundsätze des Pontificalrechts nicht umgangen werden konnte" [my italics], and 3) 1288.28-32, "Diese Entwicklung des *i. p.* und seiner Bedeutung für das Rechtsleben spiegelt sich sowohl in der Geschichte der römischen rechtswissenschaftlichen Literatur wider."

⁶⁰ Of course this criticism is not valid for Cauvet or Hüllmann who wrote their works long before Mommsen composed *Römisches Staatsrecht*, but it holds for nearly all works on the pontifical law written from the publication of that monumental work up until the present day. Even the great Georg Wissowa was not immune to this criticism, cf. *RuK*² 123-124, where he notes that a scholar had said of him, "daß ich als Schüler Theodor Mommsens die römische Religion von einem einseitigen juristischen Standpunkte aus betrachte, als ob ich in meiner Gesamtauffassung ein leibhaftiges Mitglied des römischen Pontificalcollegiums wäre." Wissowa's reply is relevant to this dissertation and worth repeating (*ibid.*, 124), "Ich glaube, es wäre eine gar nicht üble Grundlage für unser Verständnis der römischen Religion, wenn es gelänge, diese zunächst einmal so zu erfassen, wie es die Pontifices zur Zeit lebendiger Religionsübung getan haben." Cf. also Wissowa 1912, viii.

2.2 The pontiffs and the civil law

It is certainly true that the *ius pontificium* originally embraced the *ius ciuile*: tradition holds that in Rome's early centuries only the pontiffs knew the correct formulae of the *legis actiones* that were necessary for all civil law proceedings and, because they also supervised the calendar, the days on which it was religiously permissible to hold legal proceedings. According to Livy, however, this hold of the pontiffs on the civil law was forever broken in 304 BC when the scribe⁶¹ Gnaeus Flavius *ciuile ius, repositum in penetralibus pontificum, euulgauit fastosque circa forum in albo proposuit, ut quando lege agi posset sciretur*.⁶² The details of the famous story of the *ius ciuile Flauianum*⁶³ are fictionalized, but most scholars believe the general point to be true:⁶⁴ sometime in Rome's early history the pontiffs ceased exercising sole control over the *ius ciuile*.⁶⁵

⁶¹ But he may have been aedile at this time, see Livy 9.46.1-3 and *MRR* 1.168.

⁶² Livy 9.46.5; cf. also Cic. *Mur.* 11.25, *Att.* 6.1.8; Plin. *HN* 33.17; Val. Max. 2.5.2; Mac. *Sat.* 1.15.9. The epitomator of Pomponius preserved in the *Digest* (1.2.7) transmits another tradition from Pomponius' *libro singulari enchiridii*, according to which Appius Claudius Caecus composed a book of legal formulae and *Flavius...subreptum librum populo tradidit...; hic liber, qui actiones continet, appellatur ius ciuile Flauianum*. We need not believe either variant: see Schulz 1961, 11-13, especially 12 (= Schulz 1967, 8-10, especially 9). On Flavius' publication of the calendar see Michels 1967, 108-113.

⁶³ On the *ius Flauianum* see Danneberg *RE* 10: 1215-1218.

⁶⁴ Cf. Szemler 1978, 362.35-39; Wissowa 1912, 515, does not offer a date, but writes that the *ius pontificium* was emancipated from the civil law slowly and comparatively late. Cf. Bouché-Leclercq 1871, 221-223, especially 223; but his treatment is inconsistent; see below in the text.

⁶⁵ The process was no doubt gradual; see Schulz 1961, 11-13 (= Schulz 1967, 8-11), who places the process in the third century based on the appearance at that century's end of the first jurists who were not also pontiffs, the brothers Sextus (*cos.* 198) and Publius Aelius Paetus (*cos.* 201). I, however, do not think that this is sufficient evidence for concluding that the process occurred during the third century. The truth about the matter is beyond certain knowledge, but I would like to point out that one could just as easily use this evidence to propose that the process happened during the 4th century, that it was nearly complete by the end of it, and that the story of the *ius Flauianum* reflects the culmination of that process. Gordon 2001, 136, dates the cessation of pontifical control of the civil law to the time of Tiberius Coruncanius [*pont. max.* 254-243] on the evidence of two passages from the epitomator of Pomponius preserved in the *Digest* (*Dig.* 1.2.2.35 & 38); however, Schulz long ago showed that these passages cannot be so used (Schulz 1961, 13 n. 2 = Schulz 1967, 10 n. 4). The entire tradition of the *ius Flauianum* is so fraught with errors that it demands a separate treatment (obviously impossible here). The main difficulty with the story of the *ius Flauianum* is discussed at Michels 1967, 110, "Even if the pontifices had tried to keep the character of the

Berger acknowledges that this cessation of pontifical control occurred early in Rome's history,⁶⁶ but throughout his article he appears to assume that the pontiffs continued to be important for civil law throughout Roman history because of their involvement in, as he terms them, "institutions of family law, such as marriage, adoption, etc....and...the law of property."⁶⁷ Some influential scholars have made similar assumptions. For example, Bouché-Leclercq in his monograph on the pontiffs says that the publication of the *legis actiones* ended pontifical influence on civil law,⁶⁸ yet he also asserts—in a chapter tellingly entitled "La Religion et Le Droit Civil"—that the pontiffs' supervision of *confarréation*, *adrogation*, and *testament* brought with it attendant powers over civil law.⁶⁹ And in Georg Wissowa's indispensable handbook on Roman religion one finds the following statement:

Thus there arose an extensive and comprehensive *ius pontificium*, which, considering the close connection of all aspects of Roman life to the service of the gods, also comprised a great part of the public and private law, and from which the civil law was emancipated slowly and only comparatively late.⁷⁰

days secret, what, asks the modern scholar, would have prevented the Romans from noting for a few years the days on which they praetor held court, and then listing these *dies fasti*? Why did they wait for Flavius to discover and publish the information?" See the similar remarks of Forsythe 2005, 214-215, 318-321, especially in the former pages in which he sets out succinctly the problems with the tradition of the *ius Flavianum* and concludes, "...the notion of a patrician pontifical stranglehold on early Roman litigation makes little sense." I do not, however, mean to deny that the *pontifices* substantially influenced civil law during their stewardship of it. On this much-discussed topic see especially Wieacker, 1986.

⁶⁶ Berger 1919, 1287.67-1288.4.

⁶⁷ Idem, 1287.40-42; cf. also 1288.17-27 (cited above, n. 59). Similarly, Berger 1953, 531, s.v. *ius pontificium*. Here Berger may be following Cauvet (1869), who discusses, in the same order as Berger, these same areas—marriage, adoption, property.

⁶⁸ Bouché-Leclercq 1871, 221-223, especially 223.

⁶⁹ Idem 202, where he speaks of pontifical intervention in "les plus grands actes de la vie civile, la *confarréation*, l'*adrogation* et le *testament*."

⁷⁰ Wissowa 1912, 515, "So bildete sich ein umfangreiches und weitverzweigtes *ius pontificium*, das bei dem engen Zusammenhange, in dem alle Seiten des römischen Lebens mit dem Gottesdienste stehen, auch einen großen Teil des privaten und öffentlichen Rechtes mit umfaßte und von dem sich das Civilrecht erst verhältnismäßig spät und langsam emancipierte."

These statements, though perhaps accurate, offer only a vague understanding of the pontifical law and its relation to the civil law. One would like to know, for example, whether this relationship changed and, if so, how. More importantly, one would like to know in greater detail how the pontiffs and pontifical law interacted with and influenced the civil law. In the following section I attempt to answer these questions by looking at the three ancient passages that explicitly mention the relationship between the civil and pontifical law.

2.2.1 "*pontificem bonum neminem esse, nisi qui ius civile cognosset*"

A convenient starting point for this section is the following statement made by Berger in his discussion of his second definition of the pontifical law:

...on the other hand it is only completely natural that these areas of law (*i.e.* the civil and pontifical) can become entangled with one another at their shared borders, when the pontifical law takes part in the governance of some of those legal institutions that are not unimportant for private law. Particularly relevant here are the institutions of family law, such as marriage, adoption, etc., and, in the law of property (*Sachenrecht*), the doctrine (*Lehre*) of divine matters, *res divini iuris*. So one might say *pontificem bonum neminem esse, nisi qui ius civile cognosset* (Cic. de leg. II 19, 47).⁷¹

Berger essentially repeats this paragraph in the brief entry on the *ius pontificium* in his *Encyclopedic Dictionary of Roman Law*, "In their activity the pontiffs dealt often with questions of the *ius civile*. Therefore it was said: 'No one can be a good pontiff without

⁷¹ Berger 1919, 1287.34-46, "...andererseits es nur ganz natürlich ist, daß an den Grenzgebieten beider Rechtsbereiche Verwicklungen möglich sind, wenn das Pontificalrecht an der Regelung mancher Rechtsinstitute mitwirkt, die dem Privatrecht nicht gleichgültig sind. Hieher gehören insbesondere Institute des Familienrechts, wie Ehe, Adoption usf. (für die letztere vgl. Cic. de domo 14, 26. 38, s.o.), im Sachenrecht die Lehre von den geheiligten Sachen, *res divini iuris*. So dürfte man sagen *pontificem bonum neminem esse, nisi qui ius civile cognosset* (Cic. de leg. II 19, 47)."

knowledge of the *ius civile*' (Cic. *de leg.* 2.19.47).⁷² But quotes truncated and cited out of context often mislead. Let us quote the entire passage. At *De Legibus* 2.45-47 Cicero and Atticus have the following conversation:

Atticus: You have given me a clear idea of these subjects; now the perpetual sacred rites (*sacra perpetua*) and the privileges of the spirits of the dead (*ius Manium*) await your treatment.

Marcus: Yours is an amazing memory Pomponius! Indeed, I had forgotten those subjects.

Atticus: No doubt you had; but my chief reason for remembering them and looking forward to your discussion of them was the fact that they are concerned with both the **pontifical law** and the **civil law**.

Marcus: True; and a great deal has been said and written on these subjects by men of great learning. And it is my intention, during the whole of our conversation, to take up, as far as I can, in connection with every branch of law to which our discussion leads us, the corresponding division of our own **civil law**; but my treatment will extend only far enough to make clear the source of every one of these divisions. For thus it will not be difficult for anyone who is capable of following a line of thought to know the law with respect to any strange case or knotty problem which may come up, when the basic principle underlying it is once understood.

But legal experts often divide up into an infinite number of parts what is really based on a single principle, either for the purpose of deception, so that their knowledge may seem greater in amount and more difficult to acquire, or else, as is more likely, through lack of skill in teaching; for an art consists not merely in the possession of knowledge, but also in skill in imparting it to others. To take an example from this very branch of law, how extensive do the Scaevolae (both of them pontiffs and also most learned in law) make that very subject of which we have just been speaking! Scaevola, the son of Publius,⁷³ says: "How often have I heard my father say 'that no one could be a good pontiff without a knowledge of the **civil law**.'" A knowledge of the whole of it? Why so? For of what use to a pontiff is the law of house-walls or water rights, or, in fact, any part of the **civil law** at all⁷⁴ except that which is connected with religion? And that is a very small part of the whole, including only the provisions in regard to sacrifices, vows, holidays, graves, and

⁷² Berger 1953, 531, s.v. *ius pontificium*.

⁷³ Publius Mucius Scaevola, *cos.* 133 BC, *pontifex* ?-115, *pontifex maximus* 130-115; his son is Quintus Mucius Scaevola, *cos.* 95, *pontifex* 115-82 (he succeeded to his father's place in the pontifical college), *pontifex maximus* 89-82. On Publius, see *MRR* 1.503, 532, and Rüpke 2005, 2.1159 no. 2476, who dates Publius' death to 121-115; On Quintus, see *MRR* 1.532, 2.73, and Rüpke 2005, 2.1159 no. 2478.

⁷⁴ I translate the vulgate *ullo omnino* rather than Turnebus' conjecture *luminum* (from his 1552 commentary on *De Legibus*, reproduced in Davies-Moser-Creuzer 1824; for the conjecture see *idem* 666, s.v. *aut ullo*). On the other hand, this conjecture is attractive since with *ius parietum* and *ius aquarum* it forms a nice tricolon of servitudes. I am not sure why Dyck 2004, 380, thinks this conjecture (which he misreports as *lumine*) to be unnecessary. Cf. also Kreuzer's comments in n. 80 below.

things of like nature, I believe. Why, then, do we make so much of these matters, when all the rest except this one problem of the rites amounts to very little? Indeed, even this subject, which is of somewhat wider importance, can be reduced to one basic principle; namely, that these rites shall ever be preserved and continuously handed down in families, and, as I said in my law, that they must be continued forever.⁷⁵

With the full context before us several things become immediately clear. First, Atticus' opening remarks restrict all that follows—the rest of Book Two, some twenty-four chapters—to a discussion of "perpetual sacred rituals" (*sacra perpetua*⁷⁶) and "the right of the spirits of the dead" (*ius Manium*). As Atticus says, it is these two areas that "have to do with both pontifical law and civil law" (...*et ad pontificium ius et ad ciuile pertinent*).⁷⁷ One cannot, therefore, use this passage (as Berger does) to show that the pontifical law influenced the civil law in "the institutions of family law, such as marriage,

⁷⁵ Cic. Leg 2.45-47: Atticus: *habeo ista. nunc de sacris perpetuis et de Manium iure restat.* Marcus: *o miram memoriam Pomponi tuam! at mihi ista exciderant.* Atticus: *ita credo. sed tamen hoc magis eas res et memini et <ex>specto, quod et ad pontificium ius et ad ciuile pertinent.* Marcus: *uero, et a peritissimis sunt istis de rebus et responsa et scripta multa, et ego in hoc omni sermone nostro, quod ad cumque legis genus me disputatio nostra deduxerit, tractabo quoad potero eius ipsius generis ius ciuile nostrum, sed ita locus ut ipse notus sit, ex quo ducatur quaeque pars iuris, ut non difficile sit, qui modo ingenio possit moueri, quaecumque noua causa consultatioue acciderit, eius tenere ius, quom scias a quo sit capite repetendum. sed iuris consulti, siue erroris obiciundi causa, quo plura et difficiliora scire uideantur, siue, quod similis ueri est, ignoratione docendi—nam non solum scire aliquid artis est, sed quaedam ars <est> etiam docendi—saepe quod positum est in una cognitione, id <in> infinita dispertuntur. uelut in hoc ipso genere, quam magnum illud Scaeuolae faciunt, pontifices ambo et eidem iuris peritissimi! "sae<pe>," inquit Publi filius, "ex patre audiui, 'pontificem bonum neminem esse, nisi qui ius ciuile cognosset'." totumne? quid ita? quid enim ad pontificem de iure parietum aut aquarum aut ullo omnino <ni> si eo quod cum religione coniunctum est? id autem quantulum est! de sacris credo, de uotis, de feriis et de sepulcris, et si quid eius modi est. cur igitur haec tanta facimus, cum cetera perparua sint, de sacris autem, qui locus patet latius, haec sit una sententia, ut conseruentur semper et deinceps familiis prodantur, et ut in lege posui perpetua sint sacra? Text Ziegler 1974, 282; trans. (modified) Keyes 1928, 427-431.*

⁷⁶ By *sacra perpetua* Cicero means a family's (*gens*) *sacra priuata*, whose maintenance must be continued forever: *perpetua sint sacra* (Leg. 2.47 *ad fin.*); *sacra priuata perpetua manento* (Leg. 2.22 *ad fin.*). Henceforth in this chapter whenever I use the term '*sacra priuata*' I am referring to what Cicero here calls *sacra perpetua*.

⁷⁷ But note that in 2.45-47, Cicero expatiates on only the first of these, the *sacra priuata*. Discussion of the *Manium ius* comes later, but its beginning (and the end of the dialogue on the *sacra priuata*) are lost in the lacuna that follows § 53.

adoption...and in the law of property."⁷⁸ Second, one sees that the quote that Berger cites comes not from the mouth of Cicero, but from the *pontifex* Publius Mucius Scaevola. Cicero, moreover, adduces the quote only to refute it, although in order to do so he must impart to it a meaning that Scaevola may have never intended.

Cicero first claims that the Scaevolae had exaggerated the scope of the *sacra priuata*.⁷⁹ He then implies that Publius thought that a good *pontifex* needed to know all of the civil law. Not so. Cicero clarifies: a pontifex needs to know only that "trifling bit" (*quantulum*) of the civil law which is "connected with religion" (*quod cum religione coniunctum est*)⁸⁰ in the areas of "sacrifices, vows, holidays, graves, and things of like

⁷⁸ Berger's misunderstanding of this passage may originate from a misreading of Mommsen's much more circumscribed comment on this passage, "Schon die beiden Scaevola fanden es nöthig einzuschärfen, dass die beiden Disciplinen denn doch verwandt seien und das Pontificalrecht die Kenntniss *gewisser Abschnitte des Civilrechts* fordere (Cicero *de leg.* 2, 19, 47)" Mommsen 1887-1888, vol. 2, 46-47 n. 6 [my italics].

⁷⁹ I follow Dyck (2004, 379, *ad init.*) in taking "this very branch of law" (*in hoc ipso genere*) at 2.47 to mean the pontifical law regulating the *sacra perpetua* (i.e., *sacra priuata*) alone; later Cicero will discuss the *ius Manium* and the tenets of civil law applicable to it. On the other hand, Dyck may be overstating the matter when he writes, "The essential point of this criticism is the disproportion of the subject-matter of the *ius pontificium*, as conceived by the Scaevolae, with the true state of affairs" (2004, 378, *ad init.*). Cicero's criticism is not directed at the *ius pontificium* as a whole, but at this one branch of it, the *sacra priuata*.

⁸⁰ This very important clause is routinely misinterpreted and thus mistranslated. Rudd 1998, 141: "What has a pontiff to do with regulations about party-walls or the water supply or anything else except what is concerned with religion?" Zetzel 1999, 148: "Why should a pontifex know the laws concerning walls or water or anything at all that has nothing to do with religion?" Ziegler 1974, 283: "Was geht denn den Pontifex das Recht der Wände oder des Wassers oder der Fenster (reading *luminum* for *ullo omnino*; see above, n. 24) an, außer wo es etwas mit der Religion zu tun hat?" De Plinval 1959, 67: "En quoi le droit des murs, celui des eaux ou tout autre regarde-t-il le pontife, en dehors de celui qui se rattache à la religion?" Similarly incorrect is Schmidt 1969, 135 and Pernice 1873, 40 n. 3 and 43 n. 21. (The Loeb, which I have cited above in the text, translates correctly.) These translations disrupt Cicero's train of thought, lead to the misunderstandings that I discuss below (n. 81), and severely distort the relation of the civil to the pontifical law. Rudd *et al.* have Cicero's thoughts move from two specific areas of civil law (*ius parietum*, *ius aquarum*) to a general 'anything at all' (*ullo omnino...eo*), and they deny the very point that Cicero is trying to make: that a pontiff needs to know something, albeit little, about the civil law. (I do not think that Cicero means the Twelve Tables as De Visscher 1963, 85, supposes). Dyck 2004, 380, has no comment, but earlier commentators suspected something was amiss (the commentary on *aut ullo omnino* fills all of page 305 in Davies-Moser-Creuzer 1824): Turnebus wanted to emend *ullo omnino* to *luminum*, but Kreuzer thought the text sound and offered this comment, "at in voce *ullo* non iure in genere, sed *iure civile* intelligendum, quatenus opponitur *iuri pontificio*. Et sic si interpretemur, mutatione nulla opus fuerit" (Davies-Moser-Creuzer 1824, 305), and, "nullum omnino ius civile pontificibus scire necesse esse probat

nature" (*de sacris...de uotis, de feriis et de sepulcris, et si quid eius modi est*). As far as I can tell these very important words are consistently misinterpreted and mistranslated in the scholarly literature. Although scholars have recognized that Cicero's list (sacrifices, vows, etc.) is a general reference to sacrifices, vows, etc.,⁸¹ they have missed the more important point, namely, that with the words "connected with religion" Cicero does not mean that in regulating "sacrifices, vows, holidays, graves, and things of like nature" the pontifical law embraced or arrogated to itself elements of the civil law, or that the pontiffs, by applying the relevant tenets of pontifical law, could influence or change in any way the relevant civil law. Rather, he means that the pontifical law regulated some aspects of these subjects, and the civil law regulated others, and a good *pontifex* must know the relevant regulations of both. One wonders whether Scaevola did not mean exactly this when he said, "no one could be a good pontiff, without a knowledge of the civil law," since such knowledge was undoubtedly required of pontiffs throughout Roman history. It was undoubtedly to gain such knowledge that the *pontifex* Marcus Junius Brutus conversed on Samos with Servius Sulpicius [*cos.* 51]. As Cicero has Brutus say:

...for only recently⁸² at Samos, when I was bent on learning in what area our **pontifical law** was connected⁸³ to the **civil law**, I listened with great interest to his [*sc.* Servius'] replies to my many questions.⁸⁴

auctor, nisi illud unice, quod conjunctum cum religione" (ibid. 666). Nevertheless, although I think Cicero's point is clear, I remain suspicious of the text as it stands.

⁸¹ On the other hand, to take this list as an inventory of the contents of the pontifical law is an act of over-interpretation, such as committed by the most recent commentator on *De Legibus*, who thinks the list "a rough delineation of the pontiffs' sphere of responsibility" (Dyck 2004, 380; cf. also *idem* 378, line 13). One reads similar remarks in a commentary on Livy (Ogilvie 1965, 100) and in the *Real-Encyclopädie s.v. pontifex*, "er [*sc.* Cicero] beschreibt ihre religiösen Befugnisse als *de sacris, de feriis et sepulcris et siquid huiusmodi est...*" (Szemler 1978, 355.8-10). These views may go back to Georg Wissowa, who thought the list described the contents of the pontifical *decreta* (Wissowa 1912, 514 n. 7).

⁸² 47 BC; *Brutus* was composed in 46; cf. Douglas 1966, ix-x.

This is only the second passage to explicitly mention any connection between the civil and pontifical law, and its wording, which is strikingly similar to that of *Leg. 2.47*,⁸⁵ can only mean, as it does there, that Brutus wanted to learn which aspects of *religio* were regulated by both the pontifical and civil law; or, to use the words of Atticus, he wanted to learn which aspects *et ad pontificium ius et ad ciuile pertinent*. At any rate, one should not assume that Brutus learned much from Servius about the pontifical law.⁸⁶ Brutus was a *pontifex* at this time and thus well-versed in the *ius pontificium*.⁸⁷ Servius, on the other hand, was never a pontiff, but a formidable scholar of the *ius ciuile*; he undoubtedly knew little about the pontifical law.⁸⁸

I conclude my discussion of these two passages with a summary and a proposition. The pontifical and civil law were related to one another in that they shared administration over certain fields of Roman religion (*religio*). Cicero informs us that the *sacra priuata* and the *ius Manium* were two such fields; and he states indirectly that the same held for

⁸³ Hendrickson 1939, 135, translates *coniunctum* as "related to the civil law;" I have changed it to "connected with the civil law" in order to be consistent with the translation of *coniunctum* in *Leg. 2.47*.

⁸⁴ Cic. *Brut.* 156: *audiui enim nuper eum studiose et frequenter Sami, cum ex eo [sc. Seruio] ius nostrum pontificium, qua ex parte cum iure ciuile coniunctum esset, uellem cognoscere*. Text Malcovati 1970, 46; trans. (modified) Hendrickson 1939, 135. Douglas' (1966, 121) comment on this passage is a citation of Schulz 1961, 10 (= 1967, 8), who, however, assumes too confidently that here Brutus refers to "Familien- und Erbrecht".

⁸⁵ Compare '*quod cum religione coniunctum est*' (*Leg. 2.47*) with '*ius nostrum pontificium, qua ex parte cum iure ciuile coniunctum esset*' (*Brut.* 156).

⁸⁶ Mommsen also may be guilty of overstatement when he uses this quote as proof that "Zu Ciceros Zeiten... man studierte höchstens dessen [sc. des Pontificalrechts] mit dem Civilrecht sich berühende Theile" (Mommsen 1887-1888, 2.46-47 n. 6). On this see also below, n. 126.

⁸⁷ The date at which he entered the pontificate is unknown, but Broughton (*MRR* 2.254) thinks he must have become *pontifex* before 50; see also Bardt 1871, 16 no. 83, and the brief biography by Rüpke 2005, 2.1280-1281 no. 3058, who writes, "Spätestens seit 50 Pontifex."

⁸⁸ On Servius' legal activities see Kübler *RE* 4A: 858.28-859.47. Note also Cicero's glowing judgment of him at *Brutus* 150-157.

"sacrifices, vows, holidays, graves, and things of like nature".⁸⁹ This last category must be quite broad: we may suppose that it embraced many pontifical actions that were affected by both the civil and pontifical law. The dedication of a temple, for example, appears to belong here. In *De Domo Sua* Cicero makes the following remark on the various rules for performing dedications:

...the public law governing dedications—which the pontiffs themselves have always accomodated, not only to their own rituals, but also to the orders of the people (*iussu populi*).⁹⁰

And in a letter to Atticus Cicero reports in similar words the decision⁹¹ of the pontifical college regarding the restoration of his own house and property:⁹²

that portion of the site might be restored to me without sacrilege (*sine religione*), providing the person claiming to have consecrated it (*dedicasse*)⁹³ was not commissioned by name thereto by an order of the people (*neque populi iussu*) or resolution of the plebs (*plebis scitu*), neither ordered so to act by an order of the people (*neque populi iussu*) or resolution of the plebs (*plebis scitu*).⁹⁴

⁸⁹ See *Leg.* 2.47 (discussed above in text): *quid enim ad pontificem de iure parietum aut aquarum aut ullo omnino <ni>si eo quod cum religione coniunctum est? id autem quantulum est! de sacris credo, de uotis, de feriis et de sepulcris, et si quid eius modi est.*

⁹⁰ *Cic. Dom.* 136: *ius publicum dedicandi, quod ipsi pontifices semper non solum ad suas caerimonias sed etiam ad populi iussa accommodauerunt.* Text Maslowski 1981, 84; trans. Shackleton Bailey 1991, 96. It is true that Cicero speaks of *ius publicum* and not *ius ciuile*, but I think that here the terms are nearly identical, for the *iussa populi* of which Cicero speaks were required by, and hence part of, a *lex* (in this case the *lex Papiria de dedicationibus*, see *Cic. Dom.* 127, 128, and 130) and *leges* were part of the civil law, at least according to one ancient jurist's definition of the term; cf. Papinian (*Dig.* 1.1.7.pr.): *ius autem ciuile est, quod ex legibus, plebis scitis, senatus consultis, decretis principum, auctoritate prudentium uenit.*

⁹¹ It was both a *decretum* and a *responsum*; cf. Linderski 1985, 216 n. 43 = 1995, 505 n. 43.

⁹² Clodius had erected and dedicated a shrine to *Libertas* on the site of Cicero's house; to regain his property and rebuild his home without religious offense, Cicero had to show to the pontiffs that the dedication was invalid.

⁹³ A more accurate translation of this verb would be "dedicated"; Shackleton Bailey (whose translation this is, see next note) has probably confused *dedicatio* and *consecratio*, which, though part of the same ritual, were nevertheless separate acts.

⁹⁴ *Cic. Att.* 4.2.3: '*si neque populi iussu neque plebis scitu is qui se dedicasse diceret nominatim ei rei praefectus esset neque populi iussu aut plebis scitu id facere iussus esset, uideri posse sine religione eam partem areae mihi restitui.*' Text and trans. Shackleton Bailey 1965.

These two passages make it clear that the pontiffs always considered carefully the tenets of civil law relevant to any dedication. As Jerzy Linderski, in an important analysis of this passage, perceptively notes:

The *ius publicum dedicandi* was a cross between the *caerimoniae pontificum* and the *iussa populi*. The latter concerned the status of a dedication in public law, the former the religious ritual. Legally valid were only the dedications performed *iussu populi*; religiously valid were only those performed according to the prescribed ritual. The pontiffs treated the *ius dedicandi* from the standpoint of the *ius publicum* and their own *caerimoniae*. Thus we can speak of the *ius pontificium publicum*, which dealt with legal aspects of sacral acts, and the *ius pontificium proper*, which was concerned with the ritual.⁹⁵

Although the term *ius pontificium publicum* occurs nowhere in the ancient literature,⁹⁶ it is a useful term, and Linderski's distinction between it and the *ius pontificium proper* is undoubtedly correct.⁹⁷ Moreover, the distinction was clearly operative in other areas of pontifical law besides dedications. Let us consider one of them.

In 217 the Romans famously suffered a disastrous defeat at Lake Trasimene. Shortly thereafter (so Livy writes), the dictator Quintus Fabius Maximus, convinced that religious negligence was to blame, convened the senate and convinced it to order that the Sibylline books be consulted in order to discover how the gods' anger might be assuaged. The decemvirs consulted the books and reported to the senate that the books advised placating the gods with vows, temples, games, a *lectisternium*, a *supplicatio*, and a

⁹⁵ Linderski 1985, 216 = 1995, 505.

⁹⁶ As searches conducted on the PHI 5.3 and BTL-2 CD-ROM disks show.

⁹⁷ Grillius, a rhetorician of the 5th century AD (cf. *OCD*^{3r} s.v. Grillius), seems to have anticipated Linderski in positing this distinction; on the *de Domo Sua* Grillius remarks: *et cum eos* [sc. *Pontifices*] *dicit* [sc. *Cicero*] *de iure publico* iudicare, illud aestimandum relinquit, sine causa Clodium **consecrationis iure** pugnare, quod ad pontifices pertinet, cum illi etiam hoc iudicaturi sint, utrum deberet consecrari, quod pertinet ad **ius publicum** (*Commentum in Ciceronis Rhetorica, Rhet. Lat. Min.* 596 = 1.16-20 in the edition of Jakobi, 2002).

'sacred spring' (*uer sacrum*).⁹⁸ Upon receiving the decemvirs' report, the senate ordered the praetor, Marcus Aemilius (Regillus),⁹⁹ "as the college of pontifices (*ex collegii pontificum sententia*) had recommended, to see to it that all these measures were promptly put into effect."¹⁰⁰ Livy continues:

When the Senate had passed these resolutions, the praetor consulted the college, and Lucius Cornelius Lentulus (*cos.* 237, *cens.* 236),¹⁰¹ the *pontifex maximus*, gave his opinion that first of all a popular vote must be taken about the Sacred Spring; for it could not be vowed without the authorization of the people (*iniussu populi uoueri non posse*).¹⁰²

The final words of this passage recall the words of Cicero on dedications (*neque populi iussu*)¹⁰³ and lead one to conclude that a sacred spring, like a dedication, was governed by both the '*ius pontificium publicum*' and the *ius pontificium* proper, or, to paraphrase Atticus, *uer sacrum et ad pontificium ius et ad ciuile pertinet*. In this case, the civil law prescribed that a *uer sacrum* could be vowed only by authorization of the people (*iussu populi*); the pontifical law, on the other hand, governed the correct performance of the rituals of a *uer sacrum*. On both these matters the pontifical college was the recognized authority—recognized by the senate, recognized by the praetor, recognized, undoubtedly,

⁹⁸ On the *uer sacrum* see Eisenhut *RE* 8A (1955): 911-923.

⁹⁹ Cf. Brennan 2000, 2.727, and 2.659, and *MRR* 1.244.

¹⁰⁰ Liv. 22.9.11 (217 BC): *senatus...M. Aemilium praetorem, ex collegii pontificum sententia, omnia ea ut mature fiant curare iubet*. Text Dorey 1971, 76; trans. Foster 1929, 231.

¹⁰¹ Lentulus was *pontifex* ante 221-213 and *pontifex maximus* from 221-213; see *MRR* 1.234, 266, and 2.553, and Rüpke 2005, 2.915 no. 1345.

¹⁰² Liv. 22.10.1: *his senatus consultis perfectis L. Cornelius Lentulus pontifex maximus consulente collegium praetore omnium primum populum consulendum de uere sacro censet: iniussu populi uoueri non posse*. Text Dorey 1971, 76; trans. Foster 1929, 231/233.

¹⁰³ Note also the wording of Livy's report of the performance (in 195) of this same *uer sacrum* (Livy 33.44.2): *uer sacrum ex decreto pontificum iussi facere, quod A. Cornelius Mammula praetor uouerat de senatus sententia populique iussu Cn. Seruilio C. Flaminio consulibus*. Text Weissenborn-Mueller 1959, 133.

by all of Rome—and its duty was to know the pontifical and civil law pertinent to a sacred spring and to ensure that both were followed.¹⁰⁴

It is beyond the scope of this chapter to investigate every area of pontifical competence in order to determine which were governed only by the pontifical law and which were governed by the civil law as well. Cicero tells us that the civil law and pontifical law shared administration over the *sacra priuata*, *ius Manium*, and, in general, *sacra*, *uota*, *feriae*, *sepulcra*, and *is quid eius modi est*. This last category must have been large; I have tried to show that it embraced at least the acts of *dedicatio* and *uer sacrum*; it is likely that other religious acts presided over by the pontiffs also belong in this category. *Confarreatio* and *adrogatio*, for example, were undoubtedly two such areas.¹⁰⁵ One should not, however, suppose that because of this shared administration the pontiffs could change or influence what the civil law prescribed in these areas, nor, for that matter, that the interpreters of the civil law could change or influence what the pontifical law prescribed in the same. Rather, one should imagine that when applying, interpreting or giving advice on a matter of the pontifical law, a pontiff had to know the pertinent regulations of the civil law (if there were any) in order to ensure that he did not

¹⁰⁴ Here they ensure that the civil law pertaining to a *uer sacrum* is obeyed; twenty-one years later (195), when this *uer sacrum* is finally performed, they ensure that the pontifical law pertaining to it is correctly followed. As Livy (34.44.1-2) reports: *uer sacrum factum erat priore anno [sc. 195]....id cum P. Licinius pontifex non esse recte factum collegio primum, deinde ex auctoritate collegii patribus renuntiasset, de integro faciendum arbitrato pontificum censuerunt....* Text Weissenborn-Mueller 1959.

¹⁰⁵ But, to be precise, these two acts were sacral acts that had consequences in civil law; it is only in this way that they can be viewed as partly under the purview of the pontifical law, partly under the purview of the civil law. This 'double existence' (if we may so call it) does not mean, however, that the pontiffs influenced, changed, or interpreted the civil law applicable in these cases, or gained authority over the civil law in general from their involvement in the specific acts of *confarreatio* and *adrogatio* (such is the misguided view of the scholars mentioned above, nn. 20-23). What is more, we must remember that *confarreatio* eventually lost its force in civil law, that is, it ceased to create *manus*, and was preserved—in another characteristically Roman dodge—*quod ad sacra*. This change probably occurred in 11 BC, although the passage preserving the evidence for it (*Inst.* 1.136) presents a number of problems, which cannot be entered into here.

contravene them.¹⁰⁶ If ever a pontiff *did* pronounce on a matter of civil law, he most certainly did so not in his capacity as a *pontifex*, but as a senator or *iuris consultus*. In the words of the pontiff M. Terentius Varro Lucullus [*cos.* 73, *pont.* ante 73-post 57]:¹⁰⁷

...the pontiffs had been judges of the religious issue, but the Senate was judge of the law. His colleagues and himself had given their verdict on the former; on the latter they would decide in the Senate, as Senators.¹⁰⁸

Lucullus was speaking on behalf of his colleagues in the pontifical college about their verdict on the restoration of Cicero's house, but his words can be safely applied to every topic that *et ad pontificium ius et ad ciuile pertinent*. As Jerzy Linderski (discussing this passage) summarizes, "It is important to note that on questions of the law the pontiffs expressed their opinions as senators, and not as members of the *collegium*."¹⁰⁹ And to his conclusion we may add a corollary: on questions of religion and pontifical law the pontiffs expressed their opinions as pontiffs, not as members of the Senate or as *iuris consulti*.

¹⁰⁶ If my interpretation is correct, then one wonders how much pontifical law (if any) an expert at civil law had to know in order to ensure that he not contravene the *ius pontificium* when faced with a similar situation. Surely a *iuris consultus* would know something about the pontifical law or at least enough to know when he should seek a pontiff's expert advice on a matter of pontifical law. Gutherius' remarks are reasonable, "neque tamen necesse putarim pontificem ita iuri civili addictum, ut ab omnibus de illo sicut olim, consuli possit. Ut ne iuris consultum quidem, ita pontificum iura callere, ut de sacris & ceremoniis respondeat. In utroque plerumque perniciose erratur, quod non accideret, si uterque quod religioni & iuri coniunctum est, ita prospiceret, ne fines antiqui exarentur aut deiiciantur. Nihil enim pontifici de iure parietum, aut aquarum, aut luminum. Ut nihil iuris consulto de sacrificiis, diis superis aut inferis, variisque generibus hostiarum" (Gutherius 1696, 5D6-E4).

¹⁰⁷ See on his career *MRR* 2.114, 206, and 625, and Rüpke 2005, 2.1318 no. 3234.

¹⁰⁸ Cic. Att. 4.2.4: *tum M. Lucullus de omnium collegarum sententia respondit religionis iudices pontifices fuisse, legis <es>se senatum; se et collegas suos de religione statuisset, in senatu de lege statuturos cum senatu*. Text and trans. Shackleton Bailey 1965, 70-71.

¹⁰⁹ Linderski 1986, 2162. See also 2161 n. 42, "It seems to me that Lucullus spoke twice: at first he replied in his capacity as *pontifex* to the question put to him by the consul-designate Cornelius Marcellinus, and then he spoke again *suo loco* as a senator."

I turn now to the one remaining passage that discusses the relationship of the pontifical to the civil law. At *De Legibus* 2.52-53 an irritated Cicero launches the following diatribe against the Scaevolae:¹¹⁰

[Marcus]: Regarding this situation and many others, I would like to ask the Scaevolae, who were supreme pontiffs and, in my view, extremely shrewd men: why do you want to add a command of **civil law** to a knowledge of the **pontifical law**? For by your knowledge of the **civil law** you tend to cancel out the **pontifical law**. Rites (*sacra*) go with the deceased's property by the authority of the pontiffs, not by any law. So if you were only pontiffs, the pontiffs' authority would be upheld; but being at the same time great experts in **civil law**, you use this knowledge to circumvent that authority. It was the opinion of the *pontifices maximi* Publius Scaevola [*pont. Max.* 130-115] and Tiberius Coruncanius [*pont. Max.* 254-243], and of the others too, that those who received bequests of as large an amount as all the heirs put together should be obliged to perform the rites. I understand the **pontifical law**. What is added from the sphere of **civil law**? The section on the division of the estate has been carefully drafted to allow the deduction of one hundred *nummi*; thus a device was discovered for relieving the estate of the burden of performing the rites. As if the testator had not wished to forestall such a maneuver, this legal expert, Mucius himself, who is also *pontifex maximus*, advises the legatee to accept less than the sum left to all the heirs. Previous men used to say that the legatee was bound to perform the rites, whatever he received. Once again, such men are freed from that obligation.

This other thing has nothing to do with **pontifical law**, and is taken over directly from **civil law**—the device whereby they formally declare the heir free from his obligation to pay the legacy by means of bronze and balance. The situation is then the same as if the money had never been bequeathed at all, provided that the legatee has obtained a formal promise of payment in respect of the amount bequeathed, so that it is owed to him under the terms of a contract and not as the result of <a legacy>.¹¹¹

¹¹⁰ On the features of diatribe in this passage, see Dyck 2004, 386.

¹¹¹ Cic. *Leg.* 2.52-53: [Marcus]: *hoc ego loco multisque aliis quaero a uobis Scaeuolae, pontifices maximi et homines meo quidem iudicio acutissimi, quid sit quod ad ius pontificium ciuile adpetatis; ciuilibis enim iuris scientia pontificium quodam modo tollitis. nam sacra cum pecunia pontificum auctoritate, nulla lege coniuncta sunt. itaque si uos tantummodo pontifices essetis, pontificalis maneret auctoritas; sed quod idem iuris ciuilibis estis peritissimi, hac scientia illam eludistis. placuit P. Scaeuolae et Ti. Coruncanio pontificibus maximis itemque ceteris, eos qui tantundem caperent quantum omnes heredes sacris alligari. habeo ius pontificium. quid huc accessit ex iure ciuili? partitionis caput scriptum caute, ut centum nummi deducerentur: inuenta est ratio cur pecunia sacrorum molestia liberaretur. quodsi hoc qui testamentum faciebat cauere nolisset, admonet iuris consultus hic quidem ipse Mucius, pontifex idem, ut minus capiat quam omnibus heredibus relinquatur. superi<ores> dicebant, quicquid cepisset, adstringi: rursus sacris liberatur. hoc uero nihil ad pontificium ius sed e medio est iure ciuili, ut per aes et libram heredem testamenti soluant et eodem loco res sit, quasi ea pecunia legata non esset, <et> si is cui legatum est stipulatus est id ipsum quod legatum est, ut ea pecunia ex stipulatione debeatur, sitque ea non <adligata sacris.> [adligata sacris : Lambinus] Text Ziegler 1974, 286; trans. (modified) Rudd 1998, 143.*

Unfortunately, the text breaks off here; the lacuna is of uncertain length.¹¹² Enough of Cicero's words are preserved, however, to allow us to form conclusions important for the purposes of this chapter. This passage continues the discussion of *sacra priuata* upon which Atticus and Cicero had embarked at 2.45.¹¹³ Since then the conversation has turned to the inheritance of the *sacra*, with Cicero explaining how the *sacra* in his ideal Rome will be perpetually maintained.¹¹⁴ He had broached the topic earlier by noting that the pontiffs govern the inheritance of *sacra* by one general principle:

Clearly our present laws on the subject (*sc.* of the inheritance of familial *sacra*) have been laid down by the authority of the pontiffs (*pontificum auctoritate*), in order that the performance of the rites may be imposed upon those to whom the property passes, so that the memory of them (*i.e.* the familial *sacra*) may not die out at the death of the father of the family.¹¹⁵

Shortly after this passage Cicero restates the principle, emphasizing its central importance for the transmission of familial *sacra*:

Now you see that everything depends on one thing, namely, that the pontiffs want (*pontifices uolunt*) the rites to go with the property, and the feast days and the ceremonies to be assigned to the same persons.¹¹⁶

¹¹² See the comments of Dyck 2004, 388, on the topics possibly covered in the missing text. See also Davies-Moser-Creuzer 1824, 319-320.

¹¹³ Berger 1919, 1287.12-23, wrongly thinks that here Cicero juxtaposes all of the *ius ciuile* with all of the *ius pontificium*; he makes the same remark about *Leg.* 2.46, which, however, cannot be so construed; cf. the full passage cited above in the text.

¹¹⁴ In fact the section 2.47-2.53 is a comment on the law laid down at 2.22: *sacra priuata perpetua manento*. The discussion may have been longer; the lacuna makes it impossible to tell.

¹¹⁵ *Cic. Leg.* 2.48: *hoc posito haec iura [sc. de sacris perpetuis] pontificum auctoritate consecuta sunt, ut, ne morte patris familias sacrorum memoria occideret, iis essent ea adiuncta, ad quos eiusdem morte pecunia uenerit*. Text Ziegler 1974, 284; trans. Keyes, 1928, 431.

¹¹⁶ *Cic. Leg.* 2 50: *uidetis igitur omnia pendere ex uno illo, quod pontifi<ces> cum pecunia sacra coniungi uolunt, isdemque ferias et caerimonias adscribendas putant*. Text Ziegler 1974, 284; trans. (modified) Keyes 1928, 433.

Cicero repeats himself a third and final time, summarily stating in the present section (2.52) that, "rites go with the deceased's property by the authority of the pontiffs" (*sacra cum pecunia pontificum auctoritate...coniuncta sunt*). Cicero believed this principle of pontifical law¹¹⁷ sufficed and needed no additional precept from civil law. As he states "rites go with the deceased's property by the authority of the pontiffs, *not by any law*" (*sacra cum pecunia pontificum auctoritate, nulla lege coniuncta sunt*). This last point is crucial, for it forms the substance of his criticism against the Scaevolae in this section. Cicero faults the Scaevolae not so much for abandoning this one principle of pontifical law, but for the way in which they did so. They had essentially created or advised the use of 'dodges'—we might say that they had discovered 'loopholes'—whereby an heir could inherit property (*pecunia*), but avoid the attendant obligation to perform the familial *sacra* of the deceased.¹¹⁸ Now, previous pontiffs had undoubtedly acted similarly: in fact, Cicero ascribes one such 'dodge' to Tiberius Coruncanius, *pontifex maximus* for the period 254-243.¹¹⁹ The Scaevolae were innovative—perversely so, in Cicero's eyes—for using a procedure from the civil law and their own civil law casuistry (acquired, no

¹¹⁷ That the phrases "authority of the pontiffs" (*auctoritas pontificum*) and "the pontiffs want" (*pontifices uolunt*) are non-technical terms for 'pontifical law' (*ius pontificium*) is evident from Cicero's use of the three terms to describe the same concept, namely, that the pontiffs wanted the deceased's rites to be inherited with his property. Lübbert 1859, 186, thinks these phrases imply a pontifical *decretum*, probably rightly. On *auctoritas pontificum* as the equivalent of *ius pontificium*, see below in the text; *auctoritas senatus* was used similarly, *i.e.* as an untechnical term for *senatus consultum*, see Mommsen 1887-1888, 3.1033 n. 2.

¹¹⁸ On dodges in Roman law see the article of Daube (1964; a summary of an unpublished lecture) and, more recently, Brennan 2000, 1.37-38. Bruck 1945, 15, essentially anticipating Daube, gives a good definition of a 'dodge' although he does not use that term, "The Roman jurists preferred to use existing legal forms in an artistic way in order to create what really amounted to new law and corresponded to the social and economic conditions." On the pontiffs as the likely inventors of the concept of the 'dodge', see Wieacker 1986, especially 365-368.

¹¹⁹ For a discussion of his innovation, see Bruck 1945, 5-6, who dates the innovation to 252, on what evidence I have been unable to discover.

doubt, from their experiences as *iuris consulti*)¹²⁰ to create three of these dodges.¹²¹ In doing so, they effectively nullified the very pontifical law that they, as pontiffs, should have protected and upheld.¹²² I am not persuaded by the argument that Cicero criticizes the Scaevolae for the effects that their actions would have on the preservation of the *sacra*.¹²³ Rather, Cicero seems to direct his criticism at them for bringing aspects of the civil law to bear on what was properly the province of the pontifical law and thereby weakening (in Cicero's eyes) the relevant pontifical law. His criticism here recalls his censure of the Scaevolae in 2.47 for intimating that one needed to know all of the civil law to be a good *pontifex*. Both passages leave one with the impression that Cicero felt strongly that these two areas must be kept separate. Why he felt so is beyond certain knowledge;¹²⁴ perhaps he wanted to show that Roman religion in its pristine, original state capably supplied all that was needed for the 'constitution' of his ideal Rome; perhaps he was motivated by that particular distaste that the Romans had for 'mixing together'

¹²⁰ See the remains of their legal writings collected in Bremer 1896, 1.32-34 (Publius) and *ibid.* 1.48-104 (Quintus). See also the scattered references to the legal activity of both in the index of Schulz 1961, 429 (= Schulz 1967, 354), *s.v.* Mucius Scaevola P. and *s.v.* Mucius Scaevola, Q. pontifex.

¹²¹ To describe these complicated dodges is beyond the scope of this chapter and unnecessary for the present discussion; Bruck 1945, 7, offers a lucid treatment.

¹²² Bruck 1945, 8, (see also, 6) questions "whether we really meet here with the violation of pontifical law, as Cicero pleads," and shows that, in fact, the Scaevolae performed their pontifical duties seriously in creating these dodges, for they were trying to ensure that the *sacra* could be transmitted to the person most likely to perform them (*ibid.* 8-9, 14-15, 17-19). Bruck attempts (successfully in my view) to refute those scholars who use this passage of *De Legibus* to prove that Romans of the late Republic were neglecting the *sacra priuata* and by extension, Roman religion. He notes (2 n. 1), for example, the famous remarks of Wissowa, *RuK*² 72, on the "Verfall der *sacra priuata*." Dyck 2004, 386 and 387, appears to agree with Bruck's specific point about the intentions of the Scaevolae, but misses his general conclusion when he writes that, "The reform [*sc.* of the Scaevolae] thus sought to combat one manifestation of the neglect of religious rites characteristic of the late Republic" (Dyck 2004, 383).

¹²³ I doubt that Cicero did not understand the reasoning behind the Scaevolae's actions, *pace* Bruck 1945, 19, who writes, "Inadequate comprehension of the legal technique of the Scaevolae may have been the cause [*sc.* of Cicero's misunderstanding]." But Cicero appears to have studied (formally?) under Quintus Scaevola (cf. 2.47-49) and thus certainly knew whereof he and his father reasoned.

¹²⁴ The lacuna after 2.53 adds to this problem.

what they thought should be kept separate.¹²⁵ In any event, his critique leads to an important conclusion about the relationship between the pontifical and civil law.

As I noted above, it is often claimed that the pontiffs (and by extension, the pontifical law) continued to influence developed Roman civil law because of their involvement in certain that had a civil law component, such as marriage or adoption. But this passage provides evidence for the nearly opposite claim: here we see the civil law encroaching upon the territory of the pontifical law. Similar encroachment may have occurred in other fields and may have gone the other way, *i.e.* with the pontifical law encroaching on the civil, but we cannot know for certain because this is the only ancient passage to discuss in any detail the influence of either field on the other. The burden of proof is thus on those who would side with Berger *et al.* in claiming lasting pontifical involvement with and influence over Roman civil law.¹²⁶

¹²⁵ See the evidence collected in Johnson 2002.

¹²⁶ One occasionally finds reference to another passage, Cic. *de Or.* 3.136. For example, Schulz 1961, 97 (= 1967, 81), cites this passage as evidence that, "As early as Cicero the jurisconsults refused to continue to study pontifical law even in that part which *cum iure ciuile coniunctum erat*" ("Das Pontifikalrecht wollten die *iuris consulti* schon zur Zeit Ciceros nicht mehr studieren, selbst nicht den Teil, der *cum iure ciuile coniunctum erat*."). Here Schulz must surely be following Mommsen who adduced the same passage to express the same judgment in very similar words, "Zu Ciceros Zeiten 'studirte niemand das Pontificalrecht' (*de orat.* 3, 33, 136) oder man studirte höchstens dessen mit dem Civilrecht sich berührende Theile (*Brut.* 42, 156)" (Mommsen 1887-1888, 2.46-47 n. 6). On this see also above, n. 86. But Schulz's Latin is a phantom: it does not exist in the passage cited. At *de Oratore* 3.136 Crassus says: "...effert se, si unum aliquid affert, aut bellicam uirtutem et usum aliquem militarem—quae sane nunc quidem obsoleuerunt—, aut iuris scientiam—ne eius quidem uniuersi; nam pontificium, quod est coniunctum, nemo discit" (Text Kumaniecki 1969, 314). Schulz has either taken *uniuersi* [sc. *iuris*] to mean *ciuilis* [sc. *iuris*] or he has confused or perhaps (intentionally?) amalgamated this passage with the one from *Brutus* 156 that reads, "*cum ex eo ius nostrum pontificium, qua ex parte cum iure ciuili coniunctum esset*." On this see above, nn. 84-86, and the accompanying text. The Loeb translation is similarly guilty, rendering the relevant passage of *de Oratore* thus, "he is proud of himself if he brings to his duties a single qualification, either soldierly valour and some military experience—these no doubt being things that are quite out of date nowadays—or knowledge of law—and not even then of the whole of the law, for nobody studies **ecclesiastical** (= *pontificium* !) law, which is connected with **civil law**" (Rackham 1942, 107). I think that in this context *uniuersum ius* probably means "all law", of which civil law and pontifical law would be independent subsections. The mistranslation is prevalent at least as early as the 1722 edition of *de Oratore* of Proust, who writes (p. 397 note d), "*ius de rebus diuinis a pontificibus scriptum, quod est coniunctum cum iure ciuile*."

2.2.2 Conclusions

In dwelling on these passages I do not mean to disparage Berger or any other scholar; Berger's definition remains the only modern attempt to define the pontifical law and is useful in many ways: it represents well most of the received wisdom on the pontifical law and has forced me to rethink many of my assumptions. Rather I have tried to show that he and many others have offered a distorted and nebulous picture of the relationship between the pontifical and civil law. The pontiffs were the original guardians and practitioners of civil law at Rome, but lost or ceded their control over it sometime in the early Republic. Nevertheless, scholars have persistently asserted that the pontifical law continued to affect civil law because these fields shared jurisdiction over certain areas in Roman life. (The areas most often cited are marriages and adoptions.) Yet a detailed analysis of the limited relevant evidence demands that we refine this assertion and offer a more nuanced understanding of the relationship between the civil and pontifical law.

Only three ancient passages bear on this relationship and about it they tell us frustratingly little; they do, however, allow the following conclusions to be made. During Cicero's day (and perhaps for several centuries before and after) there were certain areas of religion pertinent to both the pontifical and civil law. I have discussed several such areas, but no doubt many more existed. Accordingly, we can distinguish two types of pontifical law. What we may call 'the pontifical law proper' regulated the correct performance of the ritual aspects of these areas; what we may call 'the public pontifical law' (*ius pontificum publicum*) governed the correct performance of the civil law aspects; of both areas the pontiffs were the sole experts: they knew the relevant tenets of each and

guarded against their contravention or transgression. This does not mean, however, that a *pontifex* could influence or change the civil law pertaining to *e.g.*, the performance of a *uer sacrum*, and it certainly does not mean that a pontifex had to know *all* of the civil law in order to discharge conscientiously the duties of his office. On the contrary, a pontifex knew only the civil law relevant to certain areas of *religio*, and we should not assume he could change that law in any way. The fact is we simply have no evidence that the pontiffs ever changed or influenced developed Roman civil law.

Moreover, and perhaps most importantly, we should modify the traditional understanding of the relationship between the pontifical and civil law that posits a vague but pervasive pontifical influence over developed Roman civil law. In fact, the one attested instance of either field influencing the other is a passage from *De Legibus* showing the *civil* law influencing—and in this case, undermining, at least for Cicero—the pontifical law. Here two *iurisconsulti* (who were also *pontifices*), the Scaevolae, take elements from the civil law and apply them to a subject that was properly the sole preserve of the pontifical law, the inheritance of *sacra priuata*. Other pontiffs who were also learned *iuris consulti*—and many undoubtedly were¹²⁷—*may* have acted similarly, but we can neither know nor estimate their number.¹²⁸ Those scholars (such as Berger)

¹²⁷ I note, however, that only one *pontifex* is explicitly described as well-versed in both the pontifical and civil law, P. Licinius Crassus, *pontifex maximus* 212-183; cf. Cic. *Sen.* 50: *quid de P. Licini Crassi et pontificii et ciuilis iuris studio loquar aut de huius Publi Scipionis qui his paucis diebus pontifex maximus factus est?* Cf. also Livy 30.1.5-6: *nobilis idem [sc. Publius Licinius Crassus] ac diues erat; forma uiribusque corporis excellebat; facundissimus habebatur, seu causa oranda, seu in senatu et apud populum suadendi ac dissuadendi locus esset; iuris pontificii peritissimus*. Of course, the same is implied about the Scaevolae at Cic. *Leg.* 2.52; cf. the Latin text above, n. 111. Note also Valerius Maximus' (5.8.3) description of Titus Manlius Torquatus as *iuris quoque ciuilis et sacrorum pontificalium peritissimus*, where *sacrorum pontificalium* is the equivalent of *iuris pontificii*; cf. also Vell. Pat. 2.26.2: *Scaeuolam etiam, pontificem maximum et diuini humanique iuris auctorem celeberrimum*. On the subject of pontiffs who were also jurists see Schulz 1961, 7-57 (= 1967, 6-48).

¹²⁸ It is probably to such priests that Cicero refers at *Leg.* 2.29: *plures autem deorum omnium, singuli singulorum sacerdotes et respondendi iuris et conficiendarum religionum facultatem adferunt*. I do not

who either implicitly assume or explicitly claim that the pontiffs (or pontifical law) exercised deep and lasting influence on the civil law in the Middle or Late Republic simply lack the evidence to support their views. Thus I think that my proposition, supported by the evidence and stated with due caution, is both the most reasonable and most plausible one to advance in the present state of the evidence.

In this section I hope to have demonstrated what the pontifical law did *not* embrace; in the next section I take up the question of what it did embrace.

2.3 The pontiffs and Roman religion

With the civil law removed from the purview of the pontiffs, the pontifical law loses what scholars have traditionally regarded as its primary, if not sole, constituent. We are thus forced to ask: What *did* the pontifical law contain? In this section I attempt to answer this question by undertaking six complementary studies. The first, an examination of all direct references to the pontifical law in the ancient sources, reveals that the pontifical law embraced primarily matters of Roman religion and provides a glimpse, accurate but incomplete, of what those matters were. The second study may be considered the historical or 'constitutional' counterpart to the first, for it completes the picture sketched there but partially by investigating the place of the pontifical college and its individual members within the Roman state religion. Together these two studies show the true extent of the pontifical law and the full range of pontifical duties. I then consider the

think that he means that the *ius respondendi* was a priestly duty; otherwise, why would he attribute it only to many (*plures*) of the *pontifices* (= *omnium deorum...sacerdotes*; cf. *Leg.* 2.20: *divisque aliis <alii> sacerdotes, omnibus pontifices, singulis flamines sunt*)? I think Cicero's *facultas respondendi iuris* should be kept separate from the later *ius respondendi*, attested only from Augustus onward (see Berger 1953, 532 s.v.). I thus disagree with Dyck (2004, 339): "In speaking of the priests' capacity for giving legal responses, Cicero makes no distinction between *ius sacrum* and *ius civile*, for both originally fell to the pontifices... The other priestly function specified is, however, strictly religious, namely that of bring religious rites to completion (*conficiendarum religionum*)."

procedural and territorial circumscriptions on pontifical activity. The section concludes with a discussion of the relationship to the pontifical law of the sacral law. Although my primary goal in this section is to present a clear and accurate account of the contents and scope of the pontifical law, I hope that attainment of it will have the salutary secondary effect of correcting the misconception, recently advanced, rapidly spread, and firmly established, that the pontiffs possessed no real religious power in Rome.¹²⁹

2.3.1 Latin terms for 'pontifical law'

An analysis of the Latin terms¹³⁰ for 'pontifical law' is the focus of this subsection. No such word-study exists. My purpose here is limited to trying to discover what we can know of the contents of the pontifical law by examining all direct references to it. The most important results are the confirmation and extension of the previous section's conclusions. But because this is the first word-study of the pontifical law and because this dissertation is meant to be a thorough treatment of that topic, I also discuss the frequency and distribution of the terms and the authors who use them. In doing so I hope not to have obscured the proverbial forest for the trees, yet even so, the information is, I believe, of enough interest and use to justify that risk.

¹²⁹ Beard 1990a; despite the convincing refutation of its central point (by Bodel 1992, 397-399, and Brennan 1991), this work is sometimes cited as a standard and accurate depiction of pontifical authority (as, e.g. *apud* Dyck 2004, 301; Forsythe 2005, 135 n. 5). As it is now enshrined in a volume of the *Cambridge Ancient History* (Beard 1994, esp. 730-731) it is danger of attaining, if it has not already achieved, the status of orthodoxy.

¹³⁰ Despite its ample stock of words for Latin *pontifex* (see Magie [1904] 1905, 142, and Mason, 1974, 196) and a host of readily available words for law (Mason 1974, 190, lists as Greek translations of *ius* the words *δίκαιον*, *δικαίωμα*, *ἐξουσία*, *τιμαί*), ancient Greek apparently knew no phrase for Latin 'pontifical law' (as shown by electronic searches on the TLG-E CD-ROM; neither Magie nor Mason provides an entry for pontifical law). The closest we get to such a phrase are four references to the pontifical books (Dion. Hal. 8.56: *γραφαι τῶν ἱεροφαντῶν*; 10.1 *ἱεραὶ βιβλῆαι*; Plut. *Num.* 22.4: *βιβλῆαι ἱεροφαντικᾶς*; John Lydus *Mens.* 4.25: *τὰ ποντιφικᾶ λῖα βιβλία*) and one reference to the sacral law (*ius sacrorum*), which formed a part of the pontifical law, Dion. Hal. 2.73.2: *οἱ τοὶ [sc. pontifices] φυλάττουσι μὴδὲν ἐξαμαρτάνειν περὶ τοὺς ἱεροὺς νόμους*. Cary 1937-1950, translates this as "sacred laws" which I think slightly misses the point. There is no entry for *ius sacrorum* in the works of Magie or Mason.

As must any study of Latin technical terminology, this one begins by acknowledging that the Romans were consistent, but not inflexible, in the terms with which they described the central concepts and procedures of their state and its institutions. For our purpose this means that although ancient authors used one term with overwhelming frequency to denote the pontifical law, they also used many phrases and circumlocutions to do likewise. References to the pontifical law lurk, for example, in every mention of the contents of the pontifical *libri*,¹³¹ *commentarii*,¹³² *decreta*, and *responsa*,¹³³ as well as every indirect reference to the pontifical law preserved in the countless phrases (*e.g.*, *religio est*,¹³⁴ *nefas est*,¹³⁵ *fas est*,¹³⁶ (οὐχ) ὁσίως¹³⁷) or simple verbs (such as forms of

¹³¹ That the Romans themselves could identify and thus possibly confuse the pontifical books with the pontifical law (and even the *annales maximi*) is evident from the following comment of Porphyrio on Hor. *Ep.* 2.1.26: *pontificum libros. utrum annales, an ius pontificale significat*? Yet it should also be observed that the pontifical books appear to have embraced not just *res pontificales*, but also augural matters, if Serv. at *Aen.* 7.190 can be any guide: *hoc autem ideo fingitur, quia augur fuit et domi habuit picum, per quem futura noscebat: quod pontificales indicant libri*; hence Preibisch, in his collected fragments of pontifical books, includes fragments pertaining to the augurs (as well as many other priests). Does this mean that whatever is in the pontifical books is not necessarily pontifical law, or does it mean that it is and the pontifical law accordingly applied to other religious authorities? Perhaps Servius has confused the *augurs* and *pontifices*? At any rate, it is worth noting that in at least two other instances the commentary of *Servius Danielis* confuses pontiffs with augurs (**T66**) and pontiffs with flamens (**T37a-d**).

¹³² There are also indirect references to pontifical books, such as: *nos apud pontifices legimus feriis tantum denicalibus mulos iungere non licere, ceteris licere* (Columella *Rust.* 2.21.5).

¹³³ For an extensive but admittedly uncomprehensive list of the various expressions for pontifical *decreta* and *responsa* found in Livy, see Cohee 1994, 22-24. For examples of two Greek terms (neither of which are in Magie or Mason) used for the decrees and responses I cite Dio. Cass. 48.43.6-44.1-2: *διστάζοντος γοῦν τοῦ Καίσαρος, καὶ πυθομένου τῶν ποιντικῶν εἴ οἱ ὅσιον ἐν γαστρὶ ἔχουσιν αὐτῆν ἀγαθέσθαι εἶη, ἀπεκρίναντο ὅτι εἰ μὲν ἐν ἀμφιβόλῳ τὸ κῆμα ἦν, ἀναβληθῆναι τὸν γάμον ἐχρῆν* and idem 46.1-2: *ἐπειδὴ οἱ ποιντικῆς ἀνατυθῆναι τὰ ἱερὰ ὡς οὐχ ὁσίως διὰ τοῦτο τελεσθέντα ἔγνωσαν*. Text Boissevain 1895-1931.

¹³⁴ Gell. *NA* 10.15.3: *equo Dilem flaminem uehi religio est*; the same provision in Paul. Fest. 71 L.: *equo uehi flamini Diali non licebat, ne, si longius digrederetur, sacra neglegerentur*.

¹³⁵ Mac. *Sat.* 7.13.11-17: *inter haec Caecina Albinus, 'si uolentibus uobis erit', inquit, 'in medium profero quae de hac eadem causa apud Ateium Capitonem pontificii iuris inter primos peritum legisse memini. qui cum nefas esse sanciret deorum formas insculpi anulis....*

¹³⁶ Cic. *Leg.* 2.55: *iam tanta religio est sepulcrorum, ut extra sacra et gentem inferri fas negent esse, idque apud maiores nostros A. Torquatus in gente Popillia iudicauit*; Serv. *Dan.* at *Aen.* 8.552: *ergo et equo*

negare,¹³⁸ *dicere*,¹³⁹ *permittere*,¹⁴⁰ *uelle*,¹⁴¹ *putare*,¹⁴² *licere*,¹⁴³ *oportere*,¹⁴⁴ *debere*,¹⁴⁵

necesse est,¹⁴⁶ *ἔξεστι* and *χρεῖ*¹⁴⁷) whose ultimate, if often implied, subject is the pontiffs

merito uti potuit, si ei ire in prouinciam fas erat. sciendum tamen poetam contentum esse uniuersum ius pontificale, dum aliud narrat, attingere.

¹³⁷ E.g., Dio Cass. 37.46.1-2 (Clodius and the Bona Dea scandal): ἐπειδὴ οἱ ποντίφικες ἀνατυθῆναι τὰ ἱερὰ ὡς οὐχ ὁσίως διὰ τοῦτο τελεσθέντα ἔγνωσαν; idem 48.43.6-44.1-2: τοῦ Καίσαρος, καὶ πυθομένου τῶν ποντιφίκων εἰ οἱ ὅσιον ἐν γαστρὶ ἔχουσιν αὐτὴν ἀγαγέσθαι εἴη; Cf. also idem 13.3 and 48.53.6.

¹³⁸ Gell. NA 1.12-13: *minorem quam annos sex, maiorem quam annos decem natam negauerunt capi fas esse*; Serv. Dan. at G. 4.379: *ceterum nymphis libari uino pontifices negant.*

¹³⁹ Var. Ling. 5.23: *ab eo, quom Romanus combustus est, si in sepulcrum eius abiecta gleba non est aut si os exceptum est mortui ad familiam purgandam, donec in purgando humo est opertum (ut pontifices dicunt, quod inhumatus sit), familia funesta manet.* Cic. Nat. D. 3.94.1-11: *est enim mihi tecum pro aris et focus certamen et pro deorum templis atque delubris proque urbis muris, quos uos pontifices sanctos esse dicitis.* Serv. Dan. at G. 1.270: *sed qui disciplinas pontificum interius agnouerunt, ea die festo sine piaculo dicunt posse fieri, quae supra terram sunt.*

¹⁴⁰ Serv. Dan. at G. 1.270: *...purgare est et sordes emittere, quae praecludant aquam, ideo quia a pontificibus, ut nouum fieri non permittitur feriis, ita uetus purgari permittitur...sane quae feriae a quo genere hominum uel quibus diebus obseruentur, uel quae festis diebus fieri permissa sint, siquis scire desiderat, libros pontificales legat;* Columella Rust. 2.21.3: *feriis autem ritus maiorum etiam illa permittit: far pinsire, faces incidere....*

¹⁴¹ Cic. Leg. 2.49-50: *sed pontificem sequamur. uidetis igitur omnia pendere ex uno illo, quod pontifices cum pecunia sacra coniungi uolunt isdemque ferias et caerimonias adscribendas putant.*

¹⁴² Ibid.

¹⁴³ Paul. Fest. 71 L.: *equo uehi flamini Diali non licebat, ne, si longius digrederetur, sacra neglegerentur*; Serv. Dan. at Aen. 1.179: *sane his uersibus...ius pontificum latenter attingit. flamines autem farinam fermentatam contingere non licebat*; Fest. 474 L.: *spurcum uinum est, quod sacris adhiberi non licet, ut ait Labeo Antistius lib. X. commentari iuris pontifici.*

¹⁴⁴ Mac. Sat. 1.16.25: *sed et Fabius Maximus Seruilianus pontifex in libro XII negat oportere atro die parentare; quia tunc quoque Ianum Iouemque praefari necesse est, quos nominari atro die non oportet.*

¹⁴⁵ Mac. Sat. 1.16.10: *praeter multam uero addfirmabatur eum qui talibus diebus imprudens aliquid egisset porco piaculum dare debere.*

¹⁴⁶ Serv. Dan. at Aen. 4.103 (= Pr. 3 no. 11C): *quae res ad farreatas nuptias pertinet, quibus flaminem et flaminicam iure pontificio in matrimonium necesse est conuenire*; Serv. Dan. at G. 1.21: *post specialem inuocationem transit ad generalitatem, ne quod numen praetereat, {more pontificum, <per> quos ritu ueteri in omnibus sacris post speciales deos, quos ad ipsum sacrum, quod fiebat, necesse erat inuocari, generaliter omnia numina inuocabantur}.* Serv. at G. 3.16 (= Pr. 21 no. 127): *et uerbo usus est pontificali: nam qui templum dicabat, postem tenens dare se dicebat numini, quod ab illo necesse fuerat iam teneri et ab humano iure discedere.*

¹⁴⁷ For example, Dio Cass. 56.31.3: τῷ τε Τιβερίῳ ἄδεια ἐδόθη, ὅτι τοῦ τε νεκροῦ, οὐκ ἐξὸν δὴ, ἤψατο; idem 48.43.6-44.1-2: διστάζοντος γοῦν τοῦ Καίσαρος, καὶ πυθομένου τῶν ποντιφίκων εἰ οἱ ὅσιον ἐν γαστρὶ

or pontifical college.¹⁴⁸ A collection and analysis of all such references is of course necessary for the larger purpose of this dissertation, and indeed I hope to have gathered all the relevant passages.¹⁴⁹ For the purposes of this section, however, I limit my discussion to the Latin terms that refer explicitly to the pontifical law.

In gathering my collection of terms I searched the PHI 5.3 and BTL-2 CD-ROMS for every occurrence of the lexeme *pontif-* and then searched those results for every passage in which the word for 'pontiffs' (*pontifices*) or 'pontifical' (*pontificium*, *pontificale*, *pontificalis*) was combined with a word or words to form a phrase¹⁵⁰ that could be reasonably translated as 'pontifical law'. I found fourteen such terms attested a total of eighty times.¹⁵¹ Table 2.1 presents the terms and their frequency and distribution among the ancient authors. The full text and translation of every passage in which a term occurs can be found in Appendix I of this dissertation.

THE SOURCES

Although many ancient Latin authors discuss the pontiffs and pontifical activity in general, only eighteen ever mention a term that can reasonably be taken to mean

ἔχουσιν αὐτὴν ἀγαγέσθαι εἴη, ἀπεκρίναντο ὅτι εἰ μὲν ἐν ἀμφιβόλῳ τὸ κύημα ἦν, ἀναβλησθῆναι τὸν γάμον ἐχρῆν; cf. also idem 54.27.3: ὅτι τὸν ἀρχιέρεων ἐν κοινῷ πάντως οἰκεῖν ἐχρῆν. Text Boissvain 1895-1931.

¹⁴⁸ Note also the epigraphically attested phrases that relate to the pontifical law; *ILS* 249 and 2995: *per collegium pontificum*; *ILS* 1792: *ex permissu / collegii pontific(um)*; 8110: *ex permissu pontiff.*; *ILS* 8383: *permissu pontificum*; 8390: *pontificum perm[issu]*; *ILS* 8282: *secundum sen / tentias pontificum*; *ILS* 8386: *ex auctoritate / et iudicio pontificum*; *ILS* 8228: *compellabitur a pontitices* (sic); *ILS* 8382: *petit a ponti / fices* (sic).

¹⁴⁹ Most have already been collected by Cohee 1994, and Preibisch 1878, Rohde 1936, Rowoldt 1906, and Kretzer 1903.

¹⁵⁰ The words so used are *ius*, *auctoritas*, *disciplina*, *ritus*, *sacra*, *religio*, *mos*, *institutum*, *lex*, *praeceptum*, *obseruatio*.

¹⁵¹ I have not included in this study a passage normally attributed to Labeo's work on the pontifical law, Festus 294 L. (=355 L.); on this see Appendix I, n. 654.

Table 2.1. Frequency and Distribution of Latin Terms for 'Pontifical Law'

This table illustrates the frequency and distribution of all the Latin terms for 'pontifical law.' The terms are arranged from left to right in decreasing order of frequency and from top to bottom in chronological order. When an author uses the same term multiple times, as Cicero does *ius pontificium*, I give the occurrences in chronological order. The notation **T1**, **T2**, etc., refers to the location of the relevant passage in Appendix I.

AUTHOR	A. <i>ius pontificum</i> (37x)	B. <i>ius pontificale</i> (11x)	C. <i>ius pontificum</i> (9x)	D. <i>pontificalia sacra</i> (3x)	E. <i>pontificalis auctoritas</i> (3x)	F. <i>pontificum disciplina</i> (3x)	G. <i>pontificalis ritus</i> (3x)	H. <i>institutum pontificum</i> (2x)	I. <i>pontificum auctoritas</i> (2x)	J. <i>religio pontificum</i> (2x)	K. <i>pontificum mos</i> (2x)	L. <i>lex pontificum</i> (1x)	M. <i>praeceptum pontificum</i> (1x)	N. <i>pontificalis observatio</i> (1x)
Elder Cato (1x) (234–149 BC)	T1] ORF ^a 79–80 no. 197													
L. Calpurnius Piso Frugi (1x) (<i>cos.</i> 133; <i>cens.</i> 120 BC)	T2] <i>Annales</i> 19 F = 11 P													
Varro (1x) (116–27 BC)				T58] <i>de VPR</i> fr. 52.4–9										
Cicero (25x) (106–43 BC)	T3&4] <i>Dom.</i> 36 T5] <i>Dom.</i> 121 T6] <i>Dom.</i> 128 T7] <i>de Or.</i> 3.136.4–9 T8] <i>Rep.</i> 4.8 T9] <i>Leg.</i> 2.45–47 T10–13] <i>Leg.</i> 2.52–53 T14] <i>Leg.</i> 2.57–58 T15] <i>Brut.</i> 156 T16] <i>Tusc.</i> 1.27.1–28.1 T17] <i>Nat. Deor.</i> 3.43.1–5 T18] <i>Sen.</i> 38 T19] <i>Sen.</i> 50	T38] <i>Leg.</i> 2.55 T39] <i>Leg.</i> 2.57	T49] <i>Dom.</i> 38 T50] <i>Dom.</i> 138		T61] <i>Leg.</i> 2.52			T70] <i>Leg.</i> 2.29	T72] <i>Leg.</i> 2.48 T73] <i>Leg.</i> 2.52					
Livy (2x) (59BC–AD17)	T20] 30.1.5–6		T51] 40.29.6											
Columella (1x) (1 st c. AD)										T74] <i>Rust.</i> 2.21.1–5				
Valerius Maximus (2x) (mid. 1 st c. AD)			T52] 1.1.12	T59] 5.8.3										
Elder Pliny (1x) (AD 23/4–79)						T64] <i>HN</i> 28.18								
Festus (8x) (late 2 nd c. AD)	T21] 164 L. T22] 298 L. T23] 474 L. T24] 476 L.	T40] 144 L. T41] 298 L.		T60] <i>Fest.</i> 364 L.				T71] 424 L.						
Aulus Gellius (4x) (ca. AD 123–200)	T25] pr.13 T26] 4.6.10		T53&54] 16.6.12–14											
Papinian in <i>Digest</i> (1x) (d. AD 212)					T62] <i>Dig.</i> 5.3.50									
Porphyrio (1x) (early 3 rd c. AD)		T42] in <i>Hor. Ep.</i> 2.1.26												
Lactantius (1x) (ca. AD 240–ca. 320)	T27] <i>Div. Inst.</i> 1.22.5–6													
Servius (2x) (4 th c. AD)							T67] <i>A.</i> 6.366 T68] <i>A.</i> 8.275							
Ausonius (1x) (ca. AD 310–395)			T55] <i>Prof. Burd.</i> 22.5											
Sextus Aurelius Victor (1x) (4 th c. AD)												T78] <i>Caes.</i> 28.4		
Macrobius (11x) (late 4 th –mid. 5 th c. AD)	T28] <i>Sat.</i> 1.15.21 T29] <i>Sat.</i> 1.24.16 T30] <i>Sat.</i> 3.2.11 T31] <i>Sat.</i> 3.3.11 T32] <i>Sat.</i> 3.10.1–3 T33&34] <i>Sat.</i> 6.9.5–7 T35] <i>Sat.</i> 7.13.11				T63] <i>Sat.</i> 1.15.18–19							T79] <i>Sat.</i> 3.2.1–3	T80] <i>Sat.</i> 3.4.1–2	
Servius Danielis (16x) (7 th –8 th c. AD)	T36] <i>A.</i> 4.103 T37a] <i>A.</i> 8.552	T43] <i>A.</i> 2.57 T44] <i>A.</i> 2.119 T45&46] <i>A.</i> 3.607 T47] <i>A.</i> 8.363 T48] <i>A.</i> 8.552	T56] <i>A.</i> 1.179 T57] <i>A.</i> 2.351			T65] <i>G.</i> 1.270 T66] <i>A.</i> 2.693	T69a] <i>A.</i> 4.262			T75] <i>A.</i> 4.262 T76] <i>G.</i> 1.21 T77] <i>A.</i> 4.577				

'pontifical law.' The earliest attested use occurs in Cato the Elder (234-149 BC) and the latest in *Servius Danielis* (7th-8th c. AD). The actual chronological range is less extensive, however, since the relevant information in *Servius Danielis* probably derives from much earlier sources. The author with the most such attestations is Cicero: he mentions the pontifical law twenty-five times, twelve of which occur in *De Legibus*; the rest are spread among six dialogues and the speech *De Domo Sua*. Second place goes to the commentary known as *Servius Danielis* with sixteen references, followed by Macrobius, (eleven, all from the *Saturnalia*), Festus (eight), and Aulus Gellius (four). The remaining thirteen authors mention the pontifical law only once or twice each.

Several authors or works are attested less than we might expect. It is certainly suprising, for example, that Varro and the *Digest*, respectively the greatest scholar of Roman religion and the fullest collection of Roman civil law, each mention the pontifical law only once (**T58** and **T62**, respectively). Also, Livy might have been expected to preserve more than two (uninformative) references (**T20** and **T51**). As it is, most of the references come from authors of a decisively antiquarian bent: Festus, Aulus Gellius, Porphyrio, Servius, Macrobius and *Servius Danielis* together mention the pontifical law forty-two times, over half of all citations. This percentage is skewed, however, by the large number of citations from Cicero, so it will be more accurate to say that these six authors account for 76% of all occurrences not attributable to Cicero.

Antiquarian or not, all eighteen authors share one striking feature: none is a *pontifex*.¹⁵² The fact is of great consequence and not only for this word-study, since only

¹⁵² The closest we get to a pontiff speaking is the quote put by Cicero in the mouth of C. Aurelius Cotta [*cos.* 75; *pont.* ?-74 or 73] at **T17** (*Nat. D.* 3.43); on the dates of Cotta's pontificate, see *MRR* 2.23, 2.25 n. 12, 96, 113-114. Rüpke 2005, 2.801-802; Bardt 62; Szemler 1972, 126; Taylor 1942, 393 n. 22, thinks that he "had probably secured the priesthood before his exile in 90."

a pontiff had complete and accurate knowledge of the *ius pontificium*, as is clear from Cato's remark: *ego me nunc uolo ius pontificium optime scire; iamne ea causa pontifex capiar?*¹⁵³ We cannot therefore expect these authors to treat the pontifical law thoroughly. The accuracy of their accounts is another matter; it leads to the topic of the sources of our sources, a subject too vast to be treated here. Suffice it to say that most of their information appears to be accurate, and I readily treat it as such.

THE TERMS, THEIR FREQUENCY AND DISTRIBUTION

The fourteen phrases for 'pontifical law' can be divided into two groups based on the frequency of their attestations. The first group comprises the eleven phrases attested three times or less; these account for twenty-three of the eighty total attestations (29%):

- thrice: *pontificalia sacra, pontificalis auctoritas, pontificum disciplina*,¹⁵⁴
pontificalis ritus
- twice: *institutum pontificum, pontificum auctoritas*,¹⁵⁵ *religio pontificum*,
pontificum mos
- once: *lex pontificum, praeceptum pontificum, pontificalis obseruatio*.¹⁵⁶

The second group contains remaining three terms: *ius pontificium, ius pontificale, ius pontificum*. These are attested nine times or more and account for fifty-seven of the total attestations (71%). While the eleven lesser attested phrases are scattered primarily among several late authors, chiefly Servius (two), Macrobius (four) and the commentary known as *Servius Danielis* (six), who together preserve just over half of the references, the three

¹⁵³ **T1** (*ORF*⁴ 79-80 no. 197 = *Origines* 109 P. (= Gell. *NA* 1.12.15-17). The same can be said of the augurate, for Cato continues: *si uolo augurium optime tenere, ecquis me ob eam rem augurem capiat?*

¹⁵⁴ In the sphere of religion *disciplina* seems to be more frequently applied to and more strongly associated with the *augurs* and *haruspices* (cf. Linderski 1986, 2240-2241 esp. n. 273), although note **T32** (Mac. *Sat.* 3.10.1-3): *et nos cepimus pontificii iuris auditum: et ex his quae nobis nota sunt Maronem huius disciplinam iuris nescisse constabit*.

¹⁵⁵ On this term see Mommsen 1887-1888, 3.1033 n. 2, and above, n. 117.

predominant phrases can be found in authors both early and late, although a significant percentage occur in the works of Cicero, who alone accounts for twenty-one of the fifty-seven attestations (37%).¹⁵⁷

The figures for the three most frequently attested phrases are skewed, however, by the large number of attestations of just one of them, *ius pontificium*. Its thirty-seven occurrences—almost three and one-half times as often as *ius pontificale*, its nearest competitor—account for 46% of all attested terms for pontifical law, making it by far the most frequently occurring term. It also has the added distinction of being the earliest attested term, first occurring in 149 B.C. in the last speech that Cato the Elder ever delivered¹⁵⁸ and appearing again roughly thirty years later (ca. 120 B.C.) in a fragment of the *Annales* of L. Calpurnius Piso.¹⁵⁹ The term also takes the prize for being used by more authors (nine) in more works (sixteen) over a greater time period (Cato the Elder to Macrobius¹⁶⁰—nearly 600 years) than any other term. Finally, *ius pontificium* is the term most frequently used by the most reliable and authoritative authors: Cicero, who accounts for nearly one-third of all our terms,¹⁶¹ shows a decisive preference for it, using it

¹⁵⁶ As with *disciplina* (above, n. 154) *observatio* is more frequently applied to the *augurs* and *haruspices*. For the divinatory sense of this word see Linderski 1986, 2230-2236, with further bibliography.

¹⁵⁷ Second, third, and fourth place go, respectively, to *Servius Danielis* with ten, Macrobius with eight, and Festus with six, attestations.

¹⁵⁸ The speech (T1) is entitled *Pro Direptis Lusitanis* (or *Contra Servium Galbam*); it is also included in the seventh book of Cato's *Origines* (fragment 109 in Peter 1914). For the date of the speech see the discussion at ORF⁴ 79.

¹⁵⁹ T2 *Annales* 11 Forsythe (1994) = 19 P. (= Plin. HN 13.84-87) *hoc idem tradit Piso censorius primo... commentariorum, sed libros septem iuris pontificii, totidem Pythagoricos fuisse*. On the date of composition of Piso's *Annales* see Forsythe 1994, 32-36, esp. 35: "The work was therefore probably not published before 120."

¹⁶⁰ Disregarding two references in *Servius Danielis* (T36 and T37a) that probably come from a much earlier antiquarian author.

¹⁶¹ Twenty-five of the eighty (31%).

seventeen times in eight works,¹⁶² while the famous Augustan era legal scholars Antistius Labeo and Ateius Capito appear to have entitled their respective works on the pontifical law *De Iure Pontificii*.¹⁶³ *Ius pontificium* thus appears to have been the technical term for 'pontifical law.'

Of course, this does not mean that the others are inaccurate terms for 'pontifical law'. In fact, all of the phrases appear to have been practically interchangeable. For example, Cicero, in the space of barely a paragraph, uses *ius pontificium* and *ius pontificale* to refer to the same thing, the pontifical supervision of burials and tombs.¹⁶⁴ And a glance at the evidence shows that many of the less frequently attested phrases are circumlocutions, usually of late authors, referring to a concept or process that could readily be described by *ius pontificium*. Note especially the seven (!) different expressions, including *ius pontificium*, used in *Servius Danielis* to refer to the strictures on the life of the *flamen Dialis*: *ius pontificium* **T36**, *ius pontificum* **T56**, *ius pontificale* **T43**, *ritus Romanarum caerimoniarum* **T37b**, *(uetus) ritus sacrorum* **T37c**, *pontificalis ritus* **T69a**, and *(uetus) religio pontificum* **T69b = T75**.

SCOPE AND CONTENTS

Let us now consider how these terms were used and what they can tell us about the contents of the pontifical law. To discuss each reference would be tedious; for

¹⁶² Versus a paltry two times each for *ius pontificale*, *ius pontificum*, *pontificum auctoritas*, and once for *pontificalis auctoritas*.

¹⁶³ For Antistius Labeo see **T21** Festus 164 L.: *Labeo in commentario iuris pontifici* (this, however, is a supplement of Ursinus); **T22** Festus 298 L.: *ut ait Labeo de iure pontificio lib. XI*; **T23** Festus 474 L.: *ut ait Labeo Antistius lib. X. commentari iuris pontifici*; **T24** Festus 476 L.: *Antistius Labeo ait in commentario XV. iuris pontifici*; For Ateius Capito see **T26** Gell. NA 4.6.10: *uerba Atei Capitonis ex quinto librorum, quos de pontificio iure composuit*; note, however, the variant *ius pontificale* in **T40** Festus 144 L.: *ut ait Capito Ateius in lib. VI pontificali* [sc. *iure*], and **T41** Festus 298 L.: *ait significare Antistius de iure pontificali lib. IX*.

convenience I have grouped the references into broad categories based on the subject matter to which they refer. A few assignments may be challenged; even so the resulting picture would not appear much different with but a few pieces rearranged. The groups are as follows:

# of times	'pontifical law' mentioned...	remarks on sources
15	as the title of book or description of its contents ¹⁶⁵	
10	in descriptions of persons as learned in it ¹⁶⁶	
7	as governing inheritance of <i>sacra priuata</i>	all from Cicero <i>De Legibus</i> ¹⁶⁷
7	as responsible for certain flaminiate prohibitions	all from <i>Servius Danielis</i> ¹⁶⁸
6	as governing various burial rites	all but one from Cicero ¹⁶⁹
5	as governing the sacrifice of <i>hostiae</i> ¹⁷⁰	

¹⁶⁴ **T39** *Leg.* 2.57 (*ius pontificale*) and **T14** *Leg.* 2.58 (*ius pontificium*). Note also his use, two sections previous, of *ius pontificale* to describe the same subject (**T38** *Leg.* 2.55).

¹⁶⁵ Books by Numa: **T2**, **T27**, **T51**, **T52**; book by Fabius Pictor: **T30**; book by Antistius Labeo: **T21**, **T22**, **T23**, **T24**, **T41**; book by Ateius Capito: **T26**, **T40**; anonymous *commentarii*: **T33**, **T53**; confused with *annales maximi*: **T42**.

¹⁶⁶ **T19**, **T20**, **T28**, **T29**, **T34**, **T35**, **T37a**, **T45**, **T53**, **T59**. For the persons mentioned in these citations see below, n. 187.

¹⁶⁷ **T10-13** *Cic. Leg.* 2.52-53, **T61** *Cic. Leg.* 2.52, **T72** *Cic. Leg.* 2.48, **T73** *Cic. Leg.* 2.52. All of these are discussed above in the preceding section.

¹⁶⁸ **T36** (at *Aen.* 4.103: *quae res ad farreatas nuptias pertinet, quibus flaminem et flaminicam iure pontificio in matrimonium necesse est conuenire*), **T43** (at *Aen.* 2.57: *sane saepe dictum est, Uergilium inuenta occasione mentionem iuris pontificalis facere in quacumque persona. antiquis itaque caerimoniis cautum erat, ne uinctus flaminiam introiret, si introisset, solueretur uinclaque per impluuium effunderentur inque uiam publicam eicerentur*), **T46** (at *Aen.* 3.607: *iure autem pontificali, si quis flamini pedes uel genua fuisset amplexus, eum uerberari non licebat*), **T47** (at *Aen.* 8.363: *hic ius pontificale quibusdam uidetur subtiliter tangere: domus enim, in qua pontifex habitat, regia dicitur, quod in ea rex sacrificulus habitare consuesset, sicut flaminia domus, in qua flamen habitat dicebatur*), **T56** (at *Aen.* 1.179: *ius pontificum latenter attingit* [sc. *Uergilius*] *flamines autem farinam fermentatam contingere non licebat*), **T69a** & **T69b** = **T74** (at *Aen.* 4.262: *quidam pontificalem ritum hoc loco expositum putant. ueteri enim religione pontificum praecipiebatur inaugurato flamini uestem, quae laena dicebatur, a flaminica texti oportere*).

¹⁶⁹ **T8** *Cic. Rep.* 4.8 (=Non. p. 174.7-9 L.): *sic pontificio iure sanctitudo sepulturae*; **T14** *Cic. Leg.* 2.58: [Atticus]: *uideo quae sint in pontificio iure* (reference to general pontifical law of burial; probably part of the fragmentary section of *De Legibus* in which Cicero discussed the *ius Manium*); **T16** *Cic. Tusc.* 1.27: *esse in morte sensum neque excessu uitae sic deleri hominem, ut funditus interiret: idque cum multis aliis rebus, tum e pontificio iure et e caerimoniis sepulcrorum intellegi licet*; **T38** *Cic. Leg.* 2.55: *totaque huius iuris compositio pontificalis magnam religionem caerimoniamque declarat* (reference to general pontifical law of burial); **T39** *Cic. Leg.* 2.57: *eumque morem ius pontificale confirmat* (broad reference to *iniectio terrae*); **T67** *Serv. at Aen.* 6.366: *terrae autem iniectio secundum pontificalem ritum poterat fieri et circa cadauer et circa absentium corpora quibusdam sollemnibus sacris* (reference to *iniectio terrae*).

4	as governing aspects of the calendar ¹⁷¹	
4	in a broad reference to all of pontifical law ¹⁷²	
3	as governing how to address the gods	all from <i>Servius Danielis</i> ¹⁷³
3	in broad reference to the 'public pontifical law'	all from dialogues of Cicero ¹⁷⁴
3	as governing the ritual of <i>dedicatio</i>	all from Cicero <i>De Domo Sua</i> ¹⁷⁵
3	as governing adoption of Clodius	all from Cicero <i>De Domo Sua</i> ¹⁷⁶

¹⁷⁰ **T32** Mac. Sat. 3.10.1-3: *et nos cepimus pontificii iuris auditum: et ex his quae nobis nota sunt Maronem huius disciplinam iuris nescisse constabit. quando enim diceret, 'caelicolum regi mactabam in litore taurum,' si sciret taurum immolari huic deo uetitum...*; **T44** DServ. at Aen. 2.119: *uidetur sane peritia iuris pontificalis animalis hostiae mentionem fecisse*; **T70** Cic. Leg 2.29: *iam illud ex institutis pontificum et haruspicum non mutandum est, quibus hostiis immolandum quoique deo, cui maioribus, cui lactentibus, cui maribus, cui feminis*; **T78** Aur. Vic. Caes. 28.4: *nam cum pontificum lege hostiae mactarentur*. I include here **T60**; it does not refer directly to sacrifice or sacrificial animals, but it seems clear that the *ouis*, *agnus*, and *porcus* referred to are *hostiae*. **T60** Fest. 364 L.: *...etiam in commentariis sacrorum pontificalium frequenter est hic ouis, et haec agnus, ac porcus. quae non ut uitia, sed ut antiquam consuetudinem testantia, debemus accipere*.

¹⁷¹ **T31** Mac. Sat. 3.3.11: *cauetur enim in iure pontificio ut...festis diebus purgandae lanae gratia oues lauare non liceat, liceat autem, si curatione scabies abluenda sit*; **T63** Mac. Sat. 1.15.18-19: *ut autem idus omnes Ioui, ita omnes kalendas Iunoni tributas et Uarronis et pontificalis adfirmat auctoritas*; **T65** DServ at G. 1.270: *sed qui disciplinas pontificum interius agnouerunt, ea die festo sine piaculo dicunt posse fieri, quae supra terram sunt, uel quae omissa nocent, uel quae ad honorem deorum pertinent, et quidquid fieri sine institutione noui operis potest*; **T74** Columella Rust. 2.21.1-5: *ac ne uindemiam quidem cogi per religiones pontificum feriis licet nec ouis tondere, nisi si catulo feceris* (various prohibitions precede and follow this sentence).

¹⁷² **T1** Cato the Elder ORF⁴ 79-80 no. 197: *ego me nunc uolo ius pontificum optime scire; iamne ea causa pontifex capiar?*; **T25** Gell. NA pr.13: *quodque erunt item paucula remotiora super augurio iure et pontificio, non oportet ea defugere quasi aut cognitu non utilia aut perceptu difficilia*; **T48** DServ. at Aen. 8.552: *sciendum tamen poetam [i.e. Uergilium] contentum esse uniuersum ius pontificale, dum aliud narrat, attingere*, **T55** Auson. Prof. Burd. 22.5: *quod ius pontificum, ueterum quae scita Quiritum, / quae consulta patrum, quid Draco quidue Solon / sanxerit et Locris dederit quae iura Zaleucus*.

¹⁷³ **T57** (at Aen. 2.351: *et iure pontificum cautum est, ne suis nominibus dii Romani appellarentur, ne exaugurari possint*; **T76** (at G. 1.21: *more pontificum, <per> quos ritu ueteri in omnibus sacris post speciales deos, quos ad ipsum sacrum, quod fiebat, necesse erat inuocari, generaliter omnia numina inuocabantur*); **T77** (at Aen. 4.577: *secundum pontificum morem qui sic precantur 'Iuppiter omnipotens, uel quo alio te nomine appellari uolueris'*).

¹⁷⁴ **T7** Cic. de Orat. 3.136 (Crassus speaking): *aut iuris scientiam—ne eius quidem uniuersi; nam pontificum, quod est coniunctum, nemo discit*; **T15** Cic. Brut. 156 (Brutus speaking): *audiui enim nuper eum [sc. Seruius Sulpicius] studiose et frequenter Sami, cum ex eo ius nostrum pontificum, qua ex parte cum iure ciuili coniunctum esset*; **T18** Cic. Sen. 38 (Cato speaking): *ius augurium pontificum ciuile tracto*.

¹⁷⁵ **T5** Cic. Dom. 121: *nihil loquor de pontificio iure, nihil de ipsius uerbis dedicationis, nihil de religione, caerimoniis*; **T6** Cic. Dom. 128: *neque ego nunc de religione sed de bonis omnium nostrum, nec de pontificio sed de iure publico disputo*; **T50** Cic. Dom. 138: *dixi a principio nihil me de scientia uestra, nihil de sacris, nihil de abscondito pontificum iure dicturum*.

¹⁷⁶ **T3** Cic. Dom. 36: *nego istam adoptionem pontificio iure esse factam*; **T4** *ibid.*: *...legitimo et pontificio iure quaerat et ita adoptet ut ne quid aut de dignitate generum aut de sacrorum religione minuatur*; **T49** Cic. Dom. 38: *dixi apud pontifices istam adoptionem nullo decreto huius conlegi probatam, contra omne pontificum ius factam*.

- 1 as governing ritual of *euocatio*¹⁷⁷
- 1 as establishing that Hercules and Mars are identical¹⁷⁸
- 1 as governing the ceremony of *manalis sacrum*¹⁷⁹
- 1 as establishing when and where certain *sacra priuata* must be performed¹⁸⁰
- 1 as imparting to *porricere* a technical meaning in the context of sacrifice¹⁸¹
- 1 as establishing the proper names for *sacra loca*¹⁸²
- 1 as teaching *de colendis dis immortalibus*¹⁸³
- 1 as governing *sacra priuata* and *ius Manium*¹⁸⁴
- 1 as compelling heirs to comply with deceased's last wish¹⁸⁵
- 1 in a confused reference; appears confounded with augury¹⁸⁶

An odd and interesting collection. Here we have every direct reference to the pontifical law, and yet thirty-three of them (41%), including the two most frequently attested uses,

¹⁷⁷ **T64** Pliny *HN* 28.18 (ultimately from Uerrius Flaccus): *Uerrius Flaccus auctores ponit, quibus credat in obpugnationibus ante omnia solitum a Romanis sacerdotibus euocari deum, cuius in tutela id oppidum esset, promittique illi eundem aut ampliorem apud Romanos cultum. et durat in pontificum disciplina id sacrum.*

¹⁷⁸ **T68** Serv. at Aen. 8.275 *alii communem deum ideo dictum uolunt, quia secundum pontificalem ritum idem est Hercules, qui et Mars.*

¹⁷⁹ **T58** Varro *de uita populi Romani* fr. 52.4-9 (= Non. 877 L. [547 M.]): *unde manalis lapis appellatur in pontificalibus sacris, qui tunc mouetur cum pluuias exoptantur; ita apud antiquissimos manale sacrum uocari quis non nouerit? unde nomen illius.*

¹⁸⁰ **T71** Fest. 424 L: *at si qua sacra priuata suscepta sunt, quae ex instituto pontificum stato die aut certo loco facienda sint.*

¹⁸¹ **T79** Mac. Sat. 3.2.1-3: *nam et ex disciplina haruspicum et ex praecepto pontificum uerbum [sc. porricere] hoc sollemne sacrificantibus est.*

¹⁸² **T80** Mac. Sat. 3.4.1-2: *nomina etiam sacrorum locorum sub congrua proprietate proferre pontificalis obseruatio est.*

¹⁸³ **T17** Cic. Nat. D. 3.43 (Cotta speaking): *docebo meliora me didicisse de colendis diis immortalibus iure pontificio et more maiorum capedunculis his, quas Numa nobis reliquit, de quibus in illa aureola oratiuncula dicit Laelius, quam rationibus Stoicorum.*

¹⁸⁴ **T9** Cic. Leg. 2.45: *Atticus: habeo ista. nunc de sacris perpetuis et de Manium iure restat. Marcus: o miram memoriam Pomponi tuam! at mihi ista exciderant. Atticus: ita credo. sed tamen hoc magis eas res et meminere et <ex>specto, quod et ad pontificum ius et ad ciuile pertinent.*

¹⁸⁵ **T62** Papinian in Dig. 5.3.50: *quamuis enim stricto iure nulla teneantur actione heredes ad monumentum faciendum, tamen principali uel pontificali auctoritate compelluntur ad obsequium supremas uoluntatis.*

¹⁸⁶ **T66** Serv. Dan. at Aen. 2.693: *sed hoc loco pontificalis inducitur disciplina. nam ostendit Anchisen, cum uellet fugam filii sequi, omine quod de Ascanii pro capite auspicii se obtulit, a diis commotum petisse de caelo confirmationem; subiungit enim 'uix ea fatus erat senior, subitoque fragore intonuit laeuum'.*

tell us nothing directly about its contents. Fifteen times 'pontifical law' is preserved as the mere title of a book or a description of its contents, ten times it occurs in descriptions of persons as passionate about or learned in the *ius pontificium*, (only two [!] of whom, however, are pontiffs),¹⁸⁷ seven times it is found in broad references to either all of the pontifical law or the 'public pontifical law', and once it turns up in a passage of *Servius Danielis* where the pontiffs seem to have been confused with the augurs.¹⁸⁸

¹⁸⁷ P. Licinius Crassus [*pont. max.* 212-183] **T19**, **T20**; T. Manlius Torquatus [*pont.* 170-140 (?)] **T59**; Verrius Flaccus **T28**; Ateius Capito **T35**; Julius Hyginus **T34**, **T53**; it is perhaps not surprising that the ancient devotees of Vergil, believing their author omniscient and infallible, describe him as well as two of the main characters of his epic as learned in pontifical law (in addition to many other subjects): Vergil **T29**; Aeneas **T37a**, **T45**; Anchises **T45**.

¹⁸⁸ Of course, fifteen of the passages in the first two categories indirectly provide information about the scope and contents of the pontifical law. For example, when Festus six times mentions Antistius Labeo's work on the pontifical law he also reports that Labeo discussed in it the meanings of the following phrases: *prox*, *spurcum uinum*, *sistere fana*, *proculiunt*, *subigere arietem* (the sixth passage is too lacunose to tell what Labeo discussed therein). Similarly, some of the passages that describe a person as learned in the pontifical law also provide the reason for that judgment. Thus, Verrius Flaccus is described—whether by Varro or Macrobius it is impossible to tell—as *iuris pontificii peritissimus* seemingly because of his knowledge of what could or could not be done on holidays (*feriae*).

Let us look at all fourteen passages; from them we learn that:

- 1) *prox* means 'good voice' or 'proper voice'; **T22** Fest. 298 L.
- 2) *proculiunt* means *promittunt*; **T41** Fest. 298 L.
- 3-6) the sacrificial victims known as *bidentes* were originally called *bidennes* and that they are so-called because they have two teeth longer than the rest, and that this was thought to indicate that they had passed from infancy to a more advanced age; **T33** & **T34** Mac. *Sat.* 6.9.5-7, **T53** & **T54** Gell. *NA* 16.6.12-14.
- 7) *spurcum uinum* could not be used in rituals (*quod sacris adhiberi non licet*; there follows a definition of *spurcum uinum*); **T23** Fest. 474 L.
- 8) *fana sistere* means to hold *lectisternia* at certain places and for certain gods; **T24** Fest. 476 L.
- 9) *subigere arietem* has a technical meaning; **T24** Fest. 476 L.
- 10) the *mundus* was open thrice yearly (on Aug. 24th, Oct. 5th, and Nov. 8th); **T40** Fest. 144 L.
- 11) the pontifical college once decreed that preliminary festivals (*feriae praecedaneae*) could be held on a 'black day' (*dies ater*); **T26** Gell. *NA* 4.6.10.
- 12) it was sacrilegious to engrave images of gods on rings; **T35** Mac. *Sat.* 7.13.11-17.
- 13) a pontiff in certain rites utters the word *uitulari*, which means the same as *παιανίζειν*; **T30** Mac. *Sat.* 3.2.11.
- 14) it was permitted to clean old ditches on holidays (*feriae*); **T28** Mac. *Sat.* 1.15.21.
- 15) *nautea* was something red and was used to color certain pontifical garments; **T21** Fest 164 L. (in this lacunose passage, however, the reference to pontifical garments is Ursinus' supplement, which I strongly suspect to be incorrect; at least, I have not yet found information that would corroborate or even suggest it. The relevant passage of Paulus does not help).

We thus have three passages dealing with calendrical matters (9, 10, 13), such as those mentioned in the list above (cf. n. 171), a provision about engraving rings (11), and another about using wine in sacrifices (7).

The remaining forty-seven terms refer to a range of topics—some quite specific, others obscure—and appear to do so accurately.¹⁸⁹ As for what these terms tell us about the scope and content of the pontifical law, two observations can be made.

First, none of the references are to the civil law and only eighteen are references to what we have termed 'the public pontifical law.'¹⁹⁰ The results of the preceding section are thus confirmed and the traditional assertion that the civil law made up a substantial portion of the pontifical law stands doubly refuted. Second, as even a cursory glance at this list will discover, most of the references—thirty-six in fact—describe a matter of Roman religion. Five speak of three rituals of the state religion (*euocatio*, *dedicatio*, *manalis sacrum*), five mention the gods in some manner (how to address them, the identity of Hercules and Mars, teaching *de colendis dis immortalibus*) six refer to the act of sacrifice (*hostiae*, the technical meaning of the word *porricere*), two refer broadly to *sacra priuata*, and one relates that the pontifical law was concerned with the correct names for *loca sacra*. In addition, the six references to burial rites properly refer to the ritual aspects of the *ius Manium*. Similarly the four references to the calendar are concerned exclusively with the religious aspects of this subject: one passage mentions that the Ides of every month belong to Jupiter and the Kalends to Juno, then describes the prayer and sacrifices made to Juno on all Kalends; the remaining three discuss activities

Eight passages (1-6, 9, 12) are essentially etymological notes that tell us little or nothing about when or how the relevant words were used or how they pertain to the pontifical law; one passage (14) is lacunose. From the remaining one (8) we may conclude that the pontiffs had something to do with *lectisternia*, but what that might have been we cannot tell. In any case, these fourteen passages do not contribute much to our knowledge of the pontifical law nor change the picture of it as presented in the list in the text above.

¹⁸⁹ I have not found evidence that proves any of these areas were not under the purview of the pontiffs. Although **T37a-d** (*Serv. Dan.* at *Aen.* 8.552) is certainly incorrect, if taken as meaning that according to the pontifical law pontiffs were not permitted to ride horses; cf. Appendix I n. 657.

that are religiously permitted or forbidden on *dies festi* and *feriae*. And finally, the flamine prohibitions that are seven times mentioned are best taken as matters of Roman religion, since their origin, although ultimately beyond our ken, probably lies in the relationship between the flamens and the respective god whom each of them served.¹⁹¹

Accordingly, we may assert that previous studies of the *ius pontificum* have given a distorted picture of their subject: they have overemphasized (and misrepresented) its hold on the civil law, while also under-emphasizing or neglecting the religious topics that appear to have constituted the main body of pontifical law. An accurate account of the *ius pontificum* must therefore investigate at least those areas of Roman religion that occur in this word-study.

And yet, accurate though it may be, this list too can be faulted for misrepresenting the scope and contents of the pontifical law, since it contains many obscure tenets, but conspicuously omits some of the more well-attested religious duties that the pontiffs performed and probably performed regularly, such as the instauration of games and the

¹⁹⁰ Inheritance of *sacra priuata* (7x); general references (7x); adoption of Clodius (3x); compliance with last wishes (1x).

¹⁹¹ Note also the word *religio* appears in the term for 'pontifical law' in **T75** (quoted below in this note). It is difficult to discern if some or all of these six prohibitions apply to all flamens, only to the *flamines maiores*, or to the *flamen Dialis* alone. **T36** seems to imply that only the *flamen Dialis* had to be married by *confarreatio* (DServ. at Aen. 4.103: *quae res ad farreatas nuptias pertinet, quibus flaminem et flaminicam iure pontificio in matrimonium necesse est conuenire*), yet we know for a fact that this was required of all the *flamines maiores* (cf. Gai. Inst. 1.112: *am flamines maiores, id est Diales, Martiales, Quirinales, item reges sacrorum, nisi ex farreatis nati non leguntur: ac ne ipsi quidem sine confarreatione sacerdotium habere possunt*). The provisions at **T43** (DServ. at Aen. 2.57: *antiquis itaque caerimoniis cautum erat, ne uinctus flaminiam introiret...*), **T46** (DServ. at Aen. 3.607: *iure autem pontificali, si quis flamini pedes uel genua fuisset amplexus, eum uerberari non licebat*), and **T69a & T69b = T75** (DServ. at Aen. 4.262: *quidam pontificalem ritum hoc loco expositum putant. ueteri enim religione pontificum praecipiebatur inaugurato flameni uestem...a flaminica texi oportere*) appear to apply to the *flamen Dialis* alone, whereas the plural *flamines* at **T56** (DServ. at Aen. 1.179: *ius pontificum latenter attingit* [sc. Uergilius] *flamines autem farinam fermentatam contingere non licebat*) may indicate that the prohibition therein applied to all flamens.

procurations of prodigies. It would be perverse to think that such such duties were not under the sway of the *ius pontificium*.

It is disheartening that this word-study has not revealed more about the contents of the pontifical law; it would appear that even the average, highly-educated Romans did not know much about the subject, since they most often refer to it in ways that reveal nothing about its contents. And it is surprising that the body of evidence for this section was so small. Eighty attestations is not a large amount—I would have expected at least half as many from Livy or the *Digest* alone—and those were obtained by casting wide the lexical net to include many circumlocutions for our term.

For all that, however, this study has some value. It has shown that the civil law (*qua* the public pontifical law) cannot be proven to have constituted more than a small portion of the *ius pontificium*, revealed that religious matters were its primary constituent, and given us a view, accurate but incomplete and misleading, of what those religious matters were. In the next section I shall attempt to complete and correct the picture sketched here by investigating the religious activities and obligations of the pontiffs and pontifical college.

2.3.2 The pontiffs and the state religion

In the preceding sections I attempted to demonstrate that previous treatments and definitions of the pontifical law are inadequate, for they give insufficient attention to the religious duties of the pontiffs which, as the above word-study reveals, comprised the predominant contents of the pontifical law. Yet the results of that study were not entirely satisfactory, for they provided only a glimpse of the religious activity of the pontiffs. The

present section, therefore, is designed to extend my findings by showing more precisely and definitively what the religious duties of the pontiffs were.

Although several ancient authors describe, or purport to describe, the duties of the pontiffs, I do not intend to create from their accounts a composite picture of pontifical activity.¹⁹² As none of them were pontiffs, and only one of them was a Roman, their descriptions are always incomplete and often inaccurate. Nor it is my desire to provide a bare list of pontifical obligations; instead, my goal in this section is to investigate the structure of the Roman state religion and the pontiffs' place within it. My main concerns are to delimit the areas over which the pontiffs exercised sole authority, determine the part played by members of the college in interpreting the pontifical law, and define the procedural limits of the *ius pontificium*. I hope that my results will present a more accurate conception of the extent of pontifical power and the application of the pontifical law.

I begin with a discussion of the structure of the Roman state religion or what might be called Rome's religious 'constitution'. Rome had no religious constitution – at least not in the American sense of that word, *i.e.*, a written document, a founding charter, hallowed by time and communally revered. Nevertheless we may justifiably use the term, for the Romans did have, in all aspects of their life, a mass of traditions and precedents – *mos institutumque maiorum*¹⁹³ are the preferred Latin words – that guided their every move, from which they only reluctantly departed, and which were no less powerful for being uncoded.

¹⁹² The principal passages that summarize pontifical duties are Liv. 1.20.5-7, Plut. *Num.* 9.1-12.2 (although the bulk, 9.5-12, concerns the Vestals) and Dion. Hal. 2.73.1-2.

Near the beginning of the third book of his *de Natura Deorum* Cicero has the *pontifex* and consular C. Aurelius Cotta¹⁹⁴ commence his refutation of Stoic theology with the following statement:

And seeing that the entire religion of the Roman people is divided into rites (*sacra*) and auspices (*auspicia*), and a third may be added if the interpreters of the Sibylline verses or the haruspices have given any prophetic warning from portents (*portenta*) or unnatural events (*monstra*), I have thought that none of these religious institutions (*religiones*) should ever be disregarded, and I am convinced that Romulus with auspices and Numa with rites (*sacra*) laid the foundations of our state, which surely would never have been able to be so great without appealing to the utmost the immortal gods. You now see, Balbus, what Cotta—what a *pontifex*—believes.¹⁹⁵

With this rousing defense of the importance of the state religion for the existence and success of Rome,¹⁹⁶ Cotta, or rather, Cicero, presents us with a concise account of the structure of the Roman state religion. While his emphasis is clearly on the *sacra* and *auspicia*,¹⁹⁷ whose origin he traces back to the first two kings of Rome¹⁹⁸ and whose

¹⁹³ For examples of the phrase see, e.g., Cic. *Dom.* 56: *an hoc timebam, si mecum ageretur more institutoque maiorum, ut possem praesens sustinere?*; *ibid.* 134: *si dixit aliquid uerbis haesitantibus postemque tremebunda manu tetigit, certe nihil rite, nihil caste, nihil more institutoque perfecit.*

¹⁹⁴ *Cos.* 75 BC; *pont.* ?-74 or 73 (*MRR* 2.113). On the dates of his pontificate see also *MRR* 2.23, 2.25n.12, 96, 113-114; Rüpke 2005, 2.801-802; Bardt 62; Szemler 39; note especially Taylor 1942, 393 n. 22 (cf. 411), who thinks that Cotta "had probably secured the priesthood before his exile in 90."

¹⁹⁵ Cic. *Nat. D.* 3.5: *cumque omnis populi Romani religio in sacra et in auspicia diuisa sit, tertium adiunctum sit si quid praedictionis causa ex portentis et monstris Sibyllae interpretes haruspicesue monuerunt, harum ego religionum nullam umquam contemnendam putavi mihi que ita persuasi Romulum auspiciis, Numam sacris constitutis fundamenta iecisse nostrae ciuitatis, quae numquam profecto sine summa placatione deorum immortalium tanta esse potuisset. Habes, Balbe, quid Cotta, quid pontifex sentiat.* Text Pease 1958; trans. (modified) Walsh, 1998.

¹⁹⁶ See also the words of Cotta preceding this quote: *ego uero eas* [sc. *sacra, caerimonias, religionesque*] *defendam semper semperque defendi, nec me ex ea opinione, quam a maioribus accepi de cultu deorum immortalium, ullius umquam oratio aut docti aut indocti mouebit.* The *locus classicus* for the Roman reverence for religion is Polybius 6.56.6-8; Pease 1955-1958, 2.985-986, collects many other relevant ancient passages and modern bibliography.

¹⁹⁷ Note the tentative way in which Cicero introduces the third compartment of *XVviri* and *haruspices*: *tertium adiunctum sit, si...* ("[and since] a third division may be added, if..."). It is also conspicuous that Cicero mentions the ancient and venerable origins of only the *auspicia* and *sacra*, not the *haruspices* or *XVviri*.

¹⁹⁸ For evidence of the religious activities of Numa and the auspical activities of Romulus see the passages collected by Pease 1955-1958, 2.985-986.

establishment he equates, strikingly, with the very foundation of the Roman state (*fundamenta nostrae ciuitatis*),¹⁹⁹ it is as equally clear that Cicero understands the *populi Romani religio* as divided into three parts, *sacra*, *auspicia*, and the *Sibyllae interpretes* (more commonly known as *quindecimviri sacris faciundis*) and *haruspices*.

This last division is awkward and requires comment. Why does Cicero treat the *XVviri* and *haruspices* as one group? In fact, Cicero has overstated the position of the Etruscan *haruspices*, who, though active and influential in Roman religion from time immemorial—or at least from the reign of Tarquinius Superbus, according to Livy²⁰⁰—were never official priests of the Roman state religion until the rule of Claudius.²⁰¹ They were, however, important enough religious authorities that we would expect to find them, and be surprised if they were not included, in a standard account of Roman religious institutions such as Cicero gives here. Only once elsewhere—in *De Haruspicum Responso*—does Cicero proffer a similar quadripartite division of Roman religion, but there his reason for including the *haruspices* is to win their goodwill, since he addresses them in a case over which they preside and in which Cicero has a large personal stake.²⁰²

¹⁹⁹ For a similar sentiment about the coequality of the *sacra* and Rome, see *Har. resp.* 13: *sacra constituta, quorum eadem est antiquitas quae ipsius urbis*.

²⁰⁰ See Liv. 1.56.4-5.

²⁰¹ Tac. *Ann.* 11.15 reports how Claudius and the Senate saved haruspicy from oblivion by entrusting its care to the pontiffs (*factum...senatus consultum, uiderent pontifices quae retinenda firmandaque haruspicum*). On the history of the organization of the *haruspices* see Thulin 1968, 3.131-148; Idem 1912, 2433-2437, and 2440.

²⁰² Cic. *Har. resp.* 18: *ego uero primum habeo auctores ac magistros religionum colendarum maiores nostros, quorum mihi tanta fuisse sapientia uidetur ut satis superque prudentes sint qui illorum prudentiam non dicam adsequi, sed quanta fuerit perspicere possint, qui statas sollemnisque caerimonias pontificatu, rerum bene gerundarum auctoritates augurio, fatorum ueteres praedictiones Apollinis uatum libris, portentorum expiationes Etruscorum disciplina contineri putauerunt* (Text Maslowski 1981). Lenaghan 1969, 107, offers the following cogent comments: "Cicero in the other two passages [*i.e.*, *Nat. D.* 3.5 and *Leg.* 2.20], is clear about a three-fold division of the official Roman religion, assigning the *haruspices* a place with the *x.v. viri s. f.* or giving them an entirely separate and secondary position. Varro [*Aug. CD* 6.3] simply omits them from the triad. It is, of course, understandable that Cicero should have given them

Rhetoric and philosophy aside, when Cicero legislates he makes it clear that the Roman state officially acknowledged three divisions of its state religion. In the second book of *De Legibus* Cicero, proffering the only surviving attempt²⁰³ at codifying the weighty traditions and precedents of the Roman state religion, creates an ideal religious constitution for his ideal Roman state. There we encounter the following passage in which Cicero discusses the duties of the various religious authorities in his hypothetical Rome:

Of these [*sc.* public priests], moreover, let there be three:²⁰⁴ one that is in charge of the ceremonies and sacred rites (*caerimoniis et sacris*),²⁰⁵ another that interprets the unfamiliar utterances of soothsayers and prophets that the Senate and people have officially recognized.²⁰⁶ Furthermore, the interpreters of Jove Best and Greatest, the public augurs....²⁰⁷

considerably more importance in this oration where they receive an equal and independent position in a quadripartite division of Roman religion. In actual fact, however, the *haruspices* were not official members of the Roman priesthood." Modeled on the passage from *Har. resp.* is Val. Max. 1.1.1: *maiores statas sollemnesque caerimonias pontificum scientia, bene gerendarum rerum auctoritate<s> augurum obseruatione, Apollinis praedictione<s> uatum libris, portentorum depulsi<one>s Etrusca disciplina explicari uoluerunt.* cf. T. Köves-Zulauf 1972, 43 nn. 65 & 66 and 45 n. 76.

²⁰³ Many similar attempts were written and have perished. Most regrettable is the loss of Varro's *Antiquitates*. Cicero's ideal constitution probably owes much to that work.

²⁰⁴ Dyck 2004, 302-303, reads *duo* (a correction found in manuscripts A and P) instead of *tria* (the reading advocated by J. A. Görenz in his editio maior of *De Legibus* [Leipzig 1809, *non uidi*]). *Duo* is also printed and justified by Moser (Davies-Moser-Creuzer 1824, 210), and argued for by Cohee 2001, (esp. 97) who seeks to show that *augures* were not properly called *sacerdotes*. I am skeptical of both that contention and this reading.

²⁰⁵ Dyck 2004, 302, incorrectly takes *caerimoniis et sacris* to mean "expiations."

²⁰⁶ Powell in his forthcoming OCT of *De Legibus* prints *<it>a sciuerit* instead of *asciuerit* (reported by Dyck 2004, 303). I was first inclined to view the difference between the verbs as nugatory, but now I believe that *asciuerit* is the correct form. First, it can mean "to approve, to adopt, to recognize officially", which is the sense required here. Second, it is elsewhere preferred by Cicero to describe the official acceptance and acknowledgement by Rome of (foreign) religious rites (for example, Cic. *Verr.* 2.4.115: *...inque iis sacris quae maiores nostri ab exteris nationibus adscita atque arcessita coluerunt*; *ibid.* 2.5.187: *quarum [sc. Cereris Liberaeque] sacra populus Romanus a Graecis adscita et accepta tanta religione et publice et priuatim tuetur*; *Har. resp.* 27: *<ab> Hannibale uexata sacra ista nostri maiores adscita ex Phrygia Romae conlocarunt*); and thirdly, he uses a form of this verb in the immediately preceding section of *De Legibus* (2.19): *separatim nemo, habessit deos, neue novos neue aduenas, nisi publice adscitos*. In both places Dyck 2004, offers no comment on this word.

²⁰⁷ *Leg.* 2.20: *eorum [sc. publicorum sacerdotum] autem genera sunt tria: unum quod praesit caerimoniis et sacris, alterum quod interpretetur fatidicorum et uatium ecfata incognita, quae eorum*

Later in the same dialogue Cicero restates this idea when summarizing his ideal constitution:

This description of priesthoods does not omit any kind of legitimate religious authority (*religionis*). For some are established to appease the gods; they supervise the solemn rites (*qui sacris praesint sollemnibus*). Others are established for interpreting the utterances of soothsayers.... Yet the greatest and most eminent law is that linked with the influence of the augurs.²⁰⁸

Now the *De Legibus* is a mix of fact and prescription—part real Roman law and custom, part Ciceronian fantasy—yet in both of these citations Cicero does not innovate, but describes the true structure of the Roman state religion.²⁰⁹ We may take his words as fact and conclude that Roman religion was divided into three areas, *auspicia*, *sacra*, and the *XVviri sacris faciundis* and *haruspices*.²¹⁰

Within the tripartite arrangement of the Roman state religion the place of the pontiffs is clear: they supervise the second area, or, to paraphrase Cicero, *sacris*²¹¹ *et caerimoniis*

senatus populusque asciverit. interpretes autem Iouis optumi maximi, publici augures.... Text Ziegler 1974.

²⁰⁸ *Leg. 2.30-31: descriptioque sacerdotum nullum iustae religionis genus praetermittit. nam sunt ad placandos deos alii constituti, qui sacris praesint sollemnibus, ad interpretanda alii praedicta uatium... maximum autem et praestantissimum in re publica ius est augurum cum auctoritate coniunctum* (Text Ziegler 1974).

²⁰⁹ Later in *De Legibus* (2.23) Atticus will remark on Cicero's religious constitution, *conclusa quidem est a te magna lex sane quam breui! sed ut mihi quidem uidetur, non multum discrepat ista constitutio religionum a legibus Numae nostrisque moribus*. Keyes 1921, 312-320, finds that in *De Legibus* Cicero contributed original elements to the political laws only; the religious laws he left untouched. This of course does not mean that Cicero's 'constitution' reproduces exactly all aspects of Roman religion. As he himself notes, his 'constitution' is an outline, not a detailed treatment (*leges autem a me dentur non perfectae (nam esset infinitum), sed ipsae summae rerum atque sententiae; Leg. 2.18*).

²¹⁰ It is also worth noting that Varro pursued the same division in his monumental *antiquitates rerum diuinarum* when treating *de hominibus (qui exhibeant)*. See August. *Ciu. D.* 6.3: *tres [sc. libros], qui ad homines pertinent ita subdivisit [sc. Varro], ut primus sit de pontificibus, secundus de auguribus, tertius de quindecimviris sacrorum*. Wissowa (1912) adopted the same arrangement for his handbook; chapters 67-69 deal respectively with "Das Pontificalcollegium, Die Augures, Die Quindecimviri sacris faciundis und die Haruspices."

²¹¹ The following passages mention the pontifical supervision of *sacra*, but not *caerimoniae*: Cic. *Leg. 2.30: qui sacris publice praesint* (the subject is obviously the pontiffs); *Nat. D.* 1.122: *cur sacris pontifices, cur auspiciis augures praesunt*; Cic. *Dom.* 37 (addressing the pontifical college): *sacra...quorum custodes*

pontifices praesunt.²¹² This concise statement may be taken as the proper starting point for any study of the pontifical law, the lead sentence, so to speak, of an ancient treatise on the *ius pontificium*. I propose to offer in the following sections a brief commentary on these words.

uos esse debetis; Cic. *Har. resp.* 13: *ut ab ipsis qui [sc. pontifices] sacris praesunt*; *ibid.* 14: *pontifices ... quorum auctoritati, fidei, prudentiae maiores nostri sacra religionesque et priuatas et publicas commendarunt*; Cic. *Rep.* 2.26: *idem Pompilius... sacris e principum numero pontifices quinque praefecit*; Liv. 1.20.6: *cetera quoque omnia publica priuataque sacra pontificis scitis subiecit*; Luc. *BC* 1.595: *pontifices, sacri quibus est permissa potestas*; Porphyrio in *Horati Epodos* 17.58: *pontificem nunc quasi censorem ac iudicem dicit, quia pontifices de sacris iudicant*. The same is implied in the passages from Greek authors where the pontiffs are described as "the interpreters of rites"; cf. for example, Dion. Hal. 8.89.3-5: οἱ τῶν ἱερῶν ἐξηγηταί.

The following passages imply the pontifical supervision of *caerimoniae*, but not *sacra*: Cic. *Dom.* 121: *nihil loquor de pontificio iure, nihil de ipsius verbis dedicationis, nihil de religione, caerimoniis*; Cic. *Nat. D.* 1.61 (the pontifex Cotta speaking): *itaque ego ipse pontifex, qui caerimonias religionesque publicas sanctissime tuendas arbitror...*; Val. Max. 8.13.2: *cuius [sc. M. Ualerii Coruini] uitae spatium aequauit Metellus quartoque anno post consularia imperia senex admodum pontifex maximus creatus tutelam caerimiarum... gessit*.

²¹² I have adapted this phrase from Cic. *Nat. D.* 1.122: *cur sacris pontifices, cur auspiciis augures praesunt*. For the collocation or juxtaposition of *sacra* and *caerimoniae* see also Cic. *Mil.* 83: *... qui [sc. nostri maiores] sacra, qui caerimonias, qui auspicia et ipsi sanctissime coluerunt*; Cic. *Dom.* 109: *hic arae sunt, hic foci, hic di penates, hic sacra, religiones, caerimoniae continentur*; Cic. *Har. resp.* 8: *de religionibus sacris et caerimoniis est contionatus, patres conscripti, Clodius*; Cic. *Div.* 2.148 (Cicero speaking): *nam et maiorum instituta tueri sacris caerimoniisque retinendis sapientis est*; Liv. 10.8.1: *decemuiros sacris faciundis, carminum Sibyllae ac fatorum populi huius interpretes, antistites eosdem Apollinaris sacri caerimiarumque aliarum plebeios uidemus*; Flor. 1.1.99-122: *succedit Romulo Numa Pompilius.... ille sacra et caerimonias omnemque cultum deorum immortalium docuit*. Tac. *Ann.* 14.22.4: *isdem diebus nimia luxu cupido infamiam et periculum Neroni tulit, quia fontem aquae Marciae ad urbem deductae nando incesserat; uidebaturque potus sacros et caerimoniam loci corpore loto polluisse*.

With reference to the pontiffs the same terms are collocated at *Dom.* 104, where Cicero addresses the pontifical college as *antistes caerimiarum et sacrorum*, and at *Dom.* 33, where he alludes to the college's authority over these same areas: *quid est enim aut tam adrogans quam de religione, de rebus diuinis, caerimoniis, sacris pontificum conlegium docere conari*? See also Val. Max. 2.5.2: *ius ciuile per multa saecula inter sacra caerimoniasque deorum immortalium abditum solisque pontificibus notum*; and Cic. *Nat. D.* 3.5, where Cotta says that Balba cohortabatur ut meminisset me et Cottam esse et pontificem; *quod eo credo ualebat, ut opiniones quas a maioribus accepimus de dis immortalibus, sacra caerimonias religionisque defenderem*. For the terms used of the authority of another member of the pontifical college, a flamen, see Liv. 27.8.5 (in 209 BC): *C. Flaccus flamen captus a P. Licinio pontifice maximo erat... ut animum eius [sc. Flacci] cura sacrorum et caerimiarum cepit*; copied by Val. Max. 6.9.3: *C. quoque Ualerius Flaccus secundi Punici belli temporibus luxu perditam adulescentiam incohauit. ceterum a P. Licinio pontifice maximo flamen factus, quo facilius a uitis recederet, ad curam sacrorum et caerimiarum conuerso animo*. And in a non-Roman setting we have Curt. 10.7.2: *Arrhidaeus, Philippo genitus, Alexandri paulo ante regis frater, sacrorum caerimiarumque consors modo*.

2.3.3 *pontifices praesunt*

Who were the legitimate authorities of the pontifical law? Cicero's *pontifices praesunt*, a simple statement, appears to provide the answer: the pontiffs. But *pontifices* is a tricky word. Eleanor Dickey's observation that it may refer to either the pontiffs or the members of the pontifical college²¹³ is true as far as it goes, but leaves unpursued what is undoubtedly the most important point, namely, that *pontifices* can refer to the members of the pontifical college who were not pontiffs.²¹⁴ To see this usage at work and to understand its implications for Cicero's words here, let us now consider the case of *De Domo Sua*.

That the pontifical law was the central issue of the *De Domo Sua*²¹⁵ is beyond doubt:²¹⁶ in that speech Cicero sought to recover his house and property on the Palatine by showing that the shrine to *Libertas* erected there by his arch-enemy Clodius had been dedicated and consecrated illegally. The speech fell under the jurisdiction of the pontiffs, who decided in Cicero's favor, as he reports in the following passage from *De Haruspicum Responso*:

²¹³ Dickey 2002, 351 (see 293 also), notes that *pontifices* is used as a "neutral address to members of the college of pontiffs."

²¹⁴ On the other hand Wissowa 1912, 501, makes the useful observation that the phrase *collegium pontificum* embraces all of the college's members and not just the pontiffs, yet he does not see that often *pontifices* = *collegium pontificum* and hence *pontifices* can designate the flamens and *rex sacrorum*, that is, the non-pontifical members of the pontifical college. The passage of Wissowa reads, "Wo im technischen Sprachgebrauche vom *collegium pontificum* die Rede ist, ist dieses immer im weiteren Sinne gemeint, d. h. mit Einschluß des Rex und der Flamines; das zeigt Cic. de domo 135: *praesertim cum ex collegio tanto non regem, non flaminem, non pontificem uideret* (vgl. auch ebd. 127)."

²¹⁵ Delivered before the pontifical college on 29 September 57 B.C. Later in this dissertation I shall discuss who else might have attended this meeting and where it might have been held, two matters that I have nowhere seen discussed. A helpful introduction to the speech and related events can be found in the introduction and appendices to Nisbet's (1939) commentary on the speech; more detailed is Drumann-Groebe 1899-1929, 2.208, 219-222, 228-231, 262-266; 6.628-629, 649-650. The latter reference I owe to Linderski 1985, 208 n. 2 = 1995, 497 n. 2.

But after hearing my case, which was given in two different places and with the greatest throng of the most honored and wisest citizens standing by, Publius Lentulus, consul and pontifex, Publius Servilius, Marcus Lucullus, Quintus Metellus, Manlius Glabrio, Marcus Messalla, Lucius Lentulus the Flamen of Mars, Publius Galba, Quintus Metellus Scipio, Gaius Fannius, Marcus Lepidus, L. Claudius the King of Rites, Marcus Scaurus, Marcus Crassus, Gaius Curio, Sextus Caesar the Flamen of Quirinus, and the lesser pontiffs Quintus Cornelius, Publius Albinovanus, Quintus Terentius, of one accord freed my house from religious constraint. And I assert that never since the foundation of the rites—which are coeval with the city of Rome herself—has the college on any matter, not even the capital charge against Vestal Virgins, made a ruling in such numbers.²¹⁷

Here Cicero provides the names and priesthoods of those members of the pontifical college who voted to restore his house, remarking that never had that body voted in such accord. The boast is an exaggeration, but only slightly, for with the exception of a few persons whose absence can be easily explained, we have here every member of the *collegium pontificum* at that time,²¹⁸ including most of the members who were not pontiffs proper.

²¹⁶ Cicero refers six times to the pontifical law in this speech: passages **T3, T4, T5, T6, T49, T50** in Appendix I.

²¹⁷ Cic. *Har. resp.* 12-13: *at uero meam domum P. Lentulus consul et pontifex, P. Seruilius, M. Lucullus, Q. Metellus, M. Glabrio, M. Messalla, L. Lentulus flamen Martialis, P. Galba, Q. Metellus Scipio, C. Fannius, M. Lepidus, L. Claudius rex sacrorum, M. Scaurus, M. Crassus, C. Curio, Sex. Caesar flamen Quirinalis, Q. Cornelius, P. Albinouanus, Q. Terentius pontifices minores causa cognita, duobus locis dicta, maxima frequentia amplissimorum ac sapientissimorum ciuium adstante omni religione una mente omnes liberauerunt. nego umquam post sacra constituta, quorum eadem est antiquitas quae ipsius urbis, ulla de re, ne de capite quidem uirginum Uestaliū, tam frequens collegium iudicasse* (Text Maslowski 1981; trans. modified from Shackleton Bailey 1991). Cicero also mentions the verdict at Cic. *Att.* 4.2.3: *cum pontifices decreissent ita, 'si neque populi iussu neque plebis scitu is qui se dedicasse diceret nominatim ei rei praefectus esset neque populi iussu aut plebis scitu id facere iussus esset, uideri posse sine religione eam partem areae mihi restitui'* ...; and *ibid.* 4.2.4: *tum M. Lucullus de omnium collegiarum sententia respondit religionis iudices pontifices fuisse, legis <es>se senatum; se et collegas suos de religione statuisset, in senatu de lege statuturos cum senatu.*

²¹⁸ Missing are the *pontifex maximus* Caesar, the *pontifex* L. Pinarius Natta (who had dedicated Clodius' shrine to *Libertas*), the *Flamen Dialis*, and the *flamines minores*. Caesar was fighting and writing in Gaul, Pinarius understandably would not have voted in Cicero's favor, the office of *Flamen Dialis* had been vacant since 87 B.C., and we know so very little about the minor flamens that we may wonder if these offices were even filled at this time.

That not only the pontiffs, but also the entire pontifical college, including the *rex sacrorum*, *flamines maiores*, and *pontifices minores*, voted on the pontifical law concerning Clodius' dedication shows that each member of the college could legitimately interpret and judge the pontifical law of dedications. Whether from this we can conclude that *every* member could also pronounce on *any* matter of pontifical law is difficult to say, since the matter of Clodius' dedication is the only case of pontifical law for which we possess a list of the members who voted on the issue at hand. It nevertheless seems reasonable to suppose that the procedure in *De Domo Sua* represents normal pontifical proceedings on matters of *ius pontificium*.²¹⁹ I therefore conclude that every member of the pontifical college, and not just the pontiffs proper, could and regularly did judge and interpret matters of pontifical law. Cicero's *pontifices praesunt* should therefore be understood as *pontificum collegium praeest*.²²⁰

²¹⁹ It was not necessary, however, that the entire college vote. From the following passage of Cicero it would appear that three pontiffs were a sufficient quorum for most matters of pontifical law (Cic. *Har. resp.* 12): *de sacris publicis, de ludis maximis, de deorum penatium Uestaeque matris caerimoniis, de illo ipso sacrificio quod fit pro salute populi Romani, quod post Romam conditam huius unius casti tutoris religionum scelere uiolatum est, quod tres pontifices statuissent, id semper populo Romano, semper senatui, semper ipsis dis immortalibus satis sanctum, satis augustum, satis religiosum esse uisum est*. And yet, as another passage of the same speech shows, it appears that for some cases it was thought necessary to have as large a quorum as possible (Cic. *Har. resp.* 13): *quamquam ad facinoris disquisitionem interest adesse quam plurimos (ita est enim interpretatio illa pontificum, ut eidem potestatem habeant iudicum), religionis explanatio uel ab uno pontifice perito recte fieri potest (quod idem in iudicio capitis durum atque iniquum est), tamen sic reperietis, frequentiores pontifices de mea domo quam umquam de caerimoniis uirginum iudicasse*. I would like also to note that, although nearly every ancient passage referring to a Vestal Virgin's disputed chastity uses only the word *pontifices* or an equivalent Greek term (cf., e.g., Dion. Hal. 8.89.4: *καὶ σὺν χρόνῳ μήνυσις ἀποδίδοται τοῖς ἱεροφάνταις, ὅτι τῶν παρθένων μία τῶν φυλαττουσῶν τὸ ἱερὸν πῦρ, "Οπιμία ὄνομα αὐτῇ, τὴν παρθενίαν ἀφαιρεθεῖσα μιαίνει τὰ ἱερά*; Idem 9.40: *ἐν τοιαύτῃ δὲ συμφορᾷ τῆς πόλεως οὔσης τοῖς ἐξηγηταῖς τῶν ἱερῶν γίνεται μήνυσις ὑπὸ δούλου τινός, ὅτι μία τῶν ἱεροποιῶν παρθένων τῶν φυλαττουσῶν τὸ ἀθάνατον πῦρ Ὀρβινία τὴν παρθενίαν ἀπολώλεκε*) to denote the adjudicating body, it was the entire pontifical college, and not just the pontiffs, that judged such cases (at least until the procedure was taken out of their hands in 113 B.C.) That the entire college participated in a Vestal's trial emerges most clearly from the following passage of Asconius (*In Mil.* 40 C.): *ob quam seueritatem [sc. L. Cassii], quo tempore Sex. Peducaeus tribunus plebis criminatus est L. Metellum pontificem max. totumque collegium pontificum male iudicasse de incesto uirginum Uestaliū, quod unam modo Aemiliam damnauerat, absoluerat autem duas Marciam et Liciniam, populus hunc Cassium creauit qui de eisdem uirginibus quaereret. isque et utrasque eas et praeterea complures alias nimia etiam, ut existimatio est, asperitate usus damnauit*.

Although it is occasionally observed that the entire *collegium*, including the minor pontiffs, deliberated over issues that came before the *pontifices*,²²¹ the significant ramifications of this observation for the traditional understanding of these lesser priesthoods has gone unremarked. According to the general view, found in any standard reference work, these lesser priests practiced only antiquated, obscure or routine duties. This received notion may be true as far as it applies to the rituals that we hear of the flamens, *rex sacrorum*, and minor pontiffs performing, but it misleads with respect to the totality of their activity, since the evidence of *De Domo Sua* shows that they could sit in judgment with the rest of their colleagues on cases of pontifical law. This is an important point, one not sufficiently appreciated or perhaps even made before. It bears reiteration: the flamens, *rex sacrorum*, and minor pontiffs could interpret, judge, and apply the pontifical law. As I noted above, we may question how often they did this, but I assert that the normal procedure was for these minor priests to participate in the deliberations of the pontifical college. Thus, we should view these priesthoods not as offices of little importance; nor should we consider their holders as wielding insubstantial power or even less power than the pontiffs in the religious sphere. Rather we must acknowledge that like

²²⁰ As additional support to the belief that Cicero's *sacris pontifices praesunt* means *sacris collegium pontificum praeest*, I point to the numerous passages in which the other members of the pontifical college are likewise mentioned as responsible for *sacra*. Especially important here is Liv. 5.52.3-4, where Camillus, in a discussion of *publica sacra*, strongly implies that these rites are the responsibility of the pontiffs and flamens: *hos omnes deos publicos priuatosque, Quirites, deserturi estis?... an gentilia sacra ne in bello quidem intermitti, publica sacra et Romanos deos etiam in pace deserere placet, et pontifices flaminesque neglegentiores publicarum religionum esse quam priuatus in sollemni gentis fuerit?* Here the pontiffs and flamens are clearly conceived as co-guardians of *publicae religiones* (a phrase which must mean *publica sacra*). Cf. also Liv. 27.8.5 (in 209 BC): *C. Flaccus flamen captus a P. Licinio pontifice maximo erat...ut animus eius [sc. Flacci] cura sacrorum et caerimoniarum cepit*; copied by Val. Max. 6.9.3: *C. quoque Ualerius Flaccus secundi Punici belli temporibus luxu perditam adulescentiam incohauit. ceterum a P. Licinio pontifice maximo flamen factus, quo facilius a uitiiis recederet, ad curam sacrorum et caerimoniarum conuerso animo.*

²²¹ See, for example, Marquardt 1881-1885, 3.244.

the pontiffs, these minor priests also applied, interpreted, and adjudicated the *ius pontificium*.

The relationship of these minor priesthods to the pontifical law must also be modified. At best these priesthods have been traditionally viewed as passive participants in the pontifical law, for the *pontifex maximus* could in some instances fine them or force them to lay aside their office, while in others their abdication appears to have been dictated not by the *pontifex maximus* or the pontifical college, but by some religious statutes which is probably best viewed as part of the pontifical law. Yet the evidence from *De Domo Sua* shows that these minor priests could (and probably regularly did) play an active role in the pontifical law, deliberating and pronouncing on at least one of its central tenets, the dedication of a shrine.

2.3.4 *sacra et caerimoniae*

It will be noticed that Cicero varies his description of the area of religion over which the pontifical college presides. At *De Legibus* 2.20 he says that the second division of the Roman state religion consists of *caerimoniae et sacra*, but at 2.30 he says its contents are only the *sacra*; and at *De Natura Deorum* 3.5 he mentions only the *sacra*, while at *De Haruspicum Responso* 18 only the *caerimoniae*.²²² The nearly identical contexts of these passages, *i.e.*, descriptions of the religious constitution of Rome or of Cicero's ideal state, make it difficult to discern the difference – if there is one – between the meanings of *sacra* and *caerimoniae* as used here.

²²² Cic. *Har. resp.* 18: *qui [sc. maiores nostri] statas sollemnisque caerimonias pontificatu, rerum bene gerundarum auctoritates augurio, fatorum ueteres praedictiones Apollinis uatum libris, portentorum expiationes Etruscorum disciplina contineri putauerunt.*

In fact the words appear to have been interchangeable. Indirect evidence for their synonymy abounds in the ancient literature,²²³ but explicit are the testimonies of Valerius Maximus and the commentary known as *Servius Danielis*, both of whom report that *sacra* were called *caerimoniae*.²²⁴ We might have suspected as much: the terms occupy the same semantic field, and so their definitions frequently overlap or even become synonymous, in which case their proper translation is "religious rite(s), ceremony, ceremonies".²²⁵ The synonymy of the terms explains why Cicero can include or omit either term in four passages of identical context; we can therefore conclude that the presence or absence of either need not indicate a corresponding modification of the structure of the Roman state religion or the religion of Cicero's ideal *respublica*.²²⁶

Synonyms though the words may be, we can nevertheless discern an important

²²³ See, e.g., the passages reproduced above in nn. 211 and 212.

²²⁴ Val. Max. 1.1.10: *inde enim institutum est sacra caerimonias uocari, quia Caeretani ea infracto rei publicae statu perinde ac florente sancte coluerunt* (cf. Paul. Fext. 38 L.: *caerimoniarum causam alii ab oppido Caere dictam existimant; alii a caritate dictas iudicant*); *Seru. Dan.* at Aen. 4.302: *sane sciendum ORGIA apud Graecos dici sacra omnia, sicut apud Latinos caeremoniae dicuntur* (cf. Isid. *Etym.* 6.19.36: *caerimoniae apud Latinos dicuntur sacra omnia quae apud Graecos orgia uocantur*). Note also that Livy (1.20.6) appears to equate the two terms when he writes *cetera quoque omnia publica priuataque sacra pontificis scitis subiecit* [sc. Numa] and shortly thereafter refers to these *publica priuataque sacra* as *caelestes...caerimonias*. Also see the list of this word's glosses at *TLL* s.v. *caerimonia* (3.100.22-27), although that entry omits the passage of Valerius Maximus. The true etymology of *caerimonia* is unknown; Walde-Hofmann 1938, 1.132-133, reports many of the possibilities. Roloff 1953, provides a lengthy and not uninformative study of the word.

²²⁵ This seems to happen primarily with the plural forms of these words. Compare two of the definitions of these terms offered by the *OLD*. s.v. *sacrum* 3: "A religious observance, ceremony, or rite (pl. often referring to a single event)"; 5: "(usu. pl.) sacred status or character, sanctity, inviolability". S. v. *caerimonia* 1: "sacredness, sanctity"; 3: "(usu. pl.) religious rites, ceremonies, or observances". And note the plural forms in the sources in the previous footnote.

²²⁶ Nevertheless it may be significant that only in *Leg.* 2.20 does Cicero include both terms in his description of pontifical duties. This is the most legalistic of the four excerpts, coming directly from Cicero's ideal religious constitution. Here Cicero legislates, and a legislator must offer as comprehensive and precise a text of his law as possible in order to leave no room for misunderstanding or potentially distortive interpretation. Cicero may thus have mentioned both *sacra* and *caerimoniae* here in order to indicate as clearly as possible the contents of this second compartment of Roman religion. Of course, Cicero's penchant for pleonasm may also explain it; on this see Pease 1955-1958, 1.124 s.v. *locis atque sedibus*, and the bibliography cited there, especially Norden 1909, 1.166-167.

difference in their use. When discussing the official structure of Roman religion, ancient authors use only the word *sacra*, never *caerimoniae*, to describe the types of rites acknowledged by the state, a practice which seems to indicate that *sacra* was the official term for such rites, *caerimoniae* a non-technical variant. The greatest value of such discussions, however, lies not in the answer they provide to a terminological question, but in the light they shed on the official structure of Roman *sacra* and the pontifical college's place within the same.

If we examine the arrangement of *sacra* in Roman religion,²²⁷ we observe that, as in almost every aspect of their culture, so in their religion, the Romans observed a fundamental distinction between public and private: *sacra publica* and *sacra priuata* constitute the most basic divisions of *sacra*.²²⁸ An excerpt of Paulus ex Festus 284 L. helpfully defines these categories:

publica sacra, quae publico sumptu pro populo fiunt, quaeque pro montibus, pagis, curis, sacellis: at priuata, quae pro singulis hominibus, families, gentibus fiunt.

The public rites are those performed at public expense on the people's behalf and those that are performed *pro montibus, pagis, curis, sacellis*. The first category is undoubtedly the largest, comprising most of the rites of the Roman state religion.²²⁹ The second,²³⁰

²²⁷ The standard treatment of the subject is Geiger "Sacra." *RE* IA2 (1920): 1656-1664.

²²⁸ On the distinction between *publica* and *priuata sacra*, see, in addition to the sources collected below in n. 235 and the passage of Paulus ex Festo quoted in the text above, Dion. Hal. 2.65.1: *διαϊροόμενοι τε διχῇ τὰ ἱερὰ καὶ τὰ μὲν αὐτῶν κοινὰ ποιοῦντες καὶ πολιτικά, τὰ δὲ ἴδια καὶ συγγενικά, δι' ἄμφω ταῦτά φασι πολλὴν ἀνάγκην εἶναι τῷ Ῥωμύλῳ ταύτην σέβειν τὴν θεόν*. See also Cic. *de Leg.* 2.20: *quoque haec priuatim et publice [et publice Bücheler] and Idem Dom. 105: quem umquam audisti maiorum tuorum, qui et sacra priuata coluerunt et publicis sacerdotiis praefuerunt*.

²²⁹ Geiger 1920, 1660.55-60, offers this definition, "alle die Kulthandlungen, welche auf Staatskosten für das gesamte Volk von dessen Vertretern....ausgeführt werden."

²³⁰ I am not that concerned with how we subdivide the *sacra publica*. Geiger, whom I follow here, divides *sacra publica* into two groups: 1) *pro populo fiunt*, and 2) *pro montibus, pagis, curiis, sacellis*.

being limited to four specific ceremonies, is much the smaller.²³¹ With the *priuata sacra*, on the other hand, a threefold division obtains: those for an individual,²³² those for a household,²³³ and those for a clan.²³⁴ Over all of these rites, public and private, the pontiffs exercised sole authority. In fact, they are so closely associated with these rites, that the division between them and the pontifical jurisdiction over them are often mentioned in the same passage.²³⁵

To these two categories Geiger would add *municipalia sacra*, *peregrina sacra*, and *popularia sacra*, based on the following entries in Festus:

²³¹ Wissowa 1912, 399 n. 1, writes, "bei den *sacra pro montibus* ist an das Septimonium zu denken...bei denen *pro pagis* an die Paganalia...bei den *sacra pro curiis* an die Fornacalia...bei denen *pro sacellis* an die Compitalia... a *sacella* speziell die Larenkapellen an den *compita* bezeichnet..." Geiger follows him for the most part; they disagree about the meaning of *pro curiis*.

²³² Thus, Geiger 1920, 1657.4-13, "solche gottesdienstlichen Handlungen, die für das Wohlergehen des einzelnen Menschen begangen werden; der Ausführende ist das betreffende Individuum selbst. Dieselben können natürlich recht mannigfalter Art sein; hierher gehören z. B. alle die Fälle, in denen ein einzelner irgend einer Gottheit für die Errettung aus einer gefährvollen Lage ein Gelöbnis macht und diese nach geleistetem Beistand ausführt."

²³³ See Geiger 1920, 1657.23-48.

²³⁴ Geiger 1920, 1657.49-1659.54, offers a detailed discussion of this category.

²³⁵ For passages that mention the pontiffs as the authorities of *publica* and *priuata sacra*, see especially Liv. 1.20.6: *cetera quoque omnia publica priuataque sacra pontificis scitis subiecit*; Idem 5.52.3-4 (Camillus speaking): *hos omnes deos publicos priuatosque, Quirites, deserturi estis?*... *an gentilia sacra ne in bello quidem intermittere, publica sacra et Romanos deos etiam in pace deseri placet, et pontifices flaminesque neglegentiores publicorum religionum esse quam priuatus in sollemni gentis fuerit?* Cic. Leg. 2.30: *quod sequitur uero, non solum ad religionem pertinet sed etiam ad ciuitatis statum ut sine iis qui sacris publice praesint [i.e. the pontiffs], religioni priuatae satis facere non possint*. Cic. Har. resp. 14: *...ad pontifices reicietur, quorum auctoritati, fidei, prudentiae maiores nostri sacra religionesque et priuatas et publicas commendarunt*. Plut. Num. 9.5: 'Ο δὲ μέγιστος τῶν Ποντιφίκων οἶον ἐξηγητοῦ καὶ προφήτου, μᾶλλον δὲ ἱεροφάντου τάξιν εἴληχεν, οὐ μόνον τῶν δημοσίων δρωμένων ἐπιμελούμενος, ἀλλὰ καὶ τοὺς ἰδίᾳ θύοντας ἐπισκοπῶν. There is also the following passage from Pompon. Dig. 1.2.2.6: *apud collegium pontificum..., ex quibus constituebatur, quis quoquo anno praeesset priuatis*, the meaning of which is unclear; "[n]icht recht klar ist die Angabe," says Wissowa 1912, 400 n. 8. Perhaps the official term—that is, the one the Romans used in legal documents and transactions—was *sacra populi Romani*. This may follow if we can trust Asconius to reproduce the legal terms that were originally used in the following conflict (Asc. in Pro Scauro 18-19 C): Cn. Domitius qui consul fuit cum <C.> Cassio, cum esset tribunus plebis, iratus Scauro quod eum in augurum collegium non cooptauerat, diem ei dixit apud populum et multam irrogauit, quod eius opera sacra populi Romani deminuta esse diceret. crimini dabat sacra publica populi Romani deum Penatium quae Lauini fierent opera eius minus recte casteque fieri.

Municipal rites are those that they [*sc. municipia*] had originally observed before they received Roman citizenship, and which the pontiffs wanted them to keep observing and performing in the manner to which they were long accustomed.²³⁶

Foreign rites are either those that have been compelled to come to Rome when the gods of a besieged city are summoned, or those that in times of peace are sought out for certain religious reasons, such as the rites of The Great Mother from Phrygia or of Ceres from Greece or of Aesculapius from Epidaurus. These rites are practiced as they were practiced by those from whom they were received.²³⁷

Popular rites, as Labeo says, are those that every citizen performs, nor are these rites distributed among set families. These rites [*i.e.* the popular ones] are the Fornacalia, Parilia, Laralia, and *porca praecidania*.²³⁸

I shall discuss these passages in turn. Municipal rites are simply those rites performed by Roman *municipia*. As these rites originated outside of Rome, they can have formed no original part of the *sacra publica* or *sacra priuata*. But what happened to them once their town received Roman citizenship? Festus writes that the pontiffs decreed—and the phrase *pontifices uoluerunt*²³⁹ can hardly mean otherwise—that the *municipalia sacra* were to continue to be performed in the traditional manner. Now, a pontifical decree is solid evidence from which to conclude that the pontiffs were in charge of *municipalia sacra*; and if we wish to know on what basis the pontiffs exercised this power, the simplest explanation will be to assume that they did so in their capacity as authorities of the *sacra publica*, and to posit that just as a *municipium*, once granted citizenship,

²³⁶ Fest. 146 L.: *municipalia sacra uocantur, quae ab initio habuerant ante ciuitatem Romanam acceptam; quae obseruare eos uoluerunt pontifices, et eo more facere, quo adsuissent antiquitus*. See Mommsen's comments on the subject (1887-1888, 3.579-580 and 2.26-27).

²³⁷ Fest. 237 L.: *peregrina sacra appellantur, quae aut euocatis dis in oppugnandis urbibus Romam sunt †conata† [Geiger prints coacta], aut quae ob quasdam religiones per pacem sunt petita, ut ex Phrygia Matris Magnae, ex Graecia Cereris, Epidauro Aesculapi: quae coluntur eorum more, a quibus sunt accepta*.

²³⁸ Fest. 298 L.: *popularia sacra sunt, ut ait Labeo, quae omnes ciues faciunt, nec certis familiis attributa sunt: Fornacalia, Parilia, Laralia, porca praecidania*. Mommsen comments are at 1887-1888, 2.63.1 and 3.10 n. 2, where he seems not to read the *nec*, "Labeo [*sc. nenn*]...die gentilschen Sacra *certis familiis attributa*."

became part of the Roman state, so its rites, at the same moment, became part of the Roman rites, *i.e.*, became part of the *sacra publica*. The *municipalia sacra*, therefore, should not be treated as a category of *sacra* separate from the *sacra publica*.

Foreign rites, Festus tells us, fall into two categories: those of gods who, during a war, were lured from a foreign state to Rome through the ceremony of *euocatio*, and those of gods brought to Rome for a specific purpose (*i.e.*, as a remedy for a plague) during times of peace. Geiger contends that these rites became either part of the *sacra publica* or *sacra priuata* depending on whether the state or a *gens* took care of them once they were installed at Rome.²⁴⁰ Yet the passage of Festus cannot support his contention, for if the *sacra peregrina* belonged to the *sacra publica* or *priuata*, we would expect them to have been the responsibility of the pontifical college, which presided over these two areas. And yet we know that the college had nothing to do with the *sacra peregrina* mentioned in this passage of Festus.²⁴¹ We may, therefore, conclude that *sacra peregrina*

²³⁹ It is missing from Cohee's (1994) collection of pontifical *decreta* and *responsa*.

²⁴⁰ Geiger 1920, 1663.56-63, "Die *s. peregrina* sind in ihrer weitesten Bedeutung alle von dem außerhalb des *ager Romanus* gelegenen Gebiete nach Rom eingedrungenen Religionsübungen. Sie gehören, solange sie noch von einzelnen Individuen oder Familien oder Geschlechtern gepflegt werden, zu den *s. priuata*; sobald sie staatlich anerkannt sind, rechnen sie zu den *publica*."

²⁴¹ About the cult of gods summoned through *euocatio* we know very little. The most well-attested case of *euocatio* is that of Juno Regina from Veii in 396 (Liv. 5.21-22). Serv. at *Aen.* 12.841 reports that Juno was also evoked from Carthage in 146 BC. The formula of *euocatio* is given by Mac. *Sat.* 3.9.7. There is also the following remark of Pliny *HN* 28.18 (T64): *Uerrius Flaccus auctores ponit, quibus credat in obpugnationibus ante omnia solitum a Romanis sacerdotibus euocari deum, cuius in tutela id oppidum esset, promittique illi eundem aut ampliorem apud Romanos cultum. et durat in pontificum disciplina id sacrum, constatque ideo occultatum, in cuius dei tutela Roma esset, ne qui hostium simili modo agerent.* I am not sure if this means that the pontifical college performed the rite of *euocatio* or only that it safeguarded the secret name of Rome's tutelary deity.

We know that the second group of *sacra peregrina*, those of Mater Magna from Phrygia, of Ceres from Greece, and Epidaurus from Aesculapius, were in the hands of their own native priests and priestesses (as Festus' remark—*quae coluntur eorum more, a quibus sunt accepta*—implies). On the cult of Magna Mater (Kybele) at Rome, see Rapp 1890-1894, 1666-1672 and Marquardt 1881-1885, 3.367-374. On the cult of Aesculapius at Rome see Wissowa 1912, 306-309, and Marquardt 1881-1885, 3.376. On the cult of Ceres at Rome see especially Le Bonniec 1958, 381-455. I disagree, however, with his statement at 387, "C'est un culte étranger, mais officiellement reconnu par l'État romain. Classé parmi les *sacra peregrina*, le

were not part of the *sacra publica*, but formed a separate category of the *sacra* of Roman religion.²⁴²

The *sacra municipalia* and *peregrina* may originally have formed no part of the *sacra publica* or *priuata*, but the *sacra popularia* (as defined by Festus) were no latecomers to Roman religion,²⁴³ and were, moreover, celebrated by the entire Roman community; we may reasonably question whether they formed a category separate from *sacra publica*. Certainly the first such popular rite mentioned by Festus, the Fornacalia, did not: the sources make it clear that this was a rite performed by the *curiae*.²⁴⁴ It thus belongs with the *sacra publica* as one of the *sacra pro curiis* mentioned by Festus. The next *sacra*, the Parilia, was, according to Varro,²⁴⁵ both a public and private feast. It thus belongs to both the *sacra publica* and *sacra priuata*. I have been unable to find any information about the third popular rite, the Laralia. The word occurs only here, and I have not found it

culte grec nouveau était pourtant un *sacrum publicum*, puisque les prêtresses grecques étaient *publicae*. C'est dire qu'il se célébrait pour le peuple, aux frais de L'État, selon la définition de Festus (p. 284 L.): *Publica sacra, quae publico sumptu pro populo fiunt*."

²⁴² Schied 1995, 22, however, thinks *peregrina sacra* to be an artificial category.

²⁴³ Geiger 1663.17-27, tacitly acknowledge that these feasts were very ancient and offers the following explanation of why if they were so old, they still formed a separate category of *sacra*, "Diese vier Feste stellen deshalb wahrscheinlich eine bestimmte Kategorie dar, weil sie, obgleich zu den *feriae publicae* ältester Ordnung gehörig, doch in der Art ihrer Feier eine Ausnahme bildeten gegenüber den übrigen altrömischen s. publica, die gemäß dem alteinheimischen Zeremoniell durchweg von den Vertretern des Volkes begangen wurden. In dem nach dem ritus Graecus ausgeübten Gottesdienst hingegen ist eine Teilnahme der ganzen Bürgerschaft die Regel."

²⁴⁴ See Wissowa "Fornacalia." *RE* 6.2 (1909): 2876.12-43, and the sources collected there.

²⁴⁵ *Palilia tam priuata sunt quam publica et est genus hilaritatis et lusus*. This sentence, found in the scholia to the *Satires* of Persius, is attributed to Varro by Wissowa (in Roscher's lexicon 3.1.1278 and Andreas Spira in *Der Kleine Pauly* 4 (1972) s.v. Parilia, 513.36). But I am not sure why they attribute it to him. For the scholia I have used the edition of Kurz 1875, who relegates this passage, without comment, to the *apparatus criticus* on line 72 of *Satire* I, while in his index he attributes it to Varro.

discussed in any secondary literature.²⁴⁶ Geiger (who is probably following Wissowa) identifies it with the Compitalia,²⁴⁷ thus implicitly making it a public rite, specifically, the *publica sacra quae pro sacellis*. The fourth and final popular rite mentioned by Festus, the *porca praecidania*, does not seem to belong with the other three. As far as we know it was not, like the other *popularia sacra*, performed by all the citizens—as Le Bonniec notes, we know nothing of a public rite of *porca praecidanea*²⁴⁸—but was instead executed by farmers before harvest or by heirs for a deceased family member.²⁴⁹ Note also that the first three *sacra popularia* are properly *feriae*, in which group a private sacrifice such as the *porca praecidanea* seems out of place. A thought thus occurs. We know of *feriae praecidaneae*. Perhaps then we should read *feriae praecidaneae* for Festus' *porca praecidania*, and assume that either he or his sources confused the two rites. This reading would fit the context of the passage better, but, alas, is not of much help for our present purpose, since almost nothing is known about the *feriae praecidaneae*.²⁵⁰

²⁴⁶ It cannot be identified with the feast of *Larentalia* (as the *OLD* proposes), since that feast cannot have been a *popularia sacra*: it was performed by the *flamen Quirinalis* and the pontiffs, not *ab omnibus ciuibus*. See Thulin "Larentalia." *RE* 13.1 (1924): 805-806.

²⁴⁷ The identification is implicit: when discussing the four types of *sacra popularia* Geiger defines explicitly the *porca praecidania* and the *Parilia*, but refers to the other two feasts, the *Fornacalia* and *Larilia*, thusly (1920, 1663.4-5), "Von den Fornacalia und Compitalia ist bereits oben die Rede gewesen." He is probably following Wissowa 1912, 399 n. 2, who in his citation of Festus 298 L. writes, "...*nec certis familiis adtribuata sunt: Fornacalia, Parilia, Laralia* (= Compitalia)..."

²⁴⁸ Le Bonniec 1958, 156: "Nous ne savons rien sur fête publique de la truie précidanée. Elle devait être célébrée à Rome et dans chaque *pagus*."

²⁴⁹ The main sources are collected and analyzed by Le Bonniec 1958, 93-107 and 148-157. On the passage of Festus he notes (at 156), "Ces quatre fêtes constituaient un groupe particulier: leur caractère propre est de requérir la participation de toute la communauté, au contraire des autres *sacra publica* qui étaient célébrés par les prêtres ou les magistrats, représentants du peuple." He then cites Wissowa 399 n. 2.

²⁵⁰ Only one passage mentions the *feriae praecidaneae*, Gell. *NA* 4.6.10 (**T26**): *propterea uerba Atei Capitonis ex quinto librorum, quos de pontificio iure composuit, scripsi: Tib. Coruncanio pontifici* (sic)

Such scanty evidence demands cautious conclusions about the *sacra popularia*. The Fornacalia and Parilia certainly were part of the *sacra publica*. The same holds for the Larilia, if we identify it with the Compitalia. And about the *porca* (or *feriae*) *praecidaneae* nothing can be said for certain. The evidence then, I suggest, tilts the balance toward treating *popularia sacra* not as its own category of *sacra* (as Geiger treats it), but as a part of the *sacra publica*.²⁵¹ And the Parilia, according to Varro, should be numbered among the *sacra priuata*, too. I would thus revise Geiger's list of five, to include only four, types of *sacra*: *priuata*, *publica*, *municipalia*, and *peregrina*. And of these the pontiffs oversaw the *sacra publica*, *priuata*, and *municipalia*,²⁵² but had nothing to do with the *sacra peregrina*.

If Geiger's treatment of the *sacra* and my own exposition in the preceding pages seems too schematic or appear too reliant on brief excerpts from Festus, then there is another perspective from which to view the *sacra* and the pontifical college's authority over them. The Romans differentiated carefully between the ways in which different *sacra* were performed. The two primary ways were the Roman rite (*ritus Romanus*) and Greek rite (*ritus Graecus*).²⁵³ The difference between the two need not concern us

maximo feriae praecidaneae in atrum diem inauguratae sunt. collegium decreuit non habendum religioni, quin eo die feriae praecidaneae essent.

²⁵¹ Marquardt 1881-1885, 3.190 and n. 1, believes that the *popularia sacra* were a type of *publica sacra*.

²⁵² But the pontifical college's authority over the municipal rites must have been strange compared to the authority that it exercised over the *sacra publica* and *priuata*. Whereas the college or members of it performed or supervised the performance at Rome of the private and public rites, the regular performance of the municipal rites would fall to the relevant municipal magistrates and priests. And one wonders how closely the pontiffs supervised these *sacra*. Are we to imagine them travelling, on their own initiative, to a *municipium* to ensure that their *sacra* were being performed correctly, or to adjudicate, on request, matters concerning the same?

²⁵³ A discussion of the difference between these two manners can be found at Marquardt 1881-1885, 3.186-189. In addition to *Romanus ritus*, the Romans also used the terms *patrius ritus* and *patrius mos* to

here;²⁵⁴ important is the fact that the pontifical college was in charge only of the *sacra* performed *Romano ritu*, and had nothing to do with those conducted *Graeco ritu*.²⁵⁵ Thus, although the *Quindecimviri sacris faciundis* did perform *sacra* (as their name makes clear), they were not subject to pontifical authority, since they conducted their *sacra* in the Greek fashion.²⁵⁶

To return to the passage with which this section began, Cic. *Nat. D.* 1.122: *cur sacris pontifices, cur auspiciis augures praesunt*. On this sentence Jerzy Linderski writes:

Cicero uses here the terms *sacra* and *auspicia* in the technical, but at the same time also most general meaning. The term *auspicia* will refer to a) public functions of the augurs connected with the *auspicia* b) divine signs the interpretation of which fell within the augural sphere of competence.²⁵⁷

describe the same concept. Livy, our repository of antiquarian terminology, prefers *patrius ritus*: he uses it five times (1.20.6, 1.31.3, 5.52.9, 29.1.24, 39.6.9), *Romanus ritus* twice (1.35.5, 25.1.7), *patrius mos* once (29.1.24) and *Romanus mos* once (39.16.8). Cicero in his ideal religious constitution (*Leg.* 2.19-22) has *ex patrii ritibus optima colunto*. Other categories of performance are attested, too. Serv. at *Aen.* 12.836 mentions *Phrygius mos* and Liv. 1.7.3 writes of *Albanus ritus*.

²⁵⁴ The basic difference appears to have been that the oldest rites of Italic stock were performed *Romanus ritus*, while newer and foreign deities had their worship performed *Graeco ritu*. See the remarks of Marquardt 1881-1885, 3.186, "So oft diese Differenz im Allgemeinen erwähnt wird, so selten hören wir von den Specialitäten derselben. Berichtet wird, dass man nach römischen Ritus mit verhülltem, nach griechischem mit unbedecktem Haupte opferte, und dass das Bekränzen der Opfernden mit Lorbeer griechische Sitte ist" (citing as evidence for these statements Mac. *Sat.* 1.8.2 and 3.6.17 and Serv. at *Aen.* 8.276); and Idem 3.188-189, "Im Uebrigen scheinen im Alterthum selbst die Begriffe des *ritus Romanus* und *ritus Graecus* niemals bestimmt definirt zu sein, und es hatte das auch seine Schwierigkeit. Das, was man *ritus Romanus* nennt, ist nicht ein den Römern eigenthümliches liturgisches System, sondern ein Complex italischer Ceremonien, unter welchen wieder etruskische, latinische, sabinische und albanische unterschieden werden und noch in einzelnen Fällen erkennbar sind...Andererseits ist auch der *ritus Graecus* kein einheitlicher, sondern ein aus sehr verschiedenen Gegenden eingeführter; er ist auf eine ganze Reihe altrömischer Gottheiten übertragen worden, welche durch ihre Identification mit griechischen Göttern ihren italischen Ritus einbüssten." More recently Schied 1995, 28, writes, "A religious ceremony *Graeco ritu* was a service or festival, which was not imported as a whole. It was a Roman ceremony which was slightly modified or completed in some part."

²⁵⁵ For pontifical supervision of the *patrius ritus* see Liv. 1.20.6: *cetera quoque omnia publica priuataque sacra pontificis scitis subiecit* [sc. Numa], *ut esset quo consultum plebes ueniret, ne quid diuini iuris negelegendo patrios ritus peregrinosque adsciscendo turbaretur*.

²⁵⁶ As Varro (*Ling.* 7.88) tells us, *et nos dicimus XVviros graeco ritu non Romano facere*. More evidence found at Wissowa 1912, 534 n. 4; important also is the article by Scheid 1995, especially 20-31.

²⁵⁷ Linderski 1986, 2148.

Following his lead, and on the basis of our discussion in the preceding pages, we may say that here *pontifices* means the entire pontifical college and not just the pontiffs, and *sacra* refers generally to the public functions of the pontifical college connected with the *sacra*. The technical meaning of *sacra* will then be: those *sacra* of Roman religion whose supervision fell within the pontifical college's sphere of competence.²⁵⁸ And as I have tried to show, such *sacra* comprised all the *sacra publica* and *priuata*, and—to a probably limited extent—the *sacra municipalia*, of the Roman world, or, phrased another way, all the *sacra* that belonged to the *Romanus* (or *patrius*) *ritus*.

2.3.4.1 The pontiffs and the *ius sacrum*

The clear and abundant evidence demonstrating the pontifical supervision of *sacra* appears to be the reason that many scholars believe the pontifical college interpreted the *ius sacrum*.²⁵⁹ The evidence for this belief, however, is non-existent, and the term *ius sacrum* (as used in modern scholarship), is ill defined. Before proceeding further with an investigation of the contents of the pontifical law, I would like to investigate the concept of *ius sacrum* and its relationship to the pontifical college.

The term has its own entry in the *Real-Encyclopädie* and occurs frequently in the scholarly literature, and while scholars seem to acknowledge that the *ius sacrum* was properly the sphere of the pontifical college, they also believe the term embraces the

²⁵⁸ Thus under this category I would also place law that regulated the dress, actions, and selection for office of all members of the pontifical college.

²⁵⁹ Note for example the remarks of Wissowa 1912, 408, "Der Geltungsbereich des römischen *ius sacrum* und damit zugleich des pontificalen Aufsichtsrechtes hat sich vom ursprünglichen *ager Romanus* ausgedehnt auf die italischen Bürgergemeinden..."

activities of other Roman religious authorities too.²⁶⁰ Berger, for example, in his *Real-Encyclopädie* entry, proffers the following working definition of *ius sacrum*:

The *ius sacrum* comprises everything that has a possible connection with religious, holy institutions. Accordingly the concept can be extended far beyond that which one is accustomed to conceive of as "law" in the sense inherent in the term "private law".²⁶¹

When confronted with a concept seemingly so important to Roman religion, and yet apparently not clearly understood, or so broadly understood as to be almost meaningless, we may with reason inquire after its basis in the ancient sources.

In secondary literature the phrase proliferates, but in the ancient sources *ius sacrum* is a true *rara avis*. Berger does not report how many authors preserve the phrase, but the *TLL* gives two and contends there are others.²⁶² Electronic searches, however, return only three, and expose one of the entries in the *TLL* as incorrect. If we combine the report of the *TLL* with the results of CD-ROM searches, we are left with four passages,²⁶³ which I shall now discuss.

The first passage given in the *TLL*, Cicero *Leg.* 2.22, can be easily deconstructed. The passage comes from Cicero's ideal religious 'constitution' of Rome and reads as follows:

²⁶⁰ Ambrosch 1840, 13, expresses what many seem to assume, "*primum igitur tenendum est, aliud fuisse sacrum ius universum aliud ius pontificium*." On the confusion of *ius sacrum* with other matters, augural in particular, see Linderski 1986, 2147 n. 1.

²⁶¹ Berger 1919c, 1293.12-18, "Das *i.s.* umfaßt alles, was in irgend einem Zusammenhang mit religiösen, heiligen Institutionen im Zusammenhang steht, und demgemäß ist der Begriff weit darüber hinaus dehnbar, was man als 'Recht' in dem Sinne, der dem Worte in der Verbindung 'Privatrecht' innewohnt, aufzufassen pflegt." Cf. also 1293.43-46, "Denn auch das ganze Kult- und Opferrecht, das gesamte Preisterrecht und das Recht aller jener Handlungen, die den Priestern obliegen, das sakrale Strafrecht fallen unter die Gesamtbezeichnung *i.s.*."

²⁶² Primmer *TLL* sv. *ius* 7.2.681.65-66 reads, "sacrum: Cic. leg. 2.22 Quint. inst. 2.4.33. *al.*"

²⁶³ Discounting, of course, such passages wherein *sacra* is used predicatively, such as, e.g., Sen. *Cont.* 7.1: *naturae iura sacra sunt etiam apud piratas*.

sacrum commissum quod neque expiari poterit impie commissum, esto; quod expiari poterit, publici sacerdotes expianto. loedis publicis quod siue curriculo et [sine] certatione corporum <siue> cantu et fidibus et tibiis fiat, popularem laetitiam moderanto eamque cum diuum honore iungunto.
ex patriis ritibus optuma colunto.
praeter Idaeae Matris famulos eosque iustis diebus ne quis stipem cogito.
sacrum sacroue commendatum qui clepserit rapsitue, parricida esto.
periurii poena diuina exitium, humana dedecus.
incestum pontifices supremo supplicio sanciant.
impius ne audeto placare donis iram deorum.
caute uota reddunto.
poena uiolati iuris esto.
[quocirca] nequis agrum consecrato.
auri, argenti, eboris sacrandi modus esto.
sacra priuata perpetua manento.
*deorum Manium iura sancta sunt. <bo>nos leto datos diuos habento. sumptum in ollos luctumque minuunto.*²⁶⁴

Since *ius sacrum* does not occur in this passage, we must guess which part of it the author of the entry in the *TLL* thought preserved that term. The only candidate is the clause *caute uota reddunto; poena uiolati iuris esto*, which the author seems to have read as *poena uiolati iuris <sacri> esto*. This reading, however, does not occur in any edition of *De Legibus*; nor is there any reason to supply *sacri* here, unless one is looking specifically for possible occurrences of the term *ius sacrum*.

In any event Cicero's explication of these laws later in the dialogue clarify his meaning here. At *Leg.* 2.41 he writes:

donis impii ne placare audeant deos, Platonem audiant, qui uetat dubitare qua sit mente futurus deus, quom uir nemo bonus ab improbo se donari uelit. <de> diligentia uotorum satis in lege dictum est ac uoti <est> sponsio qua obligamur deo. poena uero uiolatae religionis iustam recusationem non habet. poena uero uiolatae religionis iustam recusationem non habet.

The last sentence—which is followed not by more commentary on the law, but by a narrative celebrating the divine justice that pursued those who drove Cicero into exile—is

²⁶⁴ Text Ziegler 1974.

clearly the comment on *poena uiolati iuris esto*. Thus the phrase in 2.22 is best read,²⁶⁵ not as *poena uiolati <sacri> iuris*, but as *poena uiolati iuris [sc. religionis] esto*.²⁶⁶ Consequently this passage cannot stand as evidence for the existence of the phrase *ius sacrum*.

The second passage said by the *TLL* to mention *ius sacrum*, Quint. *Inst.* 2.4.33, contains advice on how an orator should praise or castigate laws. After noting that this type of oratory may be classified as deliberative or forensic depending on the custom of different states Quintilian goes on to note that:

*apud Graecos enim lator earum ad iudicem uocabatur, Romanis pro contione suadere ac dissuadere moris fuit; utroque autem modo pauca de his et fere certa dicuntur. nam et genera sunt tria, sacri, publici, priuati iuris. quae diuisio ad laudem magis spectat, si quis eam per gradus augeat, quod lex, quod publica, quod ad religionem deum comparata sit.*²⁶⁷

Here the term *ius sacrum* does occur, and from context its meaning seems clear. To *ius sacrum* belong those *leges* that, to paraphrase Quintilian, *ad religionem deum comparatae*. The term will thus mean something like "general religious or holy law".

Ius sacrum next occurs in the *Oedipus* of the younger Seneca where, at lines 875-876, Oedipus, upon finding out that he has married his mother, laments that he is now *saeculi crimen uagor, / odium deorum, iuris exitium sacri*. Need it be remarked that a

²⁶⁵ I do not think that the text needs suppletion or modification. According to Dyck 2004, 303, Powell in his forthcoming OCT of *De Legibus* prints <diuini> *iuris*. Davies-Moser-Creuzer 1824, 222, *ad loc.*, reproduces the conjectures and comments of several learned scholars who feel something is amiss in the short sentence *poenae uiolati iuris esto*. Lambinus tentatively proffers an ingenious, but incorrect reading: *poenae uiolati iuris jurandi esto*. As we have seen, Cicero's comments on this law make that reading impossible. Ernestus offers a fitting comment (Davies-Moser-Creuzer 1824, *loc. cit.*), "torquent se in his eruditi". Incorrect are the translations of Zetzel 1999, 138 ("Let vows be carried out scrupulously. Let there be a penalty for the violation of this law"), and Rudd 1998, 130 ("Let them be scrupulous in fulfilling their vows; there shall be a penalty for breaking a promise"), both of which make the same mistake as Lambinus.

²⁶⁶ But then later in his entry (683.17-18) Primmer seems to acknowledge the connection between these two passages (*Leg.* 2.22 and 2.41) when he writes, "leg. 2, 22 poena uiolati –is (*cf.* 2.41 violatae religionis)".

Greek character in an adapted tragedy is not a reliable source for concepts of the Roman state religion?²⁶⁸ Here the phrase can be taken in only the broadest of senses, to mean, not "religious law", but rather "the law of nature" which forbids acts such as the incest Oedipus unknowingly committed.²⁶⁹

The final passage preserving the phrase *ius sacrum* comes from Ausonius' riddling poem on the number three. At lines 61-62 of *Griphus ternarii numeri*, the poet remarks, *ius triplex tabulae quod ter sanxere quaternae: / sacrum priuatum populi commune quod usquam est*. A lighthearted reference to the law of the Twelve Tables, this sentence strongly resembles Quintilian's remarks in structure – compare Quintilian's *genera sunt tria, sacri, publici, priuati iuris* with Ausonius' *sacrum priuatum populi commune quod usquam est* – and also in meaning.²⁷⁰ Hence *ius sacrum* here can have only the broadest sense of "general religious or holy law".²⁷¹

Thus, the phrase *ius sacrum* is attested only thrice (and late at that) in all of ancient Latin literature, in which places it carries as broad and vague meaning as it does in modern scholarly literature.²⁷² Yet because the phrase carries such a general meaning and

²⁶⁷ Text Russell 2001, vol. 1.

²⁶⁸ The question is not rhetorical. In a commentary (Töchterle 1994, 562) on these lines we read, "Zum (rahmenden) Genitiv vgl. Quintilian, inst. 2,4,34 ...*genera sunt tria sacri, publici, priuati iuris*... Verletzungen von *religio* und *pietas* fallen unter das *ius sacrum*, vgl. Cicero leg. 2,22, wo er die Totenverehrung darunter zählt." It will be noticed that the author adduces the two *loci* that we have just discussed, although, as we have shown, the first is a phantom, and the second an inexact parallel.

²⁶⁹ As also remarked by Töchterle 1994, 625 *ad* 1026.

²⁷⁰ Green's 1991, 454, only comment is "cf. Quint. 2.4.33 *nam et genera sunt tria, sacri, publici, priuati iuris*."

²⁷¹ Jolowicz and Nicholas 1972, 109, however, believe that here Ausonius refers to "sacred law". And Berger 1919c, 1296.39-46, says that the three-fold division of "öffentliches, Sakral- und Privatrecht" is well known, although he can quote as supporting evidence only Quintilian and Ausonius.

²⁷² Mommsen 1887-1888, 2.53 n. 1, mentions a possible fourth, which I have been unable to find: Philo's *de creatione principum* 1.362 in the edition of Mangey. But I do not think that the theological

occurs in works that are not reliable sources for Roman religion or pontifical prerogatives, we cannot accept it either as a valid concept of Roman religion or as an accurate description of the law that guided the pontifical oversight of *sacra*.

I have been unable to discover where in the modern scholarly literature *ius sacrum* began to be so used, but at some point *ius sacrum* lost its Latin meaning and took on a new definition that has since become naturalized into the scholarly vocabulary. After all, *ius sacrum* should mean "the law (*ius*) that is *sacrum*" that is, the law that is 'cursed' or 'holy', not "the law (*ius*) that regulates holy or sacred (*sacra*) matters."²⁷³ From a strictly grammatical point of view the phrase that we should be looking for is *ius sacrorum*. The term exists, but occurs infrequently: I have found three secure attestations and what I believe are several variants. I shall discuss them in turn in order to discover 1) the meaning of *ius sacrorum* 2) whether it has a connection with the pontifical law and 3) if it is a valid technical term of Roman religion.

2.3.4.2 The pontiffs and the *ius sacrorum*

The phrase *ius sacrorum* first appears in Cicero's *De Domo Sua*; but before reproducing the relevant sentence a few words are needed to set the speech into context. In delivering this speech Cicero had two goals: to recover his house and property on the Palatine by convincing the pontifical college that the shrine to *Libertas* erected there by

musings of a Jewish philosopher would affect the present argument. Kaser 1949, 78, is incorrect to say that the phrase *ius sacrum* first occurs in Cicero; he writes, "Die Zusammenfassungen als 'ius sacrum' und 'ius pontificium' sind uns erst bei Cicero überliefert, der sie dem 'ius civile' gegenüberstellt," and as evidence cites, but does not quote, Cic. *Orat.* 3.136 (T7), Val. Max. 5.8.3 (T59) and 8.8.2. In none of these does the phrase *ius sacrum* occur.

²⁷³ It is this latter meaning, however, that the term carries in the modern scholarship. Compare also its German calque "das Sakralrecht" and our English "sacral law". Berger 1919c, 1292.22-27, is confusing, "sehr geläufig ist auch die Bezeichnung 'Sakralrecht', doch muß man, wenn man sich dieses Ausdrucks

his arch-enemy Clodius had been dedicated and consecrated illegally and was therefore invalid; and to demonstrate that Clodius' entire tribunate—and thus anything he did as tribune—was also invalid.²⁷⁴ In order to accomplish the latter of these goals Cicero assailed the foundation of Clodius' tribunate, his plebeian status, by asserting that his adoption into the plebeian *gens Fonteia* was null and void because it had been performed in contravention of basic tenets of pontifical, augural, and statute law.

Though attacking from these three angles,²⁷⁵ Cicero devotes most of his broadside to proving that the adoption was invalid according to pontifical law.²⁷⁶ Three times in his harangue he mentions the *ius pontificium*,²⁷⁷ and though he gives many examples of how

bedient, stets dessen bewußt sein, daß er hier im weitesten Sinne verwendet wird, und nicht etwa in dem engeren Sinne von 'Opferrecht'...."

²⁷⁴ See *Dom.* 34: *uidesne me non radicitus euellere omnis actiones tuas neque illud agere, quod apertum est, te omnino nihil gessisse iure, non fuisse tribunum plebis, hodie esse patricium?* (Cicero is of course doing this very thing, a rhetorical device called *occultatio*; see Nisbet 1939, 96); *ibid.* 42: *iam intellegis omni genere iuris, quod in sacris, quod in auspiciis, quod in legibus sit, te tribunum plebis non fuisse.*

²⁷⁵ At *Dom.* 42 (quoted in previous note) Cicero says that he has proven Clodius' tribunate to be invalid by sacral, auspical, and statute law. Quintilian (*Inst.* 2.4.35) summarizes Cicero's argumentation: *aut enim de iure dubitari potest eius qui rogat, ut de P. Clodi, qui non rite creatus tribunus arguebatur: aut de ipsius rogationis, quod est uarium, siue non trino forte nundino promulgata siue non idonei die siue contra intercessionem uel auspicia aliudue quid quod legitimis obstet dicitur lata esse uel ferri, siue alicui manentium legum repugnare.*

²⁷⁶ The attack lasts from § 34-42, of which 34-38 concern the pontifical, 39-40 the augural, and 41-42 the statute law.

²⁷⁷ *Dom.* 36: *dico apud pontifices: nego istam adoptionem pontificio iure esse factam...quod causa quaeri solet adoptandi, ut et is adoptet qui quod natura iam adsequi non potest legitimo et pontificio iure quaerat.* 38: *dixi apud pontifices istam adoptionem nullo decreto huius conlegi probatam, contra omne pontificum ius factam, pro nihilo esse habendam; qua sublata intellegis totum tribunatum tuum concidisse.* Strictly speaking it is the public pontifical law that Cicero discusses (on which see above, section 2.2.1). Thrice in this part of the speech he distinguishes between the public pontifical law and the pontifical law proper, saying he will discuss only the former. Cf. *Dom.* 32: *sed hoc compensabo breuitate eius orationis quae pertinet ad ipsam causam cognitionemque uestram; quae cum sit in ius religionis et in ius rei publicae distributa, religionis partem, quae multo est uerbosior, praetermittam, de iure rei publicae dicam;* 33: *quid est enim aut tam adrogans quam de religione, de rebus diuinis, caerimoniis, sacris pontificum conlegium docere conari...*; 34: *dico apud pontifices, augures adsunt: uersor in medio iure publico.* Stroh 2004, 348-349, overcomplicates this last sentence, and his remarks leave me confused. Kaster 2005, describes Stroh's paper as "nearly unreadable", Corbeil 2006, 147, as "masterful". A just appraisal will lie between these two extremes.

it was contravened, his emphasis is decidedly on the contemptuous treatment suffered by the familial *sacra* of both the adoptive and adopted *gens*: seven times in his argument of approximately one and a half Teubner pages Cicero refers to these *sacra*. His complaints are three: the pontiffs (their agency is gently implied) did not sufficiently inquire how the respective familial *sacra* would be affected by the adoption;²⁷⁸ and they did not ensure that the *sacra* of the *gens Clodia* would continue to be performed once Clodius left that *gens*,²⁷⁹ or that Clodius would perform those of the *gens Fonteia* once adopted into that family.²⁸⁰ As a result, Cicero continues, the *sacra* of these *gentes* have been thrown into confusion,²⁸¹ and, should the pontiffs approve such adoptions as Clodius', not only would all familial *sacra* soon perish,²⁸² but all patrician *gentes* would soon vanish as their members would readily have themselves adopted into plebeian families, leaving Rome without those integral priests and magistrates who must come from patrician stock.²⁸³

²⁷⁸ Dom. 34: *quae deinde causa cuique sit adoptionis, quae ratio generum ac dignitatis, quae sacrorum, quaeri a pontificum conlegio solet. quid est horum in ista adoptione quaesitum?* According to Cicero the key question here was, "will the adoption be detrimental to the *sacrorum religio* of either *gens*?", see Dom. 36: *nego istam adoptionem pontificio iure esse factam...quod causa quaeri solet adoptandi, ut...ita adoptet ut ne quid aut de dignitate generum aut de sacrorum religione minuatur.*

²⁷⁹ Dom. 34: *quid? sacra Clodiae gentis cur intereunt, quod in te est? quae omnis notio pontificum, cum adoptare, esse debuit.*

²⁸⁰ Dom. 35: *non aetas eius qui adoptabat est quaesita, ut in Cn. Aufidio, M. Pupio, quorum uterque nostra memoria summa senectute alter Oresten, alter Pisonem adoptavit, quas adoptiones sicut alias innumerabilis hereditates nominis pecuniae sacrorum secutae sunt. tu neque Fonteius es, qui esse debebas, neque patris heres, neque amissis sacris paternis in haec adoptiva uenisti.*

²⁸¹ The strong language of contamination and pollution in the passage should be noted, Dom. 35: *ita perturbatis sacris, contaminatis gentibus, et quam deseruisti et quam polluisti, iure Quiritium legitimo tutelarum et hereditatum relicto, factus es eius filius contra fas cuius per aetatem pater esse potuisti.*

²⁸² Dom. 37: *probate genus adoptionis: iam omnium sacra interierint, quorum custodes uos esse debetis, iam patricius nemo relinquetur.*

²⁸³ Dom. 38: *cur enim quisquam uellet tribunum plebis se fieri non licere, angustiore sibi esse petitionem consulatus, in sacerdotium cum possit uenire, quia patricio non sit is locus, non uenire? ut cuique aliquid acciderit qua re commodius sit esse plebeium, simili ratione adoptabitur. ita populus Romanus breui tempore neque regem sacrorum neque flamines nec Salios habebit, nec ex parte dimidia reliquos sacerdotes neque auctores centuriatorum et curiatorum comitiorum, auspiciaque populi Romani,*

After pronouncing this dire prophecy Cicero makes some brief remarks on a point of augural law relating to Clodius' adoption²⁸⁴ and then directs the following rhetorical question at Clodius:

si et sacrorum iure pontifices et auspiciorum religione augures totum evertunt tribunatum tuum, quid quaeris amplius?

If the pontiffs by the law of sacred rites and the augurs by the religious obligation of the auspices render your entire tribunate null and void, what more do you need?²⁸⁵

Cicero deftly insinuates that his arguments in the previous sections have carried the day: the augurs and pontiffs overturn Clodius' entire tribunate because his adoption was invalid from the point of view of both the *religio auspiciorum* and the *ius sacrorum*. The former phrase refers to the auspical matters that Cicero has just discussed, the latter to the familial *sacra* whose jeopardization Cicero has repeatedly railed against.²⁸⁶ Thus, *ius sacrorum* here can be defined as "the law governing the inheritance of the familial *sacra*" or more precisely "the part of the public pontifical law governing the inheritance of the familial *sacra*".²⁸⁷

si magistratus patricii creati non sint, intereant necesse est, cum interrex nullus sit, quod et ipsum patricium esse et a patriciis prodi necesse est.

²⁸⁴ It concerned the augural concept of *obnuntiatio* (and Bibulus' threat that *se de caelo seruare* at the assembly that approved Clodius' adoption); for elucidation of the augural intricacies and Cicero's misrepresentation of the truth see Linderski 1965, 425-427 = 1995, 73-75; Idem 1986, 2166-2168, 2195-2198, 2202-2203, 2205-2206, 2209-2210. Cf. also Nisbet 1939, 202-203 (on the phrase *de caelo seruare*).

²⁸⁵ Translation adapted from Nisbet 1939, 106.

²⁸⁶ I feel that I must disagree slightly with Linderski as to the interpretation of the sentence *si et sacrorum iure pontifices et auspiciorum religione augures totum evertunt tribunatum tuum, quid quaeris amplius?* He writes (1985, 208 = 1995, 497; similar remarks also at Linderski 1986, 2210): Cicero boasts in his speech that "sacrorum iure pontifices et auspiciorum religione augures totum evertunt tribunatum tuum" (*de domo* 41), but the verdict of the pontiffs concerned solely the validity of Clodius' consecration of Cicero's house, a thing vastly different from the validity of his *totus tribunatus*." True, but in this section Cicero is not discussing the validity of the consecration of his house—which he will do much later in the speech—but the validity of Clodius' adoption and hence of his entire tribunate.

²⁸⁷ Of course, it is also probable that *ius sacrorum* carried a more general meaning of "law of *sacra*" and that Cicero, by using the phrase, hoped to suggest that Clodius' adoption was invalidated, not merely by

The term *ius sacrorum* next occurs in the Livian *Periochae* of book forty-seven (159 B.C.), which begins with the following sentence:

Cn. Tremellio pr. multa dicta est, quod cum M. Aemilio Lepido, pontifice maximo, iniuriose contenderat, sacrorumque quam magistratuum ius potentius fuit.

A fine was imposed upon the praetor Gnaeus Tremelius²⁸⁸ because he had wrongfully contended with Marcus Aemilius Lepidus²⁸⁹ the *pontifex maximus*; and the law of rites (*ius sacrorum*) was more powerful than that of magistrates (*ius magistratuum*).²⁹⁰

The passage is compressed but this much is clear: a *pontifex maximus* and a praetor have clashed, the praetor has been fined, and, in the end, the *ius sacrorum* was more powerful than the *ius magistratuum*. While it is clear that *ius sacrorum* refers to the claim of the *pontifex maximus* and *ius magistratuum* to that of the praetor, the lack of context severely limits the attempt to interpret this passage and understand the meaning of *ius sacrorum*. We may, nevertheless, advance probable hypotheses on both matters by comparing this passage with the four others in which a *pontifex maximus* is involved in a dispute resulting in a *multa*.

We may summarize these four cases:²⁹¹ in three of them it is certain, and in the other it is highly likely, that the *pontifex maximus* imposed the *multa*;²⁹² three times he does so

the law regulating the inheritance of *sacra*, but by "the law of *sacra*". In this way he could suggest to his audience that Clodius' tribunate had been nullified by a much more comprehensive area of the pontifical law than it actually had been (if, in fact, it had been invalidated at all). The same sleight of hand would apply also to Cicero's use of the neighboring phrase *religione auspiciorum*.

²⁸⁸ Gnaeus Tremelius was *tribunus* in 168 and *praetor* in 159 (province unknown: see Brennan 2000, 2.740; see also *MRR* 1.428, 446; 2.627). The correct form of the *nomen* is Tremelius, see Münzer "Tremelius." *RE* 6 A2 (1937): 2286.49-57, and the literature cited there.

²⁸⁹ M. Aemilius Lepidus *pontifex* 199-152; *pontifex maximus* 180-152; on his many other offices see *MRR* 2.526. He was also *princeps senatus* (for the fifth of six times) in 159.

²⁹⁰ Text Rossbach 1959.

²⁹¹ I provide here the full text of the passages in which the four cases are mentioned.

in order to prevent a *flamen* who is also a magistrate from deserting his flaminiate

obligations to the *sacra*²⁹³ by leaving Rome to wage war abroad.²⁹⁴ In the fourth case he

1a. Liv. 37.51.1-2 (date of narrative: 189; date of relevant incident: 242): *priusquam in prouincias praetores irent certamen inter P. Licinium pontificem maximus fuit et Q. Fabius Pictorem flaminem Quirinalem, quale patrum memoria inter L. Metellum et <A.> Postumium Albinum fuerat. consulem illum cum C. Lutatio collega in Siciliam ad classem proficiscentem ad sacra retinuerat Metellus, pontifex maximus* (Text Briscoe 1991).

1b. Liv. Per. 19 (242): *Caecilius Metellus, pontifex maximus, A. Postumium consulem, quoniam idem et flamen Martialis erat, cum is ad bellum gerendum proficisci uellet, in urbe tenuit nec passus est a sacris recedere* (Text Roszbach 1910).

1c. Val. Max. 1.1.2 (242): *Metellus uero pontifex maximus Postumium consulem eundemque flaminem Martialem ad bellum gerendum Africam petentem, ne a sacris discederet, multa dicta urbem egredi passus non est, religionique summum imperium cessit* (Text Briscoe 1998).

2. Liv. 37.51.1-6 (189): *priusquam in prouincias praetores irent certamen inter P. Licinium maximum pontificem fuit et Q. Fabium Pictorem flaminem Quirinalem, quale patrum memoria inter L. Metellum et <A.> Postumium Albinum fuerat: consulem illum cum C. Lutatio collega in Siciliam ad classem proficiscentem ad sacra retinuerat Metellus, pontifex maximus; praetorem hunc, ne in Sardiniam proficisceretur, P. Licinius tenuit. et in senatu et ad populum magnis contentionebus certatum et imperia inhibita ultro citroque, et pignera capta, et multae dictae, et tribuni appellati, et prouocatum ad populum est. religio ad postremum uicit; ut dicto audiens esset flamen pontifici iussus; et multa iussu populi ei remissa* (Text Briscoe 1991).

3. Liv. 40.42.9 (180): *de rege sacrifico sufficiendo in locum C<n>. Corneli Dolabellae contentio inter C. Seruiliu pontificem maximum fuit et L. Corneliu Dolabellam duumuirum naualem, quem ut inauguraret pontifex magistratu sese abdicare iubebat. recusantique id facere ob eam rem multa duumuiro dicta a pontifice, deque ea, cum prouocasset, certatum ad populum. cum plures iam tribus intro uocatae dicto esse audientem pontifici duumuirum iuberent, multamque remitti si magistratu se abdicasset, uitium de caelo quod comitia turbaret, interuenit* (Text Briscoe 1991).

4. Cic. Phil. 11.18 (date of incident: 131): *cum Aristonico bellum gerendum fuit P. Licinio L. Ualerio consulibus. rogatus est populus quem id bellum gerere placeret. Crassus consul, pontifex maximus, Flacco collegae, flamini Martiali, multam dixit, si a sacris discessisset: quam multam populus remisit; pontifici tamen flaminem parere iussit* (Text Shackleton Bailey 1986).

²⁹² Livy (*ob eam rem multa duumuiro dicta a pontifice*) for the case of 180 and Cicero for that of 131 (*pontifex maximus...multam dixit*) report that the *pontifex maximus* imposed the *multa*. Valerius Maximus says that in 242 a fine was imposed, but does not say who imposed it, but the *pontifex maximus* is, in light of the preceding cases, the only possible choice. Livy implies the same for the incident of 189 (and thus, by extension, for 242, too): his mention of multiple *multae* is best taken as a rhetorical plural referring to the *multa* imposed by the *pontifex maximus* (so Bleicken 1957, 349-350).

²⁹³ The ancient authors make it very clear that in detaining the flamens at Rome the *pontifices maximi* acted out of concern for the *sacra* (presumably those that the flamens alone must perform). Livy tells that in 242 Metellus detained Postumius at Rome for sacral purposes (*ad sacra retinuerat Metellus, pontifex maximus*); Valerius Maximus says that Metellus acted so that Postumius not *a sacris discederet*; and the *Periochae* relate that Metellus did not allow Postumius *a sacris recedere*. Similarly phrased is Cicero's report that in 131 Crassus mulcted Flaccus *si a sacris discessisset*. We do not find such a statement in the case involving Dolabella, the *duumuir* who refused to abdicate his office to be made *rex sacrorum*, but it is tempting to think that a similar concern lay behind this case, that is, in being chosen *rex sacrorum*, Dolabella in some way began to hold that office—he at least already came under the control of the *pontifex maximus*—and by refusing to become *rex*, he was effectively deserting the *sacra* of that priesthood.

²⁹⁴ On the prohibition (which was later relaxed) against *flamines maiores* leaving Rome see Tac. Ann. 3.58 and Serv. Dan. at Aen. 8.552 (T37c). The same prohibition applied to the *pontifex maximus* until 131

fines a *duumvir naualis* for refusing to abdicate that office in order to be inaugurated as *rex sacrorum*. Thrice the person fined appeals to the people,²⁹⁵ and all four times the claim of the *pontifex maximus* prevails,²⁹⁶ trumping even the *imperium* of the consuls Postumius and Flaccus and the praetor Fabius.²⁹⁷

With these passages we may compare the information in *Per.* 47. I note the following similarities. First, the word used in *Per.* 47 to describe the conflict is nearly identical to that used by Livy—whom, after all, the *Periochae* summarizes—in relating the cases of 189 and 180.²⁹⁸ Second, the phrase *ius sacrorum* in *Per.* 47 nicely parallels the concern for the *sacra* mentioned by Livy, the *Periochae*, Valerius Maximus, and Cicero as the cause of the fine that they report. And finally, the concluding sentences of Valerius Maximus and, to a lesser extent, of Livy that *religioni summum imperium cessit*

BC. Most famous is the case of the *pontifex maximus* P. Licinius Crassus in 205, and most interesting is Livy's account of it, for he uses terminology similar to that discussed in the preceding note; Liv. 28.38.12: *quarto decimo anno Punici belli P. Cornelius Scipio et P. Licinius Crassus ut consulatum inierunt, nominatae consulibus prouinciae sunt, Sicilia Scipioni extra sortem, concedente college quia sacrorum cura pontificem maximum in Italia retinebat*. Liv. 28.44.10-11: *quod tu, Q. Fabi, cum uictor tota uolitare Italia Hannibal, potuisti praestare, hoc uide ne contumeliosum sit concusso iam et paene fracto Hannibale negare posse P. Licinium consulem, uirum fortissimum, praestare qui ne a sacris absit pontifex maximus...* The incident is briefly mentioned by Dio. Cass. 57.52 (= Xiph. 9.11.6) and Diod. Sic. 27.2 (= Exc. Vat. p. 61), the latter of which reads, ὡν γὰρ μέγιστος ἱερεὺς ἡναγκάζετο μὴ μακρὰν τῆς Ῥώμης ἀποσπᾶσθαι διὰ τὴν τῶν ἱερῶν ἐπιμέλειαν. Clearly τὴν τῶν ἱερῶν ἐπιμέλειαν = *sacrorum cura*.

²⁹⁵ The conflict of 189 appears to have been debated also in the Senate (see number 2, above in n. 291).

²⁹⁶ Only in three cases is it stated that the people decide against the appellant, but from Valerius Maximus' comment—*religioni summum imperium cessit*—we may infer the same for the fourth case (of 242).

²⁹⁷ Valerius Maximus succinctly and, one senses, somewhat triumphantly, summarizes this outcome: *religioni summum imperium cessit*; Livy does likewise: *religio ad postremum uicit*. Indeed, for two authors so interested in *exempla* a tale in which the state's highest military and civil officials submitted to the authority of the *pontifex maximus* must have had a powerful appeal as proof of a past age's exemplary piety.

²⁹⁸ For 189 Livy writes: *et in senatu et ad populum magnis contentionebus certatum*. And for 180 he has: *de rege sacrifico sufficiendo in locum C<n>. Corneli Dolabellae contentio inter C. Seruiliu pontificem maximum fuit et L. Cornelium Dolabellam duumvirum naualem...cum prouocasset, certatum ad populum*.

and *religio ad postremum uicit* have their counterpart in the summary statement of *Per.* 47 that *sacrorumque quam magistratum ius potentius fuit*. These similarities, combined with the fact that these are the only five places in which a *pontifex maximus* is mentioned in connection with a *multa*, should be sufficient evidence to make plausible the following reconstruction of events for 159.

Livy's original narrative told how Tremelius the praetor and Aemilius Lepidus the *pontifex maximus* clashed; how Lepidus fined Tremelius, how Tremelius appealed the fine, but lost; and how, in the end, the claim of Lepidus was upheld. This tale the author of the *Periochae* then condensed into the concise sentence above.

Mommsen would disagree with this interpretation. He believed that the conflicts in *Per.* 47 and in Val. Max. 1.1.2 were exceptional ("Ausnahmefällen"), that their wording emphasized that the *pontifex maximus* had prevailed over a magistrate, and that, in the case of *Per.* 47, Tremelius was probably fined by the tribunes and not the *pontifex maximus*, for the *pontifex maximus* could not fine a magistrate. Implicit in this interpretation is the belief that Tremelius was only a magistrate and was fined as such by the *pontifex maximus*.²⁹⁹

But surely the *pontifex maximus* is a better choice than the tribunes for the identity of the person who levied the fine. Not only are tribunes not mentioned in *Per.* 47, but if we

²⁹⁹ Mommsen discusses *Per.* 47 in *Staatsrecht* and *Strafrecht*. In the former (Mommsen 1887-1888, 2.58) he writes: "Darüber hinaus aber findet sich von dem Multirungsrecht des Oberpontifex keine sichere Spur, weder gegenüber anderen Priestern, noch gegenüber Magistraten oder Privaten." In the corresponding footnote he writes, "Denn wenn Livius *ep.* 47 sagt: ...so ist die Annahme nicht nöthig und nach der Fassung nicht einmal wahrscheinlich, dass der Oberpontifex diese Mult aussprach; eher dürfte dies das Tribunencollegium gethan haben." And in *Strafrecht* (Mommsen 1899, 559) we read, "es hat hier die Tendenz eingegriffen, theils das Priesterthum nicht den Ordnungen der Magistratur zu unterwerfen, theils dem Priesterthum über die Magistratur keine Macht einzuräumen", to which he appends the footnote, "bei den Ausnahmefällen wird es hervorgehoben, dass der Priester über den Magistrat den Sieg davonträgt"; he then cites as "Ausnahmefällen" Val. Max. 1.1.2 and Liv. *Ep.* 47. It thus appears that in the *Strafrecht* Mommsen contradicts or at least rescinds his earlier interpretation, for previously he held that the *pontifex*

look to the four above cases for guidance, we see there that in three of them the *pontifex maximus* is expressly said to have imposed the fine, while in the remaining one the same is strongly implied. Nor are these incidents as exceptional as Mommsen thinks. As I have shown, there are three other cases remarkably similar to those reported in *Per.* 47 and *Val. Max.* 1.1.2. As for the wording of *Per.* 47 and *Val. Max.* 1.1.2, the phrases he cites—*sacrorumque quam magistratum ius potentius fuit* and *religionique summum imperium cessit*—and perhaps a phrase of Livy's which he does not cite (37.51.6: *religio ad postremum uicit*) can be explained best by considering the type of conflict reported in the other four cases discussed above. Despite what these phrases imply the conflicts are not between a priest and a magistrate. In each case the man mulcted is not just a magistrate, but a priest who also holds a magistracy. The conflict is thus between priest and priest, and the ability of the *pontifex maximus* to fine these men undoubtedly derives from his position as head of the pontifical college to which they belonged. The most important point, however, is that in three of the four cases (242, 189, 131) the *pontifex maximus* fines the priest because that priest tries to use his magisterial *imperium* in a way that clashes with his priestly obligation to the *sacra*. These conflicts are thus best viewed as clashes between religious obligation and magisterial prerogative. Valerius Maximus understood this point well, hence his comment that in 242 *religioni summum imperium cessit*. Livy seems to have meant as much with his similar phrase *religio ad postremum uicit*. If the words of Valerius Maximus do not describe the victory of a priest over a magistrate, but a *pontifex maximus* over a subordinate priest, then the phrase in *Per.* 47—*sacrorumque quam magistratum ius potentius fuit*—probably describe a similar

maximus could not fine a magistrate, but here he claims that in these two passages the priest prevails over a magistrate.

situation. Mommsen is thus probably mistaken to take these words as implying that Tremelius was a mere magistrate when fined by the *pontifex maximus* Lepidus; he may well have also been a priest and a member of the pontifical college. In any event, the words of *Per.* 47 appear to describe a conflict similar to that of 242, 189, 180, and 131 between the *pontifex maximus* and a magistrate who wanted to use his magisterial powers to the detriment of the *sacra*.³⁰⁰ If my interpretation is correct, the incidents reported at Val. Max. 1.1.2 and *Per.* 47 are not exceptional cases in which a priest fined and triumphed over a magistrate, but ordinary and explicable conflicts between a *pontifex maximus* and priests subordinate to him in which the duty of *religio* superseded the claim of *imperium*.

An insight into these four incidents, and thus the correct interpretation of *Per.* 47, may come if we ask on what authority the *pontifex maximus* levied these fines. The following passage of Paulus ex Festo (113 L.) provides a clue:

maximus pontifex dicitur, quod maximus rerum, quae ad sacra et religiones pertinent, iudex sit uindexque contumaciae priuatorum magistratuumque.

The *pontifex maximus* is so-called because he is the supreme judge of matters pertaining to rites and religion and the punisher of stubbornly defiant private citizens and magistrates.³⁰¹

³⁰⁰ I hesitate to speculate about what the dispute in *Per.* 47 concerned. I was inclined, based on the similar cases, to think that Tremelius held or had been chosen for a priesthood of the pontifical college. The problem with this proposition, however, is that as a plebeian Tremelius could not have been *rex sacrorum* or one of the *flamines maiores*, the priesthoods held by the men mulcted in the similar cases; perhaps Tremelius was a minor flamen (these priests were plebeian, see Paul. Fest. 137 L.: *maiores flamines appellabantur patricii generis minores plebei*) and in that capacity conflicted with Lepidus. Or the conflict might have concerned an entirely different matter. Regardless, the course of action would probably have been the same as those in the four cases discussed above.

I should also like to note that Mommsen's contention that a *pontifex maximus* could not fine a magistrate needs slight modification. As we have seen, the *pontifex maximus* could indeed fine a magistrate if that magistrate were a flamen or had been chosen to become *rex sacrorum*. (And it follows that he also could mulct a magistrate who had been chosen to become a flamen).

³⁰¹ Lindsay 1930, 254 and Müller 1839, 126, print the same text. The apparatus criticus of the latter work reads *uindex contumaciae priu. mag.] haec verba ab aliorum V.v. D.d. suspicionibus iure uindicat Scal.* I have been unable to find the work of Scaliger referred to here.

The *pontifex maximus* could punish (*i.e.* mulct) magistrates and private citizens because he was the supreme authority on matters pertaining to the *sacra* and *religiones*. The excerpt well describes the conflicts in the above case, where a *pontifex maximus* imposes a fine on a magistrate either to force him to become *rex sacrorum* or to prevent him from leaving Rome and neglecting his priestly obligation to the *sacra*. As Mommsen saw, this excerpt must refer to such cases; indeed, the original source of this excerpt may have had these very incidents in mind.³⁰² More importantly, we see that here the *sacra* in *ius sacrorum* refers to those *sacra et religiones* for which the *pontifex maximus* was the *maximus iudex*, and these *sacra* and *religiones* we should take to mean all the *sacra* that fell under the sway of the *pontifex maximus*, and by extension, the pontifical college.³⁰³

If we now juxtapose this excerpt from Festus with that from *Per.* 47, we can arrive at the following plausible interpretation of the meaning of *ius sacrorum* in the latter passage: there the phrase means simply the "law of those *sacra* that were the responsibility of the *pontifex maximus*." Furthermore, absent any evidence that the *pontifex maximus* and the pontifical college oversaw separate *sacra* or separate areas of the *sacra*, we may treat this law as the responsibility of the pontifical college, too.

The phrase *ius sacrorum* next occurs in the following passage from Festus (446 L.):

spectio in auguralibus ponitur pro aspectione et nuntiatio, quae omne ius sacrorum habent auguribus. spectio dumtaxat.

³⁰² Mommsen 1889, 559 n. 4.

³⁰³ We have no evidence that the *pontifex maximus* oversaw *sacra* that the pontifical college did not also oversee. Note also the following passage in Dion. Hal. (2.73.2), which is similar to the present passage from Paulus, but with the pontiffs (*i.e.*, probably the pontifical college), and not just the *pontifex maximus*, as subject: καὶ γὰρ δικάζουσιν οὗτοι τὰς ἱερὰς δίκας ἀπάσας ἰδιώταις τε καὶ ἄρχουσι καὶ λειτουργοῖς θεῶν ("For they are the judges in all religious causes wherein private citizens, magistrates or the ministers of the gods are concerned"). Trans. Cary 1937-1950.

The two main editors of Festus variously emend parts of this passage, but both are agreed in keeping the phrase *ius sacrorum*.³⁰⁴ In such a dense technical discussion of augural matters, however, the phrase *ius sacrorum* is strikingly out of place—we do not have any evidence of augural involvement in sacral matters; the passage should therefore be emended, as Regell long ago showed, to *ius auspiciorum*.³⁰⁵

The last attested use of the phrase *ius sacrorum* comes from the following long passage in the commentary of *Servius Danielis*:

A choice steed for Aeneas. *Exortem* ('choice'), moreover, is similar to *exlegem* ('lawless'). And many criticize Vergil here, because, although he presents Aeneas everywhere as a *pontifex*—and *pontifices* are not permitted to ride on horseback, but in a chariot; thus in Book Seven [7.280] he says that a chariot was given to him by Latinus—why does he here have him use a horse, saying 'for Aeneas they bring out a choice steed covered by a lion's tawny pelt, resplendent with golden claws' [8.552-3] and likewise 'and now the cavalry had exited from the open gates, Aeneas at the vanguard' [8.585-6]? The reason for this is as follows: Aeneas had been both first in and skilled at not only pontifical law (*pontificii iuris*), but the law of all rituals ([sc. *ius*] *omnium sacrorum*), moreover, whenever the opportunity arises Vergil describes the rite of Roman ceremonies (*ritum Romanarum caerimoniarum*). The fact is that according to the old ritual of sacred rites (*ueteri sacrorum ritu*) neither the *flamen* of Mars nor the *flamen* of Quirinus were constrained by all the ceremonial regulations (*omnibus caerimoniis*) by which the *flamen* of Jupiter was: they were not bound fast to daytime sacrifices; and they were allowed to depart from Italy's borders; nor did they always wear the purple-bordered toga or priestly hat except at the time of a sacrifice. Therefore, if they were permitted to go to a province, they were also permitted to travel on horseback without religious scruple. This Vergil illustrates here by giving Aeneas a horse as if he was sent into a province: for Evander says 'but I am preparing to ally with you great peoples and camps rich in kingdoms,' [8.475-6] then later he makes mention of the power of holding a province, 'he himself has sent me envoys and a kingdom's crown and scepter' [8.505-6], and after making an

³⁰⁴ Müller 1839, 333, prints: *spectio in auguralibus ponitur pro aspectione † et nuntiatio, quia † omne ius sacrorum habent auguribus, spectio dumtaxat*..., while Lindsay 1930, 423, prints *spectio in auguralibus ponitur pro aspectione et nuntiatio, quia omne ius sacrorum habent auguribus. spectio dumtaxat*.

³⁰⁵ Cf. Regell 1888, 382 (*non uidi*); I do not know why Müller and Lindsay reject his emendation, which Valetton 1890, 455, prints and (at 444 n. 1) endorses, "De hac lectione, quam proposuit Regell (Jahr. f. Phil. 1888 p. 382) dubitari non potest. Pontifices soli dicuntur praeesse *sacris*, augures vero *auspiciis*"; in support Valetton quotes Cic. *Nat. D.* 1.122 (quote above, n. 211) and cites Cic. *Dom.* 41 and *Leg.* 2.30 (quoted above, n. 208).

excuse he urges Aeneas to lead the Etruscans who are in need of a leader and king, saying, 'you upon whose years and family fate looks kindly, take up your task' [8.511-13]. Therefore Aeneas could justly ride on horseback, if it were proper for him to go to a province. Nevertheless it must be noted that the poet is content to touch on general pontifical law (*ius pontificale*), while discussing something else.³⁰⁶

The commentator attempts to explain the inconsistency that others have found in Vergil's portrayal of Aeneas here. If Vergil, so the criticism goes, portrays Aeneas everywhere as a pontiff, how can he here show Aeneas riding a horse, which pontiffs were not permitted to do? That the pontiffs were so prohibited is demonstrably wrong; only the *flamen Dialis* could not ride a horse. (The commentator, however, silently corrects himself when he later says that it is the *flamen Dialis* who could not ride a horse, and then notes that the flamens of Mars and Quirinus could).³⁰⁷ The commentator argues that Vergil's inconsistency is only apparent; Aeneas can ride a horse because he was skilled at not only pontifical law (*pontificii iuris*), but the law of all rituals ([sc. *ius*] *omnium sacrorum*), and thus if the flamens of Mars and Quirinus could ride a horse, so could Aeneas.

The argument is tortuous, the logic not readily apparent, yet for our present purpose the passage is important, since with the remark that "Aeneas had been both first in and

³⁰⁶ Serv. Dan. at Aen. 8.552 (T37a-d): *EXORTEM AENEAE*. 'exortem' autem, ut 'exlegem'. et multi hoc loco reprehendunt Uergilium, quod, cum Aeneam ubique pontificem ostendat, et pontificibus non liceat equo uehi, sed curru, sicut et in septimo a Latino ei currum missum dicit, cur hic equo eum usum faciat, dicens 'ducunt exortem Aeneae, quem fulua leonis pellis obit totum praefulgens unguibus aureis' item 'iamque adeo exierat portis equitatus apertis Aeneas inter primos'. cuius rei haec redditur ratio: Aeneam non tantum pontificii iuris, sed omnium sacrorum et peritum et primum fuisse, Uergilium autem inuenta occasione ritum Romanarum caerimoniarum exponere. etenim ueteri sacrorum ritu neque Martialis neque Quirinalis flamen omnibus caerimoniis tenebatur, quibus flamen Dialis: neque diurnis sacrificiis destinabantur, et abesse eis a finibus Italiae licebat, neque semper praetextam, neque apicem nisi tempore sacrificii gestare soliti erant. ergo si ire eis in prouinciam licebat, et equo sine religione uehi licuit: quod hic ostendit, uelut in prouinciam misso Aeneae equum datum: nam Euander hoc ait 'sed tibi ego ingentes populos opulentaque regnis iungere castra paro', deinde infra de potestate obtinendae prouinciae subtexuit 'ipse oratores ad me regnique coronam cum sceptro misit', et excusatione interposita hortatur Aeneam, ut Etruscis, regem et ducem desiderantibus, praesit: ait enim 'tu, cuius et annis et generi fatum indulget, ingredere'. ergo et equo merito uti potuit, si ei ire in prouinciam fas erat. sciendum tamen poetam contentum esse uniuersum ius pontificale, dum aliud narrat, attingere. Text Thilo-Hagen 1881-1902, vol. 2.

skilled at not only pontifical law, but the law of all rituals" (*Aeneam non tantum pontificii iuris, sed omnium sacrorum et peritum et primum fuisse*), *Servius Danielis* implies 1) that the pontifical law was equivalent to that *ius sacrorum* which was part of the pontifical law, and 2) that the pontifical law did not embrace all *iura sacrorum*. And in his remarks a few sentences later he seems also to imply 3) the "law of all *sacra*" embraced the behavior of the three greater flamens, and 4) that this behavior did not fall under the purview of the pontifical law (although his final comment: "Nevertheless it must be noted that the poet is content to touch on general pontifical law, while discussing something else", would seem to contradict this fourth point).

Now, the third and fourth implications are false: as demonstrated above (section 2.3.3), the behavior of the flamens and the rites they performed fell under the purview pontifical law. And the first implication also misleads. As I shall show later in this, the *ius sacrorum* constituted a large part, but did not form the sole contents, of the pontifical law. Only the second implication has a claim to truth, since, as I have shown, the pontiffs were not in charge of all *sacra*, but only those performed *patrio ritu*. Thus it is entirely correct to speak, as the commentator does here, of an *ius sacrorum* that lay outside the scope of the pontifical law.

Unfortunately, the confused nature of this passage limits our ability to say anything more definite about the meaning of *ius sacrorum* here or to know how much trust to place in this author's remarks on the basic precepts and terminology of Roman religion; we may therefore be justifiably cautious about the value of this passage—and perhaps even the value of this author—for a study of a technical term of Roman religion.

³⁰⁷ See n. 657 in Appendix I, especially for a discussion of a modern commentator's interpretation of this passage, which is no less confusing than the one found in *Servius Danielis*.

Thus end all attestations of the phrase *ius sacrorum*. Two other passages, however, mention or imply the phrase *iura sacrorum*. Near the beginning of his *Academica* Cicero praises Varro's prodigious scholarly output with the words

*tum ego 'sunt', inquam, 'ista, Uarro. nam nos in nostra urbe peregrinantis errantisque tamquam hospites tui libri quasi domum deduxerunt, ut possemus aliquando qui et ubi essemus agnoscere. tu aetatem patriae tu descriptiones temporum, tu sacrorum iura tu sacerdotum, tu domesticam tu bellicam disciplinam, tu sedum regionum locorum tu omnium diuinarum humanarumque rerum nomina genera officia causas aperuisti...'*³⁰⁸

It is impossible to know which of Cicero's phrases describe which of Varro's works. The words *tu sacrorum iura tu sacerdotum* should probably be taken as a general reference to Varro's many religious writings, but unfortunately the entire passage is too vague to help us understand more precisely the meaning of *iura sacrorum*. And yet there is one important point to be made. That Cicero here uses the plural *iura sacrorum* proves that there existed more than one *ius sacrorum*. The point is simple, but worth calling attention to, for it not only shows that it is incorrect to speak of pontifical oversight of the *ius sacrorum*, but also demonstrates the validity of our previous discussion of the *sacra* wherein I showed that the pontiffs were in charge only of certain *sacra*, most simply, the *sacra* of the *patrius ritus*. This passage of Cicero thus confirms the results of that discussion and leads us to conclude that each type of *sacra* was governed by its own *ius sacrorum*, which was the responsibility of those priests who performed those *sacra*.

In addition to the simple phrase *ius sacrorum* and *iura sacrorum* we also find terms similar in construction that refer to concepts which are independently verifiable as concerns of the pontiffs or pontifical law. For example, the phrase *lex sacrorum* occurs

³⁰⁸ Cic. *Acad.* 1.

twice in reference to the secret name of Rome³⁰⁹ and once in a garbled reference in *Servius Danielis* where it may refer to the *lex Papiria* governing the law of dedications and consecrations;³¹⁰ we also encounter the phrase *ritus sacrorum* once in the above-mentioned garbled passage of *Servius Danielis* (see n. 306), once in reference to the *indigitamenta* kept by the pontiffs,³¹¹ once in a description of the prohibitions on the three greater flamines,³¹² and once in a broad reference to religiously sanctioned activity on feast days.³¹³ All of these terms come from late sources (mostly the commentary of *Servius Danielis*), and can hardly be considered official terms of Roman state religion.

³⁰⁹ Serv. at G. 1.498 (= Pr. 14 no. 64B): *nam uerum nomen eius numinis, quod urbi Romae praeest, sciri sacrorum lege prohibetur: quod ausus quidam tribunus plebis enuntiare in crucem leuatus est*; Schol. Bernens. ad Verg. G. 1.498 (= Pr. 14 no. 64C): *uerum numen, quod urbi praeest, sacrorum lege prohibitum est scire*.

³¹⁰ Serv. Dan. at Aen. 12.836: *nam patri * * * quod ait 'morem ritusque s. adiciam' ipso titulo legis Papiriae usus est, quam sciebat de ritu sacrorum publicatam. et quod iunxit 'faciamque omnis' * * * sic enim dictae sunt leges avitae et patritae et utramque legem sacrorum complexus est. nam ritus est comprobata in administrandis sacri * * * q. civitas ex alieno ascivit sibi; cum receptum est, mos appellatur. alii ita definiunt, ritum esse, quo sacrificium uti fiat * * * tis aut institutus religiosus aut ceremoniis consecratus, isque privatus aut publicus est, publicus ut curiarum, compitorum * * **.

³¹¹ Mac. Sat. 1.12.21 (T82): *auctor est Cornelius Labeo huic Maiae id est terrae aedem kalendis Maiis dedicatam sub nomine Bonae Deae: et eandem esse Bonam Deam et terram ex ipso ritu occultiore sacrorum doceri posse confirmat: hanc eandem Bonam Faunamque, et Opem et Fatuam pontificum libris indigitari...*

³¹² Serv. Dan. at Aen. 8.552 (T83) *etenim ueteri sacrorum ritu neque Martialis neque Quirinalis flamen omnibus caerimoniis tenebatur, quibus flamen Dialis.*

³¹³ Serv. and Serv. Dan. at G. 1.269: *fas et iura sint id est diuina humanaque iura permittunt: nam ad religionem fas, ad homines iura pertinent. {et non sine causa hoc dictum a Uergilio, gnaro totius sacrorum ritus, ponitur: religiosi enim esse dicuntur, qui faciendarum praetermittendarumque rerum diuinarum secundum morem ciuitatis dilectum habent nec se superstitionibus implicant. cum ergo hic dicit 'festis quaedam exercere diebus fas et iura sinunt' [Verg. G. 1.268-9] et 'nulla religio uetuit', ostendit multa, quae ad rem diuinam pertinent, ex praecepto ex posse fieri et uitari, ab his scilicet, qui religiosi, ut supra dictum est, appellantur: quem morem poeta agendo aliud subtiliter docuit.}* The term also occurs in Serv. Dan. at G. 1.12 (where it describes a rite of foreign, not Roman religion): *unde Illyricos quotannis ritu sacrorum equum solere aquis inmergere*. Perhaps from this we might conclude that *ritu sacrorum* (and possibly all such variants) that occur in Serv. Dan. are but variant terms for the general concept of "a religious practice".

The plural *sacrorum* should be noted in all of these phrases, because it shows that when describing the pontifical college's supervision of *sacra*, ancient authors used the plural *sacrorum*, regardless of the noun (*ius*, *lex*, *ritus*, etc.) with which they joined it.³¹⁴ Never do we encounter the phrase *ius sacrum* or any phrase such as *lex sacra* or *ritus sacrus*, where the singular of the word *sacrum* is used to describe a guiding principal of pontifical law. Such phrases are not only grammatically absurd, but are also, as I hope to have shown, unknown to the Romans and to the technical and conceptual vocabulary of Roman religion.

As a final note I would like to add that Greek authors who describe pontifical prerogatives appear to follow the Roman authors' use of the plural *sacrorum*. Although this is not the place for a discussion of Greek terminology for *res Romanae*, I would like to point out that the standard reference works on Greek terms for Roman concepts and institutions neither provide an entry for *ius sacrum* or *ius sacrorum* nor give a Greek equivalent for *sacrum*.³¹⁵ Nevertheless, a perusal of some of the more relevant passages shows that when Greek authors describe the duties of the pontiffs or pontifical college they couple the plural *ἱερά*—and never the singular *ἱερόν*—with a Greek word for law to refer to a concept that is probably to be identified with the *ius sacrorum*.³¹⁶

³¹⁴ The phrase *ius sacrorum* is also implied in such passages as Cic. *Dom.* 16.42: *iam intelligis omni genere iuris, quod in sacris, quod in auspiciis, quod in legibus est, te tribunum plebis non fuisse*. Cf. also Ulp. *Dig.* 1.1.1.2: *publicum ius in sacris, in sacerdotibus, in magistratibus constitit*. On the latter passage see the comments of Mommsen 1887-1888, 2.53, "Die Dreitheilung *ius sacrum, publicum, priuatum* kommt nur bei späteren Nichtjuristen vor...und ist auch nichts als falsche Uebertragung vom Eigenthum (*res*) auf Recht und Rechtshandel (*ius und iudicum*)."

³¹⁵ Magie [1904] 1905 and Mason 1974.

³¹⁶ Note especially the following passage (Dion. Hal. 2.73.1-2) where τὰ ἱερά surely means the *sacra* and τοὺς ἱεροὺς νόμους is undoubtedly the author's term for *ius sacrorum*: Τελευταῖος δ' ἦν τῆς Νόμα διατάξεως μερισμὸς ὑπὲρ τῶν ἱερῶν, ὧν ἔλαξον οἱ τὴν μεγίστην παρὰ Ῥωμαίοις ἱερατείαν καὶ ἐχουσίαν ἔχοντες. οὗτοι κατὰ μὲν τὴν ἑαυτῶν διάλεκτον ἐφ' ἐνὸς τῶν ἔργων ὃ πρῶτον ἐπισκευάζοντες τὴν ξυλίνην γέφυραν ποντίφικες προσαγορεύονται, εἰσὶ δὲ τῶν μεγίστων πραγμάτων κύριοι. καὶ γὰρ δικάζουσιν

Let us summarize our findings. The phrase *ius sacrorum* occurs three times, but only twice in reliable sources, Cicero and the Livian *Periochae*. In Cicero's speech before the pontiffs *ius sacrorum* means "the public pontifical law of the inheritance of familial *sacra*"; in *Per.* 47 it probably refers to the law of those *sacra* that were the responsibility of the pontifical college, *i.e.*, all the *sacra* that the pontifical college oversaw. Cicero, then, uses the phrase to refer to a specific, the *Periochae* to a general, area of pontifical law. Is it possible, however, that both authors are using the term in the same way? Note that, as I contended above, Cicero uses *ius sacrorum* to describe to a part of the public pontifical law. Note also, that in the *Periochae* *ius sacrorum* refers to the law on the side of the *pontifex maximus* in a conflict between him and a magistrate who was either a priest or had been chosen to be inaugurated as a priest of the pontifical college. In such a matter the *ius sacrorum* of the *pontifex maximus* can be well-described as the public pontifical law, since the conflict certainly did not concern the ritual aspects of a rite—*i.e.*, the pontifical law proper—but the public law connected with a priesthood and the *sacra* that fell under its sway.

Of course with such limited evidence firm conclusions are impossible. Nevertheless, I would like to suggest the possibility that in these passages of Cicero and Livy *ius sacrorum* refers to the public pontifical law, although I readily concede that the term could also have been used in a wider sense. In either event, the most important point is

οὗτοι τὰς ἱερὰς δίκας ἀπάσας ἰδιώταις τε καὶ ἄρχουσι καὶ λειτουργοῖς θεῶν καὶ νομοθετοῦσιν ὅσα τῶν ἱερῶν ἄγραφα ὄντα καὶ ἀνέδιστα *** κρίνοντες ἃ ἂν ἐπιτήδεια τυγχάνειν αὐτοῖς φανείη νόμων τε καὶ ἐδισμῶν· τὰς τε ἀρχὰς ἀπάσας, ὅσαις δύσῃα τις ἢ θεραπεία θεῶν ἀνάκειται, καὶ τοὺς ἱερεῖς ἅπαντας ἐξτάζουσιν, ὑπηρετάς τε αὐτῶν καὶ λειτουργοὺς, οἷς χρῶνται πρὸς τὰ ἱερά, οὗτοι φυλάττουσι μὴδὲν ἐξαμαρτάνειν περὶ τοὺς ἱεροὺς νόμους. Note also the references to the pontiffs as the "interpreters of *sacra*" οἱ τῶν ἱερῶν ἐξηγηταὶ collected by Magie [1904] 1905, 142 and Mason 1974, 115-116. Finally, note Diod. Sic. 27.2 (printed above, n. 294) where τὴν τῶν ἱερῶν ἐπιμέλειαν obviously means *cura sacrorum*.

secure: *ius sacrorum* was closely connected with the pontifical law and was a valid technical term of Roman religion.

2.3.4.3 The pontiffs and the *ius caerimoniarum*

As mentioned above, the Romans treated *sacra* and *caerimoniae* as synonyms. We might therefore expect, or at least we would not be surprised, to find the term *ius caerimoniarum*. The phrase is indeed attested. In this section I shall investigate it 1) in order to determine if and how their meanings differ from *ius sacrorum* and 2) to understand their relationship to the pontifical law.

The term *ius caerimoniarum* occurs twice. We find it first in *De Domo Sua* where Cicero counters Clodius' suggestion that the pontiffs will decide against Cicero because they disapproved of his recent proposal to confer on Pompey extraordinary powers to regulate Rome's grain supply. Cicero ends his attack with the following statement:

So, Clodius, you may as well drop that line of talk in which you intimate that, after my proposal in the Senate about the grain supply, the pontiffs' attitude changed. Do you really think that their sentiments concerning Gnaeus Pompeius are any different from mine?...Or do you imagine that, even if my proposal did offend one or other of these gentlemen—which I am sure it did not—he is going to reach any other decision as a pontiff on a matter of religion (*de religione*) and as a citizen on a matter of public concern than that imposed by ritual law (*ius caerimoniarum*), and the good of the community?³¹⁷

Cicero contends that even if a pontiff disagreed with Cicero's proposal, he would still judge impartially the case of Clodius' dedication, since on this issue of religion the *ius caerimoniarum* would determine the pontiffs' judgment. These words not only make it clear that the *ius caerimoniarum* is a part of the pontifical law, but also demonstrate that

³¹⁷ Cic. Dom. 31: *qua re istam orationem qua es usus omittas licet, post illam sententiam quam dixeram de annonae pontificum animos esse mutatos; proinde quasi isti aut de Cn. Pompeio aliter atque ego existimo sentiant ...aut etiam, si cuius forte pontificis animum, quod certo scio aliter esse, mea sententia*

here the phrase refers to Clodius' dedication and consecration of the shrine to *Libertas*, the central issue of *De Domo Sua*. It is reasonable, moreover, to extend the application of the phrase to dedications and consecrations in general. We can imagine, then, that the *ius caerimoniarum* regulated the performance of a dedication and consecration, although it is difficult to know if it applied only to the ritual aspects, *e.g.* the correct gestures and words, or also the dedication's compliance with the public law of dedication such as the *lex Papiria*. Cicero probably intended the phrase to cover both areas since in this speech he attacks Clodius' dedication on both grounds.

Ius caerimoniarum next occurs in the commentary known as *Servius Danielis*, where it refers not to a specific religious ceremony, as it does in *De Domo Sua*, but to an obscure prohibition on the attire of the *flaminica*, the wife of a member of the pontifical college, the *flamen Dialis*.³¹⁸ It is difficult to know if this precept was part of the pontifical law, although in absence of evidence to the contrary, it may be helpful to assume it was, since other passages seem to imply that the proper behavior of the *flamen Dialis* was dictated by the pontifical law, and it is reasonable to suppose that the dress of his wife fell under the same jurisdiction.

It is difficult to believe, however, that *ius caerimoniarum* as used here means the same thing as it does in Cicero's speech. If both authors use the term to refer to the same concept, then we must conclude that *ius caerimoniarum* was a term broad enough in its application to embrace both the law of dedications and consecrations and the attire of the

offendit, alio modo sit constituturus aut de religione pontifex aut de re publica cuius quam eum aut caerimoniarum ius aut ciuitatis salus coegerit. Text Maslowski 1981; trans. Shackleton Bailey 1991.

³¹⁸ *Serv. Dan.* at *Aen.* 4.137 (T86): *uetere caeremoniarum iure praeceptum est, ut flaminica uenenato operta sit. operta autem cum dicitur pallium significatur, uenenatum autem infectum.*

wife of a member of the pontifical college. That would seem to indicate that *ius caerimoniarum* was little more than a variant of *ius pontificium*.

Such a conclusion seems improbable. *Servius Danielis*—or the original author of this passage—is not striving for precision in his use of a technical term of Roman religion and he certainly is not speaking before the pontiffs as Cicero was. It is more probable that the author used *ius caerimoniarum* because it readily (if perhaps somewhat vaguely) connoted an archaic religious practice. The word *caerimoniarum* seems to have been one of his favorites on such occasions. Not only does he once elsewhere use *caerimoniae ueterum* also to describe a constraint on the *flaminica*,³¹⁹ but in five other places he employs phrases similar in form—*ritus Romanorum caerimoniarum*, *ritus ueterum caerimoniarum*, *uetus ritus caerimoniarum*, *disciplina caerimoniarum*, *caerimoniae flaminum*—to refer respectively to the constraints on the greater flamens, a confused reference (perhaps to the *rex sacrorum*), a constraint on the *flamen Dialis*, the proper procedure for prayer, and, again, a constraint on the *flamen Dialis*.³²⁰ Because *Servius Danielis* is our only source for these six phrases—just as he is almost our sole source for the term *ritus sacrorum*—they cannot be considered proper technical terms of Roman religion and certainly cannot be given the same weight in a terminological study as the term *ius caerimoniarum* as used by Cicero.

³¹⁹ *Serv. Dan.* at *Aen.* 4.29 (= Pr. 11B): *caerimoniis ueterum flaminicam nisi unum uirum habere non licet...nec flamini aliam ducere licebat uxorem, nisi post mortem flaminicae uxoris.*

³²⁰ The first four passages can be found in Appendix I at **T84** (constraints on major flamens), **T85** (confused reference), **T87** (constraint on *flamen Dialis*), and, **T88** (regulation for praying properly); the fifth I reproduce here, *Serv. Dan.* at *Aen.* 11.76: *id est truncos indutos iubet offerri. sane hoc uidetur secundum caerimonias flaminum subtiliter dixisse/ flamini enim nisi unum mortuum non licet tangere, sed Aeneas plurimos postea occidit. sed aliud est in bello occidere, aliud mortuum tangere. sciendum est tamen, Aeneae omne genus sacerdotii tribui.*

These are the only two attestations of *ius caerimoniarum*. Any conclusions from such limited evidence must be made with due caution, although a few things can be said with an acceptable degree of certainty. First, because Cicero uses this term in a speech before the pontifical college to refer to the law that should guide their deliberations on Clodius' dedication, we may confidently assert that *ius caerimoniarum* refers at least to the law of dedications and consecrations, that its connection to the pontifical law is secure, and that it was a valid term of Roman religion in the time of Cicero. *Servius Danielis* uses the phrase to refer to an obscure prohibition on the dress of the wife of the *flamen Dialis*; this prohibition probably fell under the pontifical law as well. Nevertheless, that both Cicero and *Servius Danielis* use *ius caerimoniarum* should be viewed as a coincidence, and the latter author's use of it cannot be used to prove that *ius caerimoniarum* was an official term of Roman religion.

We have one reliable attestation of *ius caerimoniarum* and two of *ius sacrorum*. Each term occurs for the first time in Cicero's *De Domo Sua*, a speech addressed to the pontifical college on a matter of pontifical law. Yet though the terms' connection to the pontifical law may be secure, their exact relation to it remains murky; nor are we likely to achieve clarity on the matter, since such limited evidence—only three passages—renders any assertion hypothetical at best. It is therefore best to conclude that *ius sacrorum* designated the law governing the public pontifical law of *sacra*, while *ius caerimoniarum* regulated both the public pontifical law and the pontifical law proper of dedications and consecrations, although both terms could possibly have been used in a broader sense, and maybe even overlapped in meaning.³²¹

³²¹ I should also like to note that books 36-38 of Varro's *antiquitates rerum humanarum et diuinarum* treated *de sacris* (*quid exhibeant*) with one book devoted to *de consecrationibus*, one to *de sacris priuatis*,

Nevertheless, I would like to proffer one hypothesis. It may be possible that *ius sacrorum* and *ius caerimoniarum* describe different aspects of the pontifical law. Both terms occur for the first time in *De Domo Sua*, which speech, it should be noted, is our best source for the pontifical law and pontifical terminology.³²² In this speech *ius caerimoniarum* refers to the law governing the proper performance of dedications and consecrations, *ius sacrorum* to the public pontifical law governing the inheritance of familial *sacra*. Is it possible that the latter phrase denoted the public pontifical law in general while *ius caerimoniarum* was used to describe the pontifical law proper, that is, the proper gestures, words, etc. of a dedication and consecration (and perhaps any ceremony that the pontiffs oversaw)? Of course, certainty on this matter is impossible, but I thought I should proffer the theory, even if it must remain that.

2.3.4.4 Summarizing comments

In the three preceding sections I first attempted to show that the term *ius sacrum* is used incorrectly in the secondary literature, where it carries a broad, nearly vacuous, meaning with no basis in reliable ancient sources for Roman religion. I then sought to demonstrate that modern authors are incorrect to assert or assume that the *ius sacrum* had a strong connection with the pontiffs; the proper term—the one the Romans themselves would have used—for this connection is *ius sacrorum*, a term with a demonstrably close relation to the pontiffs and the pontifical law, and attested in reliable sources on Roman religion. I then attempted to prove that *ius caerimoniarum* was a valid term of Roman religion with as strong a connection as *ius sacrorum* to the pontifical law. And finally,

and one to *de sacris publicis*, an arrangement that seems to indicate that consecrations (such as that referred to by *ius caerimoniarum*) were viewed as a type of *sacra*, but somehow separate from the *sacra publica* and *priuata*. But again, the evidence is too thin to support firmly such a conclusion.

more hypothetically, I suggested that perhaps *ius sacrorum* referred to the public pontifical law and *ius caerimoniarum* to the pontifical law proper.

My focus on investigating and elucidating these phrases should not be considered a vain attempt at specious terminological precision or a pedantic attention to insignificant details. In order to understand fully and completely a religion's guiding beliefs, the scholar must have a firm grasp of that religion's idioms and technical terminology. In this respect, these sections have been helpful. By exposing as nearly meaningless a term (*ius sacrum*) that is so naturalized in the scholarly vocabulary that it has an entry in our discipline's standard reference work, although it lacks support in the ancient sources and is not even well enough defined by moderns to be a useful concept for understanding the pontifical law, and by replacing it with two terms (*ius sacrorum* and *ius caerimoniarum*) that are both better attested and more precisely defined, yet have not received any scholarly attention,³²³ I have tried to recover and understand the terms that the pontifical college itself would have used in their deliberations and writings. In doing so, I hope to have moved a step closer to understanding the pontifical law.

2.4 Additional areas of the pontifical law

If I have spent much time on the *sacra* and *caerimoniae*, that should not be taken to mean that these were the only, or even the primary, components of the pontifical law. Two other areas of Roman religion can be shown to have belonged to the *ius pontificium*. In this section I shall briefly discuss them in order to show not only that they fell under the pontifical law, but that they also were separate from the *sacra* and *caerimoniae*.

³²² As well as for constitutional law, see the remarks of Mommsen 1887-1888, 3.1037-1038 n. 2.

The first area is the *ius Manium*.³²⁴ That it formed a part of the pontifical law is incontrovertible. The point is made explicitly four times in the second book of *De Legibus* (the most relevant passage on the subject for our present purpose): first, when Atticus says that he eagerly awaits Cicero's treatment of the *sacra priuata* and *ius Manium* because these two subjects "are concerned with both the pontifical law and the civil law";³²⁵ for the second and third time when Cicero notes that the pontifical law governed the *ius Manium*;³²⁶ and for the final time when Atticus describes Cicero's preceding comments as covering those aspects of the *ius Manium* that fell under the pontifical law.³²⁷ The first of these remarks, moreover, also proves that the *ius Manium*

³²³ Szemler's (1978, 360.56-57) mention of an article in the *RE* on *ius sacrorum* is a *lapsus calami* for *ius sacrum*.

³²⁴ The bibliography on Roman funerary ceremonies and grave law is vast (although curiously the *RE* lacks an entry for *ius Manium*). The standard works and basic ancient texts can be found at Mommsen 1895, 203-220 and Wissowa 1912, 478-479.

³²⁵ The full passage (Cic. *Leg.* 2.45; **T9**) runs: *Atticus: habeo ista. nunc de sacris perpetuis et de Manium iure restat. Marcus: o miram memoriam Pomponi tuam! at mihi ista exciderant. Atticus: ita credo. sed tamen hoc magis eas res et memini et <ex>specto, quod et ad pontificium ius et ad ciuile pertinent.*

³²⁶ Cic. *Leg.* 2.57 (**T39**): *et quod nunc communiter in omnibus sepultis uenit usu <ut> humati dicantur, id erat proprium tum in iis quos humus iniecta contexerat, eumque morem ius pontificale confirmat.*

³²⁷ Cic. *Leg.* 2.58 (**T14**): *Atticus: uideo quae sint in pontificio iure, sed quaero ecquidnam sit in legibus. Marcus: pauca sane, Tite, et, ut arbitror, non ignota uobis. sed ea non tam ad religionem spectant quam ad ius sepulcrorum.* This passage and the discussion that follows it are particularly important for the contents of the *ius Manium* and their arrangement. On the latter topic I would here like to note that we should not take these words as meaning that part of the *ius Manium* was beyond the reach of the pontifical law. Rather, Cicero here distinguishes between the ritual aspects of this area, which he has just discussed and which he says are *in pontificio iure*, and the civil law aspects, which he says are *in legibus*. Dyck 2004, *ad loc.*, is incorrect to take *in legibus* as referring to the Twelve Tables; in fact, it refers to all civil law aspects of the *ius Manium*. This area of civil law Cicero says pertains *ad ius sepulcrorum*, while the area of pontifical law pertains *ad religionem*. This distinction is nothing less than Linderski's (1985) distinction between the *ius pontificium* proper and the *ius pontificium publicum* which I discussed above (section 2.2.1). Again, this distinction does not mean that the pontifical college had nothing to do with the *ius Manium*. This is refuted not only by Atticus' remark that the *ius Manium* pertained both to the pontifical and civil law, but also by Cicero's subsequent discussion in this section on the civil law aspects of the *ius Manium*, during which he twice mentions decrees of the pontifical college on the matter. Thus, as with dedications, so with the *ius Manium* we make speak of the *ius pontificium* proper which governed the ritual

was an area of the pontifical law separate from the *sacra priuata*. That it was also separate from the *sacra publica* is a point not made here, but one that readily emerges from Festus' definition of *sacra publica* (284 L.) as those rites that are performed "*publico sumptu pro populo fiunt, quaeque pro montibus, pagis, curis, sacellis*". As the *ius Manium* does not fit into any of these categories, it cannot belong to the *sacra publica*.

The second area of Roman religion that falls under the pontifical law, but is not part of the *sacra* or *caerimoniae*, is the treatment of *prodigia*. Strangely, in his ideal constitution Cicero never mentions prodigies as a pontifical duty: his only remarks on the subject are two brief sentences delegating this area to the Etruscan haruspices.³²⁸ It must be remembered, however, that Cicero's constitution is but a précis of the religious laws of his ideal state, not a thorough treatment.³²⁹ And indeed here he omits what was undoubtedly a major pontifical duty, since evidence of pontifical involvement with the treatment of prodigies abounds.³³⁰

That the pontifical care of *prodigia* did not belong to the *sacra* and *caerimoniae* of the *patrius ritus* may seem almost self-evident. After all, determining if a prodigy should

acts (or, to use Cicero's words here, *quae ad religionem spectant*) and the *ius pontificium publicum* which was concerned with legal aspects of religious acts (or, to use Cicero's phrase, *quae ad ius sepulcrorum spectant*). On the other hand at *Tusc.* 1.27 (T16) *ius pontificum* appears to refer to the public pontifical law and *caerimoniae sepulcrorum* to the religious aspects thereof: *esse in morte sensum neque excessu uitae sic deleri hominem, ut funditus interiret: idque cum multis aliis rebus, tum e pontificio iure et e caerimoniis sepulcrorum intellegi licet, quas maxumis ingeniis praediti nec tanta cura coluissent nec uiolatas tam inexpiable religione sanxissent*.

³²⁸ Cic. *Leg.* 2.21: *prodigia portenta ad Etruscos [et] haruspices, si senatus iussit, deferunt, Etruriaque principes disciplinam doceto. quibus diuis creuerint, procuranto, idemque fulgura atque obstipiant*.

³²⁹ See most notably Cic. *Leg.* 2.18: *leges autem a me dentur non perfectae (nam esset infinitum), sed ipsae summae rerum atque sententiae*.

³³⁰ See the discussion of pontifical involvement with *prodigia* in MacBain, *passim*.

be officially acknowledged and decreeing what should be done to fix the breach in the *pax deorum* that it indicated involved no ritual or ceremony. But for compelling and explicit evidence that it was treated so, we should consider Livy's description of the duties that King Numa Pompilius gave to the first pontiff, Numa Marcius:

And he [sc. Numa] made all other private and public rites (*publica priuataque sacra*) subject to the decrees (*scitum*) of the pontiff. That way the plebs would have someone to consult lest any part of the divine law (*ius diuinum*) be thrown into confusion either through neglect of ancestral or adoption of foreign rituals (*ritus*). And he also had the same *pontifex* impart not only ceremonies relating to the gods above (*caelestes caerimonias*), but also proper funeral rituals (*iusta funebria*) and the propitiation of the spirits of the dead (*placandosque manes*), as well as which prodigies, sent by lightning or some other sign, should be acknowledged and procured.³³¹

Livy divides the subjects of pontifical activity into two categories: those that are *caelestes caerimoniae* and those that are not. As is clear from the structure of this passage, *caelestes caerimoniae* refers to the immediately preceding areas Livy has discussed. That is, it is but another term for *publica priuataque sacra*. With this category Livy juxtaposes—note the emphatic *nec modo...sed quoque*—a second comprised of three elements: *iusta funebria*, *placandi manes*, and *prodigia*.

This representation of pontifical authority is similar in one respect to Cicero's religious constitution. As shown above Cicero clearly marks the *ius Manium* as an area of pontifical area separate from the *sacra*. Now, Livy's *iusta funebria* and *placandi manes* can hardly be anything but this same concept—the *ius Manium*—described in different words. That Livy's presentation mirrors Cicero's in this one important aspect indicates that here the annalist does not invent or fabricate, but reproduces a fact about the basic

³³¹ Liv. 1.20.6: *cetera quoque omnia publica priuataque sacra pontificis scitis subiecit, ut esset quo consultum plebes ueniret, ne quid diuini iuris neglegendo patrios ritus peregrinosque adsciscendo turbaretur: nec caelestes modo caerimonias, sed iusta quoque funebria placandosque manes ut idem*

structure of Roman religion. Of course, since Cicero does not mention pontifical care of *prodigia* in his constitution, we cannot speak as confidently about this area. Nevertheless, it seems rash to think that Livy would be right about the structure of pontifical authority in all other instances—note his mention of the well-attested category of public and private rites—and be wrong in this instance. His information probably derives from a reliable antiquarian or annalistic source, and we may confidently conclude that the *prodigia* were the third, and final, area of pontifical supervision.

One final point on *prodigia* needs mentioning. The diagnosis and treatment of *prodigia* were not the duty of the pontiffs alone: the Haruspices and *quindecimviri sacris faciundis* also regularly handled the same. Thus while we can say that *prodigia* fell under the purview of the pontifical law, we cannot claim that they fell under the purview of this law alone. This brings up the topic of the cooperation of Roman priests or the overlap in their duties, a potentially interesting topic whose treatment, however, is beyond the scope of the present study.

2.5 Conclusion: defining the pontifical law, part II

I began this chapter by challenging the traditional view that the pontifical law was concerned primarily with questions of civil law. I tried to show that the civil law made up only a small fraction of the pontifical law, that it was a specific type of civil law that fell under the pontiffs' purview, and that their influence over it was more restricted than has heretofore been recognized. I then attempted to demonstrate, through a word study of terms for 'pontifical law', that matters of religion were the main focus of the *ius pontificium*. I then undertook, as a counterpart to that study, an investigation into the

pontifex edoceret, quaeque prodigia fulminibus alioque quo uisu missa susciperentur atque procurarentur.

duties of the pontiffs in historical times in order to understand who interpreted and applied the pontifical law and what areas of Roman religion fell within its scope. I was able to demonstrate that the entire pontifical college, not just the pontiffs proper, interpreted and adjudicated matters of *ius pontificium* and that the pontifical law embraced three areas of Roman religion: the *sacra* and *caerimoniae* of the *patrius ritus*, the *ius Manium*, and *prodigia* (although supervision of this last area they shared with other religious authorities). I also tried to show that a concept most frequently attached to the pontiffs, the *ius sacrum*, has been incorrectly used in modern scholarship; I suggested that in its place we should use the term *ius sacrorum* which, though infrequently attested, has a demonstrably stronger connection to the pontifical law and a decidedly more precise definition than *ius sacrorum*. In connection with this term I also discussed the phrase *ius caerimontiarum* and its connection to the pontifical law, tentatively positing that it might refer to the pontifical law proper, and *ius sacrorum* to the 'public' pontifical law discussed in section 2.2.1.

From this chapter I hope to have arrived at a more precise and accurate understanding of the scope of the pontifical law and to have corrected some common misconceptions about the same. I would thus offer the following definition of the pontifical law: The *ius pontificium* embraced both the public pontifical law and the pontifical law proper of 1) the *sacra* and *caerimoniae* of the *patrius ritus* 2) the *ius Manium* 3) and the treatment of *prodigia*. Definitions, however, are only a beginning and not an end in themselves.³³² Our task in the next chapter is to investigate how the pontifical college applied and adapted the pontifical law in these areas.

Text Ogilvie 1974; trans. (here modified) Foster 1919.

³³² See the remarks of Linderski 1990, 42-43 = 1995, 32-33; restated at Idem *CR* (2005) 55.2: 652.

CHAPTER THREE: THE DUTIES OF THE PONTIFICAL COLLEGE

In this chapter I attempt to understand the place of pontifical law in Roman religion by investigating the duties and prerogatives of the pontifical college. To contend that the religious power of the pontifical college has never been duly examined or significantly appreciated may seem misinformed or hubristic, but in fact nearly every published work on the *pontifices* denies or overlooks the full religious importance of the *collegium pontificum*. Mommsen, for example, famously viewed the *pontifex maximus* as the holder of not only all pontifical power, but also some magisterial prerogatives, and accordingly treated the college as merely a *consilium* whose advice the chief priest could freely disregard.³³³ Similarly, the book by Bouché-Leclercq and the articles on the pontiffs in the standard classical reference works devote no attention to the activities of the college *qua* college.³³⁴ I know of only one work that attempts to understand the influence that the

³³³ The relevant passage of Mommsen deserves full quotation. In a section tellingly entitled "Die magistratische Befugniss des Oberpontifex" he (1887-1888, 2.22) writes:

Während die übrigen Priestercollegien Roms fast durchaus, und vor allem die dem pontificalen an Alter und Ansehen zunächst stehenden, ohne Haupt sind, stehen die Pontifices nicht bloss unter einem Vorsteher, sondern bei allen Acten magistratischer Natur, insbesondere bei der Spectio, bei der Ernennung der Priester und der Leitung der Priesterwahlen und bei der gesammten Judication, erscheint dieser Vorsteher, der Pontifex maximus als der eigentliche Träger der Gewalt und die übrigen Collegien in der Regel nur als dessen Consilium.

In the attendant footnote Mommsen admits that "Die Beweise für diesen Satz können hier nicht gegeben werden; sie bestehen in einer Reihe einzelner Anwendungen, die im Verlauf der Darstellung vorkommen werden, und die auch für die übrigen Fälle, wo die Quellen nur die pontificale Thätigkeit im Allgemeinen bezeichnen, dasselbe Princip anzuwenden nöthigen." Wissowa, who was a devoted student of Mommsen, and whose *Religion und Kultus der Römer* is to Roman religion what Mommsen's *Römisches Staatsrecht* is to Roman law, largely echoes Mommsen's view (1912, 509), "Die rechtliche Stellung des Pontifex maximus ist eine eigenartige und komplizierte. Den übrigen Pontifices steht er nicht als ein *primus inter pares* gegenüber...sondern die Pontifices bilden eine einheitliche, in ihrer Unteilbarkeit durch den Pontifex max. dargestellte und nur aus praktischen Gründen der Dienstführung zu einer Mehrheit von Personen verstärkte Priesterwürde...(1912, 509)." And note his footnote (510): "Die Pontifices...die nicht sowohl unter dem Pontifex max. stehen, als mit ihm zusammen eine Einheit bilden...". See also Bouché-Leclercq 1871, 297, who writes, "mais le sentence était prononcée par le P. M., et l'on ne saurait prouver qu'il dût accepter dans son verdict l'opinion de la majorité. Le collège représentait ici le conseil de famille."

³³⁴ Bouché-Leclercq 1871, Berger 1919b, Szemler, 1978. As far as I can ascertain, this criticism holds true for every work on the pontiffs.

pontifical college wielded over Roman religion.³³⁵ My main task in this chapter is to remedy this oversight by focusing on the obligations and powers that the *collegium pontificum* performed as a collective body. I hope thereby not only to restore to the pontifical college the religious power which has long been denied it, but also to offer a clearer and deeper understanding of the operation of the pontifical law in Roman religion.

I begin by summarizing the approach of the most significant scholarly treatments of the pontifical college. These works, insightful though they may be, fail to differentiate clearly between the powers of the college as a collective body and the powers of its individual members. This is a crucial mistake, for, as I show, the Romans clearly recognized some duties as the preserve of the college and others as the prerogative of an individual *pontifex*. I analyze the ancient evidence for this distinction and I identify three collegiate tasks: the safeguarding of the pontifical law, the trial of Vestal Virgins accused of *incestus*, and the issuing of decrees and responses.

The next two sections are devoted to an analysis of these duties. In the first part I discuss the college's obligation to 'hold' or 'keep' the pontifical law. This duty was first identified and discussed by Linderski, who noted in passing its relevance to the pontiffs and went on to explore in detail its importance for the augural law. After summarizing his remarks, I show that the pontifical college was as concerned as the augural college with preserving the tenets of its discipline, and I highlight the importance of this duty for the development of the pontifical law.

In the next section I analyze the decrees and responses of the pontifical college. I begin by pointing out the fundamental difference, which has not always been recognized, between the terms *decretum* and *responsum*, before taking up the decrees and responses

³³⁵ Cohee 1994.

themselves, examining first those that the college issued on its own initiative and then those it issued in response to a request by an outside agent. With both sets, my approach is two-fold: I attempt first to reconstruct the procedure for issuing these documents, focusing on such matters as how and where the college assembled, how many members participated in formulating a decree, and how the college arrived at its decision. I then analyze the contents of the documents, trying in particular to understand the underlying theology of the college's decisions.

In this same section I analyze both the decrees that the college issued at *incestus* trials and the college's role in the same. It seems more convenient to treat these two topics together, rather than devote separate sections to each. In examining these trials I first seek to reconstruct in as much detail as possible a typical *incestus* trial, in order to pinpoint precisely what the college did and to delimit more clearly than has previously been done, the procedure of a trial, the different roles of the *pontifex maximus* and the college, and the development of the college's authority over this area of Roman religion. I then consider the decrees themselves. I point out that the college issued at least two and possibly three decrees every time it tried a Vestal on a charge of *incestus*, and I show how one of these *decreta* was meant to preserve the *pax deorum*. I use this decree to try to demonstrate that the relationship between the virginity of the Vestals and the *pax deorum* is regularly misunderstood. It was not, as is often claimed, the Vestal's loss of virginity *per se* which broke the *pax deorum*, but the fact that she performed the *sacra* while unchaste, thus polluting them and rousing the anger of the gods.

3.1 Individual vs. collegiate duties

Modern treatments of the pontiffs typically list and describe the duties of the *flamen* *Dialis*, *rex sacrorum*, *pontifex maximus*, and the *pontifices*, but neglect to consider the tasks that these priests performed as a collective group. Indeed, scholars use the terms *pontifices* and *collegium pontificum* almost interchangeably, as if the duties of the latter are merely the sum of the duties of the former.³³⁶ Even Wissowa, in his still indispensable chapter on the pontiffs in *Religion und Kultus der Römer*, does not entirely avoid this mistake.³³⁷ Ancient authors do likewise. For example, in his ideal religious 'constitution' in Book Two of *De Legibus*, Cicero never assigns a sacerdotal task explicitly to the *collegium*, but instead speaks of the duties that the *pontifices* or *sacerdotes* should perform, without making it clear whether with these words he refers to the entire pontifical college, only the *pontifices* proper, or to any individual member of the college, including the *flamines*, *pontifices minores*, and *rex sacrorum*.³³⁸ Livy is more explicit, for he writes of matters referred *ad collegium pontificum*³³⁹ (although in reporting the college's decisions he is usually less explicit, using a phrase such as *pontifices decreuerunt* and not *collegium decreuit*).³⁴⁰ Greek authors, meanwhile, never use a Greek

³³⁶ Linderski appositely remarks (1986, 2210 n. 238), "Moreover the plural may denote a category of persons who were entitled to perform certain...acts, although each of those acts was actually performed by one person only."

³³⁷ In that work he appears to ascribe to the college three duties but he fails to make clear whether he understands these three tasks to be the duties of the college, all its individual members, or only the pontiffs proper. See below, n. 350.

³³⁸ Cic. *Leg.* 2.19-22.

³³⁹ E.g., Liv. 29.20.10: *ad conlegium pontificum relatum de expiandis quae Locris in templo Proserpinae tacta ac uiolata elataque inde essent*; Liv. 31.9.5-10: *quamquam et res et auctor mouebat, tamen ad collegium pontificum referre consul iussus, si posset recte uotum incertae pecuniae suscipi*.

³⁴⁰ Cf. Liv. 27.37.7: *decreuere item pontifices ut uirgines ter nouenae per urbem euntes carmen canerent*; Liv. 31.9.5-10: *posse rectiusque etiam esse pontifices decreuerunt*.

equivalent to *collegium*, but instead employ calques or translations to render what in Latin would obviously be *collegium pontificum*.³⁴¹ The practice of these ancient authors may explain why most modern scholars have not differentiated between collegiate and individual duties: they simply did not know that the Romans themselves did.

And yet there is sufficient evidence that the Romans recognized certain tasks as falling to the college and certain task as falling to its individual members. Consider, for example, the following passage of Cicero:

And I assert that never since the foundation of the rites—which are coeval with the city of Rome herself—has the college on any matter, not even the capital charge against Vestal Virgins, made a ruling in such numbers. In an inquiry into delinquency, the larger the attendance the better, for the pontiffs' interpretive function is of such a nature that they have the power of judges; whereas in a matter of religious observance an elucidation can properly be given by a single experienced member of the college—which is harsh and inequitable in a capital trial. And yet you will find that the pontiffs ruled on my house in larger numbers than have ever ruled on the rites of the Virgins.³⁴²

Cicero says that an individual pontiff could rightly give a *religionis explanatio*, but for one pontiff to try a Vestal accused of *incestus* is "harsh and inequitable" (*durum atque iniquum*). Bouché-Leclercq and Mommsen saw in these three words a reference to the power of the *pontifex maximus* to condemn a Vestal without consulting his colleagues or even against their collective vote for her acquittal.³⁴³ This view, though possible, seems

³⁴¹ See Mason 1974 and Magie [1904] 1905, and, most famously, the passage of Dion. Hal. 2.73, where the author lists the Greek terms he uses for *pontifices*.

³⁴² Cic. *Har. resp.* 13: *nego umquam post sacra constituta, quorum eadem est antiquitas quae ipsius urbis, ulla de re, ne de capite quidem uirginum Uestaliū, tam frequens collegium iudicasse. quamquam ad facinoris disquisitionem interest adesse quam plurimos - ita est enim interpretatio illa pontificum ut eidem potestatem habeant iudicum - , religionis explanatio uel ab uno pontifice perito recte fieri potest - quod idem in iudicio capitis durum atque iniquum est -, tamen sic reperietis, frequentiores pontifices de mea domo quam umquam de caerimoniis uirginum iudicasse.* Text Maslowski 1981; trans. modified from Shackleton Bailey 1991.

³⁴³ Bouché-Leclercq 1871, 297, "Il [i.e. *pontifex maximus*] eût commis un acte non pas illégal, mais cruel et injuste, en portant seul la sentence de mort—*quod in iudicio capitis durum et iniquum est.*" Mommsen 1887-1888, 2.55 n. 2, writes of the participation of the college in *incestus* trials, "Gesetzlich

to me to read too much into Cicero's remarks. Rather than see here a reference to a specific duty of the *pontifex maximus*, it is better to take Cicero as merely juxtaposing the duty of an individual pontiff with the duty of the entire college. I shall have more to say on this passage below. For now I wish to note that, with the words *quamquam ad facinoris disquisitionem interest adesse quam plurimos*, Cicero makes it clear that to judge a Vestal Virgin was a duty best performed by the entire college.

One pontiff could give a *religionis explanatio*, but he could not try a Vestal. The college could try a Vestal; could it also give a *religionis explanatio*? To answer this question let us examine the following passage from one of Cicero's letters to Atticus:

The pontiffs having found (*cum pontifices decressent*) that 'that portion of the site might be restored to me without sacrilege (*sine religione*), providing the person claimed to have consecrated³⁴⁴ it was not commissioned by name thereto by an order of the people or resolution of the plebs, neither ordered so to act by an order of the people or resolution of the plebs'....On the Kalends of October there was a meeting of the Senate, well attended. All the pontiffs who were senators were called in. Marcellinus, who was very strongly on my side, as the first called upon, asked them to give reasons for their decree. M. Lucullus, speaking for all his colleagues, then replied that the pontiffs had been the judges of the religious issue (*religionis iudices pontifices fuisse*), but the Senate was the judge of law. His colleagues and himself had given their verdict on the former (*se et collegas suos de religione statuisset*); on the latter they would decide in the Senate, as senators. Accordingly all of them, as called upon in their turn, spoke at length in favour of my case.³⁴⁵

vorgeschrieben war die Zuziehung nicht und in geringeren Sachen nicht üblich; aber in schweren Fällen galt das Verfahren ohne Consilium, wahrscheinlich auch das Urtheilssprechen gegen die Majorität des Consilium als *durum et* [this is a slip for *atque*] *iniquum*." The view of Bouché-Leclercq and Mommsen are based on the view that the *pontifex maximus* stood to the Vestals as a father to his wife or daughters and that the other *pontifices* were analogous to the *consilium* of family members that the father was all but obliged to consult when deliberating on punishing his wife or children. We do not have any evidence that the *pontifex maximus* ever did this or could do it; in every attested trial of a Vestal, it is the college that renders the verdict.

³⁴⁴ Shackleton Bailey's translation here is incorrect; the word *dedicasse* cannot be translated as 'to have consecrated', for *consecratio* and *dedicatio*, though part of the same ritual, are two distinct acts.

³⁴⁵ Cic. *ad Att.* 4.2.3-4: *cum pontifices decressent ita, 'si neque populi iussu neque plebis scitu is qui se dedicasse diceret nominatim ei rei praefectus esset neque populi iussu aut plebis scitu id facere iussus esset, uideri posse sine religione eam partem areae mihi restitui'.... Kal. Oct. habetur senatus frequens. adhibentur omnes pontifices qui erant senators. a quibus Marcellinus, qui erat cupidissimus mei, sententiam primus rogatus quaesiuit quid essent in decernendo secuti. tum M. Lucullus de omnium*

Cicero here uses the term *pontifices* in its broadest sense to mean the entire *collegium pontificum*, and both the words of the *pontifex* M. Lucullus—*religionis iudices pontifices fuisse; se et collegas suos de religione statuisset*—and the phrase *sine religio* in the pontifical decree show that in the matter of Cicero's house the college had adjudged a matter of *religio*. The judgment can hardly be considered anything other than a *religionis explanatio* given by the college as a collective body. Such "explanations" are attested elsewhere (particularly in the pages of Livy), and they are often referred to by the terms *decreta* and *responsa* or variants thereof. Thus Cicero writes in this passage *cum pontifices decressent*, and in another letter to Atticus he states *de domo nostra nihil adhuc pontifices responderunt*.³⁴⁶ These two excerpts seem to indicate that the words *decerno* and *respondeo*, and therefore *decretum* and *responsum*, are interchangeable. But in fact, they are substantially different, as I shall demonstrate below. For now it will suffice to point out that the issuance of *religionis explanationes* in the form of *decreta* and *responsa* was another duty performed by the college as a collective body. This is the most well attested collegiate duty and one that must have given the pontifical law its most influential expression, since a decree often affected the public law as well as the state religion.

The third collegiate duty emerges from a comparison with the duties of the augural college. Linderski points out that the primary task of the augural college was 'to keep the

collegiarum sententia respondit religionis iudices pontifices fuisse, legis <es>se senatum; se et collegas suos de religione statuisset, in senatu de lege statuturos cum senatu. itaque suo quisque horum loco sententiam rogatus multa secundum causam nostram disputavit. Text and trans. Shackleton Bailey 1965, vol. 2.

³⁴⁶ Cic. Att. 4.1.7.

augural discipline' (*disciplinam tenere*).³⁴⁷ A similar duty is never ascribed to the pontifical college, but this does not mean the college did not practice it. As Linderski points out, "[t]enere disciplinam, to uphold the doctrine, was the common obligation of the augurs, pontiffs, and haruspices."³⁴⁸ In point of fact, the pontifical law appears to have been as much a *disciplina* as the augural law was,³⁴⁹ and like the augural college the *collegium pontificum* had to preserve the tenets of the pontifical law and hand it down it to the next generation of its members. The guarding of the pontifical discipline thus constitutes the third and final duty of the pontifical college.

As a collective body the pontifical college thus performed three tasks: it tried Vestals accused of *incestus*, it issued decrees and responses on matters of *religio*, and it 'kept' the pontifical discipline. In the following sections I propose to examine these three duties.³⁵⁰

³⁴⁷ Linderski 1986, 2152-2153. See Cic. *Leg.* 2.20: *publici augures...disciplinam tenento*.

³⁴⁸ Linderski 1985, 234 = 1995, 523.

³⁴⁹ It is true that *disciplina* is used much more frequently of the augurs and *haruspices* than of the pontiffs (Linderski 1986 2240 n. 373), but this does not mean that the pontifical college handled their duties in a significantly different way than the augurs or haruspices did theirs. I would attribute the discrepancy to the fact that one of the major sources for Roman religion (and one of the authors who most frequently applies the term *disciplina* to the augurs) was Cicero, who as an augur was far better acquainted with that priesthood than the pontificate. If he had been a *pontifex*, the pages of *De Divinatione* and *De Natura Deorum* would be filled with references to the *disciplina pontificum*. I have found only five occurrences of the term 'pontifical discipline' which, it should be noted, show that *disciplina* is used of the pontiffs in the same way it is usually used of the augurs, to denote the theoretical aspects of the pontifical law (see Linderski 1986, 2240 with n. 374). The five passages are Plin. *HN* 28.18 (T64): *Uerrius Flaccus auctores ponit, quibus credat in obpugnationibus ante omnia solitum a Romanis sacerdotibus euocari deum, cuius in tutela id oppidum esset, promittique illi eundem aut ampliorem apud Romanos cultum. et durat in pontificum disciplina id sacrum, constatque ideo occultatum, in cuius dei tutela Roma esset, ne qui hostium simili modo agerent*; Cic. *Dom.* 121 (T5; addressed to the pontifical college): *etsi effluunt multa ex uestra disciplina quae etiam ad nostras aures saepe permanent*; Mac. *Sat.* 3.10.1-3 (T32): *et nos cepimus pontificii iuris auditum: et ex his quae nobis nota sunt Maronem huius disciplinam iuris nescisse constabit*; (T65) *Serv. Dan.* at *G.* 1.270: *sed qui disciplinas pontificum interius agnouerunt, ea die festo sine piaculo dicunt posse fieri, quae supra terram sunt, uel quae omnia nocent, uel quae ad honorem deorum pertinent, et quidquid fieri sine institutione noui operis potest*; *Serv. Dan.* at *Aen.* 2.693 (T66; a confused reference): *unde alibi "siquem numina laeua sinunt". sed hoc loco pontificalis inducitur disciplina*.

³⁵⁰ The three duties I have identified are similar to those that Wissowa attributes to the college (1912, 513-514). According to him the college was charged with the safekeeping and communication of the documents of the *ius sacrum*, the creation of new law by issuing decrees and responses on the sacral law,

3.2 Keeping the pontifical discipline

The augurs of Cicero's ideal Rome are 'to hold the discipline' (*disciplinam tenere*).³⁵¹

Cicero does not ascribe this duty to the pontiffs, but there can be little doubt that in the real Rome the pontifical college kept the *disciplina pontificum* as well as the augural college did the *disciplina auguralis*. Linderski has discussed this duty in relation to the augurs; here I shall summarize his observations and discuss their applicability to the pontiffs.

Linderski makes two important points about the augurs' duty *disciplinam tenere*. First, he notes that 'to hold the discipline' means "to preserve it, and transmit it intact to succeeding generations of augurs."³⁵² This the augurs did by keeping the documents that recorded the rules and procedures essential for the performance of augural ceremonies and by memorizing those tenets that could not be written down. In transmitting these unwritten rules, one is reminded, as Linderski points out, of the idea of *apostolica successio*, and in fact, he cites a passage from Festus (14 –15 L.) that illustrates the propriety of applying this notion to the augurs:

and the maintenance of the worship of the gods of the *sacra patria*. This is partly incorrect and also confusing. First, the college had nothing to do with the *ius sacrum*, which, in fact, did not exist. Second, the duty to communicate the documents of the sacral law and the duty to issue decrees and responses on it appear to be identical. And I do not think it is correct to imply that the college's decrees and responses necessarily created new law. Some undoubtedly did, but many established only that something had or had not occurred (witness the decree on Cicero's house; Cic. *Att.* 4.2.4, quoted above, p. ???). Wissowa also is incorrect to treat the pontifical *responsa* and *decreta* as identical; these documents were substantially different in origin and influence. Moreover, as mentioned above, Wissowa fails to make clear whether he understands these three tasks to be the duties of the college, all its individual members, or only the pontiffs proper. Finally, Wissowa does not include the trials of Vestal Virgins as a collegiate duty, probably because he followed Mommsen on the matter and attributed this task to the *pontifex maximus*.

³⁵¹ Cf. Cic. *Leg.* 2.20, quoted in n. 347 above. Cf. also (T1) Cato *ORF*⁴ 79-80 no. 197 = *Origines* 109 P. (= Gell. *NA* 1.12.15-17): *ego me nunc uolo ius pontificium optime scire; iamne ea causa pontifex capiar? si uolo augurium optime tenere, ecquis me ob eam rem augurem capiat?*

³⁵² Linderski 1986, 2152.

arcani sermonis significatio trahitur siue ab arce ... siue a genere sacrificii, quod in arce fit ab auguribus, adeo remotum a notitia uulgari, ut ne litteris quidem mandetur, sed per memoriam successorum celebretur.

But the augurs were not always successful in this task. According to Cato the college neglected to uphold some of the tenets of its discipline: *itaque multa auguria, multa auspicia, quod Cato ille sapiens queritur, neglegentia collegi amissa plane et deserta sunt.*³⁵³ Other evidence supports his claim. According to Cicero, the augural discipline was completely respected and all of its tenets dutifully observed only in the regal period or in the earliest days of the Republic.³⁵⁴

Linderski's second point is that to 'hold' the discipline was not a passive duty. Linderski reminds us that the *augures* were also leading politicians and that these two roles often put the augurs in a difficult theological position. As augurs "they had to preserve the doctrine...and oppose any and every change...but at the same time as leaders of the state they had to adapt the augural rules to new political and social situations". The tenets of their discipline they could of course not change, but they could reinterpret them or interpret away any apparent difficulties; they could do this because were the "only official interpreters of the augural law."³⁵⁵

Let us now consider these observations with regard to the pontifical college. Like the augural college the pontifical college was the sole repository of its respective law and safeguarded the documents of the *ius pontificium*. Some of these documents were undoubtedly accessible only to the members of the college and contained many of the

³⁵³ *Div.* 1.28; see also *Nat. D.* 2.9: *sed neglegentia nobilitatis augurii disciplina omisa ueritas auspiciorum spreata est, species tantum retenta*. For other evidence see the note at Pease 1955-1958, 2.568 s.v. *neglegentia nobilitatis*.

³⁵⁴ See Linderski 1986, 2254-2255.

³⁵⁵ *Ibid.*, 2153.

rules and regulations for the *sacra et caerimoniae* regulated by the pontifical law.³⁵⁶ We can form some idea of the contents of these books from the many references (particularly in the ancient commentators on Vergil) to the *libri* and *commentarii pontificum*. There also seems to have been at least one element of the pontifical law that was known only to the pontiffs, which would form an exact parallel with the *genus sacrificii* that Festus attributes to the augurs. The commentator known as *Servius Danielis* writes:

That is why the Romans wished the identity of their city's tutelary deity to be concealed. And addressing the Roman gods by their own names is cautioned against by the pontifical law, lest they be able to be exaugurated. And on the Capitoline [in the Temple to Jupiter?] was consecrated a shield on which had been inscribed, 'To the presiding divinity of the city of Rome, whether male or female.' And the pontiffs thus used to pray, 'Jupiter Best and Greatest, or by whatever other name you will have wished to be addressed'; for Aeneas himself says, 'we follow you, holy deity, whoever you are' [4.576-7].³⁵⁷

It is highly probable that the pontifical law prohibited the college from committing to writing the true names of Rome's god. Rather, we must imagine the pontiffs preserving and transmitting these names by memory alone to the succeeding members of the college just as the augurs did their *genus sacrificii*.

The augurs were not alone in neglecting their discipline. Cato's complaint, *multa auguria, multa auspicia...negligentia collegi amissa plane et deserta sunt* finds a parallel in Cicero's remark that:

³⁵⁶ On the pontifical books see Linderski 1986, 2242-2244 and 1985, 207-234 = 1995, 496-523.

³⁵⁷ (T57) *Serv. Dan.* at *Aen.* 2.351: *inde est, quod Romani celatum esse uoluerunt, in cuius dei tutela urbs Roma sit. et iure pontificum cautum est, ne suis nominibus dii Romani appellarentur, ne exaugurari possint. et in Capitolio fuit clipeus consecratus, cui inscriptum erat 'genio urbis Romae, siue mas siue femina'. et pontifices ita precabantur 'Iuppiter optime maxime, siue quo alio nomine te appellari uolueris' nam ipse ait sequimur te, sancte deorum, quisquis es*. Text Thilo-Hagen 1881-1902. Cf. *Serv.* at *G.* 1.498: *nam uerum nomen eius numinis, quod urbi Romae praeest, sciri sacrorum lege prohibetur: quod ausus quidam tribunus plebis enuntiare in cruce leuatus est*; Schol. Bernens. ad *Verg. G.* 1.498 (= *Pr.* 14 no. 64C): *uerum numen, quod urbi praeest, sacrorum lege prohibitum est scire*. The term *lex sacrorum* points directly to the pontiffs as the priests who knew Rome's secret name. Cf. also T64 and T77. It is also possible that the augurs, too, knew the true and secret name of Rome; it appears to have been uttered at the ceremony mentioned in the above passage of Festus. See on this Linderski 1975, 285 = 1995, 586.

*quod <ad> tempus ut sacrificiorum libamenta seruentur, fetusque pecorum quae dicta in lege sunt, diligenter habenda ratio intercalandi est, quod institutum perire a Numa, posteriorum pontificum negligentia dissolutum est.*³⁵⁸

But it was not only in keeping the calendar that the pontiffs neglected their discipline. As was discussed in the previous chapter, several pontiffs who were also *iurisconsulti* used their knowledge of the civil law to nullify certain regulations of the pontifical law on the inheritance of *sacra priuata*.³⁵⁹ As with the augural discipline, the pontifical law existed pure and untouched only in the fabulous period of Numa's reign.

The members of the pontifical college, too, would have often been in the same difficult position as the augurs: as priests they were obligated to prevent any alteration to the pontifical law, but as politicians they were all but required to adapt that law to ever changing political and social realities. Consequently, they too would have frequently needed to reinterpret the rules of the *ius pontificium*, a task well within their capabilities, for they were the only interpreters and experts on the pontifical law. Neither the senate, or the magistrates, or the people, or other priests could overturn or contradict the college's interpretation.

We would very much like to know how the college performed its main task of 'holding' the discipline. In order to do so we must now consider the pontifical *decreta* and *responsa*, for it was in issuing these documents that the college not only 'held' the pontifical law, but also gave it its most influential expression in Roman religion and public life.

³⁵⁸ Cic. *Leg.* 2.29.

³⁵⁹ See section 2.2.1 above.

3.3 *decreta et responsa*

Scholars have long discussed *decreta* and *responsa*,³⁶⁰ but none had illuminated the fundamental difference between the two terms until Linderski shed light on the matter in a paragraph worth quoting in full:

[T]he *decretum* was promulgated by a collective body, the *responsum* was an answer given either by a collective body or by an individual. In the former case the *responsum* was at the same time also a decree insofar as it was a result of deliberations and presumably the vote of the *collegium*. The *responsum* presupposes the existence of a question to which it constitutes the reply: it has to be initiated by a third party. On the other hand the initiative to issue a decree lay in the hands of the *collegium* (or in any cases its presiding officer). In conclusion we may say that every *responsum* of the college was also a decree, but not every decree was a *responsum*. Furthermore with respect to the *augures* we have to distinguish carefully between the *responsa* of the *collegium*, and the *responsa* which were given by individual augurs.³⁶¹

These observations are directed at the augural decrees and responses, but they are just as true for the pontifical documents.³⁶² I thus propose to base my analysis of the pontifical *decreta* and *responsa* on Linderski's classifications, treating in this section those documents issued by the college and in the next chapter those issued by its individual members; I shall also adopt his distinction between decrees initiated by the college and decrees initiated by an outside agency. Linderski also notes that a *responsum* of the college was also a *decretum*.³⁶³ Therefore, in what follows I shall use the term *decretum*

³⁶⁰ Mommsen 1887-188 2.44-47, Wissowa 1912, 395, 514-515, 527, 530-531.

³⁶¹ Linderski 1986, 2154-2155, followed by Cohee 1994, 21.

³⁶² Linderski is concerned with rectifying scholarly misconceptions about the augural decrees and responses, but similar misunderstandings plague the study of the pontifical documents. Wissowa 1912, 514-515, notes the importance for the *ius pontificum* of pontifical *decreta* and *responsa*, but gives only a brief account of the form and content of a *decretum*; apparently he thought a response and a decree were identical, or at least, he does not make clear what distinguishes the one from the other.

³⁶³ He goes on to give two important caveats (ibid. 2154): a *responsum* is also a *decretum* "insofar as it [the *responsum*] was a result of deliberations and presumably the vote of the *collegium*", and (at 2154 n. 2) "the pontiffs and the augurs had to be convoked as a *collegium*; the *responsa* of three individual augurs [or pontiffs] did not constitute a *responsum* of the *collegium*."

with the understanding that, unless otherwise noted, my observations apply also to a *responsum*.

Before discussing the decrees initiated by the college, I would like to note briefly some important points about decrees and responses. The manner in which our sources report pontifical decrees and responses often makes it difficult to determine which *decreta* were also *responsa* (initiated by an outside agent) and which were *decreta* proper (initiated by the college). True, many authors—most commonly Livy, our main source for pontifical decrees—usually provide enough context to allow us confidently to conclude that the college issued its decision in response to the request of the Senate or a magistrate,³⁶⁴ but other authors sometimes provide only the barest information, and we are left to guess whether the decree they report is a *responsum* or a *decretum*.³⁶⁵

Hazardous, too, are the reports such as Plin. *NH* 8.206: *Coruncanius* [pont. max. 254-243] *ruminales hostias, donec bidentes fierent, puras negavit*, for without more context we must guess whether this statement describes 1) a *responsum* of the college which Coruncanius, as its head, officially announced to the inquiring body,³⁶⁶ 2) Coruncanius' personal *responsum* to a question or 3) Coruncanius' opinion which he

³⁶⁴ E.g., Livy 39.5.7-10: [sc. *M. Fulvium*] *petere ut ex ea pecunia quam in triumpho latam in aerario positurus esset, id aurum secerni iuberent. senatus pontificum conlegium consuli iussit num omne id aurum in ludos consumi necesse esset. cum pontifices negassent ad religionem pertinere quanta impensa in ludos fieret...*

³⁶⁵ Thus, for example, Cic. *Leg.* 2.58: *sed quom multa in eo loco sepulcra fuissent, exarata sunt. statuit enim collegium locum publicum non potuisse priuata religione obligari.*

³⁶⁶ For the *pontifex maximus* announcing the college's official verdict see, e.g., Cic. *Dom.* 136: *cum Licinia, uirgo Uestalis...aram et aediculam et puluinar sub Saxo dedicasset, nonne eam rem ex auctoritate senatus ad hoc conlegium Sex. Iulius praetor rettulit? cum P. Scaeuola pontifex maximus pro conlegio respondit...*; Liv. 22.10.1: *L. Cornelius Lentulus pontifex maximus consulente collegium praetore omnium primum populum consulendum de uere sacro censet: iniussu populi uoueri non posse.*

expressed in a book on pontifical law or a related subject.³⁶⁷ All are plausible scenarios, and without more evidence we cannot tell for certain which is the true one. In analyzing the pontifical *decreta* and *responsa* I have been constantly aware of these difficulties and I have tried to be careful in deciding which documents were initiated by the college and which by an outside agent.

3.3.1 *decreta* initiated by the college

It is beyond doubt that the pontifical college could initiate a *decretum* on any matter that fell to its competence. We have, however, evidence that it did so only in connection with the possible *incestus* of a Vestal Virgin and in incidents dealing with theoretical aspects of the pontifical law. Decrees of the former type are explicitly attested, but the latter I have plausibly inferred on comparison with the practice of the augural college. In this section I shall discuss only these plausibly inferred decrees; those dealing with the *incestus* of Vestals I shall analyze later in this chapter in the section on the pontifical college's role in *incestus* trials, where I shall also discuss the location and procedure of the meetings at which these self-initiated decrees were formulated.

Cicero tells us that the augurs used to meet every Nones *commentandi causa*,³⁶⁸ and it is likely, as Linderski notes, that from these monthly meetings they issued decrees on

³⁶⁷ For *negavit* used of a pontiff's opinion expressed in a book see Mac. Sat. 1.16.21-27: *sed et Fabius Maximus Servilianus pontifex in libro duodecimo negat oportere atro die parentare*. There is no evidence that Coruncanus wrote a book on pontifical law, but Cicero (*Brut.* 55) tells us that *possumus ... suspicari disertum ... Ti. Coruncanium, quod ex pontificum commentariis longe plurimum ingenio ualuisse uideatur*. This seems to indicate that opinions or decisions of Coruncanus were written down in the *pontificum commentariis*. Note also Pomponius (*Dig.* 1.2.38): *Tiberius Coruncanus... cuius tamen scriptum nullum extat, sed responsa complura et memorabilia eius fuerunt*.

³⁶⁸ *Lael.* 7: *itaque ex me quaerunt, credo ex hoc item Scaeuola, quonam pacto mortem Africani feras, eoque magis, quod proximis Nonis cum in hortos D. Bruti auguris commentandi causa, ut adsolet, uenisse...* Cic. *Div.* 1.90: *et in Persis augurantur et diuinant magi, qui congregantur in fano commentandi causa atque inter se conloquendi, quod etiam idem uos quondam facere Nonis solebatis*. The word *solebatis* may indicate that by Cicero's day the augurs no longer regularly met on the Nones.

the matters they discussed.³⁶⁹ Unfortunately, we have no direct evidence that the pontiffs did likewise. The closest we get is Varro's statement that on the Kalends of each month the pontiffs announced publicly when the Nones would be,³⁷⁰ from which practice we may infer that the pontiffs met each month in order to prepare this announcement. Nevertheless it seems reasonable to contend on the analogy with the augurs that the pontifical college regularly met to discuss pontifical law and that it promulgated the results of these meetings as decrees. Several of the contextless pontifical decrees may have issued from such meetings, but I have felt confident in assigning only one extant decree to this category. I turn to it now.

3.3.1.1 *decretum de feriis praecidaneis*

Aulus Gellius preserves a vexing decree that he says he found in a book on pontifical law by Ateius Capito. After discussing the terms *hostiae praecidaneae* and *porca praecidanea* Gellius notes

But, as I said, it is well known that a sow and certain sacrificial animals are called *praecidaneae*, but that feasts (*feriae*) are also called *praecidaneae* is, I think, not at all common knowledge (*a uolgo remotum est*). I therefore have written here the words of Ateius Capito from the fifth of his books on pontifical law, "When Tiberius Coruncanius³⁷¹ was *pontifex maximus* [254-243 BC; *cos.* 280] *feriae praecidaneae* were inaugurated on a black day (*dies ater*). The college decreed that religion should not prevent *feriae praecidaneae* from occurring on that day."³⁷²

³⁶⁹ Linderski 1986, 2155.

³⁷⁰ *Ling.* 6.27: *primi dies mensium nominati kalendae, quod his diebus calantur eius mensis nonae a pontificibus, quintanae an septimanae sint futurae, in Capitolio in Curia Calabra sic...*

³⁷¹ *Ti. Coruncanio pontifici maximo* seems to me to be a mistake for *Ti. Coruncanio pontifice maximo*, which is what I have translated. Tiberius Coruncanius was the first plebeian *pontifex maximus* (*Liv. Per.* 18; cf. Bardt 1871, 4 no. 8; *MRR* 1.210).

³⁷² *Gell.* 4.6.9-10 (=Capito 10 Strz.): *sed porcam et hostias quasdam 'praecidaneas', sicuti dixi, appellari uolgo notum est, ferias 'praecidaneas' dici id, opinor, a uolgo remotum est. propterea uerba Atei Capitonis ex quinto librorum, quos de pontificio iure composuit, scripsi: Ti. Coruncanio pontifici maximo feriae praecidaneae in atrum diem inauguratae sunt. collegium decreuit non habendum religioni, quin eo die feriae praecidaneae essent.*

The words *a uolgo remotum est*, which recall Gellius' introductory remarks on augural and pontifical law and remind us of the obscure nature of some aspects of the pontifical law, is singularly appropriate here: this is the only ancient passage to mention *feriae praecidaneae*.³⁷³

The first problem that must be addressed is the identity of the unspecified *collegium* that issued this decree. At first glance it is tempting to conclude that *collegium* means pontifical college, but the words *inaugurateae sunt* not only indicate that augurs participated in the *feriae praecidaneae*, but also raise the possibility that it was the augural college that issued the decree that removed the *religio*. In this connection it must be pointed out that the augurs, like the pontiffs, were concerned with establishing and removing the existence of *religio*.³⁷⁴ Thus Linderski cautiously suggests that here the augural college is meant, although he allows that it may be the *collegium pontificum*.³⁷⁵ Yet, the subject of the decree seems to me to indicate that the pontifical college issued it. Note that the decree was meant to establish whether *feriae praecidaneae* could occur (*esset*) on a 'black day' (*dies ater*), not whether they could be inaugurated on the same. That is, the subject of the decree was not the inauguration of these feasts, but the type of day on which they could properly be held, a matter on which only the pontifical college

³⁷³ The introductory remarks are at Gell. pr. 13 (T25): *quod erunt autem in his commentariis pauca quaedam scrupulosa et anxia uel ex grammatica uel ex dialectica uel etiam ex geometrica, quodque erunt item paucula remotiora super augurio iure et pontificio, non oportet ea defugere quasi aut cognitu non utilia aut perceptu difficilia*. The term *feriae praecidaneae* may occur in ancient literature only here, but I have found it mentioned elsewhere; it occurs in the seventeenth dialogue ("De canticis deque feriis divi Martini") of Petrus Mosellanus' (1493-1524) *Paedologia*; needless to say this passage does not provide any information on the ancient *feriae praecidaneae*.

³⁷⁴ On augural concern with *religio* see Linderski 1986, 2184-2190, especially 2186, "We have to distinguish between *religiosum esse*, referring to an action, and *religiosum esse* referring to a *res*. In the former both the pontiffs and the augurs were interested; in the latter mainly the pontiffs."

³⁷⁵ 1986, 2190 n. 159.

could pronounce, since it was the sole authority on the calendar and feasts. Though the pontiffs would need the augurs to inaugurate the *feriae*,³⁷⁶ it is highly improbable that a decree concerning the correct day on which a feast could be held fell within the sphere of competence of the augural college. Note a most pertinent example from Macrobius where we find the augur M. Valerius Messalla Rufus (*cos.* 53; *aug. ca.* 63-8³⁷⁷) consulting the pontifical college about a very similar topic:

Julius Modestus affirms that when the augur Messalla consulted the pontiffs as to whether the days of the *nundinae* of the Romans and of the Nones were bound by *feriae*, the pontiffs responded that the *nundinae* did not seem to them to be *feriae*.³⁷⁸

Now, in the case of Coruncanus the issue was not the inauguration of the *feriae praecidaneae*, but the religious character of the day on which those *feriae* were to occur. Thus I think it most reasonable to take *collegium* to mean *collegium pontificum*.³⁷⁹

Let us now consider the substance of the decree. The pontifical college decreed that *religio* should not prevent *feriae praecidaneae* from occurring on a certain *dies ater*. This is thus an example of a pontifical decree that determined whether an action was *religiosus*

³⁷⁶ Linderski 1986, 2222, "The details of the procedure and the very nature of the *feriae praecidaneae* are quite obscure, but it is reasonably clear that the *pontifex maximus* was in charge of the ceremony, and that it also required the *inauguratio*, i.e. the participation of the augurs."

³⁷⁷ Dates as given by Bardt 1871, 25-26.

³⁷⁸ Mac. *Sat.* 1.16.28 (dated on the basis of Messalla's tenure in the augurate to 63-8 BC): *Iulius Modestus adfirmat Messala augure consulente pontifices an nundinarum Romanorum Nonarumque dies feriis tenerentur, respondisse eos nundinas sibi ferias non uideri*. On this passage see Michels 1967, 84-86.

³⁷⁹ I do not think that my interpretation here conflicts with the following statement of Linderski (1986, 2190), "The augurs were, however, able to change by their decree the religious character of the day, to remove the *religio*." He is discussing a passage of Festus (366 L.; see Linderski 1986, 2186), in which the mentioned augural decree does not, I think, pertain to the religious character of the day *per se*, but to the fixing of the day on which the *lustrum* of 89 B.C. was to occur. The passage reads: *referri diem predictam, id est anteferri, religiosum est, ut Ueranius in eo, qui est auspiciorum de comitiis: idque exemplo comprobatur L. Iuli et P. Licini censorum, qui id fecerint sine ullo decreto augurum, et ob id lustrum parum felix fuerit*. It may also be possible that this is a *responsum*, evoked by some constituency that desired to hold the ritual on a *dies ater*.

or not.³⁸⁰ Clearly, before this decree was passed, it was considered *religiosus* for *feriae praecidaneae* to be performed on a *dies ater*; and in fact *dies atri* were a type of *dies religiosi*.³⁸¹ This prohibition must derive from the pontifical decree in 389 BC that, according to Verrius Flaccus, declared "no sacrifice could rightly be made" (*pontifices decreuerunt nullum...sacrificium recte futurum*) on the day immediately after the Kalends, Nones, and Ides of each month.³⁸² These days, as Varro tells us, were called 'black' (*ater*). Thus the original prohibition was not against the performance of *feriae praecidaneae* on a *dies ater*, but against the performance of any sacrifice on the same.

The phrasing of the pontifical decree from 254-243 is worth noting. It says that *religio* cannot prevent *feriae praecidaneae* from occurring *eo die*. The phrase *atro die* is conspicuously absent. Of course it is impossible to know whether Capito has edited the original decree or Gellius has edited Capito, but assuming that they have correctly reproduced the decree's original wording, the phrase *eo die* would seem to indicate that the decree removed the *religio* from only this one *dies ater*, for if the pontifical college

³⁸⁰ Determining whether something or some action was *religiosus* was a primary concern of the pontiffs; see especially Mac. Sat. 3.3.11: *inter decreta pontificum hoc maxime quaeritur, quid sacrum, quid sanctum, quid religiosum*. And see the quote from Linderski 1986 (above, in n. 374).

³⁸¹ See Festus 348 L.: *Religiosus est non mod[ic]o deorum sanctitatem magni aestimans, sed etiam officiosus aduersus homines. dies autem religiosi, quibus, nisi quod necesse est, nefas habetur facere: quales sunt sex et triginta atri qui appellantur, et Alliensis, atque [h]i, quibus mundus patet*. See Michels 1967, 62-65.

³⁸² Gell. 5.17.1-2 (deriving from Verrius Flaccus): *Uerrius Flaccus in quarto de uerborum significatu dies, qui sunt postridie Kalendas, Nonas, Idus, quos uulgus imperite 'nefastos' dicit, propter hanc causam dictos habitosque 'atros' esse scribit. 'urbe' inquit 'a Gallis Senonibus recuperata L. Atilius in senatu uerba fecit Q. Sulpicium tribunum militum ad Alliam aduersus Gallos pugnaturum rem diuinam dimicandi gratia postridie Idus fecisse; tum exercitum populi Romani occisione occisum et post diem tertium eius diei urbem praeter Capitolium captam esse; compluresque alii senatores recordari sese dixerunt, quotiens belli gerendi gratia res diuina postridie Kalendas, Nonas, Idus a magistratu populi Romani facta esset, eius belli proximo deinceps proelio rem publicam male gestam esse. tum senatus eam rem ad pontifices reiecit, ut ipsi, quod uideretur, statuerent. pontifices decreuerunt nullum his diebus sacrificium recte futurum*. See also Liv. 6.1.11-12: *quidam...etiam postridie Idus rebus diuinis supersederi iussum, inde, ut postridie Kalendas quoque ac Nonas eadem religio esset, traditum putant*.

meant the decree to apply to all *dies atri* we would expect it to have used in its decree the words *atris diebus* instead of *eo die*. This, however, may be a negligible point since once the pontifical college had passed a decree on one *dies ater*, it could easily pass others allowing *feriae praecidaneae* to be performed on other 'black days'.

Because Ateius Capito, whom Gellius quotes, does not make it clear whether the pontifical decree preceeded or followed Coruncanus' action, the exact chain of events and thus the correct interpretation of the passage is unclear. We may distinguish three possibilities:

- 1) The decree was passed before the date of the *feriae* was fixed
- 2) The decree was passed between the fixing of the date and the inauguration
- 3) The decree was passed after the *feriae* were inaugurated

Let us look first at interpretations two and three. Most scholarly works I have consulted advance interpretation two. They believe that Coruncanus picked an unsuitable day for the *feriae* and that the pontifical decree rescued him from the mistake of performing them on a *dies ater*.³⁸³ This seems to me unlikely, if not untenable, since it is difficult to believe that any *pontifex maximus*, let alone one as renowned for his knowledge of the pontifical law as Tiberius Coruncanus, would contravene even inadvertently a tenet of the pontifical law.³⁸⁴ Of course, we may contend that Coruncanus could make no mistake because as a pontiff he was infallible, but I know of no ancient evidence for

³⁸³ So, e.g., the translation of the Loeb, "Tiberius Coruncanus, the pontifex maximus, appointed *feriae praecidaneae*...for a day of ill-omen" (Rolfe 1946, 333/335), and Bouché-Leclercq 1871, 127, thinks that Coruncanus chose "par distraction sans doute" a *dies ater* for the *feriae*, and that the pontifical college "maintint la décision de son chef, ne fût-ce que pour sauvegarder le principe d'infailibilité nécessaire aux autorités sans contrôle."

³⁸⁴ Cf. especially Cic. *Dom.* 135: ...*e Ti. Coruncani scientia, qui peritissimus pontifex fuisse dicitur.*

pontifical infallibility, despite passing references to the concept in some secondary literature.³⁸⁵

The third interpretation is all but demanded by the Latin and the order of the sentences, yet it too seems highly improbable and goes against common sense. The religious status of an *dies ater* must have been well-known—and not just to the pontiffs: the performance of a ceremony of Roman state religion on a day on which such ceremonies had always been forbidden would have undoubtedly struck an observant Roman as aberrant if not impious, and one cannot imagine the pontifical college making a similar observation only after the ceremony had been inaugurated. Finally, to accept either of these interpretations is to assume not only that a *pontifex maximus* could incur the divine displeasure attendant upon any contravention of sacral law, but also that he could avoid atoning for his mistake by having the pontifical college decree retroactively that he had, in effect, made no mistake at all.³⁸⁶ To me this seems beyond the capacity even of pontifical casuistry, in addition to running counter to traditional notions of Roman piety.

Now let us now examine the first interpretation. According to it, Coruncanus wanted to choose for some unknown, but presumably important reason a *dies ater* for performing

³⁸⁵ One might compare Coruncanus' possible mistake with that of Tiberius Gracchus (father of Tiberius and Gaius), who, although an augur (*MRR* 1.394, cf. 1.406-407 nn. 4 & 5; Rüpke 2.1270-1271), made a serious mistake on a fundamental point of augural law: as presiding consul he held the elections of 163, but forgot to auspicate when crossing the *pomerium* (*Cic. Nat. D.* 2.11; *Div.* 1.33). On the incident see Linderski *AL* 2239. It appears to have been a principle of Roman religion that upon becoming an augur or pontiff one attained immediate and complete knowledge of the augural or pontifical law; this appears to be the point of Cato the Elder's comment, *ego me nunc uolo ius pontificum optime scire; iamne ea causa pontifex capiar? si uolo augurium optime tenere, ecquis me ob eam rem augurem capiat?* (**T1**). Whether infallibility attended this omniscience is difficult to discern, but the case of Gracchus would seem to prove that it did not. Bodel 1992, 400 n. 11, however, mentions an "augur's infallibility", but he does not discuss the cases of Gracchus or Coruncanus.

³⁸⁶ In this case the penalty for contravening the sacral law would probably have been the performance of a piacular sacrifice.

the ceremony, but, recognizing the religious obstacle to doing so, consulted with his colleagues before formally fixing the date and decided with them to promulgate a decree that removed the *religio* preventing *feriae praecidaneae* from occurring on a *dies ater*.

The chain of events would be:

- 1) Coruncanus wants to choose an *ater dies* for performing the *feriae*
- 2) Before formally establishing the date, he convenes the pontifical college about the matter
- 3) The college passes a decree that removes the *religio* preventing the *feriae* from being performed on the *ater dies*
- 4) Coruncanus has the *feriae* inaugurated

We of course cannot know fully the historical circumstances behind this incident nor the motivation for Coruncanus' actions, but as this first interpretation seems the most plausible, I contend that it is the most likely account of what happened.

It should be noted that in this decree we have not only an important tenet of the *ius pontificium*, but also evidence of it being changed. Furthermore, the mention of Tiberius Coruncanus' supreme pontificate allows us to date this change to his tenure of that office, 254-243. We can thus say that from 389 until somewhere between 254-243 *religio* arose if *feriae praecidaneae* were performed on a *dies ater*. Between 254 and 243 the pontifical college changed this rule so that *feriae praecidaneae* could occur on a certain *dies ater* and possibly all of them. If we possessed a statute book on pontifical law the original rule would read something like this (following Verrius Flaccus' wording of the pontifical decree of 389):

DIEBUS ATRIS NULLUM SACRIFICIUM RECTE FACERI POTEST

or, if we follow Capito's wording of the decree of 254-243

RELIGIO EST SACRIFICIUM DIEBUS ATRIS FACERE.

This statute was then replaced between 254-243 with the following one:

POSSUNT SINE RELIGIONE DIE ATRO³⁸⁷ FERIAE PRAECIDANEAE FIERI.

3.3.1.2 Another possibly self-initiated *decretum*

The evidence for self-initiated *decreta* is virtually non-existent, yet I do not believe that the college was unable to assemble and issue decrees on its own initiative. Rather, I hypothesize that the college could meet whenever a member wished to discuss a matter of importance. Apparent evidence for such a meeting can be found in Livy's description of the events in 194 that followed the performance of a *uer sacrum* in the previous year:

When the *pontifex* [sc. *maximus*]³⁸⁸ P. Licinius reported first to the college that the sacred spring of the previous year had not been performed correctly, then, on the authority of the college, reported the same to the fathers...³⁸⁹

In this case it seems likely that Licinius convened the pontifical college to discuss his findings on the *uer sacrum*. I do not think, however, that this was necessarily a prerogative that he alone, as *pontifex maximus*, enjoyed, for if so, how could the college meet when—as often happened in the late Republic—the *pontifex maximus* was absent from Rome?³⁹⁰ It is likely that not just the head priest, but any member of the college could convene a meeting to discuss a matter he thought needed its attention.

³⁸⁷ Or *diebus atris* if we think that the decree was valid for all 'black days'.

³⁸⁸ This is a good example of Livy using the word *pontifex* to mean *pontifex maximus*.

³⁸⁹ Liv. 34.44.1-2: *uer sacrum factum erat priore anno...id cum P. Licinius pontifex non esse recte factum collegio primum, deinde ex auctoritate collegii patribus renuntiasset.*

³⁹⁰ For example, the college clearly met in 57 BC to decide on Cicero's house, even though the *pontifex maximus* Caesar was in Gaul.

3.3.2 *decreta* initiated by an outside agent

A glance at the *testimonia* for pontifical *decreta* reveals that the majority of the decrees are properly *responsa*; that is, the pontifical college issued them in response to a request by an outside agent. Before discussing the *responsa* themselves I would like devote a few words to procedural matters for issuing a *responsum*. Because the relevant evidence is scattered and patchy not every step in the process can be reconstructed and the resulting picture is necessarily hypothetical in places. I have, however, tried to keep my interpretation within the bounds of probability and reason.

3.3.2.1 Procedural observations

The phrase most often used to describe the consultation of the pontifical college is "to refer something to the pontifical college" (*ad collegium pontificum referre*); this must have been the technical term. We also find the terms *reicere ad pontifices*, *iubere pontificum collegium consuli*, *delegare ad pontifices*, and *adhibito collegium*.³⁹¹ Livy

³⁹¹ I give here in descending order of frequency the terms used to denote a referral to the pontifical college:

ad collegium pontificum referre:

Liv. 29.19.7-8: *aut prius ad conlegium pontificum referretur, quod sacri thesauri moti, aperti, uiolati essent, quae piacula, quibus deis, quibus hostiis fieri placeret.*

Liv. 29.20.10..21.4: *...ad conlegium pontificum relatum de expiandis quae Locris in templo Proserpinae tacta ac uiolata elataque inde essent...*

Liv. 31.9.5: *tamen ad collegium pontificum referre consul iussus.*

Liv. 38.44.5: *de iis...placere ad collegium pontificum referri, et quod ii censuissent fieri.*

Cic. Dom. 136: *habetis in commentariis uestris C. Cassium censorem de signo Concordiae dedicando ad pontificum conlegium rettulisse.*

Cic. Dom. 136-137: *nonne eam rem ex auctoritate senatus ad hoc conlegium Sex. Iulius praetor rettulit?*

Cic. Att. 13.3: *rem ex senatus consulto ad uirgines atque pontifices relatum idque ab iis nefas esse decretum.*

Cic. Har. resp. 11: *decreuistis ut de mearum aedium religione ad pontificum conlegium referretur.*

Mac. Sat. 1.16.21-27 *tunc patres iussisse ut ad collegium pontificum de his religionibus referretur.*

reicere + ad pontifices:

Liv. 26.34.12: *signa statuas aeneas quae capta de hostibus dicerentur, quae eorum sacra ac profana essent ad pontificum collegium reiecerunt.*

Liv. 41.16.1: *id cum ad senatum relatum esset senatusque ad pontificum collegium reiecisset.*

Gell. 5.17.1-2 *tum senatus eam rem ad pontifices reiecit.*

pontificum collegium consulere:

provides the most and the most detailed information about the issuance of *responsa*, but he also does not present the entire process in one place. Instead we must piece together the process of requesting and passing a *responsum* from his many fragmentary descriptions of the same and from references in other writers to the passing of pontifical *responsa*.

Let us first look at who typically referred a matter to the pontifical college. Livy often says that a matter was referred to the pontifical college, but does not indicate who referred it.³⁹² In other places he says that a consul was ordered to refer a matter to the pontifical college,³⁹³ while elsewhere he writes that the senate referred the matter to the pontifical college.³⁹⁴ In each of these passages he omits at least one step and misrepresents the procedure. The full process will have been as follows.

During its discussions and debates on matters of state religion, the Roman senate often decided to solicit the advice of the pontifical college by referring to it the matter under discussion. Three passages in Cicero indicate that this referral took the form of a *senatus consultum*.³⁹⁵ It appears, however, that with this *senatus consultum* the senate did

Livy 39.5.7-10: *senatus pontificum conlegium consuli iussit num omne id aurum in ludos consumi necesse esset.*

Cic. Dom. 130: *hoc signum C. Cassius censor cum in curiam transtulisset, conlegium uestrum consuluit* Julius Modestus = Mac. Sat. 1.16.28: *Iulius Modestus adfirmat Messala augure consulente pontifices an nundinarum Romanorum Nonarumque dies feriis tenerentur ad pontifices delegare:*

Livy 5.25.4: *cum ea disceptatio, anceps senatui uisa, delegata ad pontifices esset.*

Also attested is an instance of the senate ordering the *pontifex maximus* to look into the *piacula irae deorum*. Liv. 40.37.1: *C. Seruilius pontifex maximus piacula irae deum conquirere iussus*. I assume that here Livy or his source has incorrectly assigned to the chief priest what was in fact a referral to the entire college.

³⁹² E.g. Liv. 29.19.7-8: *aut prius ad conlegium pontificum referretur.*

³⁹³ E.g., Liv. 31.9.5: *tamen ad collegium pontificum referre consul iussus.*

³⁹⁴ E.g., Liv. 41.16.1: *id cum ad senatum relatum esset senatusque ad pontificum collegium reiecisset.*

not refer the matter directly to the pontifical college. Rather, it seems to have instructed a magistrate to consult the college. Thus Cicero writes of a praetor referring a matter to the pontifical college *ex auctoritate senatus*.³⁹⁶ Now, Livy does not always provide this information. Rather, in one place he speaks of a consul being ordered to refer a matter to the college (*ad collegium pontificum referre consul iussus*)³⁹⁷ while elsewhere writing that the senate ordered the college to be consulted (*senatus pontificum conlegium consuli iussit*).³⁹⁸ But in these places Livy has surely omitted the steps included by Cicero. In the first case he fails to mention the *consultum* that instructed the consul to make the referral, while in the second he fails to mention the magistrate's instruction to make the referral. Accordingly, I conclude that for every known senatorial referral to the pontifical college we must posit that the senate passed a *consultum* instructing a magistrate to make that referral, even if the sources do not mention either of these steps.

It would be interesting to know how a magistrate referred a matter to the pontifical college. As possibly relevant evidence I have found only the following passage from Livy, which describes the Romans' reaction to a string of misfortunes in 180 BC:

At last this misfortune began to be viewed as a prodigy. C. Servilius the *pontifex maximus*³⁹⁹ was ordered to inquire into the expiations of the gods' wrath (*piacula irae deum conquirere iussus*), the decemvirs to consult the books, and the consul [A.

³⁹⁵ Att. 13.3: *rem ex senatus consulto ad uirgines atque pontifices relata idque ab iis nefas esse decretum*; Cic. Har. resp. 11 (addressed to the senate): *decreuistis ut de mearum aedium religione ad pontificum conlegium referretur*; Dom. 136-137: *nonne eam rem ex auctoritate senatus ad hoc conlegium Sex. Iulius praetor rettulit?* For *auctoritas senatus* meaning *senatus consultum* see Mommsen 1887-1888, 3.1033-1034.

³⁹⁶ Dom. 136-137, above in previous note.

³⁹⁷ Liv. 31.9.5.

³⁹⁸ Liv. 39.5.7-10: *senatus pontificum conlegium consuli iussit num omne id aurum in ludos consumi necesse esset*.

³⁹⁹ C. Servilius Geminus, cos. 203, pont. 210-180; pont. max. 183-180. See MRR 1.390.

Postumius Albinus (Luscus); *MRR* 1.387] to vow and give gilded statues to Apollo, Aesculapius and Salus.⁴⁰⁰

The account is much compressed, but it seems clear that it was the senate that gave the orders to C. Servilius, the decemvirs, and Postumius. Most important for this section is Livy's report that it was the *pontifex maximus* who was ordered *piacula ira deum conquirere*. This is the only passage in which a referral is made to the head priest and not the pontifical college. How do we explain this exception? I do not think the answer resides in the subject matter of the referral, which does not appear to me to differ significantly from that of the other attested referrals to the college. Rather, I think that Livy has here included a standard step in the referral process that he otherwise always omits. That is, I would contend that when a *senatus consultum* instructed a magistrate to refer a matter to the pontifical college, the magistrate made that referral by giving the senate's request to the *pontifex maximus*. The *pontifex maximus* would then probably summon the pontifical college to discuss the issue.

In this connection it is worth noting another prerogative that the *pontifex maximus* may have enjoyed. Livy writes that in 200 BC the senate referred to the pontifical college the question of the proper performance of a vow after the *pontifex maximus* had given his opinion on the subject.⁴⁰¹ It follows that the *pontifex maximus* was either consulted or gave his unsolicited opinion about the vow and only then did the senate decide to refer the matter to the pontifical college.

⁴⁰⁰ Liv. 40.37.1-2: *praetor Ti. Minucius et haud ita multo post consul C. Calpurnius moritur, multique alii omnium ordinum inlustres uiri. postremo prodigii loco ea clades haberi coepta est. C. Servilius pontifex maximus piacula irae deum conquirere iussus, decemuiri libros inspicere, consul Apollini Aesculapio Saluti dona uouere et dare signa inaurata.* Text Briscoe 1991.

⁴⁰¹ Liv. 31.9.5-10: *moram uoto publico Licinius pontifex maximus attulit, qui negauit ex incerta pecunia uouere licere; ex certa uoueri debere, quia ea pecunia non posset in bellum usui esse seponique*

One wonders how regular an occurrence this was. Of course, without more evidence we cannot answer that for certain, but I would like to offer as a working hypothesis that it may have been quite normal for the senate, when debating a religious matter on which the pontiffs were experts, to consult first the *pontifex maximus* (who, as a senator, would likely often be present at the meeting of the senate). Perhaps this practice explains the reports of passages such as Cic. *Dom.* 136, where we are told that the *pontifex maximus* responded on behalf of the college (*pontificem maximum pro conlegio respondisse*).⁴⁰² But there may be another explanation for such phrases, namely, that the *pontifex maximus* was the member charged with reporting the college's decision to the senate. This hypothetical on-site deliberation of the college makes sense in as much as it would eliminate the perhaps substantial amount of time needed for the pontifical college to assemble, debate, and report its decision to the senate. Let us now look closer at the college's meetings.

Livy typically represents the *responsum* of the pontifical college as following immediately upon the official referral to it. That is, he gives the impression that the college's decision was given then and there in the senate chamber. I was at first inclined to accuse him here of compression and misrepresentation also, but now I think that in such cases he may often be correct, for two reasons. First of all, most *pontifices* were also senators, so presumably many pontiffs regularly attended a meeting of the senate, and they could have arrived at a decision then and there in the senate house. Here must be noted the following important remark of Cicero: *quod tres pontifices statuissent, id*

statim deberet nec cum alia pecunia misceri; quo si factum esset, uotum rite solui non posse. quamquam et res et auctor mouebat, tamen ad collegium pontificum referre consul iussus. Text Briscoe 1991.

*semper populo Romano, semper senatui, semper ipsis dis immortalibus satis sanctum, satis augustum, satis religiosum esse uisum est.*⁴⁰³ This seems to me to establish that three pontiffs constituted a *quorum* and that their decision constituted a decree of the college. I shall have more to say on the pontiffs' participation in passing decrees, but for now I wish to point out that those pontiffs who were also senators could use this *quorum* to render a binding decision of the college without leaving the senate chamber to consult their colleagues or waiting until the meeting of the senate ended to do so. That is, when a matter was referred to the pontifical college, it was, so I hold, referred first to the *pontifex maximus*, who may have then and there in the senate meeting consulted with at least two of his colleagues and with them rendered the college's official *responsum*.

But it is also probable that the college would often assemble elsewhere (probably in the Regia, see below), to discuss the matter referred to it. In such cases I would assert that the college assembled on the orders of the *pontifex maximus*. We know that it was the prerogative of the *pontifex maximus* (*ius pontificis maximi*) to assemble his colleagues in order to judge a Vestal Virgin accused of *incestus*, and it is, I think, likely that the *pontifex maximus* possessed the same prerogative for other meetings of the college.⁴⁰⁴ This may explain why, as I hold, the *pontifex maximus* was the one to whom the senate made its referral: he alone possessed the right to convene the pontifical college. I shall have more to say on the subject of pontifical meetings; for now I wish to note the strong

⁴⁰² See also Cic. *Dom.* 137: *cum P. Scaeuola pontifex maximus pro conlegio respondit*; and also Liv. 22.10.1: *his senatus consultis perfectis L. Cornelius Lentulus pontifex maximus consulente collegium praetore omnium primum populum consulendum de uere sacro censet*.

⁴⁰³ Cic. *Har. resp.* 12.

⁴⁰⁴ Plin. *Ep.* 4.11.6: *fremeat enim Domitianus aestuabatque in ingenti inuidia destitutus. nam cum Corneliam Vestalium maximam defodere uiuam concupisset, ut qui inlustrari saeculum suum eiusmodi*

possibility that the college could give its *responsa* either immediately in the senate chamber or later, after having met elsewhere to discuss the issue referred to it.

FORM OF THE REFERRAL

I would like now to consider the form of the referral. Some ancient authors report only that the senate discussed a religious issue and then referred it to the pontifical college. In such cases the matter referred to the college is described only in the barest terms, for example, as "it" (*id*) or "the matter" (*ea res*).⁴⁰⁵ Other authors provide slightly more information about the referral's contents. Thus, Cicero says that the senate referred to the college the "dedication of the statue of Concordia",⁴⁰⁶ and Livy writes that the senate referred to the college "the expiation of what in the temple of Proserpina at Locri had been touched, violated, and removed."⁴⁰⁷ But these are obviously highly abbreviated accounts, and we can hardly believe that the senate's referral was so vague as to instruct the pontifical college merely to investigate a matter. The actual referral will have been more detailed and undoubtedly very similar to those reported in the following five passages, which are the only ones I have found that give a detailed account of the referral's contents:

1. Livy 26.34.12: *signa statuas aeneas quae capta de hostibus dicerentur, quae eorum sacra ac profana essent ad pontificum collegium reiecerunt.*

exemplis arbitraretur, pontificis maximi iure, seu potius immanitate tyranni licentia domini, reliquos pontifices non in Regiam sed in Albanam uillam conuocauit.

⁴⁰⁵ E.g., Liv. 41.16.1: *id cum ad senatum relatum esset senatusque ad pontificum collegium reiecisset. Cic. Dom. 136: nonne eam rem ex auctoritate senatus ad hoc conlegium Sex. Iulius praetor rettulit? Gell. 5.17.1-2 tum senatus eam rem ad pontifices reiecit.*

⁴⁰⁶ Cic. Dom. 136: *habetis in commentariis uestris C. Cassium censorem de signo Concordiae dedicando ad pontificum conlegium rettulisse.*

⁴⁰⁷ Liv. 29.20.10: *...ad conlegium pontificum relatum de expiandis quae Locris in templo Proserpinae tacta ac uiolata elataque inde essent.*

2. Livy 29.19.8: *ad conlegium pontificum referretur, quod sacri thesauri moti, aperti, uiolati essent, quae piacula, quibus deis, quibus hostiis fieri placeret.*
3. Livy 31.9.8: *tamen ad collegium pontificum referre consul iussus, si posset recte uotum incertae pecuniae suscipi.*
4. Livy 39.5.9: *senatus pontificum conlegium consuli iussit num omne id aurum in ludos consumi necesse esset.*
5. Cic. Dom. 130: *Q. Marcius censor...conlegium uestrum consuluit num quid esse causae uideretur quin id signum curiamque Concordiae dedicaret.*

I have underlined the portions of these passages that I think represent the substance of the referral to the pontifical college. From the fact that all of them are indirect questions I conclude that the senate's referral took the form of a question. Thus in the third example the original referral will have been *potestne suscipi uotum incertae pecuniae?* And number two will have originally read *estne necesse omne id aurum in ludos consumi?* The first example may well have contained two questions. The first would be *quae signorum statuarum aenearumque captarum de hostibus sacra sunt?* The second would be *quae signorum statuarum aenearumque captarum de hostibus profana sunt?*⁴⁰⁸

I think we can confidently conclude that all attested referrals were phrased similarly, even if the sources typically give an abbreviated version of the same. Note especially Cicero's reference to the referral on the dedication of the shrine of Concordia. In the fifth passage above Cicero probably reproduces the actual referral, but a few paragraphs later he summarizes the same and says that the referral to the pontiffs concerned "the dedication of the shrine to Concordia."⁴⁰⁹

⁴⁰⁸ Such questions were a regular feature of pontifical decrees according to Mac. Sat. 3.3.11: *inter decreta pontificum hoc maxime quaeritur, quid sacrum, quid sanctum, quid religiosum.*

3.3.2.2 The location of meetings of the pontifical college

I noted above that the pontifical college may occasionally have been able to give its *responsum* without leaving the senate chamber. I also noted that the college would probably sometimes leave the senate and assemble elsewhere to discuss their potential *responsum*.⁴¹⁰ It is the location of this second type of meeting that I would like to discuss here.

In one of his letters Pliny tells us that Domitian, acting *iure pontificis maximi*, convened the *pontifices* not in the *Regia*, but in his Alban Villa in order to try a Vestal for *incestus*.⁴¹¹ Wissowa used this letter as evidence that the pontifical college met in the *Regia*.⁴¹² Other scholars have asserted the same.⁴¹³ But note that the meeting Pliny describes was convened to try a Vestal, and so the passage proves only that the college

⁴⁰⁹ Cic. *Dom.* 136: *habetis in commentariis uestris C. Cassium censorem de signo Concordiae dedicando ad pontificum conlegium rettulisse*. Note that Cicero here omits the dedication of the *curia* that he mentioned in the first passage.

⁴¹⁰ As professor Figueira points out to me, the choice as to where to hold the meeting was probably at the discretion of the pontiffs present in the senate.

⁴¹¹ Plin. *Ep.* 4.11.6: *fremebat enim Domitianus aestuabatque in ingenti inuidia destitutus. nam cum Corneliam Vestalium maximam defodere uiuam concupisset, ut qui inlustrari saeculum suum eiusmodi exemplis arbitraretur, pontificis maximi iure, seu potius immanitate tyranni licentia domini, reliquos pontifices non in Regiam sed in Albanam uillam conuocauit*.

⁴¹² Wissowa 1912, 502, "...die Regia...in welchem dieses [sc. das Pontifikalcollegium] seine Versammlungen abhielt", citing the letter of Pliny, *CIL* VI 2023a 9.18, and Gellius 4.6.2. But the inscription, as Wissowa notes, reports that the *Aruales fratres* met in the *Regia*, and Gellius relates that a *pontifex* reported to the Senate that the spears of Mars in *sacrario in Regia* had moved themselves (which was then treated as a *prodigium*). The two passages are thus irrelevant for a consideration of the meetings of the pontifical college. In their entries on the *Regia* both the *LTUR* and Platner-Ashby recycle Wissowa's references.

⁴¹³ See also Frier 1999, 87, "The Regia, which in addition to housing the ancient regal cults provided a meeting place for the pontifical college..." Linderski 1985, 212 = 1995, 501, "The archive of the pontiffs was probably housed in the *regia*, which was their meeting place and where they kept various holy objects." Beard, North, and Price, 1998, 39, is more vague: "the regia was the religious centre of the *rex sacrorum* and the *pontifices*." The comments of Sherwin-White 1966, 203, on the letter of Pliny are also unhelpful.

normally met in the *Regia* to hear *incestus* trials. In this connection it is worth pointing out that we do not elsewhere hear of the *Regia* being used as a meeting place of the pontifical college. Instead it was used as a storehouse for important religious objects (and possibly pontifical documents) and as a place where certain sacrifices were regularly performed.⁴¹⁴

Nevertheless, it may seem reasonable to conclude from Pliny's letter that all pontifical meetings, and not just the trials of Vestals, were held in the *Regia*. But there is another location that should be considered as a pontifical meeting place: the *Curia Calabra*. This structure stood on the Capitol and was used by the pontifical college for several purposes.⁴¹⁵ Varro tells us that in the *Curia Calabra* on the Kalends of each month the *pontifices* would announced on which day the Nones would fall, and that on the Nones the *rex* [sc. *sacrorum*] would proclaim when the month's first festival would take place.⁴¹⁶ Macrobius reports that in the days before Cn. Flavius published the calendar, a *pontifex minor* would watch for the the crescent moon on the Kalends, report its appearance to the *rex sacrorum*, and, after due sacrifices by him, the *rex*, and the *regina sacrorum*, would summon the people next to the *Curia Calabra* in order to inform them when the next Nones would fall.⁴¹⁷ Paulus ex Festo (42 L.) tells us that *Calabra*

⁴¹⁴ For the ancient textual and archaeological evidence on the *Regia* see Scott's article on the *Regia* in *LTUR* (4.189-92) and Platner-Ashby 1929, 440-443.

⁴¹⁵ See Platner-Ashby 1929, 142.

⁴¹⁶ Var. Ling. 6.27-28: *primi dies mensium nominati kalendae, quod his diebus. calantur eius mensis nonae a pontificibus, quintanae an septimanae sint futurae, in Capitolio in curia Calabra sic dicto quinquies 'kalo Iuno Couella', septies dicto 'kalo Iuno Couella'. nonae appellatae aut quod ante diem nonum idus semper, aut quod, ut nouus annus kalendae Ianuariae ab nouo sole appellatae, nouus mensis <ab> noua luna nonae; eodem die [enim] in urbe<m> <qui> in agris ad regem conueniebat populus. harum rerum uestigia apparent in sacris nonalibus in arce, quod tunc ferias primas menstruas, quae futurae sint eo mense, rex edicit populo.* Text Goetz-Schoell 1910.

curia dicebatur, ubi tantum ratio sacrorum gerebatur, a remark which, in view of the pontiffs' status as guardians of the *sacra*, seems to establish another link, though of indeterminate significance, between the *collegium pontificum* and the *Curia Calabra*.⁴¹⁸ Finally, Aulus Gellius speaks of *comitia calata*, assemblies that were held for the pontifical college or to inaugurate a *rex sacrorum* or the *flamines*;⁴¹⁹ these *comitia* probably met next to the *curia Calabra*.⁴²⁰ Because no archaeological remains of this building have been discovered we cannot know its size or shape, but guided by the normal meaning of the word *curia* and what we know of the use and appearance of preserved *curiae* (such as the *curia Iulia*, or the *curia Hostilia*) we may safely assume that the *curia Calabra* was a hall designed for, or at a least well-suited to, meetings of a collective body. I see no reason to follow Mommsen in believing that the Senate

⁴¹⁷ Mac. Sat. 1.15.9-13: *priscis ergo temporibus, antequam fasti a Cn. Flauio scriba inuitis patribus in omnium notitiam proderentur, pontifici minori haec prouincia delegabatur, ut nouae lunae primum obseruaret aspectum uisamque regi sacrificulo nuntiaret. itaque sacrificio a rege et minore pontifice celebrato idem pontifex calata, id est uocata, in Capitolium plebe iuxta curia Calabram, quae casae Romuli proxima est, quot numero dies a Kalendis ad Nonas superessent pronuntiabat: et quintanas quidem dicto quinquies uerbo καλῶ, septimanas repetito septies praedicabat. uerbum autem καλῶ Graecum est, id est uoco: et hunc diem, qui ex his diebus qui calarentur primus esset, placuit Kalendas uocari. hinc et ipsi curiae ad quam uocabantur Calabrae nomen datum est, et classi, quod omnis in eam populus uocaretur. ideo autem minor pontifex numerum dierum qui ad Nonas superessent calando prodebat, quod post nouam lunam oportebat Nonarum die populares qui in agris essent confluere in urbem accepturos causas feriarum a rege sacrorum sciturosque, quid esset eo mense faciendum. unde quidam hinc Nonas aestimant dictas, quasi nouae initium obseruationis, uel quod ab eo die semper ad Idus nouem dies putantur: sicut apud Tuscos Nonae plures habebantur, quod hi nono quoque die regem suum salutabant et de propriis negotiis consulebant. See also Serv. Dan. ad Aen. 8.654: *horrebat regia cvlmo Curiam Calabram dicit, quam Romulus texerat culmis. { ideo autem 'Calabra', quod cum incertae essent kalendae aut idus, a Romulo constitutum est, ut ibi patres uel populus calarentur, id est uocarentur, et scirent, qua die kalendae essent uel etiam idus. a rege sacrificulo idem fiebat ut, quoniam adhuc fasti non erant, ludorum et sacrificiorum praenoscerent dies. }* On all these passages see Michels 1967, 19-21.*

⁴¹⁸ A reference to the *curia Calabra* may lurk in the mention of a *curia* on the Capitol at Liv. 41.27.7: *et clium Capitolinum silice sternendum curauerunt et porticum ab aede Saturni in Capitolium ad senaculum et super id curiam.*

⁴¹⁹ Gell. NA 15.27: *in libro Laelii Felicis ad Q. Mucium primo scriptum est Labeonem scribere 'calata' comitia esse, quae pro conlegio pontificum habentur aut regis aut flaminum inaugurandorum causa.*

⁴²⁰ So Linderski 1986, 2258.

assembled here.⁴²¹ The remark of Paulus ex Festus—that in the *curia Calabra tantum ratio sacrorum gerebatur*—seems to militate against this. Rather, because the term *curia* is regularly used to designate a meeting place and because the *curia Calabra* appears to have been used only by members of the pontifical college, I submit that this structure may have served as a meeting place for the college when it convened to issue its *responsa* and *decreta*.⁴²²

But one final thing should be noted. In its meetings the college would inevitably discuss matters meant for its members alone to hear. Consequently its meetings would have to occur away from the eyes and ears of non-members—'behind closed doors', as we might say. Yet the most famous meeting of the pontifical college, that at which Cicero delivered his *De Domo Sua*, appears to have been open to the public; such can be concluded from the reference to augurs and people other (*alii*) than the pontiffs in attendance at this speech.⁴²³ I think we have to posit two phases to a decretal meeting. The first would be an information-gathering phase necessarily open to those non-pontiffs whom the college questioned or from whom they gathered evidence about, *e.g.*, the appearance of a possible *prodigium*.⁴²⁴ To this phase I would assign the meeting that

⁴²¹ Mommsen 1887-1888, 927-928. He bases this interpretation on the belief that *curia* is never used to designate a mere house of assembly, but either the assembly of the curies or the Senate (ibid. 868 n. 1). But this seems to be contradicted by Varro who distinguishes between *curiae* used for the Senate and *curia* used for *sacra publica*, of which the pontiffs were the overseers: Var. *Ling.* 2.46, *curiae, ubi senatus rempublicam curat, et illa ubi cura sacrorum publica*.

⁴²² The location of the *curia Calabra* on the Capitolium might also have made this structure a convenient place for the college to assemble when the Senate, meeting in the nearby temple of Jupiter, referred a matter to the *pontifices* for discussion.

⁴²³ Cic. *Dom.* 34: *dico apud pontifices, augures adsunt; Dom.* 121 *non dissimulo me nescire ea quae, etiam si scirem, dissimularem, ne aliis molestus, uobis etiam curiosus uiderer*. To my knowledge the only scholar to notice the significance of *alii* has been Linderski 1985, 209 = 1995, 498.

heard Cicero's *De Domo Sua*.⁴²⁵ The second phase would be a meeting in which the college discussed its findings and determined its decision; this session would naturally be open only to the members of the college. Of course not every decretal meeting needed to have had these two hypothetical phases: no doubt the college could often formulate its response without recourse to the first phase. On many matters, however, it would need to consult non-members before making its decision. In any event, I propose that the *curia Calabra* may have served a meeting place for the *collegium pontificum* and that some of this body's meetings were divided into two phases, the first accessible to non-members, the second attended only by the college.⁴²⁶

3.3.2.3 Participation

We do not know how many members normally participated in formulating a pontifical decree. The most detailed passage comes from *De Haruspicum Responso* where Cicero provides the names of the members of the college who voted on the decree that restored him his house. I have examined this passage in the previous chapter and shown that nearly every member of the college, including the non-pontiffs, participated in

⁴²⁴ Note, e.g., that Livy gives an instance of the college questioning an outside member, Camillus, about the details of a vow he had made. Liv. 5.25.4-12: *cum ea disceptatio, anceps senatui uisa, delegata ad pontifices esset, adhibito Camillo uisum collegio... eius partem decimam Apollini sacra esse.*

⁴²⁵ It is unfortunate that we do not know the location of this, the most well-documented meeting of the pontifical college.

⁴²⁶ Cicero writes (*Har. resp.* 14): *at uero meam domum... causa cognita, duobus locis dicta, maxima frequentia amplissimorum ac sapientissimorum ciuium adstante, omni religione una mente omnes liberauerunt* [sc. *collegium pontificum*]. Does this imply that pontifical decrees were recited publicly? If so, the *curia Calabra* would be a suitable place for the recitation, since near it was an area where people could assemble; see above in the text and especially Mac. *Sat.* 1.15: *calata, id est uocata, in Capitolium plebe iuxta curia Calabram*. On the other hand Cicero here may be merely referring to the recitation of the *senatus consultum* containing the college's decree (cf. the *s.c.* containing the decree on the dedication of the Vestal Licinia, Cic. *Dom.* 136).

issuing the decree.⁴²⁷ Whether all decretal meetings were so well-attended is uncertain, although I think it likely for two reasons. First, I believe that most members took their priestly duties seriously enough to participate in their college's meetings. Secondly, it is important to remember that many of the issues referred to the *collegium* were, like the status of Cicero's house, inextricably tied up with Roman politics and public life. A principled, or rather, a non-principled pontiff would surely not miss the chance to participate in issuing a decree that would influence the course of current events.

In the same speech Cicero also tells us that *quod tres pontifices statuissent, id semper populo Romano, semper senatui, semper ipsis dis immortalibus satis sanctum, satis augustum, satis religiosum esse uisum est*.⁴²⁸ This seems to establish that the presence of three pontiffs constituted a *quorum* and that their decision constituted a decree of the college.⁴²⁹ In view of the imprecision with which ancient authors used the term *pontifices*, however, one wonders if the three *pontifices* had to be pontiffs proper or if they could be any three members of the college, such as two *flamines* and the *rex sacrorum*. Note, that as we saw in the previous section, these minor priests participated in the decree on Cicero's house (above, section 2.3.3), and thus could adjudge a matter of pontifical law. But from that does it necessarily follow that three of these non-pontiffs could issue a *decretum*? I doubt it. The only time the word *pontifices* is used imprecisely is when it is used as an equivalent to *collegium pontificum*; in all other instances *pontifices* means just that, the pontiffs proper. I know of no contradictory examples. I

⁴²⁷ See above, section 2.3.3.

⁴²⁸ Cic. *Har. resp.* 12, on which see Mommsen 1887-1888, 2.46 n. 2 and Linderski 1986, 2154 n. 25.

⁴²⁹ It is worth mentioning here that the colony of Urso had three *pontifices* (see *lex Coloniae Genetivae Iuliae* [CIL 2 Suppl. 5439 = ILS 6087] chapter 67) and that the same *quorum* of three applied to

thus conclude that the *quorum* of three had to consist of three pontiffs (or two pontiffs and the *pontifex maximus*) and not just any three members of the pontifical college.

It would be interesting to know how often and in what context the *quorum* of three was met. I was first inclined to use Cicero's remark to connect attendance at a pontifical meeting with the importance of the issue referred to the college. That is, the graver the matter referred to the college, the greater the attendance at the meeting. For example, *prodigia* (especially in times of war or famine) would prompt the entire college to assemble, while for less pressing issues only three members would need to attend in order to formulate a binding decree.⁴³⁰

But I am not sure if this is correct. In any event, I can imagine another context in which the *quorum* could have been used. It must be remembered that one pontiff on his own could not issue a decree; he could give only a *responsum*, which was not a binding pronouncement and could surely be overturned by the *responsum* of another pontiff.⁴³¹ But what if a *pontifex* wished his opinion on an issue to be decisive? In that case, the *quorum* provided him with a convenient way to do so. He only needed to find two like-minded colleagues and promulgate their collective opinion, thus effectively transforming his interpretation into the official position of the college. I do not have any evidence of a *pontifex* ever doing this, but I would be surprised to find that the *quorum* of three was never so used. And I do not think that the absence or defiance of the *pontifex maximus* presents an obstacle to this scenario. From the above discussion it seems clear that the

the augurs, Cic. *ad Att.* 4.17.2: *nisi tres augures dedissent, qui se adfuisse dicerent*. For explanations of the origin of the *quorum* of three see Mercklin 1848, 89 (with his attendant correction on page 230).

⁴³⁰ Of course, if the college deliberated in the Senate house, then necessarily every member present would have participated.

⁴³¹ See the remarks of Linderski 1986, 2208-2209.

pontifex maximus possessed no special power allowing him to override or even vet the college's decision, nor is there evidence that his participation was necessary for any and all collegial decrees.

Interesting information on the participation at a pontifical meeting comes from Cicero report of Clodius' presence at the sacrifice that the Vestal Virgins performed to Bona Dea. As the ceremony was open only to women, Clodius' presence was *religiosum*, a serious religious infraction.⁴³² Cicero in a letter to Atticus summarizes the chain of events:

I expect you have heard that at the national sacrifice in Caesar's residence a man in woman's clothes got in, and that after the Vestals had repeated the ceremony Q. Cornuficius (he took the lead, in case you think it was one of use) raised the matter in the Senate. It was then referred back by senatorial decree to the Vestals and college of pontiffs (*postea rem ex senatus consulto ad uirgines atque pontifices relatum*), who pronounced that the occurrence constituted a sacrilege (*idque ab iis nefas esse decretum*).⁴³³

It attracts attention that the senate referred the issue to the *pontifices* and the Vestals. The latter's presence is easily explained: as the ceremony in question was performed by the them alone,⁴³⁴ their testimony naturally would be needed to determine what had

⁴³² Fest. 348 L.: *religiosum ait esse Gallus Aelius, quod homini ita facere non liceat, ut si id faciat, contra deorum uoluntatem uideatur facere. quo in genere sunt haec: in aedem Bonae deae uirum introire.* The words *religiosum ait* are Mueller's addition. Lindsay omits them and puts daggers around *esse*. See also Cic. *Har. resp.* 8: *...qui puluinaribus Bonae deae stuprum intulerit, eaque sacra quae uiri oculis ne imprudentis quidem aspici fas est*; Liv. *Per.* 103: *P. Clodius accusatus, quod in habitu mulieris in sacrarium, quo uirum intrare nefas est, clam intrasset et uxorem Metelli pontificis stuprasset, absolutus est.*

⁴³³ Cic. *Att.* 13.3: *credo enim te audisse, cum apud Caesarem pro populo fieret, uenisse eo muliebri uestitu uirum, idque sacrificium cum uirgines instaurassent, mentionem a QI. Cornificio in senatu factam (is fuit princeps, ne tu forte aliquem nostrum putes); postea rem ex senatus consulto ad uirgines atque pontifices relatum idque ab iis nefas esse decretum; deinde ex senatus consulto consules rogationem promulgasse; uxori Caesarem nuntium remisisse. in hac causa Piso amicitia P. Clodi ductus operam dat ut ea rogatio quam ipse fert, et fert ex senatus consulto et de religione, antiquetur.* Ttext and trans. Shackelton Bailey 1965, vol. 1.

⁴³⁴ More precisely, no more than four Vestals attended this rite, for two were always needed to watch the eternal fire.

happened at the ceremony. Thus, the Vestals must have participated in the college's deliberations about Clodius' possible infraction.

We would like to know the manner in which the Vestals participated in formulating the *decretum*. Did they give evidence? Did they vote with the other members of the college? Were they only called upon to confirm or deny Clodius' presence? The words *ab iis nefas esse decretum* may indicate that the *decretum* was formulated and issued by both the Vestals and the pontiffs, although, because *iis* could refer to *pontifices* as well as *uirgines atque pontifices*, this matter cannot be definitively decided. Nevertheless I am inclined to believe that the Vestals did deliberate with the *pontifices* as to whether or not Clodius' presence at the ceremony was *nefas*. The alternative is to suppose that the Vestals only gave testimony and provided evidence to the college. But if this were the case, then the *senatus consultum* would hardly have referred the matter explicitly to both the Vestals and the *pontifices*. It could have handed the matter to the *pontifices* on the expectation that they would question the Vestals about what happened at the ceremony. It should be remembered that the ceremony to Bona Dea was supervised by the Vestals and was open only to women. All members of the pontifical college were thus excluded from the rite; they could not know even the goddess's true name.⁴³⁵ Such being the case, the Vestals were the true experts on the ceremony, and the *collegium*, I contend, would readily heed their advice or opinions.⁴³⁶

⁴³⁵ Cic. *Har. resp.* 37: *quod quidem sacrificium nemo ante P. Clodium omni memoria uiolauit, nemo unquam adiit, nemo neglexit, nemo uir aspicere non horruit, quod fit per uirgines Uestalis, fit pro populo Romano, fit in ea domo quae est in imperio, fit incredibili caerimonia, fit ei deae cuius ne nomen quidem iiros scire fas est.*

⁴³⁶ Probably only the four Vestals who attended the rite of the Bona Dea (see n. 434, above) participated in this meeting of the pontifical college, since two Vestals were always needed to attend the eternal fire of Vesta in her temple.

This is the only time we hear of Vestals participating in a meeting of the pontifical college.⁴³⁷ Their presence we can readily explain by their close relationship to the ceremony under discussion. We cannot know for certain what they did at this meeting, but I believe they played an active part in determining the college's *decretum*.

3.3.2.4 Deliberation

A *decretum* expressed the official position of the college. How was that official position determined? I have found only one passage, from Livy, that might shed light on the subject. In 200 BC the Romans prepared to undertake a new war by performing *supplicationes*, an *obsecratio*, and also by ordering the consul P. Sulpicius Galba Maximus to vow games and a gift to Jupiter. The performance of this vow was delayed by the *pontifex maximus* P. Licinius Crassus Dives,⁴³⁸ who denied that a vow for an uncertain amount of money could rightly be made. Licinius' reasoning and his authority were duly considered, but the presiding consul was nevertheless ordered to refer the matter to the pontifical college, which then decreed that to perform such a vow was both possible and more than correct. Accordingly, the consul vowed the games and the gift, with Licinius dictating the proper formula for the *uota*.⁴³⁹

⁴³⁷ None of the handbooks and standard accounts I have consulted draw attention to the fact that Vestals participated in this meeting of the College. Wissowa (1912, 501 n. 2) implies that the Vestals, as women, were excluded from pontifical meetings. In the light of the present discussion this is clearly incorrect.

⁴³⁸ *Pontifex maximus* 212-183, cos. 205; see Bardt 4 no. 11, *MRR* 1.271.

⁴³⁹ Livy 31.9.5-10: *cum dilectum consules haberent pararentque quae ad bellum opus essent, ciuitas religiosa, in principiis maxime nouorum bellorum, supplicationibus habitis iam et obsecratione circa omnia puluinaria facta, ne quid praetermitteretur quo aliquando factum esset, ludos Ioui donumque uouere consulem, cui prouincia Macedonia euenisset, iussit, moram uoto publico Licinius pontifex maximus attulit, qui negauit ex incerta pecunia uouere licere; ex certa uoueri debere, quia ea pecunia non posset in bellum usui esse seponique statim deberet nec cum alia pecunia misceri; quo si factum esset, uotum rite solui non posse. quamquam et res et auctor mouebat, tamen ad collegium pontificum referre consul iussus, si posset recte uotum incertae pecuniae suscipi. posse rectiusque etiam esse pontifices decreuerunt. uouit in eadem*

Although the only certain conclusion that can be drawn from this passage is that the *decretum* of the college could overturn the opinion of the *pontifex maximus*, scholars have traditionally seen in this passage evidence that the college arrived at its decision by simply majority vote,⁴⁴⁰ a view which would imply that each member possessed a vote of equal weight. This seems to me the most plausible interpretation, and I readily accept it as such.⁴⁴¹

Even if we do not accept that the members voted, it can hardly be denied that the members could voice their respective opinions at a meeting. In what order did they do so? We do not know for certain, although we may look to the augural college for guidance. In that body the eldest member spoke first, the youngest last. It is likely, but of course not certain, that the same procedure obtained in the *collegium pontificum*.⁴⁴²

3.3.2.5 Summary remarks

In the preceding sections I attempted to reconstruct the procedure for the referral of an issue to the pontifical college and I discussed the location of the meetings of the pontifical college, the number of members who would participate in formulating a *decretum* or *responsum*, and the manner in which the college arrived at its decision. In doing so I offered the following hypotheses. I tried to show first that when the senate

uerba consul praeunte maximo pontifice quibus antea quinquennialia uota suscipi solita erant, praeterquam quod tanta pecunia quantam tum cum solueretur senatus censuisset, ludos donaque facturum uouit. octiens ante ludi magni de certa pecunia uoti erant. hi primi de incerta. Text Briscoe 1991.

⁴⁴⁰ See Wissowa 1912, 514; cf. Marquardt 1881-1885, 315-316.

⁴⁴¹ In the case of the decree on Clodius' defilement of the ceremony of Bona Dea, I would hypothesize that the Vestals voted on the matter, too, although whether they each had one vote is uncertain and, I think, unlikely.

⁴⁴² The procedure of the augural college is given at Cic. *Sen.* 64: *multa in uestro collegio praeclara, sed hoc de quo agimus in primis, quod ut quisque aetate antecedit, ita sententiae principatum tenet, neque solum honore antecedentibus, sed iis etiam qui cum imperio sunt, maiores natu augures anteponuntur.*

referred an issue to the pontifical college, it issued a *senatus consultum* instructing a magistrate to make the referral. I then suggested that the magistrate would make the referral by consulting the *pontifex maximus*, who in turn might consult immediately on-site with those of his colleagues who were present and with them render the college's *responsum*. I also suggested that the *pontifex maximus* might instead convene his colleagues elsewhere, probably in the *Regia*, where they could deliberate at length and in private on the matter at hand. I also tried to show that the official referral was phrased as a question, which ancient authors frequently truncate and summarize.

Information on the location of pontifical meetings is frustratingly sparse. Nevertheless, using the limited existing evidence I posited that the pontifical college probably held its meetings in the *Regia* and the *curia Calabra*. I also hypothesized that some of these meetings consisted of two phases, one open to non-members and one open to the college alone. I also proposed that the *pontifex maximus* convened these meetings.

Attendance at pontifical meetings must have varied, but I tried to demonstrate that most members would attend a meeting on a matter referred to the college. Furthermore I sought to explain Cicero's statement that three pontiffs constituted a *quorum* by suggesting two instances in which this *quorum* might have been used: when a matter of no pressing importance was referred to the college and when one pontiff wished to make his opinion a formal decree of the college. I also pointed out that the Vestals could attend at least those meetings of the college at which the ceremony for Bona Dea was discussed.

Finally, I agreed with the scholarly consensus that the college arrived at its decision by a simple majority vote and that even the *pontifex maximus* could be outvoted; from this I then concluded that each member—perhaps even the Vestals, when they

participated—possessed a vote of equal weight. On analogy with the procedure used by the augural college, I suggested that the age of the members of the pontifical college determined the order in which they expressed their opinions at meetings: the eldest member would speak first and the youngest last.

3.3.3 The contents of the *responsa*

I now turn to an analysis of the contents of the pontifical *responsa*. Considerations of space preclude a lengthy analysis of every pontifical response. I have therefore limited my treatment to the most well attested *responsa*.

Any discussion of the responses of the pontifical college must begin with the following passage from Macrobius' *Saturnalia* (3.3.11): *inter decreta pontificum hoc maxime quaeritur, quid sacrum, quid sanctum, quid religiosum*. As a concise description of the guiding principles behind pontifical *decreta* this sentence is very useful. We might also adduce Cicero's comments from *De Haruspicum Responso* (12):

de sacris publicis, de ludis maximis, de deorum penatium Uestaeque matris caerimoniis, de illo ipso sacrificio, quod fit pro salute populi Romani, quod post Romam conditam huius unius casti tutoris religionum scelere uiolatum est, quod tres pontifices statuissent, id semper populo Romano, semper senatui, semper ipsis dis immortalibus satis sanctum, satis augustum, satis religiosum esse uisum est.

In this brief and limited survey of the areas of Roman religion that the pontiffs governed, Cicero indirectly describes the principles guiding that governance: *sanctum*, *augustum*, *religiosum*. Cicero's list corresponds neatly with Macrobius', although one notes that Macrobius has *sacrum* where Cicero has *augustum*. Here we must follow Macrobius. The ancient evidence demonstrates overwhelmingly that the pontiffs were deeply concerned with actions and things that were *sacrum*, but only incidentally with those that were *augustum*, which is more properly an augural term. Cicero must be using this word

to score a rhetorical point against Clodius, not to describe accurately the contents of the pontifical decrees.

As a collegiate body the pontiffs were concerned with three concepts: *sacrum*, *sanctum*, *religiosum*. But, we may also add that in order to determine what was *sacrum* meant also to determine what was not *sacrum*, that is, what was *profanum*. This emerges very clearly in the following passage from Livy:

They⁴⁴³ referred to the pontifical college the task of decided which of the statues and bronze sculptures said to have been taken from the enemy were sacred (*sacra*) and which profane (*quae eorum sacra ac profana essent*).⁴⁴⁴

No doubt the same can be said for the concepts *sanctum* and *religiosum*; that is, that the pontiffs were also concerned with determining what was not *sanctum* and what was not *religiosum*.

But Macrobius' is not an exhaustive list. It is clear that the pontiffs investigated other matters besides whether something or some action was or was not *sacrum*, *sanctum*, or *religiosum*.⁴⁴⁵ To take but two examples from my discussion above, the pontifical college would often pass *responsa* that determined whether something could rightly be done or whether an intended action was necessary. Thus Livy tells us that the senate ordered the consul to consult the college to see "if a vow for an indeterminate sum of money could

⁴⁴³ The plural *reicerunt* is a slip. Surely it was the senate that referred the matter to the pontifical college. This passage comes at the end of a long summary list of senatorial decrees which Livy reports with the third person plural verb (*iusserunt*, *censuerunt*), apparently with the broadly understood subject of *Romani* or *senatores*.

⁴⁴⁴ Livy 26.34.12: *signa, statuas aeneas, quae capta de hostibus dicerentur, quae eorum sacra ac profana essent, ad pontificum collegium reiecerunt*.

⁴⁴⁵ Apposite here are the remarks of Linderski 1986, 2186, "We have to distinguish between *religiosum esse*, referring to an action, and *religiosum esse* referring to a *res*. In the former both the pontiffs and the augurs were interested; in the latter mainly the pontiffs."

rightly be made", ⁴⁴⁶ and elsewhere he says that the college was to determine "whether it was necessary that all gold be used for the games". ⁴⁴⁷ These examples, which can easily be multiplied, show that, although Macrobius' list is valuable for any treatment of the pontifical law, it cannot be used to structure an investigation of the contents of pontifical *responsa*. I have accordingly chosen to group the *responsa* according to subject matter, keeping in mind, of course, the pontifical college's concern with the status of an action or event as *sacrum*, *sanctum*, or *religiosum*. Considerations of space preclude a detailed investigation of every attested collegial response. I have therefore limited my discussion to those dealing with dedications, the calendar, and the making of vows, a large enough sample and one from which important conclusions can readily be drawn.

3.3.3.1 *responsa de dedicationibus*

There are attested four pontifical *responsa* pertaining to dedications. Cohee lists three others, but these are not pontifical *responsa* or *decreta*, as I shall demonstrate below. Nevertheless, these passages do play a key role in three of the four attested *responsa* and thus merit closer investigation.

It is best to begin with the following two passages from Varro (preserved by Tertullian): ⁴⁴⁸

censuerant, ne qui imperator fanum, quod in bello uouisset, prius dedicasset quam senatus probasset; ut contigit M. Aemilio, qui uouerat Alburno deo. ⁴⁴⁹

⁴⁴⁶ Liv. 31.9.8: *tamen ad collegium pontificum referre consul iussus, si posset recte uotum incertae pecuniae suscipi.*

⁴⁴⁷ Liv. 39.5.9: *senatus pontificum conlegium consuli iussit num omne id aurum in ludos consumi necesse esset.*

⁴⁴⁸ Cohee 1994, 147.

⁴⁴⁹ Tert. *Ad Nat.* 1.10.14 = Varro *Antiquitates Rerum Diuinarum* 44 Cardauns.

*uetus erat decretum, ne quis deus ab imperatore consecraretur, nisi a senatus probatus. Sed M. Aemilius de deo suo Alburno.*⁴⁵⁰

According to Varro an old decree laid down that any *imperator* who wished to dedicate a shrine (*fanum*) that he had vowed in war must first get the senate's approval to do so.

Cohee gives the date of this decree as uncertain, but an apparent reference to it in Livy allows us to date it precisely.

Livy writes that in 304 BC the *pontifex maximus* Cornelius Balbus clashed with Cn.

Flavius over the dedication of a shrine to Concordia:

Cn. Flavius son of Gnaeus...dedicated a shrine to Concordia (*aedem*) in the area of the Volcanal, though the nobles were very resentful of this; the *pontifex maximus*, Cornelius Barbatus⁴⁵¹ was compelled by the consent of the people to dictate the formula for the dedication, although he persistently asserted that tradition (*more maiorum*) allowed only a consul or commander the ability to dedicate a temple (*templum*). Accordingly in accordance with the authority of the senate a bill was brought before the people that no one dedicate a temple (*templum*) or altar (*aramue*) without the order of the senate or a majority of the tribunes of the plebs.⁴⁵²

In dedicating the shrine Cornelius Barbatus protested that he was acting against custom (*mos maiorum*), according to which only a consul or commander could dedicate a temple.

The dedication appears to have been carried despite these protestations, but as a result the senate had a bill brought to the people that stipulated that dedications of a temple or altar needed the prior approval of the senate or a majority of the tribunes. The bill must have been passed, and it must be the *decretum* referred to by Varro in the passages from

⁴⁵⁰ Tert. *Apol.* 5.1 = Varro *ibid.*: Also reported at Tert. *Adv. Marc.* 1.18.4; Euseb. *Hist. Eccl.* 2.2.5.

⁴⁵¹ The exact identity of this Cornelius is not certain. He may have been the *consul* of 328, *dictator* of 306; see *MRR* 1.145 n. 1 and 2.556.

⁴⁵² Liv. 9.46.4-7: [Cn. Flavius Cn. filius]...*aedem Concordiae in area Uolcani summa inuidia nobilium dedicauit; coactusque consensu populi Cornelius Barbatus pontifex maximus uerba praeire, cum more maiorum negaret nisi consulem aut imperatorem posse templum dedicare. itaque ex auctoritate senatus latum ad populum est ne quis templum aramue iniussu senatus aut tribunorum plebei partis*

Tertullian. We can thus date the *decretum* to this year, 304 BC. More importantly, however, we see that Varro's *uetus decretum* is not a decree of the pontifical college at all, but a resolution of the people or, it might be better to say, a decree of the senate approved by the people. We might have suspected as much from the passages of Varro alone, for they show that the central issue was the senate's approval of a dedication, not the religious aspects of the same; as demonstrated in the previous chapter, the latter was the proper preserve of the pontiffs; the former was part of the public law, and the public law the pontiffs could neither create nor modify, although they had to uphold it. Thus we do not here have a pontifical decree on dedications, but an important provision of the public law on dedications.

It would be interesting to know how often this law was cited in pontifical decrees, but unfortunately it is never mentioned again in our sources. We do, however, know of a similar law, the *lex Papiria*, which formed the basis for three of the four attested pontifical *responsa*.

Sometime between 174 and 154 a *Lex Papiria* was passed forbidding the consecration of an *aedis*, *terra*, or *ara* without the authorization of the people.⁴⁵³ In *De Domo Sua* Cicero cites two pontifical *responsa* that sought to uphold the *Lex Papiria*.

The first *responsum* comes from 154 and is told by Cicero in two passages:

Q. Marcius the censor had made a statue of Concord and placed it in public. When C. Cassius the censor would transfer this statue to the curia, he consulted your college whether there seemed to be a cause whereof he could not dedicate this statue and

maioris dedicaret. Pliny (NH 33.19) refers to the vowing of this shrine: *P. Sempronio L. Sulpicio cos. Flavius uouit aedem Concordiae*.

⁴⁵³ Cic. *Dom.* 127: *uideo enim esse legem ueterem tribuniciam quae uetet iniussu plebis aedis, terram, aram consecrari*. Ibid. 128: *Lex Papiria uetat aedis iniussu plebis consecrari*. See for the date MRR 2.471.

curia to Concord (*num quid esse causae uideretur quin id signum curiamque Concordiae dedicaret*).⁴⁵⁴

But let me return to the public law of dedications (*ius publicum dedicandi*), which the pontiffs themselves have always accommodated not only to their own ceremonies, but also to the people's orders (*populi iussa*). You have in your commentaries that C. Cassius the censor referred to the pontifical college the matter of dedicating the statue of Concord, and M. Aemilius, the *pontifex maximus*, responded to him on behalf of the college, that if the Roman people had not put him in charge by name and unless he had done it by their order, it did not seem that this could be rightly dedicated (*nisi eum populus Romanus nominatim praefecisset atque eius iussu faceret, non uideri eam posse recte dedicari*).⁴⁵⁵

In 154 Cassius wanted to put a statue of Concord in the Curia and dedicate both it and the Curia to concord. He consulted the college on the matter; in the first passage we have his question to the college, in the second the college's response. The phrasing of both are worth noting. Cassius' question is very broad, asking only if there is a reason why he cannot perform the dedication. The college's reply, however, is very specific and conditional. It does not say that Cassius cannot make his dedication; rather it says that if the people had not by name put him in charge of the dedication and if he had not acted by their order, then it did not seem to it that the dedication could be rightly (*recte*) made. Put another way, the college's response does not forbid Cassius from making the dedication, but merely says that if he did not comply with the *lex Papiria de dedicationibus*, then it seems to them that his dedication cannot be performed correctly.⁴⁵⁶ The college is thus upholding a provision of the public law of dedications. The question naturally arises of

⁴⁵⁴ Cic. Dom. 130: *Q. Marcius censor signum Concordiae fecerat idque in publico conlocarat. hoc signum C. Cassius censor cum in curiam transtulisset, conlegium uestrum consuluit num quid esse causae uideretur quin id signum curiamque Concordiae dedicaret*. Text and trans. Shackleton Bailey 1991.

⁴⁵⁵ Cic. Dom. 136: *sed ut reuertar ad ius publicum dedicandi, quod ipsi pontifices semper non solum ad suas caerimonias sed etiam ad populi iussa adcommoauerunt, habetis in commentariis uestris C. Cassium censorem de signo Concordiae dedicando ad pontificum conlegium rettulisse, eique M. Aemilium pontificem maximum pro conlegio respondisse, nisi eum populus Romanus nominatim praefecisset atque eius iussu faceret, non uideri eam posse recte dedicari*. Text and trans. Shackleton Bailey 1991.

what would happen if Cassius ignored the decree and performed his decree. To answer this query, let us look at the next case cited by Cicero.

In 123, thirty-one years after Cassius' failed attempt, the pontifical college was faced with a similar case. Cicero describes the incident:

When in the consulship of T. Flaminius and Q. Metellus [123 BC] Licinia, a Vestal Virgin of noble birth, endowed with the most holy priesthood, dedicated an altar (*aram*), shrine (*aediculam*) and couch (*puluinar*) under the Rock, did the praetor Sextus Iulius not act on the senate's authority and refer the matter to the [pontifical] college? When P. Scaevola, the *pontifex maximus*, responded on behalf of the college, 'What Licinia, Gaius' daughter, dedicated in a public place without the people's express order, does not seem to be sacred (*sacrum*)'.⁴⁵⁷

Again the college bases its decision on the *lex Papiria*: because Licinia had not obtained the prior approval of the people, the object she had dedicated did not seem to be *sacrum*. But as important as the reasoning behind these two decrees is the result they effected. In 154 the college determined that Cassius' dedication could not rightly (*recte*) be made; in 123 it decreed that Licinia's dedication was not *sacrum*.

We thus have two decrees, formulated on the same principle, yet differing in their effect. The explanation for the difference is not difficult to find: Licinia had made her dedication; Cassius had not. The decree in the former case pertained to the validity of an intended action and determined whether it could be done, but in the latter case the decree determined the status of an object, or, to use the college's term, whether it was *sacrum* or not. The pontifical decree effectively prohibited Cassius' dedication,⁴⁵⁸ and we may

⁴⁵⁶ On this passage see especially Linderski 1985, 216 = 1995, 505.

⁴⁵⁷ Cic. Dom. 136-137: *cum Licinia, uirgo Vestalis summo loco nata, sanctissimo sacerdotio praedita, T. Flaminius Q. Metello consulibus aram et aediculam et puluinar sub Saxo dedicasset, nonne eam rem ex auctoritate senatus ad hoc conlegium Sex. Iulius praetor rettulit? cum P. Scaeuola pontifex maximus pro conlegio respondit, 'quod in loco publico Licinia, Gai filia, iniussu populi dedicasset, sacrum non uideriet'*. Text and trans. Shackleton Bailey 1991.

surmise that any pontifical decree could similarly block an intended action. But in Licinia's case the mere decree that her dedication was not *sacrum* was insufficient to make it so. Additional steps were needed, and so the senate, acting *ex auctoritate pontificum*, voted that the altar she had set up should be removed and ordered the urban praetor to make sure that Licinia's dedication was not regarded as *sacrum* and instructed him to remove any inscriptions on it.⁴⁵⁹

Let us look at another pontifical decree which, like that in Licinia's case, was both issued after a dedication had been made and was based on the *Lex Papiria*. In 57 Clodius had razed Cicero's house on the Palatine and in its place erected a shrine to Libertas. In an attempt to regain his property Cicero delivered before the pontifical college the speech *De Domo Sua*. His efforts were successful for, as he tells us in a letter to Atticus, the college ruled in his favor:

The pontiffs having found that 'that portion of the site might be restored to me without sacrilege (*sine religione*), providing the person claimed to have consecrated it was not commissioned by name thereto by an order of the people (*populi iussu*) or resolution of the plebs (*plebis scitu*), neither ordered so to act by an order of the people or resolution of the plebs,'...⁴⁶⁰

⁴⁵⁸ Cic. Dom. 137: *tum censorem, hominem sanctissimum, simulacrum Concordiae dedicare pontifices in templo inaugurato prohibuerunt.*

⁴⁵⁹ Cic. Dom. 137: *senatus in loco augusto consecratam iam aram tollendam ex auctoritate pontificum censuit neque ullum est passus ex ea dedicatione litterarum exstare monumentum.* Earlier in the same section we read: *Uidetisne praetori urbano negotium datum ut curaret ne id sacrum esset, et ut, si quae essent incisae aut inscriptae litterae, tollerentur?* One naturally wonders what the praetor did to ensure that the dedication was not seen as *sacra*. Certainly the altar was removed, but that may have happened only after its sacred character was annulled. It is, moreover, difficult to know to what the *id* in *curaret ne id sacrum esset* refers. Is it all three items that Licinia dedicated? Or were they each treated separately? All that can be said for certain is that the altar was removed, any inscriptions were effaced, and the sacredness of her dedication(s) was removed. Perhaps the praetor summoned a *pontifex* to deconsecrate the dedicated objects. The matter deserves further investigation.

⁴⁶⁰ Cic. Att. 4.2.2: *cum pontifices decreissent ita, 'si neque populi iussu neque plebis scitu is qui se dedicasse diceret nominatim ei rei praefectus esset neque populi iussu aut plebis scitu id facere iussus esset, uideri posse sine religione eam partem areae mihi restitui'*...Text and trans. Shackleton Bailey 1965, vol. 2.

As Linderski remarks, the conditional nature of this decree is worth noting: the college did not decree that Cicero's house should be restored to him or that Clodius' dedication should be annulled, but rather decided that if the dedication contravened the *Lex Papiria*, then it was religiously invalid, and thus Cicero's property could be restored to him *sine religione*.⁴⁶¹ Of course, the college could not determine whether the dedication had been made in contravention of the *Lex Papiria*; that was the task of the senate; but if the senate decided it was invalid, then the college would remove the *religio* from Cicero's property.

Now, the dedications of both Clodius and Licinia were made in contravention of the *Lex Papiria*, and yet the pontifical responses for each case were different: the pontifical college determined that Licinia's dedication was not *sacrum*, but determined that Cicero's house could be restored *sine religione*.⁴⁶² In fact, this difference is only superficial, for the decree on Cicero's house was in effect a decree that Clodius' dedication was not *sacrum*. This emerges from the following passage from *De Haruspicum Responso*:

Is it therefore really about this sacred place (*locus sacer*) that the haruspices seemed to have spoken; this, the only place of all the private places that has this special right, namely, that it has been adjudged to be not sacred (*sacer non esse iudicatus sit*) by those in charge of sacred matters (*qui sacris praesunt*)?⁴⁶³

Here Cicero states that the pontiffs had determined that his property was not made *sacer* by Clodius' dedication. He of course slightly misrepresents the substance of the pontifical response, which, as noted above, was conditional, and said only that his property could be

⁴⁶¹ 1985, 216-217 = 1995, 505-506, esp. 217/506, "In the event the dedication should prove legally invalid, the pontiffs removed the *religio*; now it was the Senate's turn to decide whether the law was violated. On the question of the law the pontiffs would express their opinions as senators and not as priests."

⁴⁶² See also Cic. *Har. resp.* 12-13: *at uero meam domum ... omni religione una mente omnes [pontifices] liberauerunt*. Ibid. 13: *domum meam iudicio pontificum religione liberatam uideri*; Ibid. 14: *aut uobis cognitio dabitur, qui primi de hac domo sententiam dixistis et eam religione omni liberastis*.

restored to him if Clodius' dedication contravened the *Lex Papiria*. And yet Cicero's statement is not incorrect, for the removal of the *religio* from his property was in effect a declaration that the property was not *sacer*. The difference in the wording of the decree on Licinia's dedications and that on Clodius' must be attributed to the fact that Cicero was trying to regain the property on which a dedication had been made in order to use it for his dwelling; as this spot was possibly a *locus sacer*, it would be *religiosum* to build a house on it. On the other hand, no one wanted to use the site of Licinia's dedications for anything. Her dedication occurred *in loco publico* (*Dom.* 136), which would revert to that status once her dedication was invalidated.

Let us now consider some of the theological points that emerge from a consideration of the dedications of Cassius, Licinia, and Clodius. First, we see that we must distinguish between those pontifical decrees that are passed before a dedication is performed and those that are passed after its performance. To the first category belongs the decree on Cassius' dedication. Though phrased conditionally, this decree effectively prohibited his dedication. No religious issues were involved; rather, the college strove merely to uphold the *ius publicum* (in this case the *Lex Papiria*) on dedications. To the second category belong the decrees on the dedications of Licinia and Clodius. Now, these decrees too upheld the public law on dedications, but they also appear to have effected a change in the religious status of the objects dedicated. The senate ordered the removal of the altar Licinia had dedicated and instructed the urban praetor to remove any inscriptions and see to it that her dedication not be regarded as sacred. Similar instructions were undoubtedly given for Clodius' dedication.

⁴⁶³ 14: *de hoc igitur loco sacro potissimum uidentur haruspices dicere, qui locus solus ex priuatis locis omnibus hoc praecipue iuris habet, ut ab ipsis qui sacris praesunt sacer non esse iudicatus sit?*

It would be interesting to know the college's opinion on the status of Clodius' and Licinia's dedications in the period between when they were first made and the issuance of the decree that invalidated them. I was first inclined to think that the dedicated objects were viewed as never having been consecrated and dedicated in the first place, but I am not sure this is correct. For if it were correct, why was the decree on Licinia's dedication not sufficient to render the dedication invalid? The orders of the pontifical college indicate to me that her dedication had in some way invested the *ara*, *aedicula* and *puluinar* with a sacred character which the pontifical college was obliged to remove. The college decreed that Cassius dedication could not be rightly (*recte*) performed in contravention of the *Lex Papiria*. But "not rightly" does not seem to mean "completely invalid", for both Licinia and Clodius did what Cassius wanted to do—that is, perform a dedication *non recte*—and yet their dedications appear to have been viewed as almost quasi-valid and to have given the dedicated objects some sort of provisory sacred quality. I do not have a satisfactory solution to this problem. I suspect that the answer may lie in the nature of the ceremony of *dedicatio/consecratio*. These were two separate acts, but part of the same ceremony. *Dedicatio* removed an object from the sphere of *ius humanum*; *consecratio* transferred it to the realm of *ius diuinum*.⁴⁶⁴ Perhaps Licinia's and Clodius' failure to comply with the *Lex Papiria* rendered invalid only one of these acts. Cicero describes Licinia's altar as *in loco augusto consecratam iam aram*, which seems to indicate that the consecration of the altar was valid. If so, then perhaps it was only the ceremony of *dedicatio* that was nullified by her failure to comply with the *Lex Papiria*. But it is difficult to know if Cicero here uses *consecratam* in its precise technical sense. Ancient authors do not always distinguish carefully between *consecratio* and *dedicatio*

⁴⁶⁴ Nisbet 1939, 209-210.

and often use one term for both acts. The answer to our conundrum will only come from a detailed study of the thus far much neglected ceremony of *consecratio/dedicatio*.⁴⁶⁵

The final pontifical response concerning a dedication does not deal with the public law of a dedication, but a religious aspect of the same. During the battle of Clastidium in 222, M. Claudius Marcellus won the *spolia opima* and vowed to dedicate a shrine to *Honos et Virtus*. It was not until 208, however, that he attempted to dedicate the temple. Livy, Valerius Maximus, and Plutarch⁴⁶⁶ narrate the events surrounding this dedication.⁴⁶⁷ Let us first consider Livy's account:

One religious matter after another was cast Marcellus' way and detained him. Among these was the fact that the dedication of the temple (*aedem*) to Honor and Virtue that he had vowed at Clastidium in the Gallic War was being blocked by the pontiffs (*a pontificibus impediabatur*), who were denying that one chamber (*cellam*) could rightly be dedicated (*recte dedicari*) to more than one deity, because if it should be struck by lightning or some prodigy should occur in it, the procuration (*procuratio*) would be difficult because one couldn't know to which of the two deities sacrifice (*res diuina*) should be made, and one animal cannot be rightly sacrificed to two deities unless they are fixed deities (*certis deis*). Accordingly Marcellus hastily added a shrine of Virtue (*addita Uirtutis aedes*): nevertheless these temples (*aedes*) were not dedicated by him.⁴⁶⁸

⁴⁶⁵ The existing scholarly treatments of this ceremony, though useful and cogent, strike me as somewhat outdated; the subject demands a fresh and full treatment. The standard works are the pages of Nisbet cited in the previous note, a few sentences in Wissowa 1912, 385-6 and Marquardt 1881-1885, vol. 3, and Wissowa's articles on *consecratio* and *dedicatio* in the *RE*.

⁴⁶⁶ Plut. *Marc.* 28.1-4: ἔπειτα ναὸν ἐκ τῶν Σικελικῶν λαφύρων ὠκοδομημένον ὑπ' αὐτοῦ Δόξης καὶ ἀρετῆς καθιερωῖσθαι βουλόμενος, καὶ κωλυθεὶς ὑπὸ τῶν ἱερέων, οὐκ ἀξιούντων ἐνὶ ναῷ δύο θεοὺς περιέχεσθαι, πάλιν ἤρξατο προσοικοδομεῖν ἕτερον, οὐ ῥαδίως φέρον τὴν γεγενημένην ἀντίκρουσιν, ἀλλ' ὥσπερ οἰωνίζόμενος.

⁴⁶⁷ Brief mention of this temple is given at Cic. *Nat. D.* 2.61 Plut. *Mor.* 318D-319B and 322C.

⁴⁶⁸ Liv. 27.25.6-10: *Marcellum aliae atque aliae obiectae animo religiones tenebant, in quibus quod, cum bello Gallico ad Clastidium aedem Honori et Uirtuti uouisset, dedicatio eius a pontificibus impediabatur quod negabant unam cellam amplius quam uni deo recte dedicari, quia, si de caelo tacta aut prodigii aliquid in ea factum esset, difficilis procuratio foret, quod utri deo res diuina fieret, sciri non posset; neque enim duobus nisi certis deis rite una hostia fieri. ita addita Uirtutis aedes adproperato opere: neque tamen ab ipso aedes eae dedicatee sunt.* Text Conway-Johnson 1935.

According to Livy Marcellus' plan was to dedicate a temple to Honos and Virtus that would contain one *cella* for both deities. It is interesting that Livy says Marcellus' *dedicatio* was blocked by the pontiffs, for this implies that the temple had already been built. Plutarch's account is explicit on this matter; he says that Marcellus "desired to dedicate to Honor and Virtue a temple that he had built out of his Sicilian spoils" (ἔπειτα ναὸν ἐκ τῶν Σικελικῶν λαφύρων ὠκοδομημένον ὑπ' αὐτοῦ Δόξης καὶ ἀρετῆς καθιερωσάι βουλόμενος).⁴⁶⁹ This is an important point: it indicates that one did not need the college's approval in order to build a temple. Before reading this passage I had assumed that the college would question any temple-builder about the plans for his proposed structure, but apparently this was not the case.

Livy, Valerius Maximus and Plutarch say that the dedication was blocked by the pontiffs (*a pontificibus impediatur; a collegio pontificum ineditus est; κωλυθεὶς ὑπὸ τῶν ἱερέων*). How did the college do this? I would suggest that upon completion of the temple Marcellus approached the college and asked one of its members to dedicate it.⁴⁷⁰ After deliberating on the matter the college determined that the dedication could not be made. The hindering of the dedication thus probably consisted of the refusal of all members of the college to perform it.

Let us now look at the college's *responsum*. Marcellus' temple contained one *cella* for both Honos and Virtus (presumably the gods' statues would be placed here). Livy says

⁴⁶⁹ Valerius Maximus (1.1.8) follows Livy and implies that the temple had already been built: *quia numquam remotos ab exactissimo cultu caerimoniarum oculos habuisse nostra ciuitas existimanda est. in qua cum <M.> Marcellus quintum consulatum gerens templum Honori et Uirtuti Clastidio prius. deinde Syracusis potitus nuncupatis debitum uotis consecrare uellet, a collegio pontificum ineditus est.*

⁴⁷⁰ It seems to have been customary for the entire college to be invited and to attend a dedication, see Cic. *Dom.* 117 (Cicero addressing Clodius about his dedication): *non te pudet, cum apud pontifices res agatur, pontificem dicere et non conlegium pontificum adfuisse...* The entire college may have attended, but the actual ceremony would be performed by only one *pontifex*.

the college blocked the dedication because one *cella* could not rightly be dedicated (*recte dedicari*) to two deities. Valerius Maximus repeats Livy nearly *verbatim*.⁴⁷¹ Plutarch, however, reports that the college "did not think it right that two gods be housed in one temple" (οὐκ ἄξιούντων ἐνὶ ναῷ δύο θεοὺς περιέχασθαι). Here I think we must follow Plutarch, for the simple reason that surely the dedication was of the entire temple and not just its *cella*.

Let us now look at the reasoning behind this *responsum*. The college blocked Marcellus' dedication because if his temple were struck by lightning or a prodigy occurred in it, the pontiffs could not know whether to make a sacrifice to Honos or Virtus. And one could not simply sacrifice to both, for *una hostia* could only be rightly (*recte*) sacrificed to certain deities (and obviously Honos et Virtus were not among them).⁴⁷²

Marcellus' solution to his problem was to build an adjoining *aedes* for Virtus and place a statue of each deity in its respective *aedes*.⁴⁷³ Neither Livy nor Plutarch say how Marcellus arrived at this solution, but Valerius Maximus writes that

by this pontifical admonition (*pontificum admonitione*) it was effected that Marcellus should set up images of Honor and Virtue in separate temples (*separatis aedibus*), nor to the pontifical college was the prestige of a most renowned man or the added expense to Marcellus an impediment preventing religion from being given its due tenor and observation.⁴⁷⁴

⁴⁷¹ 1.1.8: *negante unam cellam duobus diis recte dicari*.

⁴⁷² On *dei certi* see Serv. *Dan.* at *Aen.* 2.141: *...et pontifices dicunt, singulis actibus proprios deos praeesse. hos Varro certos deos appellat*.

⁴⁷³ Liv. 27.25.10: *ita addita Uirtutis aedes adproperato opere*. Val. Max. 1.1.8: *ea pontificum admonitione effectum est ut Marcellus separatis aedibus Honoris ac Virtutis simulacra statueret*.

⁴⁷⁴ Val. Max. 1.1.8: *ea pontificum admonitione effectum est ut Marcellus separatis aedibus Honoris ac Virtutis simulacra statueret, neque aut collegio pontificum auctoritas amplissimi uiri aut Marcello adiectio impensae inpedimento fuit quo minus religionibus suis tenor suaque observatio redderetur*. Text Briscoe 1998.

This passage seems to indicate that the pontifical college advised Marcellus that in order to dedicate his temple to Honor and Virtue he would need to set up the images of Honos and Virtus in separate *aedes*, which in effect meant that he had to build another *aedes* for Virtus. This interpretation makes sense not only from the point of view of Valerius Maximus' report, but also from the point of view of the pontifical college's obligation to oversee the fulfillment of vows. Marcus had vowed a temple to Honos and Virtus and thus had to build and dedicate the temple. The college's role was not merely to block or approve the dedication of his temple, but to see to it that the temple was dedicated and dedicated in conformity with the pontifical law on dedications. I should prefer to think that Marcellus did not build a completely separate *aedes* for Virtue, but that he built one that adjoined the temple he had already built, which from now on was to be the *aedes* of Honos alone.⁴⁷⁵

If we accept that the issue for the college was not (as Livy reports) that one *cella* could not rightly be dedicated to one god, but that (as Plutarch recounts) one temple could not rightly house two gods, then the pontifical solution appears somewhat strange. Why was a separate *aedes* for Virtus necessary? After all, the Romans did not have a problem with one structure housing multiple deities; witness the fact that the standard Roman temple was typically home to three gods (*e.g.*, the Capitoline Temple, which housed Juno, Jupiter, and Minerva). Thus a simpler solution would seem to be to have Marcellus build two *cellae* in the temple, place a statue of Honor in one and of Virtue in the other, and dedicate the whole *aedes* to the pair. Apparently, however, this solution was either not considered or was deemed theologically impossible. I submit that it was

⁴⁷⁵ Livy's words, *ita addita Uirtutis aedes*, may hint at this arrangement.

the latter, and my reason for doing so is the information provided by the following passage from Servius:

Caesar will be in the middle and he will hold my temple. ... But, moreover, when he says "in the middle", he signifies that this would be a temple, for a place is always made sacred (*sacratus*) to the deity whose image is placed in the middle; other images serve only as ornamentation (*tantum ad ornatum*).⁴⁷⁶

According to Servius a place is *sacratus* to the deity whose image is placed in the middle. The arrangement of Roman temples corroborates this statement. Consider, for example, the Capitoline temple. That structure housed three gods, Juno, Jupiter, and Minerva, yet was technically known as the temple of Jupiter Optimus Maximus. Servius' statement shows us why: because the middle *cella* was occupied by Jupiter's cult statue.

This statement allows us to explain why Marcellus could neither house Honos and Virtus in one temple nor merely build another *cella* in the temple and dedicate the entire structure to the pair. The resulting temple would house only two gods, neither of which could occupy the middle position. And with no god in the middle position the identity of the deity to whom the temple was *sacratus* could not be known. The procuration of any prodigy that occurred in such a temple or of any lightning strike that hit it would be impossible⁴⁷⁷ because the pontiffs could not know which of the two deities was thereby expressing his anger and in need of placation. Marcellus' solution—or the solution the pontifical college suggested to him—eliminated this confusion because it gave to each deity its own *aedes*. In this way it was clear which *aedes* belonged to which deity, and any prodigies or lightning strikes that visited either temple could readily be procured.

⁴⁷⁶ Serv. ad G. 3.16 (= Pr. 21 no. 127) *in medio mihi Caesar erit templumque tenebit....quod autem dicit 'in medio', eius templum fore significant: nam ei semper sacratus numini locus est, cuius simulacrum in medio collocatur; alia enim tantum ad ornatum pertinent.*

⁴⁷⁷ Livy says *difficilis procuratio foret*; which phrase is probably artistic understatement.

Taken together these *responsa* shed important light on the involvement of the pontifical college in dedications. Most surprisingly, the evidence suggests that it was unnecessary to consult the pontifical college before making a dedication. Both Licinia and Clodius performed their respective dedications only to have them annulled after the fact by the college and the senate who together determined that Clodius and Licinia had violated the *Lex Papiria de dedicationibus*. Had either consulted the pontifical college before the dedication, surely that body would have decreed that the dedicator needed to comply with the *Lex Papiria* in order for the dedication to be valid. This is in fact what the college declared in its *responsum* to Cassius on his dedication. He had asked it whether there was a reason why he could not make his dedication, and the college replied that it could not rightly be performed without adherence to the *Lex Papiria*. But we may ask, in the case of Licinia and Clodius, why the pontiff who performed or presided at their dedications did not make sure that the dedication he was performing complied with the the *Lex Papiria*. True, Clodius as tribune could compel the *pontifex*, even against his will, to perform the ceremony;⁴⁷⁸ perhaps Licinia, as a Vestal Virgin, could too. But even if forcefully compelled a *pontifex* might reasonably be expected to report to his colleagues that the dedication he had performed or was going to perform violated the *Lex Papiria* and then have them decree that it was invalid. The answer must be that the pontifical college did not have the power to make such a decree on its own initiative. That is, even if the college knew that a dedication was invalid from the point of view of the public law, it could only decree as much if the senate asked it to rule on the matter, as in fact happened in the case of the dedication of Cassius. The *Lex Papiria* pertained only

⁴⁷⁸ Cic. Dom. 117: *non te [sc. Clodium] pudet, cum apud pontifices res agatur, pontificem dicere et non conlegium pontificum adfuisse, praesertim cum tribunus plebis uel denuntiare potueris uel etiam*

to the *ius publicum*, and in this sphere the pontifical college apparently could do nothing unless instructed to do so by the senate.

Regarding the religious aspects of a dedication, however, the college was free to act on its own initiative. This is why it could prohibit Marcellus' dedication: his planned temple failed to comply with the pontifical law on the layout of a temple. That his planned dedication called for two gods in one *aedes* did not affect the public law, but could have disastrous consequences for the *pax deorum*, were a *prodigium* to occur in that temple or lightning to strike it. On such religious questions the pontifical college enjoyed complete authority and could thus prevent Marcellus' dedication. It is important to remember that Marcellus was currently fighting Hannibal and thus in a hurry to leave Rome for his province in southern Italy. If he could have ignored the college's concern and dragooned one of its members into performing the dedication, he surely would have done so. Instead, he had to stay in Rome and accommodate the college's concerns.⁴⁷⁹ That the college could effectively block the wishes of a man who was in his fifth consulship and currently fighting the dire threat of Hannibal shows the impressive range of the college's powers in matters of religion.⁴⁸⁰

cogere? See Mommsen 1887-1888, 1.25 n. 5, who accepts Cicero's statement as true.

⁴⁷⁹ Both Plutarch (*Marc.* 28.4) and Livy (27.25.6-10) mention that Marcellus was in haste to leave Rome, but was detained by the concerns over his dedication.

⁴⁸⁰ Cicero appears to give a list of the questions that the college would ask before assenting to a dedication: *Cic. Dom.* 127: *in dedicatione nonne et quis dedicet et quid et quo modo quaeritur*? But these questions, if asked by the college at all, probably pertained only to the religious aspects of the dedication and not the public law of the same.

3.3.3.2 *responsa* on the calendar

We possess but one securely attested *responsum* on the Roman calendar. It is attested by four authors. The most detailed account is given by Gellius and by Cassius Hemina, who are quoted in the following passage of Macrobius:

Our ancestors, moreover, thought that all things should be guarded against on the days after the Kalends, Nones, and Ides, which they also condemned with the ill-omened name of 'black' (*atros*). Nevertheless, some people, as though to modify such expression of disapproval, have called the days 'common' (*communes*) days. The reason for this belief is given by Gellius in the fifteenth Book of his *Annals* and by Cassius Hemina in the second Book of his *Histories*. In the 363rd year of the city the military tribunes Virgilius, Mallius, Aemilius, Postumius and their colleagues brought up for discussion in the senate the cause for the Republic being so often badly afflicted during the last few years; and by precept of the fathers the haruspex L. Aquinius was ordered to come into the Senate for the sake of inquiring about religious matters, and he said that when the military tribune Q. Sulpicius was about to fight against the Gauls at Allia, he performed on the day after the Ides of Quintilius (Jan. 16th), the sacrifice for the sake of fighting; similarly at Cremera and in many other times and at many other places after the sacrifice was celebrated on the day following [*sc.* the Ides], the conflict turned out badly. Then the fathers ordered that these religious matters (*de his religionibus*) be referred to the college of pontiffs, and the pontiffs determined that the day following all Kalends, Nones, and Ides should be held black (*atros*), so that these days were neither fit for battle (*praeliares*) nor pure (*puri*) nor suitable for assemblies (*comitiales*).⁴⁸¹

Before examining the other evidence for this *responsum* (which is also a *decretum*) it will be helpful first to reconstruct the chain of events. According to this account, in the year

⁴⁸¹ Mac. Sat. 1.16.21-27 (=Cassius Hemina 20 (Peter) & Cn. Gellius 25 (Peter)): *dies autem postriduanos ad omnia maiores nostri cauendos putarunt, quos etiam atros uelut infausta appellatione damnarunt: eosdem tamen nonnulli communes uelut ad emendationem nominis uocitauerunt. horum causam Gellius Annalium libro quinto decimo et Cassius Hemina Historiarum libro secundo referunt. anno ab urbe condita trecentesimo sexagesimo tertio a tribunis militum Uirgilio Mallio Aemilio Postumio collegisque eorum in senatu tractatum, quid esset propter quod toties intra paucos annos male esset afflicta res publica; et ex praecepto patrum L. Aquinium haruspitem in senatum uenire iussum religionum requirendarum gratia dixisse: Q. Sulpicium tribunum militum ad Alliam aduersus Gallos pugnaturum rem diuinam dimicandi gratia fecisse postridie Idus Quintiles, item apud Cremeram multisque aliis temporibus et locis post sacrificium die postero celebratum male cessisse conflictum. tunc patres iussisse ut ad collegium pontificum de his religionibus referretur, pontificesque statuere postridie omnes Kalendas Nonas Idus atros dies habendos, ut hi dies neque praeliares neque puri neque comitiales essent.* Text Willis 1970).

389⁴⁸² the senate discussed the reason for the many disasters that had recently befallen Rome. To find the answer the senate summoned the *haruspex* Lucius Aquinius⁴⁸³ and questioned him on the matter. Lucius responded that before the disaster at Allia a military tribune had sacrificed on the day after the Ides of July. At Cremera, too, he said, and on many other occasions and in many other places, the same thing had been done, with the same result that the Romans were defeated in the subsequent battle. The Senate then ordered that these religious matters be referred to the pontifical college, who declared that the day after all Kalends, Nones, and Ides were to be regarded as "black," and that these days were neither fit for battle (*praeliares*) nor assemblies (*comitiales*), nor free from religious restrictions (*puri*).

As far as procedure goes it is interesting to note that the *haruspex* gave only an explanation of why these disasters happened; he did not say how the Romans might prevent such disasters from happening again. Nevertheless, his response must have made it clear that any solution would involve the calendar, and so the senate referred the matter to the pontifical college, the experts on that subject. Cassius Hemina and Gellius say that the senate referred to the pontifical college *de his religionibus*. It is unclear to what this refers. It may refer to the response of the *haruspex*: the college was to consider what he had said and propose a solution. If so, then one wonders if the college had the ability to challenge Lucius' *responsum* and offer in its place a response of its own, or if the college

⁴⁸² The text gives the date as the 363rd year of the city, which would be 391; the correct year, however, is 389; see *MRR* 1.96-97.

⁴⁸³ One wonders why only one *haruspex* was summoned and not the *haruspices* as a group, as seems to have been the normal practice (see, for example, Cic. *Nat. D.* 2.10 (*haruspices introducti responderunt*; *Leg.* 2.21: *prodigia portenta ad Etruscos haruspices, si senatus iussit, deferunt*). Varro *Ling.* 5.148: *ad haruspices referre*. Perhaps L. Aquinius was the head *haruspex* and could speak for his colleagues. On the organization of the *haruspices*, whose leader appears to have been called *haruspex primus* (*CIL* 13.1821) or *magister publicus haruspex* (e.g., *CIL* 6.2161, 2164, 2165) see Wissowa 1912, 548-549.

could only accept his interpretation and propose a solution to the problem he had identified. After the college met, debated, and presumably voted on the matter, it returned its own *responsum*: the day after all Kalends, Nones, and Ides are black and not *praeliares, puri*, or *comitiales* (*statuisse postridie omnes Kalendas Nonas Idus atros dies habendos, ut hi dies neque praeliares neque puri neque comitiales essent*).

Let us compare this wording of the decree with that given by Verrius Flaccus in a passage from Aulus Gellius:

Verrius Flaccus, in the fourth book of his *On the Meaning of Words* writes that the days after the Kalends, Nones, and Ides, which the common people call ignorantly 'holidays' (*nefastos*)⁴⁸⁴ are properly called and considered, 'ill-omened' (*atros*), for this reason: 'when the city', he says, 'had been recovered from the Senonian Gauls, Lucius Atilius stated in the senate that Quintus Sulpicius, tribune of the soldiers, when on the eve of fighting against the Gauls at the Allia, offered sacrifice in anticipation of that battle on the day after the Ides; that the army of the Roman people was thereupon cut to pieces, and three days later the whole city, except the Capitol, was taken. Also many other senators said that they remembered that whenever with a view to waging war a magistrate of the Roman people had sacrificed on the day after the Kalends, Nones, or Ides, in the very next battle of that war the State had suffered disaster. Then the senate referred the matter to the pontiffs, so that they might take what action they saw fit. The pontiffs decreed that no offering would properly be made on those days (*pontifices decreuerunt nullum his diebus sacrificium recte futurum*).⁴⁸⁵

Verrius Flaccus presents this information in an attempt to explain why the common people incorrectly call the days after the Kalends, Nones, and Ides *nefasti*, although their proper term is *atri*. Verrius reports the *responsum* of Lucius (whose cognomen he gives

⁴⁸⁴ This is the Loeb's translation, which to me seems wrong.

⁴⁸⁵ Verrius Flaccus = Gell. 5.17.1-2: *Verrius Flaccus in quarto de uerborum significatu dies, qui sunt postridie Kalendas, Nonas, Idus, quos uulgus imperite 'nefastos' dicit, propter hanc causam dictos habitosque 'atros' esse scribit. 'urbe' inquit 'a Gallis Senonibus recuperata L.. Atilius in senatu uerba fecit Q. Sulpicium tribunum militum ad Alliam aduersus Gallos pugnaturum rem diuinam dimicandi gratia postridie Idus fecisse; tum exercitum populi Romani occisione occisum et post diem tertium eius diei urbem praeter Capitolium captam esse; compluresque alii senatores recordari sese dixerunt, quotiens belli gerendi gratia res diuina postridie Kalendas, Nonas, Idus a magistratu populi Romani facta esset, eius belli proximo deinceps proelio rem publicam male gestam esse. tum senatus eam rem ad pontifices reiecit,*

as Atilius and not Aquinius, as reported by Macrobius), but does not mention that he was a *haruspex*. From his account Lucius appears to be only a senator expressing his opinion on the matter under discussion. Lucius' reply is identical to that given in Macrobius' account. The pontifical decree as given by Verrius, however, is substantially different from that reported by Macrobius. According to Verrius the "pontiffs decreed that no sacrifice could rightly be made on these days", *i.e.* the day immediately following every Kalends, Nones, or Ides (*pontifices decreuerunt nullum his diebus sacrificium recte futurum*).

The third passage explicitly to mention a pontifical decree on this matter comes from Paulus ex Festo 187 L.:

The Nones, Ides, and Kalends are held to be 'alien' (*alieni*) to marriages, since these days have been judged 'black' by a decree of the pontiffs (*hi dies decreto pontificum atri iudicati sunt*), because as often as Roman generals had for the sake of waging war offered supplication on these days, they had managed the republic badly.⁴⁸⁶

Festus mentions the pontifical decree in an attempt to explain why some people treat the Nones, Ides, and Kalends as *alieni* for marriages. He gives a concise version of the pontifical decree, according to which the day immediately after the Nones, Kalends, and Ides were adjudged black by pontifical decree (*hi dies decreto pontificum atri iudicati sunt*). Paulus says that the reason for this decision was the fact that the Romans had been defeated badly whenever the Roman generals had sacrificed (*supplicauerunt*) on the day after the Nones, Ides, or Kalends. The explanation is identical to Verrius', but differs

ut ipsi, quod uideretur, statuerent. pontifices decreuerunt nullum his diebus sacrificium recte futurum.' Text Hosius 1903.

⁴⁸⁶ Paul. ex. Fest. 187 L. (= 294 L. (1930)): *Nonarum, Iduum, Kalendarum dies nuptis alieni habentur, quoniam hi dies decreto pontificum atri iudicati sunt, quod, quotienscumque Romani duces belli gerendi gratia his diebus supplicauerunt, male rempublicam gesserunt.*

slightly from Macrobius', who says these defeats occurred when sacrifice was made on the day after the Ides.

The fourth passage mentioning this *responsum* comes from Livy, who writes:

Then there began to be agitation about the 'religious days' (*dies religiosi*), and the fifteenth day before the Kalends of August (July 18th), besmirched as it was by two misfortunes—since one time the Fabii were cut down at Cremera, and then later on the same date the fighting at Allia went badly (*foede*) with the destruction of the city—they called Allian (*Alliensem*) from the latter catastrophe and they made it suitable for doing no business, public or private. Some people say that because on the day after the Ides of July the military tribune Sulpicius had not sacrificed (*litasset*) and the Roman army met with the enemy after the third day, even though the *pax deorum* had not been obtained, it was ordered that sacrifice be omitted on the day after the Ides (*etiam postridie Idus rebus diuinis supersederi iussum*). This is why they think it was handed down that the day after the Kalends and the day after the Nones as well should be bound by the same religious constraint (*eadem religio*).⁴⁸⁷

Livy does not mention a pontifical decree, but he obviously refers to the same events as the previous three passages. Therefore the words *etiam postridie Idus rebus diuinis supersederi iussum* must refer to the pontifical decree reported by Macrobius, Verrius, and Paulus. According to Livy this decree forbade sacrifice on the day immediately following the Ides. His report agrees with that of Verrius against those of Macrobius and Festus.

We thus have four accounts of the *responsum* which agree in the circumstances of its passing, but differ in its substance. Cassius Hemina and Gellius say that the pontiffs determined that the days should be held black, so that they were neither fit for battle, nor pure, nor suitable for assemblies (*pontificesque statuisset postridie omnes Kalendas*

⁴⁸⁷ Liv. 6.1.11-12: *tum de diebus religiosis agitari coeptum, diemque a. d. XV Kal. Sextiles, duplici clade insignem, quo die ad Cremeram Fabii caesi, quo deinde ad Alliam cum exitio urbis foede pugnatum, a posteriore clade Alliensem appellarunt reique nullius publice priuatimque agenda fecerunt. quidam, quod postridie Idus Quintiles non litasset Sulpicius tribunus militum neque inuenta pace deum post diem tertium obiectus hosti exercitus Romanus esset, etiam postridie Idus rebus diuinis supersederi iussum; inde, ut postridie Kalendas quoque ac Nonas eadem religio esset, traditum putant.* Text Weissenborn 1869.

Nonas Idus atros dies habendos, ut hi dies neque praeliares neque puri neque comitiales essent), Verrius says that the college decreed that no sacrifice could rightly take place on these days (*pontifices decreuerunt nullum his diebus sacrificium recte futurum*), Paulus ex Festo says that the pontifical college decreed the days in question black (*hi dies decreto pontificum atri iudicati sunt*), and Livy says that the decree forbade sacrifice on these days (*etiam postridie Idus rebus diuinis supersederi iussum*). Verrius and Livy agree with one another against Macrobius and Paulus. Which pair is correct?

I think we must follow Verrius Flaccus and Livy and take as imprecise Macrobius' and Festus' report that the pontifical decree designated these days *atri*. Two things must be kept separate: the pontifical decree about these days and the Roman popular beliefs about the same. Plutarch says that the Romans thought the days after the Kalends, Nones, and Ides unsuitable for leaving home or travelling,⁴⁸⁸ Paulus ex Festo says that *dies atri* are thought *alieni* for marriages, and Varro says that the Romans began nothing new on *dies atri*.⁴⁸⁹ These must be popular superstitions surrounding these days and not official prohibitions decreed by the pontifical college.

And I cannot accept Festus' report that with its decree the college designated these days as 'black', or Macrobius' report, which implies that the college designated them as such and then explained what the term 'black' meant. I cannot imagine that the pontifical college determined that these days should henceforth carry a new name and then explained what could not be done on such days. Clearly Macrobius and Paulus have

⁴⁸⁸ *Mor.* 269E-270D = *Quaest. Rom.* 25: "Διὰ τί τὴν μετὰ καλάνδας ἡμέραν καὶ νόνας καὶ εἰδούς ἀνέξοδον καὶ ἀνεκδήμητον τίθενται;"

⁴⁸⁹ Varro *Ling.* 6.29: *dies postridie kalendas, nonas, idus appellati atri, quod per eos dies <nihil> noui inciperent.*

confused the superstition surrounding these days with the pontifical decree on the same. Verrius and Livy, on the other hand, make no such mistake and reproduce correctly the content of the *decretum*.

The problem remains of explaining the term *dies ater*. The phrase is commonly translated as "black day", and rightly so. But *ater* may not have always meant "black". In 1880 O. Gruppe published a brief note in *Hermes* in which he analyzed two passages from Festus and Varro⁴⁹⁰ reporting that terms such as *Quinquatrus* designated the festival that occurred on the fifth day after the Ides of March and *Sexatrus* was so called *ab Tusculanis* because it was the sixth day after the Ides (of an unnamed month). Accordingly Gruppe believed that there was a trace of this use of *-atrus* in the Roman calendar in the designation *dies ater*. He thus posited that "*dies ater* ursprünglich weiter nichts als den ersten Tag nach Wochenanfang bedeutet" and that *-atrus* must have originally meant something like 'after'.⁴⁹¹

Almost ninety years after Gruppe's suggestion Agnes Michels advanced a similar argument. Adducing the same passages of Festus and Varro, but apparently unaware of Gruppe's article, she hypothesized that "the correct form, a synonym for *dies postridianus*, may have been *dies atrus*, which was corrupted to *ater* with its implication of bad luck by the incorrigible Roman tendency to find dire meanings in innocent

⁴⁹⁰ Festus 304 L. (cf. Paul. Fest. 305 L.): *Quinquatrus* appellari quidam putant a numero dierum, qui † fere his † celebrantur. quod scilicet erant tam hercule, quam qui triduo Saturnalia, et totidem diebus Compitalia; nam omnibus his singulis diebus fiunt sacra. forma autem uocabuli eius, exemplo multorum populorum Italicorum enuntiata est, quod post diem quintum iduum est is dies festus, ut apud Tusculanos Triatrus, et Sexatrus, et Septematus, et Faliscos Decimatus. Varro Ling. 6.14: *Quinquatrus*; hic dies unus ab nominis errore observatur proinde ut sint quinque dictus; ut ab Tusculanis post diem sextum idus similiter uocatur sexatrus et post diem septimum septimatus, sic hic, quod erat post diem quintum idus, *quinquatrus*.

⁴⁹¹ Gruppe 1880, 624.

phenomena."⁴⁹² I would follow Gruppe and Michels and contend that the original decree only forbade sacrifice on the days immediately after the Kalends, Nones, and Ides of every month. The decree may have referred to these days as *atri*, which in 389 meant only "the days after".⁴⁹³ The meaning of this designation, as Michels holds, was then corrupted to "black". Subsequently the superstitions described by Varro, Festus, and Plutarch took root.

Let us now examine the theological issues involved in this decree and try to explain the rationale behind the college's decree. The basic facts are that on the day immediately after the Ides of July (July 16th) the military tribune Quintus Sulpicius had performed a sacrifice and three days later (July 18th) the Roman army was destroyed at the battle of Allia. Cassius Hemina and Gellius (as reported by Macrobius) and Verrius Flaccus (as reported by Aulus Gellius) described Sulpicius' sacrifice simply as *res diuina*. They also say that this sacrifice was offered *dimicandi gratia*. Paulus and Livy give different accounts. Paulus does not mention only Sulpicius' actions, but those of the many Roman commanders who had acted as he had. He says that these commanders *supplicauerunt*, and that they had done so *belli gerendi gratia*. Livy does not mention a reason for Sulpicius' sacrifice; and he says that Sulpicius *non litasset*. The result of Sulpicius' actions was that *male cessisse conflictum* (Hemina and Gellius), *rem publicam male gestam esse* (Verrius), *male rem publicam gesserunt* (Paulus), and *neque inuenta pace deum* (Livy).

⁴⁹² Michels 1967, 65 n. 16.

⁴⁹³ As professor Figueira points out to me, late republican pontiffs may have lost the understanding of the original meaning of *atri*.

Livy provides the most specific information; let us look closer at his report. Livy reports the opinion of certain people (*quidam*) who believe that it was ordered to omit sacrifice on the day after the Ides because Sulpicius *non litasset neque inuenta pace deum*, yet nevertheless joined battle three days later. In fact Livy calls attention to this failure to obtain the *litatio* before the battle of Allia in his account of that conflict: *nec auspicato nec litato instruunt aciem*⁴⁹⁴ he concisely reports. The verb *litare* is crucial to a proper understanding of Sulpicius' actions; let us investigate it.⁴⁹⁵

A passage that helps us understand the concept of *litatio* and Sulpicius' actions comes from Livy (27.23.4): *per dies aliquot hostiae maiores sine litatione caesae diuque non impetrata pax deum*.⁴⁹⁶ When one sacrificed it was important to receive the *litatio*⁴⁹⁷ for it indicated the placation of the gods,⁴⁹⁸ or, put another way, the presence of *pax deum*. One was supposed to sacrifice until one attained the *litatio*. This is clearly what Sulpicius did not do. One wonders if he sacrificed only once or many times and then

⁴⁹⁴ 5.38.1.

⁴⁹⁵ The term is only briefly discussed by Wissowa 1912, 418-19; Mommsen 1887-1888 1.88 n. 2 has helpful remarks.

⁴⁹⁶ See also Liv. 41.15.1-4: *dum de iis rebus <in> senatu agitur, Cn. Cornelius euocatus a uiatore, cum templo egressus esset, paulo post redit confuso uultu et exposuit patribus conscriptis bouis sescenaris, quem immolauisset, iocur diffluxisse. id se uictimario nuntianti parum credentem ipsum aquam effundi ex olla, ubi exta coquerentur, iussisse et uidisse ceteram integram partem extorum, iecur omne inenarrabili tabe absumptum. territis eo prodigio patribus et alter consul curam adiecit, qui se, quod caput iocineri defuisset, tribus bubus perlitasse negauit. senatus maioribus hostiis usque ad litationem sacrificari iussit. ceteris diis perlitatum ferunt; Saluti Petilium perlitasse negant. Gell. NA 4.6.6: si primis hostiis litatum non erat, aliae post easdem ductae hostiae caedebantur...*

⁴⁹⁷ Mommsen 1887-1888 1.88 n. 2, defines *litare* as "das richtige Darbringen des Opfers." This is perhaps too concise. Better is the definition given by Linderski 1993, 57 = 1995, 612, "the *exta* of the sacrificial victims proved on inspection to be unfavorable".

⁴⁹⁸ Mac. Sat. 3.5.4: *litare, quod significat sacrificio facto placasse numen. Serv. Dan. ad Aen. 2.119: et 'litare' uerbo pontificali usus est, id est sacrificiis deos placare.*

finally gave up in frustration at not attaining the *litatio*.⁴⁹⁹ Now a sacrifice *sine litatione* signalled the lack of the *pax deorum* or, we may say, the presence of the *ira deorum*. But with what were the gods displeased? To answer this question let us look closer at the categories of sacrificial animals (*hostiae*).

The Romans recognized two kinds of *hostiae*, *consultatoriae* and *animales*.⁵⁰⁰

Trebatius (preserved in Macrobius *Sat.* 3.5.1) defines the two categories as follows:

Trebatius libro primo de religionibus doceat hostiarum genera esse duo, unum in quo uoluntas dei per exta disquiritur, alterum in quo sola anima deo sacratur, unde etiam haruspices animales has hostias uocant.

Clearly the *hostiae* that Sulpicius had sacrificed were *consultatoriae*, but to what did the *uoluntas dei* apply? I think we can distinguish two possibilities: the Roman gods could either approve of the substance or the time of an intended action.⁵⁰¹ But *hostiae* must have been relevant only for the time of an action, for if they pertained to the act itself, then a negative answer before battle would mean that the Romans could not ever fight the enemy they were then facing, and such a situation is patently absurd. Thus I conclude that the *hostiae* sacrificed by Sulpicius pertained to the time of the battle.

So much seems secure; nevertheless I find it difficult to explain the pontifical *responsum*. If Sulpicius had failed to attain the *litatio* on the day following the Ides, then

⁴⁹⁹ Incidentally this probably explains why the *haruspex* Aquinius/Atilius was summoned to give his opinion in the senate: the examination of the *exta* of *hostiae*—through which one determined if the *litatio* had been obtained—was the preserve of the *haruspices*; see Wissowa 1912, 419, "Dagegen ist die gesamte sehr komplizierte Theorie der Extispicin....durchaus unrömisch und eine spezifisch etruskische, nur von den Haruspices geübte Kunst, die seit der Zeit etwa des hannibalischen Krieges bei bestimmten Gattungen von Staatsopfern üblich wurde." See also Mommsen 1887-1888, 1.88 "so gehört doch die stetige Beobachtung und folgerichtige Auslegung der Opfereingeweide ...nicht zu dem ältesten römischen Ritual; vielmehr werden dafür bekanntlich die etruskischen Haruspices verwendet..."

⁵⁰⁰ Mac. *Sat.* 3.5.5: *in his ipsis hostiis, uel animalibus uel consultatoriis.*

⁵⁰¹ This is the key difference between *auspicia* and *auguria*: the latter pertain to the action itself, the former to the time of it. See Linderski 1995, 493.

why did the college determine that no sacrifices could occur on those days? The explanation may reside in the fact that several senators noted that the same result had occurred at Cremera and at many other times and places (*item apud Cremeram multisque aliis temporibus et locis*) when sacrifice was made on the day following the Ides, Kalends, and Nones. In these individual cases the gods were expressing their disapproval of the time of the intended battle, but collectively these cases must have signalled to the pontifical college that the gods refused to receive sacrifices on these days.

3.3.3.3 *responsa* on vows

There are attested seven pontifical *responsa* on vows. In this section I analyze them, discussing the role of the college in the vow-making process and calling attention to some of its underlying theological doctrine.

The first extant pontifical *responsum* on a vow was issued in 396 BC and is recounted by Livy:

Then there began to be discussion about Apollo's gift. When Camillus said that he had vowed a tenth part of the spoil to him, the pontiffs decreed that the people must be released from religious constraint (*pontifices soluendum religione populum censerent*), but it was not at all easy to enter into a plan of ordering the people to return the spoils so that from it the owed part might be set aside as sacred (*in sacrum secerneretur*). At last there was recourse to what seemed to be the mildest solution, that whoever wanted his house and self to be free of religious obligation (*se domumque religione exsoluere uellet*), should himself estimate the value of his spoils and give a tenth part of it over to the state so that from it might be made a gold gift worthy of the size of the temple and the power of the god, in accordance with the dignity of the Roman people. And this contribution also distanced the hearts of the people from Camillus.⁵⁰²

⁵⁰² Livy 5.23.8-11: *agi deinde de Apollinis dono coeptum. cui se decimam uouisse praedae partem cum diceret Camillus. pontifices soluendum religione populum censerent, haud facile inibatur ratio iubendi referre praedam populum, ut ex ea pars debita in sacrum secerneretur. tandem eo quod lenissimum uidebatur decursum est, ut qui se domumque religione exsoluere uellet, cum sibimet ipse praedam aestimasset suam, decimae pretium partis in publicum deferret, ut ex eo donum aureum, dignum amplitudine templi ac numine dei, ex dignitate populi Romani fieret. ea quoque conlatio plebis animos a Camillo alienauit.* Text Ogilvie 1974; trans. Foster 1924.

Camillus had in battle vowed a tenth of the spoils to Apollo. This money was to be used to make a gold gift for Apollo's temple. The gift had to be worthy of both the size of the temple and the power of the god (*dignum amplitudine templi ac numine dei*). It is interesting to note that Camillus' vow put the entire Roman *populus*, and not just himself, under the obligation to fulfill it. When Camillus and the army won the battle it was a sign that Apollo had accepted the vow and fulfilled his part of the bargain; the Romans were now obligated to fulfill theirs.

In the course of discussing the gold gift that Camillus had vowed to Apollo, the senate referred the matter to the pontifical college. We do not know how the senate phrased the referral, but it almost certainly did not simply tell the college to discuss the vow. Based on the college's response and the above study of the phrasing of other referrals to the college, we might say that the senate asked the college *num populum religione solui necesse est*. The college replied that "the people had to be released from the religious obligation" (*soluendum religione populum censerent*).

It is interesting to note that the spoils had already been distributed to the people. I would have expected the pontifical college or the senate to have intervened before this distribution was made, as it seriously hampered its fulfillment. But apparently this was not the case, and the college and senate became involved only after the spoils had been allotted.

To fulfill Camillus' vow, the spoil had to be gathered and a tenth of it (the portion vowed) set aside *in sacrum*. This was a difficult task, for the spoils had already been distributed to the people, and not only would it be difficult if not impossible to get them to agree to return it, it would also be difficult to know, if the people did agree, how much

of the original spoils they had actually returned. The vow was for a tenth of the spoils; so in order to fulfill the vow, the pontiffs had to know the value of the original spoils. If the people returned only half of the full amount, the ten percent could not be taken from that, since it would in fact represent only half of the amount originally vowed.

The solution is interesting in two respects. First, note that it is not stated that the pontiffs come up with it (although that might be the logical solution); the matter was undoubtedly debated in the senate after the pontifical decree. Second, the solution itself is that those who want to free themselves and their house from *religio* should make the appropriate contribution. An elegant solution: it frees Rome from any obligation and instead binds with *religio* any person who does not wish to contribute his share in fulfillment of the vow. Presumably those who refused to return a tenth of their spoils would incur the wrath of Apollo whose *aureum donum* had suffered by their stinginess.

A few sections later Livy narrates the fallout from this *responsum* and the attendant decision that everyone should contribute a tenth of his share of the spoils:

Camillus harangued the people constantly and in all places. It was no wonder, he said, that the citizenry (*ciuitatem*) had gone mad, since, bound though they were to carry out their vow, they were more concerned about everything else than about the discharge of their obligation (*quae damnata uoti omnium rerum potiore curam quam religione se exsoluendi habeat*). He would say nothing of their penny contribution—a truer name for it than tithe—since in this regard each man had bound himself as an individual, and the state was freed (*quando ea se quisque priuatim obligauerit, liberatus sit populus*); but there was one thing his conscience would not suffer him to pass over in silence; to wit, that the tithe should be defined as consisting of that part only of the booty which was movable; and that nothing should be said of the captured city and its territory, which were likewise included in the vow. Unable to agree on this point, the senate referred it to the pontiffs, who decided, after consulting with Camillus, that what had belonged to the Veientes before the vow was made and had subsequently come into the possession of the Roman people, a tithe thereof was sacred to Apollo. Thus the city and the land came into the

estimate. Money was drawn from the treasury, and the tribunes of the soldiers with consular rank were directed to purchase gold with it...⁵⁰³

Several things call for comment. First, the phrase *quando ea se quisque priuatim obligauerit, liberatus sit populus* indicates that after the *responsum* of the pontifical college and the decision on how to handle the tithe, each person took an oath to discharge their obligation. We must therefore posit the existence of a second vow made by each individual who had received part of the spoils. That is, Camillus' vow was modified, so that now each individual, and not the populace collectively, was responsible for its fulfillment. But still Camillus, as the one who made the original vow, must have felt some responsibility to ensure its proper fulfillment. Such is my interpretation of his concern that the vow be scrupulously discharged.

Secondly, we see here that the spoils were first treated as consisting of moveables only; Camillus, however, wanted the captured territory and city of Veii to be included in the estimate because these, too, had been part of his original vow. The senate was divided on the matter and referred it *ad pontifices*. The pontifical college then questioned Camillus (*adhibito Camillo*), undoubtedly asking him exactly what he had vowed. Afterwards, the college decreed⁵⁰⁴ that a tenth part of whatever had been Veientine before

⁵⁰³ 5.25.4-12: *Camillus identidem omnibus locis contionabatur: haud mirum id quidem esse, fuerere ciuitatem, quae damnata uoti omnium rerum potioem curam quam religione se exsoluendi habeat; nihil de conlatione dicere, stipis uerius quam decumae, quando ea se quisque priuatim obligauerit, liberatus sit populus. enimuero illud se tacere suam conscientiam non pati quod ex ea tantum praeda quae rerum mouentium sit decuma designetur: urbis atque agri capti, quae et ipsa uoto contineatur, mentionem nullam fieri. cum ea disceptatio, anceps senatui uisa, delegata ad pontifices esset, adhibito Camillo uisum collegio, quod eius ante conceptum uotum Veientium fuisset et post uotum in potestatem populi Romani uenisset, eius partem decimam Apollini sacram esse. ita in aestimationem urbs agerque uenit. pecunia ex aerario prompta, et tribunis militum consularibus ut aurum ex ea coemerent negotium datum.* Text Ogilvie 1974; trans. Foster 1924.

⁵⁰⁴ The phrase used is *uisum collegio*, a term which clearly indicates a decision of the college; it is a variant for the more technical *collegium decreuit* or *collegium respondit*.

the vow was made and then had come into the possession of the Roman people was *Apollini sacra*. The college thus agreed with Camillus.

Thirdly, this passage provides evidence for a second pontifical response on the matter of Camillus' vow. Whereas with the first response the college determined whether the people were bound by Camillus' vow, in this response it decided whether a tenth part of the territory and city of Veii were *Apollini sacra*. Here then we have an example of a *responsum* where the college determined whether something was *sacrum* or not. Livy does not say how the college arrived at its decision, but it is tempting to conclude that it simply asked Camillus what he had vowed, with the understanding that the original terms of that vow must be followed. He must have repeated to the college his claim that the *urbs et ager* of Veii were included in his vow. Once the college had confirmed this, it could readily respond that a tenth of what had belonged to Veii and was now in the power of the Roman people (*in potestatem populi Romani*) was *Apollini sacra*.

The third attested pontifical *responsum* dates to 217. In that year the senate ordered the *decemviri sacris faciundis* to inspect the Sibylline Books in order to find out the necessary *piacula* for the *ira deum* that was then plaguing Rome. The *decemviri* inspected the books and reported back to the senate that:

- the vow to Mars for the sake of the war had not been performed rightly (*non rite factum*)
 - a. it had to be done again and on a larger scale (*de integro atque amplius faciundum esse*)
- 2) great games to Jupiter must be vowed
- 3) a temple to Venus Erycina must be vowed
- 4) a temple to Mens must be vowed
- 5) a *supplicatio* must be held
- 6) a *lectisternium* must be held
- 7) a *uer sacrum* must be vowed

Livy continues with the senate's response to this reply:

Since [Q. Maximus] Fabius the dictator was busy with the war the Senate ordered the praetor M. Aemilius to see to it that all these things happen in a timely fashion and in accordance with the opinion of the pontifical college (*Aemilium praetorem, ex collegii pontificum sententia, omnia ea ut mature fiant curare iubet*). When these decrees of the senate had been passed (*his senatus consultis perfectis*) the praetor consulted the college and the *pontifex maximus* L. Cornelius Lentulus determined first of all that the people should be consulted about the sacred spring (*omnium primum populum consulendum de uere sacro censet*), for it could not be vowed without an order of the people (*iniussu populi uoueri non posse*).⁵⁰⁵

The Senate thus accepted the decemvirs' reply and ordered the praetor M. Aemilius to see to it that all the things they recommended be done in a timely fashion and *ex collegii pontificum sententia*. This last phrase must conceal the Senate's order that he consult the pontifical college about the proper performance of the acts recommended by the decemvirs. Livy then gives the reply of the *pontifex maximus*, who probably reports his colleagues' decision to the Senate. Livy mentions only the college's *responsum* on the *uer sacrum*, but surely it must have responded to each of the seven recommended actions, if only to say that there seemed to be no reason why X or Y could not be done. Livy probably only reports the *reponsum* on the sacred spring because it was the only one of the acts about which the college expressed reservations.

Several things require comment. First, it is interesting to note that the college's response ensured that the performance of the sacred spring abided by the public law; it did not contain any provisions about its ritual aspects. Second, the senate viewed the

⁵⁰⁵ Liv. 22.9.7-10.1: *Q. Fabius Maximus dictator iterum quo die magistratum iniit uocato senatu, ab dis orsus, cum edocuisset patres plus neglegentia caerimoniarum quam temeritate atque inscitia peccatum a C. Flamio consule esse quaeque piacula irae deum essent ipsos deos consulendos esse, peruicit ut, quod non ferme decernitur, nisi cum taetra prodigia nuntiata sunt, decemviri libros Sibyllinos adire iuberentur. qui inspectis fatalibus libris rettulerunt patribus, quod eius belli causa uotum Marti foret, id non rite factum de integro atque amplius faciundum esse, et Ioui ludos magnos et aedes Ueneri Erycinae ac Menti uouendas esse et supplicationem lectisterniumque habendum et uer sacrum uouendum, si bellatum prospere esset resque publica in eodem quo ante bellum fuisset statu permansisset. senatus, quoniam Fabium belli cura occupatura esset, M. Aemilium praetorem, ex collegii pontificum sententia, omnia ea ut mature fiant curare iubet. his senatus consultis perfectis L. Cornelius Lentulus pontifex maximus consulente collegium praetore omnium primum populum consulendum de uere sacro censet: iniussu populi*

pontifical college as the proper authority on all these recommendations even though at least one of them, the *lectisternium*, was performed by the *decemviri*.⁵⁰⁶ That the pontifical college was regarded as the authority about a rite that it did not perform is certainly striking. We should like to know what the college investigated when discussing the decemvirs' recommendation that a *lectisternium* be held. There is one passage that may help in this matter. Festus tells us that

When 'to establish shrines' (*sistere fana*) is said at a city's foundation it means to constitute the places in town for future shrines; although Antistius Labeo says in the fifteenth book of his commentary on the pontifical law that it means to hold *lectisternia* in certain places and for certain gods (*certis locis et dis*).⁵⁰⁷

In his book on pontifical law Antistius Labeo discussed the phrase *sistere fana* and said that it meant to hold *lectisternia* in certain places and for certain gods. Now, *certus-a-um* is an important word in Roman religion and law: here it refers to firmly established deities and fixed locations for religious acts. I am tempted to conclude from this passage that there was not just one type of *lectisternium*. That is, certain gods received a *lectisternium* in a fixed location, but others could receive them anywhere. Perhaps this is what the college discussed in 217. It investigated the location of the *lectisternium* that the decemvirs recommended and the deities for whom it would be performed.

The fourth pontifical *responsum* on a vow comes again from Livy, this time from his account of events in 200 BC:

The citizenry ordered the consul who had obtained Macedonia has his province to vow games and a gift to Jupiter, but the *pontifex maximus* Licinius delayed the public

uoueri non posse (Text and trans. Foster 1929). A more abbreviated account of these events given by Plut. *Fab.* 4.3-5.

⁵⁰⁶ Liv. 22.10.8: *tum lectisternium per triduum habitum decemuiris sacrorum curantibus*.

⁵⁰⁷ Fest. 476 L. (T24): *sistere fana cum in urbe condenda dicitur, significat loca in oppido futurorum fanorum constituere: quamquam Antistius Labeo ait in commentario XV iuris pontifici, fana sistere esse lectisternia certis locis et dis habere*.

vow, denying that it was allowed to make a vow from an uncertain amount of money (*ex incerta pecunia*); it ought to be vowed from certain money (*ex certa uoueri debere*) because this money could not be used for war and ought immediately to be set aside and not mixed with the other money (*nec cum alia pecunia misceri*); were that done the vow could not rightly be discharged (*uotum rite solui non posse*). Although Licinius' argument and his influence moved [the senate], the consul was nevertheless ordered to refer to the pontifical college if a vow of uncertain money could rightly be undertaken (*si posset recte uotum incertae pecuniae suscipi*). The pontiffs decreed that it was possible and even more than correct (*posse rectiusque etiam esse pontifices decreuerunt*). The consul then made the vow, repeating the words that the *pontifex maximus* dictated and by which the previous quinquennial vows had customarily been made, except for the fact that he vowed that he would make the gift and the games for as much money as the senate decided at the time when the vow was discharged (*praeterquam quod tanta pecunia quantam tum cum solueretur senatus censuisset, ludos donaque facturum uouit*). Eight times before the great games had been vowed from fixed amounts of money (*de certa pecunia*). These were the first from unfixed amounts (*de incerta*).⁵⁰⁸

I have discussed this passage previously in the section (3.3.2.4) on the consultation of the college and the voting procedure used by it in formulating its decrees. I would here like to examine some of the theological issues this passage raises.

Let us look at Licinius' reasoning. Licinius objected to the vow for the games and gift to Jupiter because they were going to be made from an indeterminate sum of money. According to him the sum has to be a fixed amount because the money, once vowed, should be immediately set aside (*seponique statim*) and not mixed with other types of money (*nec cum alia pecunia misceri*) nor used for war (*non posset in bellum usui esse*). The normal procedure for a vow, then, was for the person making the vow to state explicitly the amount that would be spent. That amount would then immediately be set

⁵⁰⁸ Liv. 31.9.5-10: *ciuitas...ludos Ioui donumque uouere consulem, cui prouincia Macedonia euenisset, iussit, moram uoto publico Licinius pontifex maximus attulit, qui negauit ex incerta pecunia uouere licere; ex certa uoueri debere, quia ea pecunia non posset in bellum usui esse seponique statim deberet nec cum alia pecunia misceri; quo si factum esset, uotum rite solui non posse. quamquam et res et auctor mouebat, tamen ad collegium pontificum referre consul iussus, si posset recte uotum incertae pecuniae suscipi. posse rectiusque etiam esse pontifices decreuerunt. uouit in eadem uerba consul praeunte maximo pontifice quibus antea quinquennalia uota suscipi solita erant, praeterquam quod tanta pecunia quantam tum cum solueretur senatus censuisset, ludos donaque facturum uouit. octiens ante ludi magni de certa pecunia uoti erant. hi primi de incerta*. Text Briscoe 1991.

aside so that, in the event that the god fulfilled his part of the vow, the Romans could then fulfill theirs. From Licinius' statement we may conclude that from the moment the vow was made the amount of money vowed became sacred and should not be used for any other purposes nor mixed with any other type of money. But why? The best solution I can offer is that once the money was set aside the Romans viewed it as already belonging to the deity that is, as *sacra*. Of course it could not be thought to belong completely to the god, since he had not yet fulfilled or neglected his part of the vow, but in some way the *pecunia* was thought to belong to him and thus to be *pecunia sacra*. The stipulation that the amount should be fixed was meant to ensure only that the money not be mixed with other funds, that is, with *pecunia profana*.⁵⁰⁹

Precedent was certainly on Licinius' side. As Livy says, the eight previous games had all been vowed *de certa pecunia*. And yet the college was able to overrule him. And not just overrule, but convincingly overrule. The college stated not only was a vow of *incerta pecunia* able to be made, it was more than correct (*rectius etiam*) that such a vow be made. It is unfortunate that Livy does not report the college's reasons for this decree, for it would be interesting to know its justification for this break from precedent. Perhaps they determined that the god (in this case, Jupiter) would not be angry if the money for his games was commingled with other funds. But a better hypothesis may come from a consideration of Livy's remarks that the vow, when finally made, stated that the consul "would make the gift and the games for as much money as the senate decided at the time when the vow was discharged" (*praeterquam quod tanta pecunia quantam tum cum solueretur senatus censuisset, ludos donaque facturum uouit*). From this statement I

⁵⁰⁹ Cohee 1994, 99, appositely remarks, "...the religious issue is not one of amount, but of source—and therefore the quality—of the money."

would tentatively conclude that the college had determined that the *pecunia* vowed for the games was not *sacra* until the vow was discharged, that is, until the god had fulfilled his part of the vow; before that time, the money could be used for whatever purpose necessary. Once Jupiter held up his end of the bargain, *i.e.*, once the Romans won the battle, then the sum could be determined and the money set aside.

The fifth and sixth pontifical *responsa* on *uota* concern the *uer sacrum*, discussed above, whose vowing was advised by the *decemviri* in 217. The first dates from 195 and is fairly straightforward:

Before they left the city the consuls were ordered by a decree of the pontiffs (*ex decreto pontificum iussi*) to perform the *uer sacrum* which the praetor A. Cornelius Mammula had vowed in accordance with the senate's will and by order of the people when Cn. Servilius and C. Flaminius were consuls. It was performed twenty-one years after it had been vowed.⁵¹⁰

Most noteworthy for the purpose of this section is the fact that the pontifical college could by its decree order the consuls to do something. I do not think Livy has exaggerated the powers of the college. Rather we have here a case involving the performance of a religious rite, and on such matters the college could issue a decree on its own initiative instructing whomever to do whatever it advised. The issue in 195 was not one of the public law on the performance of the *uer sacrum*, but the simple performance of it. The college must have met on its own and determined that the *uer sacrum* vowed twenty-one years previous had to be performed now. It then issued a decree instructing the consuls to perform the *uer sacrum* before they left the city.⁵¹¹ As the supreme

⁵¹⁰ Liv. 33.44.1: *consules, priusquam ab urbe proficiscerentur, uer sacrum ex decreto pontificum iussi facere, quod A. Cornelius Mammula praetor uouerat de senatus sententia populiue iussu Cn. Seruilio C. Flamínio consulibus. annis post uno et uiginti factum est quam uotum.* Text Weissenborn-Mueller 1959.

⁵¹¹ As Cohee 1994, 104, notes "the college was anxious about the rather tardy fulfillment of the vow."

authority on such matters, the college could not be ignored, and the consuls duly performed the *uer sacrum*.

But this was not the end of the matter for in the next year the following happened:

The sacred spring had been made in the previous year, when M. Porcius and L. Valerius were consuls. When P. Licinius the *pontifex maximus* reported (*renuntiasset*) first to the pontifical college that it had not been performed correctly (*non esse recte factum*) and then, on the determination of the college (*ex auctoritate collegii*), reported the same to the senators, they voted that in accordance with the pontiffs' judgement (*arbitratu pontificum*) that the sacred spring should be performed anew and that the great games which had been part of the vow, should be made for as much money as was customary.⁵¹²

The *pontifex maximus* P. Licinius had determined that the *uer sacrum* had been incorrectly performed. He brought the matter to the attention of his colleagues who collectively determined that he was correct and that he should report the matter to the senate. Livy does not mention a pontifical decree, but the college must have issued one that stated the *uer sacrum* had been performed incorrectly. Like the immediately preceding decree, this one must have been initiated by the college, for it was not a response to a query from the senate. The matter in question was the rite of the *uer sacrum*, itself purely a matter of Roman religion, and on this subject the college, as the supreme authority, possessed the prerogative to issue decrees on its own initiative. It is frustrating that Livy does not tell us why the college deemed the sacred spring incorrectly performed. But then again, this is understandable, for such details were probably suitable for the ears of the members of the college alone. In promulgating its decree the college may well have noted only *uer sacrum non esse recte factum* and left the matter at that.

⁵¹² Liv. 34.44.1-3: *uer sacrum factum erat priore anno, M. Porcio et L. Valerio consulibus. id cum P. Licinius pontifex non esse recte factum collegio primum, deinde ex auctoritate collegii patribus renuntiasset, de integro faciendum arbitratu pontificum censuerunt ludosque magnos, qui una uoti essent, tanta pecunia quanta adsoleret faciendos.* Text Weissenborn-Mueller 1959

The seventh and final pontifical *responsum* on *uota* comes from 187 BC and again concerns a commander's wartime vow of great games to Jupiter. Livy again preserves the passage:

A triumph was decreed to M. Fulvius. When he had given thanks to the senators, he added that on the day he captured Ambracia he had vowed great games to Jupiter Best and Greatest. For this purpose the cities had brought him one hundred pounds of gold. He sought that the senators might order that of the money which he would carry in triumph and then place in the treasury this gold be kept apart (*id aurum secerni iuberent*). The senate ordered the pontifical college consulted on whether it was necessary that all this gold be spent on the games (*senatus pontificum conlegium consuli iussit num omne id aurum in ludos consumi necesse esset*). When the pontiffs asserted that the amount spent on the games did not pertain to religion (*cum pontifices negassent ad religionem pertinere quanta impensa in ludos fieret*) the Senate permitted Fulvius to spend as much as he wanted as long as he spent no more than 80,000 sesterces.⁵¹³

Fulvius had vowed great games to Jupiter Best and Greatest when he had captured Ambracia. Jupiter had granted victory; Fulvius now owed him *magni ludi* in return. The cities had given him one hundred pounds of gold for this purpose, but once back in Rome Fulvius wanted this hundred pounds to be set aside from the money that would be put in the treasury, *i.e.*, he wanted it for himself, or at least, did not want to spend it on the games. He asked the Senate for permission to do so, and the Senate referred the matter to the pontifical college, asking it whether all the gold had to be spent on the games. Livy does not say how the college arrived at its decision, but it is reasonable to suppose that it questioned Fulvius about the exact terms of his vow, just as it had done with Camillus in the first *responsum* discussed in this section.

⁵¹³ Liv. 39.5.7-10: *his uictus castigationibus tribunus cum templo excessisset, referente Ser. Sulpicio praetore triumphus M. Fulvius est decretus. is cum gratias patribus conscriptis egisset, adiecit ludos magnos se Ioui optimo maximo eo die quo Ambraciam cepisset uouisse; in eam rem sibi centum pondo auri a ciuitatibus conlatum; petere ut ex ea pecunia quam in triumpho latam in aerario positurus esset, id aurum secerni iuberent. senatus pontificum conlegium consuli iussit num omne id aurum in ludos consumi necesse esset. cum pontifices negassent ad religionem pertinere quanta impensa in ludos fieret, senatus Fulvius quantum impenderet permisit, dum ne summam octoginta milium excederet.* Text Walsh 1999.

We may be able to proffer a reasonable hypothesis about the college's reasoning by working backward from its response. The college decreed that the amount spent on the games did not pertain *ad religionem* (*cum pontifices negassent ad religionem pertinere quanta impensa in ludos fieret*). This last phrase cannot fail to attract our attention, especially when we consider the college's reply in the first *responsum* on a vow, that of Camillus. He had vowed a tenth of his spoils to a gift for Apollo. This vow was apparently discussed in the senate and referred to the pontifical college, which decreed that *soluendum religione populum*.⁵¹⁴ The mention of *religio* in both passages is important. In the passage on Camillus' vow *religio* denotes the obligation that Camillus put the Roman people under when he made his vow. In Fulvius' case *religio* must refer to the same thing: the obligation Fulvius incurred with his vow at Ambracia. Now the question asked of the college here was not whether Fulvius' vow had to be discharged or not, but whether all the gold given to him had to be used on the games he had vowed. The college's reply—*negassent ad religionem pertinere quanta impensa in ludos fieret*—must mean that the amount spent on the games was not part of the *religio* incurred by Fulvius' vow. If this is the correct interpretation, then we must conclude that when making his vow Fulvius had not fixed an amount for his games; he had merely said that if he took Ambracia he would give *magni ludi* to Jupiter, but he never specified the amount he would spend on those games. Apparently it did not matter for what purpose the cities had given Fulvius the gold; what mattered was Fulvius' promise to Jupiter, and that promise contained no mention of the cost of the games or the source of their funding. It simply stipulated *magni ludi* for Jupiter should Ambracia fall. Thus, the role of the college here

⁵¹⁴ Liv. 5.23.8-11: *agi deinde de Apollinis dono coeptum. cui se decimam uouisse praedae partem cum diceret Camillus. pontifices soluendum religione populum censerent.*

was simply to see that the terms of Fulvius' vow were properly met. Whether its decision was just or not is another matter: Fulvius and the college did not need to satisfy the *ciuitates*, but Jupiter alone.

3.4 The pontifical college and the Vestal Virgins

In this section I begin by showing that the pontifical college alone was responsible for trying a Vestal, and thus that any decree issuing from these trials were initiated by the pontifical college. Next, I challenge the view of Mommsen, who implicitly doubted that the pontifical college presided over the trials of Vestals; he ascribed all pontifical power to the *pontifex maximus*, viewed the college as merely his *consilium*, and from this belief naturally concluded that in an *incestus* trial the chief priest could freely ignore the advice (or votes) of his colleagues and even condemn a Vestal without convening them to hear her case. As I hope to show, the evidence does not support Mommsen's theory, but shows that the full college, and not just the *pontifex maximus*, regularly judged *incestus* trials. I then proceed to attempt to reconstruct the procedure of a typical trial from accusation to condemnation or acquittal, focusing primarily on where the college met and how it voted. I then discuss the history of the extent and development of the pontifical authority in this area. Finally, I analyze the decrees that the pontifical college issued in a typical trial, paying particular attention to the reasoning behind these decrees. The limited evidence on *incestus* trials renders some of my reconstruction necessarily speculative. Yet I have tried to draw conclusions consistent with reason and probability, in an attempt to offer as detailed and accurate picture as possible of pontifical activity and authority in this area.

3.4.1 *incestus* trials: initiated by the college

It is tempting, on a cursory perusal of the evidence, to see pontifical *decreta* on Vestal virgins as issued in the same way as most other decrees, that is, in response to an inquiry by the Senate or a magistrate. Three points, however, militate against such a view. First, we never hear that the possible *incestus* of a Vestal (or the extinction of the eternal hearth fire that they guarded, for that matter) was first discussed in the Senate and then, by senatorial decree, referred to the pontifical college for discussion and decision. Of course, as an *argumentum ex silentio* this claim is hardly definitive. But there does exist evidence to support it, namely (and this is the second point) the explicit statement by Dionysius Halicarnassus that the pontiffs were the authorities who investigated and punished the Vestals for their minor and major misdeeds⁵¹⁵ and Cicero's provision from the religious constitution of Book Two of *De Legibus*, which ascribes the punishment for *incestus* to the *pontifices*.⁵¹⁶ Their views are corroborated by three passages from Cicero and Livy that tell of the suspicion and discovery of a lapsed Vestal. In these accounts, neither the Senate nor a magistrate plays a role. Instead, the damaging information against the Vestal is leaked directly to the *pontifices*.⁵¹⁷ Finally, we have the following

⁵¹⁵ Dion. Hal. 2.67.4: τιμωρίαι τε ἐπὶ τοῖς ἀμαρτανομένοις κεῖνται μεγάλαι, ὧν ἐξετασταί τε καὶ κολασταὶ κατὰ νόμον εἰσὶν οἱ ἱεροφάνται (= *pontifices*), τὰς μὲν ἄλλο τι τῶν ἐλαττόνων ἀμαρτανούσας ῥάβδοις μαστιγοῦντες, τὰς δὲ φθαρείσας αἰσχίστῳ τε καὶ ἐλεεινοτάτῳ παραδιδόντες θανάτῳ.

⁵¹⁶ *Leg.* 2.22: *incestum pontifices supremo supplicio sanciunt*.

⁵¹⁷ Dion. Hal. 8.89.4 (483 BC): καὶ σὺν χρόνῳ μήνυσις ἀποδίδεται τοῖς ἱεροφάνταις, ὅτι τῶν παρθένων μία τῶν φυλαττουσῶν τὸ ἱερὸν πῦρ, ὅπμιμία ὄνομα αὐτῇ, τὴν παρθενίαν ἀφαιρεθεῖσα μιαίνει τὰ ἱερά. Dion. Hal. 9.40 (472 BC): ἐν τοιαύτῃ δὲ συμφορᾷ τῆς πόλεως οὔσης τοῖς ἐξηγηταῖς τῶν ἱερῶν γίνεται μήνυσις ὑπὸ δούλου τινός, ὅτι μία τῶν ἱεροποιῶν παρθένων τῶν φυλαττουσῶν τὸ ἀθάνατον πῦρ ὀρβινία τὴν παρθενίαν ἀπολώλεκε καὶ τὰ ἱερά θύει τὰ τῆς πόλεως οὐκ οὔσα καθαρά; Livy 8.15.7-8 (337 BC): *eo anno Minucia Uestalis, suspecta primo propter mundiorem iusto cultum, insimulata deinde apud pontifices ab indice seruo*; there is also the following excerpt from Plutarch, who, however, does not report to whom the informant gave his information, *Plut. Mor.* 284B = *Quaest. Rom.* 83 (114 BC): ἐμήνυσσε Βάρρου τινὸς ἰππικοῦ θεράπων τρεῖς παρθέλους τῶν ἐστιάδων, Αἰμιλίαν καὶ Λικινίαν καὶ Μαρκίαν. Cf. the similar, but longer, story at Dio 26, fr. 87. *Plut. Num.* 9.10 claims that the *pontifex maximus* oversaw the Vestal Virgins

passage from a letter of Pliny the Younger in which he describes the trial under Domitian of the *Vestalis maxima* Cornelia⁵¹⁸:

For when he [*i.e.* Domitian] had conceived a strong desire to bury alive the head Vestal Cornelia (for he thought that his reign would shine with examples of this sort), he exercised the right of the *pontifex maximus* (*pontificis maximi iure*), or rather, the cruelty of a tyrant and a master's caprice, and summoned the other pontiffs not to the Regia, but to his Alban villa.⁵¹⁹

Pliny says that Domitian convoked his fellow pontiffs⁵²⁰ *pontificis maximi iure*, a phrase that immediately attracts attention⁵²¹ since it suggests that to convene these trials was the prerogative of the *pontifex maximus*. Since Pliny's letter is the only extant passage describing the convocation of an *incestus* trial it is uncertain whether all *pontifices maximi* enjoyed the same right, but I think it reasonable to conclude as much, chiefly because in this letter Pliny is at pains to paint Domitian as a harsh and brutal ruler (note especially the references to *immanitas tyranni* and *licentia domini*), and he could easily have added to this portrait by omitting the reference to Domitian's role as head priest and

(Ὁ δὲ μέγιστος τῶν Ποντιφίκων... ἣν δὲ καὶ τῶν ἱερῶν παρθένων ἐπίσκοπος, ὡς Ἑστιάδας προσαγορεύουσι), but I think he bases this statement on the fact that Vestals who let the fire go out were whipped by the *pontifex maximus*; but even if the Romans saw the *pontifex maximus* as the "overseer" of the Vestals, it does not follow that he could try and condemn a Vestal on his own. In all attested *incestus* cases it is the college that renders the verdict.

⁵¹⁸ Raepsaet-Charlier 1987, no. 2745.

⁵¹⁹ Pliny *Ep.* 4.11.6: *nam cum Corneliam Vestalium maximam defodere uiuam concupisset, ut qui inlustrari saeculum suum eiusmodi exemplis arbitaretur, pontificis maximi iure, seu potius immanitate tyranni licentia domini, reliquos pontifices non in Regiam sed in Albanam uillam conuocauit.* Text Mynors 1966.

⁵²⁰ It is uncertain whether here *pontifices* means *collegium pontificum* or *pontifices* proper.

⁵²¹ I have found the phrase *ius pontificis maximi* attested only once elsewhere, Suet. *Claud.* 22.1: *utque dira aue in Capitolio uisa obsecratio haberetur, eamque ipse [sc. Claudius] iure maximi pontificis pro rostris populo praeiret summotaque operariorum seruorumque turba.*

instead saying that as Emperor he forced his fellow pontiffs to assemble.⁵²² Instead, Pliny uses *pontificis maximi iure* to imply that in prosecuting Cornelia Domitian was abusing one of the rights he enjoyed as chief priest and hiding his tyrannical cruelty behind a pontifical prerogative.

We have no evidence that the Senate or a magistrate referred to the pontifical college the investigation of a possibly lapsed Vestal. Instead we have the claim that the pontiffs alone were in charge of overseeing the Vestals, three passages that report that information against a Vestal was delivered directly to the pontiffs, and one passage that strongly suggests that it was the *pontifex maximus* who possessed the right to convene these trials. We can thus conclude that the Senate and magistrates never intervened in the process, that *incestus* trials were the preserve of the pontifical college alone,⁵²³ and that the *pontifex maximus* convened his colleagues to hear these trials. We may therefore conclude that any decrees issuing from these trials were initiated by the college alone and not by an outside agent.

3.4.2 A typical trial: from suspicion to condemnation or acquittal

About the unchastity of the Vestal Virgins much has been written.⁵²⁴ Yet I have been unable to find either a complete discussion of the pontifical involvement in the

⁵²² Mommsen 1887-1888, 2.55, esp. n. 2, would go further. To the *pontifex maximus* he ascribed the power not only to convene the trial, but also to condemn a Vestal against their vote for her innocence, and even to condemn her without consulting the pontifical college. This view, as sensible as it is within Mommsen's conception of the powers of the *pontifex maximus*, probably goes too far. As I hope to show below, he has read too much into the ancient passage he adduces in support, Cic. *Har. resp.* 13, and has assumed too much about the voting procedure of the college in these trials. See below, n. 556 and the attendant discussion.

⁵²³ The punishment of the Vestal and her lover, however, appear to have been prescribed by a *lex*, cf. Fest. 277 L.: **Probrum** uirginis Uestalis ut capite puniretur, uir, qui eam incestauisset, uerberibus necaretur: lex fixa in atrio Libertatis cum multi<s> alis legibus incendio consumpta est, ut ait M. Cato in ea oratione, quae de auguribus inscribitur. On this see Mommsen 1899, 20.

incestus trials or a full treatment of the trials themselves.⁵²⁵ For completeness and clarity I have therefore tried to collect every securely attested case of a Vestal accused of losing her chastity. I have found evidence for twenty-seven trials (summarized in Table 3.1). The first occurred in 483 BC, the last in the late fourth century AD. All but one of the accused Vestals were priestesses at Rome, the one exception being the Vestal in the last attested case who came from Alba Longa. It is worthwhile to point out that Vestals existed elsewhere than Rome and that these priestesses, like the *sacra* of the communities to which they belonged, appear to have fallen under the jurisdiction of the pontifical college at Rome.⁵²⁶

3.4.2.1 Suspicion and accusation

A Vestal Virgin could incur suspicion of unchastity (*incestus*)⁵²⁷ for a number of reasons. Two Vestals were accused for their improper dress and behavior (including telling jokes)⁵²⁸ and one for keeping too frequent company with men.⁵²⁹ Prodigies are

⁵²⁴ I have found the following treatments particularly helpful and informative: Mommsen 1887-1889, 2.54-57, Idem 1899, 18-20, 688-928-930; Wissowa 1912 and 1923; Münzer 1937; Koch 1958; Cornell 1981; Bouché-Leclercq 1871, 292-298; Lovisi 1998; I have not seen Guizzi 1968.

⁵²⁵ Parker's (2004, 593-595) appendix contains several errors and inaccuracies in its treatment of *incestus* trials. Marquardt (1881-1885, 3.342 n. 7) writes, "Die Fälle von Verurtheilungen von Vestalinnen sind gesammelt bei Brohm *a. a. O. S.* 17-26." The reference is to R. Brohm, *De Iure Uirginum Uestaliū* (Thorn 1835), a work I have been unable to find in the United States. Cohee's (1994, 51-55) treatment is valuable, but he does not discuss the location of the trials, trials during the Empire, or the *Lex Peducaea*. Other partial lists of trials are given by Lovisi 1998, 699, and Mekacher 2006, 259.

⁵²⁶ On the subject of municipal *sacra* see Mommsen 1887-1888, 3.579-580; Wissowa 1912, 519-521; on municipal Vestals see Koch 1958, 1720.11-1724.10.

⁵²⁷ This is not the place to enter into the debate on the concept of *incestus*. Cornell 1981, 27-37, provides a helpful introduction to the topic.

⁵²⁸ Liv. 4.44.11-12 (420 BC): *eodem anno Postumia uirgo Uestalis de incestu causam dixit, crimine innoxia, ab suspicione propter cultum amoeniorem ingeniumque liberior quam uirginem decet parum abhorrens. eam ampliata, deinde absolutam pro collegii sententia pontifex maximus abstinere iocis colique sancte potius quam scite iussit*. Plutarch reports the incident, gives the name of the *pontifex maximus*, but omits the *sententia collegii*. Plut. *Mor.* 89E-F = *inim. util.* 6: Πιστοῦμίαν δὲ τὸ γελᾶν

twice taken as indicating that a Vestal had polluted the *sacra* by performing them while unchaste.⁵³⁰ There is no evidence that a Vestal's unchastity was ever treated as a

prodigy.⁵³¹ A Vestal might be suspected of *incestus* because the eternal fire went out on her watch, but no Vestal was ever convicted of *incestus* for this reason.⁵³² Instead, as

προχειρότερον καὶ λαλιᾷ χρῆσθαι θρασυτέρα πρὸς ἄνδρα διέβαλεν, ὥστε κριθῆναι φθορᾶς. εὐρέθη μὲν οὖν καθαρά τῆς αἰτίας, ἀπολύσας δ' αὐτὴν ὁ ἀρχιερεὺς Σπόριος Μινούκιος ὑπέμνησε ἢ χρῆσθαι λόγοις ἀσεμνοτέροις τοῦ βίου. Liv. 8.15.7-8 (337 BC): *eo anno Minucia Uestalis, suspecta primo propter mundiorem iusto cultum, insimulata deinde apud pontifices ab indice seruo, cum decreto eorum iussa esset sacris abstinere familiamque in potestate habere, facto iudicio uiua sub terram ad portam Collinam dextra uiam stratam defossa Scelerato campo; credo ab incesto id ei loco nomen factum.* When reading about Postumia, I am reminded of Sempronia, one of Catiline's co-conspirators, about whom Sallust (*Cat.* 25.3) writes, *sed ei cariora semper omnia quam decus atque pudicitia fuit; pecuniae an famae minus parceret, haud facile discerneres.* I note that among her many reprehensible (at least to Sallust) talents was her ability *iocum mouere* (*Cat.* 25.5). A proper Roman woman, virgin or not, did not tell jokes.

⁵²⁹ Plut. *Crass.* 1.2 (the case is from 73 BC and was not, as I shall argue, tried before the pontiffs): καίτοι προῖον καθ' ἡλικίαν αἰτίαν ἔσχε Λικιννία συνιέναι, τῶν Ἑστιάδων μιᾷ παρθένων, καὶ δίκην ἔφυγεν ἢ Λικιννία Πλωτίου τινὸς διώκοντος. ἦν δὲ προάστειον αὐτῇ καλόν, ὃ βουλόμενος λαβεῖν ὀλίγης τιμῆς ὁ Κράσσος, καὶ διὰ τοῦτο προσκείμενος αἰεὶ τῇ γυναικὶ καὶ θεραπεύων, εἰς τὴν ὑποψίαν ἐκείνην ἐνέπεσε, καὶ τρόπον τινὰ τῇ φιλοπλουτίᾳ τὴν αἰτίαν τῆς φθορᾶς ἀπολυσάμενος, ὑπὸ τῶν δικαστῶν ἀφείδθη. τὴν δὲ Λικιννίαν οὐκ ἀνῆκε πρότερον ἢ τοῦ κτήματος κρατῆσαι. Plut. *Mor.* 89E = *inim. util.* 6: Κράσσος δὲ τῶν ἱερῶν μιᾷ παρθένων αἰτίαν ἔσχε πλησιάζειν, χωρίον τι καλὸν ὠνήσασθαι παρ' αὐτῆς βουλόμενος καὶ διὰ τοῦτο πολλάκις ἐντυγχάνων ἰδίᾳ καὶ θεραπεύων.

⁵³⁰ Dion. Hal. 8.89.3-4 (483 BC): καὶ τὰ μὲν ἐπὶ στρατοπέδου γινόμενα τοιαῦτ' ἦν· ἐν αὐτῇ δὲ τῇ Ῥώμῃ πολλὰ δαιμόνια σημεῖα ἐφαίνετο δηλωτικὰ θείου χόλου κατὰ τε φωνὰς καὶ ὄψεις ἀήθεις. πάντα δ' εἰς τοῦτο συνέτεινεν, ὥς οἱ τε μάντεις καὶ οἱ τῶν ἱερῶν ἐξηγηταὶ συνενέγκαντες τὰς ἐμπειρίας ἀπεφαίνοντο, <ὅτι> θεῶν [χοροῦσθαι] τινες οὐ κομίζονται τὰς νομίμους τιμὰς οὐ καθαρώς οὐδὲ ὁσίως ἐπιτελουμένων αὐτοῖς τῶν ἱερῶν. ζήτησις δὲ μετὰ τοῦτο πολλὴ ἐκ πάντων ἐγίνετο, καὶ σὺν χρόνῳ μήνυσις ἀποδίδοται τοῖς ἱεροφάνταις, ὅτι τῶν παρθένων μία τῶν φυλαττουσῶν τὸ ἱερὸν πῦρ, Ὀπιμία ὄνομα αὐτῇ, τὴν παρθενίαν ἀφαιρεθεῖσα μιαίνει τὰ ἱερά. Cf. Livy's account (2.42.9-11): *accessere ad aegras iam omnium mentes prodigia caelestia, prope cottidianas in urbe agrisque ostendantia minas; motique ita numinis causam nullam aliam uates canebant publice priuatimque nunc extis, nunc per aues consulti, quam haud rite sacra fieri; qui terrores tamen eo euasere ut Oppia uirgo Uestalis damnata incesti poenas dederit.* Dion Hal. 9.40 (472 BC): ἐν ἀρχῇ δὲ τοῦ ἔτους εὐθὺς ὀττειάς τινος ἢ πόλις ἐπληρώθη καὶ φόβου δαιμονίου τεράτων τε καὶ σημείων πολλῶν γινομένων. καὶ οἱ τε μάντεις ἅπαντες καὶ οἱ τῶν ἱερῶν ἐξηγηταὶ χόλου δαιμόνων μηνύματα εἶναι τὰ γινόμενα ἀπέφαινον, ἱερῶν τινων οὐχ ὁσίως οὐδὲ καθαρώς ἐπιτελουμένων..... ἐν τοιαύτῃ δὲ συμφορᾷ τῆς πόλεως οὔσης τοῖς ἐξηγηταῖς τῶν ἱερῶν γίνεσθαι μήνυσις ὑπὸ δούλου τινός, ὅτι μία τῶν ἱεροποιῶν παρθένων τῶν φυλαττουσῶν τὸ ἀθάνατον πῦρ ὀρβινία τὴν παρθενίαν ἀπολώλεκε καὶ τὰ ἱερά θύει τὰ τῆς πόλεως οὐκ οὔσα καθαρά.

⁵³¹ Wissowa (1923) posited that the Romans viewed a Vestal's unchastity as a prodigy. He based his view primarily on Liv. 22.57.2-7 (216 BC): *terruti etiam super tantas clades cum ceteris prodigiis, tum quod duae Uestales eo anno, Opimia atque Floronia, stupri compertae ... hoc nefas cum inter tot, ut fit, clades in prodigium uersum esset....* Koch (1958) refutes Wissowa convincingly.

⁵³² The most explicit passage is Dion. Hal. 2.67.5: πολλὰ μὲν οὖν καὶ ἄλλα δοκεῖ μηνύματα εἶναι τῆς οὐχ ὁσίως ὑπηρετούσης τοῖς ἱεροῖς, μάλιστα δὲ ἡ σβέσις τοῦ πυρός, ἣν ὑπὲρ ἅπαντα τὰ δεινὰ Ῥωμαῖοι δεδοίκασιν ἀφανισμοῦ τῆς πόλεως σημεῖον ὑπολαμβάνοντες. But note that Dionysius does not say that the fire's extinction indicates the Vestal's unchastity, but that she had performed the *ἱερά* (=sacra) impurely

punishment for letting the fire go out a Vestal received a flogging on the order and probably from the hands of the *pontifex maximus*.⁵³³

We do not have much information about how a suspected Vestal was formally accused. In two instances we hear that a slave divulged to the pontifical college damaging information against a Vestal; in another instance the informer is unnamed.⁵³⁴ Regardless

(οὐχ ὁσίως), i.e. as *incesta*. For the relationship between a Vestal's chastity and the *sacra* that she performs, see the discussion below in the text. Of the Vestals known to have been convicted of *incestus*, none was suspected because the sacred fire went out on her watch. We may conclude that the fire's extinction *could* indicate a Vestal's unchastity, but did not always do so.

⁵³³ See Paul. Fest. 94L.: *ignis Uestae si quando interstinctus esset, uirgines uerberibus adficiebantur a pontifice*. That the *pontifex maximus* administered the flogging himself is stated by Plut. *Numa* 10.4: κόλασις δὲ τῶν μὲν ἄλλων ἁμαρτημάτων πληγαὶ ταῖς παρθένοις, τοῦ μεγίστου Ποντίφικος κολάζοντος ἔστιν ὅτε καὶ γυμνὴν τὴν πλημμελήσαν, ὁθόνῃς ἐν παλινσκήῳ παρατεινομένης· ἡ δὲ τὴν παρθεῖαν καταισχύνουσα ζῶσα κατορύττεται παρὰ τὴν Κολλίνην λεγομένην πύλιν. I have found two securely attested cases of a Vestal punished for the extinction of the fire. The first occurred in 206 BC and is reported by Livy (28.11.6): *terruit animos hominum ignis in aede Uestae extinctus, caesaque flagro est Uestalis cuius custodia eius noctis fuerat iussu P. Licini pontificis*; whence Val. Max. 1.1.6: *adiciendum his quod P. Licinio pontifici maximo uirgo Uestalis, quia quadam nocte parum diligens ignis aeterni custos fuisset, digna uisa est quae flagro admoneretur*. The second is the case of Aemilia (or her *discipula*) in 178 BC, Dion. Hal. 2.68.3: λέγεται δὴ ποτε τοῦ πυρὸς ἐκλιπόντος δι' ὀλιγορίας τινὰ τῆς τότε αὐτὸ φυλαττούσης Αἰμιλίας...ταραχὴ πολλὴ γενέσθαι κατὰ τὴν πόλιν ὅλην καὶ ζήτησις ὑπὸ τῶν ἱεροφάντων, μή τι μίasma περὶ τὸ πῦρ τῆς ἱερείας ἐτύγχανε γεγονός; Val. Max. 1.1.7: *Maximae uero uirginis Aemiliae discipulam extincto igne tutam ab omni reprehensione Uestae numen praestitit. qua adorante, cum carbasum, quem optimum habebat, foculo inposuisset, subito ignis emicuit*. See also Liv. *Per.* 41: *ignis in aede Uestae extinctus est*, and Obs. 8: *Uestae penetrals ignis extinctus. uirgo iussu M. Aemilii pontificis maximi flagro caesa negauit ulterius interiturum*. According to Dionysius and Valerius Maximus Aemilia was spared stripes, for she appealed to Vesta and was saved when the fire magically relit. Münzer 1937, 202, views these accounts as "die legendarische Version" of the actual case of 178. Similar remarks at idem, 161-164. Note also the report of Plutarch (*Numa* 9.6): ἐὰν δὲ ὑπὸ τύχης τινὸς ἐκλίπη, καθάπερ ἀθήνησι μὲν ἐπὶ τῆς ἀριστίωνος λέγεται τυραννίδος ἀποσβεσθῆναι τὸν ἱερὸν λύχρον, ἐν Δελφοῖς δὲ τοῦ ναοῦ καταπρησθέντος ὑπὸ Μήδων, περὶ δὲ τὰ Μιθριδατικά καὶ τὸν ἐμφύλιον Ῥωμαίων πόλεμον ἅμα τῷ βωμῷ τὸ πῦρ ἠφανίσθη, οὐ φασὶ δεῖν ἀπὸ ἐτέρου πυρὸς ἐναύεσθαι, καὶνὸν δὲ ποιεῖν καὶ νέον, ἀνάπτοντας ἀπὸ τοῦ ἡλίου φλόγα καθαράν καὶ ἀμίαντον. It is difficult to tell if the reference is to the fire at Rome or at Delphi; if Rome, then we have here evidence for two other occasions when the sacred fire went out, sometime between 88-63 BC. The responsible or rather the irresponsible Vestal would have been punished on both occasions.

⁵³⁴ Dion. Hal. 8.89.4 (483 BC): καὶ σὺν χρόνῳ μὲνυσις ἀποδίδεται τοῖς ἱεροφάνταις, ὅτι τῶν παρθένων μία τῶν φυλαττουσῶν τὸ ἱερὸν πῦρ, ὀπιμία ὄνομα αὐτῇ, τὴν παρθεῖαν ἀφαιρεθεῖσα μιαίνει τὰ ἱερά. A slave informed against a Vestal in 472 BC, Dion. Hal. 9.40: ἐν τοιαύτῃ δὲ συμφορᾷ τῆς πόλεως οὐσης τοῖς ἐξηγηταῖς τῶν ἱερῶν γίνεται μὲνυσις ὑπὸ δούλου τινός, ὅτι μία τῶν ἱεροποιῶν παρθένων τῶν φυλαττουσῶν τὸ ἀθάνατον πῦρ ὀρβινία τὴν παρθεῖαν ἀπολώλεκε καὶ τὰ ἱερά θύει τὰ τῆς πόλεως οὐκ οὔσα καθαρά; again in 337 BC, Livy 8.15.7-8: *eo anno Minucia Uestalis, suspecta primo propter mundio rem iusto cultum, insimulata deinde apud pontifices ab indice seruo*; and again in 114 BC, Plut. *Mor.* 284B = *Quaest. Rom.* 83: ἐμήνυσσε Βάρρου τινὸς ἱππικοῦ θεράπων τρεῖς παρθένας τῶν ἐστιάδων, Αἰμιλίαν καὶ Λικινίαν καὶ Μαρκίαν. See also Oros. 5.15.22 *indicio per servum facto*. And see also the longer story told at Dio 26, fr. 87.

of who initiated the accusation, I wonder if the pontifical college would normally conduct a preliminary investigation into the validity of the charges before deciding to try the Vestal. I admit that I know of no ancient evidence that would answer this question, but it is worth noting that a similar preliminary investigation obtained for the acknowledgement of a prodigy (*susceptio prodigiorum*). It would not be surprising to find a similar procedure at work in accusations of *incestus*. With no firm evidence, however, this question must remain unanswered, and my proposal can be only hypothetical.

3.4.2.2 Place, duration, and length of trial

Once a Vestal was accused, the pontifical college would meet to decide her fate. As shown above the *pontifex maximus* convened the meeting by virtue of his *ius pontificis maximi*. But where did the meeting take place? The only pertinent information we have on this question comes from the letter of Pliny the Younger cited above and an excerpt of Cassius Dio preserved by Xiphilinus, both of which pertain to the trials under Domitian. Pliny tells us that when Domitian, as *pontifex maximus*, decided to persecute for a second time the *Vestalis Maxima* Cornelia, he convened *reliquos pontifices non in Regiam sed in Albanam uillam*.⁵³⁵ This implies that the pontifical college normally met in the *Regia* to hear *incestus* trials. The excerpt of Dio reports that Domitian conducted such a "harsh and cruel examination" (*σκληρῶς καὶ τραχείας ἐξετάσεως*) and accused and punished so many people, that one of the pontiffs, Helvius Agrippa, no longer able to endure it, died: *αὐτοῦ ἐν τῷ συνεδρίῳ, ὥσπερ εἶχεν, ἀποψύχαι*.⁵³⁶ Dio's reference to Helvius Agrippa as

⁵³⁵ See the full passage above, n. 519.

⁵³⁶ Dio 67.3.3-4: οὐδὲ τῶν ἀειπαροφένων ἐφείσατο ἀλλ' ὥς καὶ ἡνδρωμένας ἐτιμωρήσατο, ὅτε καὶ λέγεται, σκληρῶς καὶ τραχείας τῆς περὶ αὐτὰς ἐξετάσεως γενομένης καὶ πολλῶν αἰτιαθέντων καὶ

"one of the pontiffs" implies the presence of other *pontifices* and strongly suggests that he is describing a meeting of the *collegium pontificum* convened to try accused Vestals and their paramours. The Loeb translation, "expired then and there in the senate-chamber", follows the practice, well-attested among Greek writers, of rendering Latin *senatus* as *συνέδριον*.⁵³⁷ We thus have two sources, one saying the pontiffs usually met in the *Regia*, but on this occasion assembled in Domitian's Alban villa, the other strongly implying that on this same occasion the college met in the senate. How to resolve the contradiction?

First, I note that the contradiction may be only apparent, for Domitian conducted at least two sets of *incestus* trials during his reign, the first in 83 when three Vestals were condemned and one, Cornelia, was acquitted, the second sometime later when the same Cornelia was retried and convicted.⁵³⁸ Now, it is clear that Pliny describes the second trial, but it is not readily apparent which of the two trials Dio reports. I think it likely, however, that he describes the first trial, since he says that many people were accused and punished during the meeting at which Helvius Agrippa expired. The multiple accusations and punishments do not fit the second trial, at which only Cornelia and her paramour Valerius Licinianus were accused and punished, but they accord very well with the trial of 83 in which four Vestals were accused and three condemned. Accordingly, we may posit that Dio is describing the first trial and that this trial occurred ἐν τῷ συνεδρίῳ.

κολαζομένων, οὐκ ἐνεγκὼν εἰς τῶν ποντιφίκων Ἐλουῖος Ἀγρίππας ἀλλ' ἐκπλαγεὶς αὐτοῦ ἐν τῷ συνεδρίῳ, ὥσπερ εἶχεν, ἀποψύχαι (= Xiph. 218, 17, 22 R. St.). On Helvius see Schumacher 1978.

⁵³⁷ See Magie [1904] 1905, 44-45 svv. *senatus* and *senator*. Neither Magie [1904] 1905, Mason 1974, Vrind 1971, or Freyburger-Galland 1997, discuss this passage.

⁵³⁸ Suet. *Dom.* 8.3-4: *incesta Uestaliū uirginū, a patre quoque suo et fratre neglecta, uarie ac seuerē coercuit* [sc. Domitianus], *priora capitali supplicio, posteriora more ueteri. nam cum Oculatis sororibus, item Uarronillae liberum mortis permisisset arbitrium corruptoresque earum relegasset, mox Corneliam maximam uirginem absolutam olim, dein longo interuallo repetitam atque conuictam defodi imperauit*. The exact date of Cornelia's second trial is uncertain. Sherwin-White 1966, 283, summarizes the conflicting ancient evidence.

But we are still left with the awkward fact that Pliny implies that the college normally heard *incestus* trials in the *Regia* and Dio implies that one trial took place in the senate. The awkwardness may be removed if we consider the term *συνέδριον*. As noted above the Loeb translates this word as "senate-chamber", a meaning well-attested. But to admit this translation here is to accept that pontifical meetings to try *incestus* could occur in the senate-chamber and that the Vestals could enter the same. This is not impossible, since under the Empire women were occasionally allowed to enter the senate house, and Domitian could well have ordered the Vestals to appear there for their trials.⁵³⁹ But I do not think it is likely either, and again we are left with Pliny's passage suggesting that the *Regia* was the normal meeting place for such trials.

The simplest solution would be to take *συνέδριον* here to mean *Regia*. But since *συνέδριον* is, as far as I can ascertain, never so used, this solution is unsatisfactory. I think the best approach is to take *συνέδριον* as not referring to a building at all. I would submit that in this passage the word means 'assembly, meeting, *consilium*'. This meaning is attested and fits the context of the passage well.⁵⁴⁰ I am thus inclined to translate Dio's *αὐτοῦ ἐν τῷ συνεδρίῳ, ὥσπερ εἶχεν, ἀποψύχαι* as "expired then and there in the meeting [*sc.* of the pontifical college]". This reading would allow us to square the reports of Dio and Pliny and to conclude, based on the latter's report, that the pontifical college normally met in the *Regia* to try cases of *incestus*.⁵⁴¹

⁵³⁹ Mommsen 1887-1888, 3.874.

⁵⁴⁰ On this meaning see Freyberger-Galland 1997, 100 and Magie [1904] 1905, 70, where he cites Josephus' use of the term to mean *consilium Augusti*. See also *Lidell-Scott s.v.*

⁵⁴¹ I thus disagree with Van Haepelen 2002, 105, who takes *συνέδριον* to mean "senate" and writes, "Il est difficile d'interpréter cette information isolée: cela signifie-t-il que le collège des pontifes pouvait se réunir au Sénat?" After questioning whether the pontiffs could meet in the presence of senators she concludes that it is impossible to answer these questions "dans l'état actuel de nos connaissances."

A passage of Fenestella preserved by Macrobius relates important information about two of the three trials in 114 BC. According to Fenestella the Vestal Aemilia was condemned on December 16th and the Vestal Licinia pleaded her case on December 18th. No trial was held on the 17th, because on that day the official celebration of the Saturnalia occurred.⁵⁴² Assuming that these trials reflect normal procedure, we may draw two important conclusions. First, when, as often happened,⁵⁴³ multiple Vestals were accused simultaneously, each was tried on a separate day.⁵⁴⁴ Second, the fact that the college did not meet on the *Saturnalia* must mean that it was prohibited from meeting on *dies feriati*.⁵⁴⁵ This latter conclusion is perhaps the most important, for although the prohibition of civil litigation on *dies feriati* is well known, I have not seen it noted that the same prohibition applied to the pontifical court as well. It would be interesting to know what other civil laws, if any, applied to the pontifical college. Unfortunately, that question is beyond the scope of this section.

I was first inclined to use the passage of Fenestella to claim that a typical *incestus* trial lasted one day. But now I see that the passage cannot be so used, for Fenestella says

⁵⁴² Mac. Sat. 1.10.5 = Fenestella HRR F 11*: *Masurius et alii uno die, id est quarto decimio kalendas Ianuarias, fuisse Saturnalia crediderunt, quorum sententiam Fenestella confirmat, dicens Aemiliam uirginem XV kalendarum Ianuariarum esse damnatam. quo die si Saturnalia gererentur, nec causam omnino dixisset. deinde adicit, sequebantur eum diem Saturnalia. mox ait postero autem die, qui fuit XIII kalendarum Ianuariarum, Liciniam uirginem ut causam diceret iussam: ex quo ostendit XIII kalendarum profestum esse.* Text Willis 1970.

⁵⁴³ See Table 3.1.

⁵⁴⁴ Zumpt 1868-1869, 2.1.217 notes that the Vestals were tried on separate days, but does not say whether he thinks this reflects normal procedure, "...im Monate December wurde über die Jungfrauen, über jede an einem Tage Gericht gehalten." But why were Aemilia and Licinia not tried on the same day? A possible answer may lie in the verdict. Note that Aemilia was the only Vestal of 114 to be condemned (see Ascon. In Mil. 46 C.: *unam modo Aemiliam damnauerat* [sc. *pontificum collegium*], *absoluerat autem duas Marciam et Liciniam*). Perhaps multiple entombments of Vestals on the same day were prohibited. It would certainly be strange either to bury two in the same ceremony or to reopen the tomb for a second Vestal when the first was still alive therein. Perhaps if Aemilia had been absolved, Licinia too would have been tried on Dec. 16th.

only that Aemilia was condemned on the 16th and that Licinia was ordered to plead her case on the 18th. The full trial of each may have taken many more days. In fact, when the three Vestals accused in 114 were retried, at least one of these retrials lasted two days, as is evident from a passage of Valerius Maximus.⁵⁴⁶ We therefore have no firm evidence about the length of a typical *incestus* trial.

3.4.2.3 Participation

Let us now consider how many members of the pontifical college participated in an *incestus* trial. On this subject we have as explicit evidence only the report of Asconius, who tells us that the tribune Sextus Peducaeus accused the *pontifex maximus* and the entire pontifical college of misjudging the three trials of 114 (*totumque collegium pontificum male iudicasse de incesto uirginum Uestaliū*).⁵⁴⁷ Cicero provides more indirect information when, in the course of boasting about the verdict which restored him his house, he says the following:

⁵⁴⁵ Strictly speaking the *Saturnalia* was an *NP* day, and although every *NP* day was also a *dies feriatius*, not every *dies feriatius* was an *NP* day. See Michels 1967, 68-71.

⁵⁴⁶ Valerius Maximus reports that during one of these trials the judges demanded that one of the accused paramours, M. Antonius, hand over his slave for torture. When Antonius and his slave returned home the slave urged Antonius to hand him over to the judges, assuring him that he would not betray Antonius. He was handed over to the judges—clearly on the next day—tortured, but did not incriminate his master. Val. Max. 6.8.1: *M. Antonius auorum nostrorum temporibus clarissimus orator incesti reus agebatur. cuius in iudicio accusatores seruū in quaestionem perseuerantissime postulabant, quod ab eo, cum ad stuprum irent, lanternam praelatam contenderent. erat autem is etiam tum inerbis et stabat <in> corona uidebatque rem ad suos cruciatus pertinere, nec tamen eos fugitauit. ille uero, ut domum quoque uentum est, Antonium hoc nomine uehementius confusum et sollicitum ultro est hortatus ut se iudicibus torquendum traderet, adfirmans nullum ore suo uerbum exiturum, quo causa eius laederetur, ac promissi fidem mira patientia praestitit: plurimis etenim laceratus uerberibus eculeoque inpositus, candentibus etiam lamminis ustus omnem uim accusationis custodita rei salute subuertit.* Text Briscoe 1998.

⁵⁴⁷ Ascon. In Mil. 45-46 C.: *Sex. Peducaeus tribunus plebis criminatus est L. Metellum pontificem max. totumque collegium pontificum male iudicasse de incesto uirginum Uestaliū, quod unam modo Aemiliam damnauerat, absoluerat autem duas Marciam et Liciniam.* Other passages imply that the entire college participated in at least the supervision, if not the trial and punishment of a Vestal. See, for example, those quoted above in n. 534, Dion. Hal. 2.67.4, 8.89.4, 9.40; Liv. 8.15.7-8.

And I assert that never since the foundation of the rites—which are coeval with the city of Rome herself—has the college on any matter, not even the capital charge against Vestal Virgins, made a ruling in such numbers. In an inquiry into delinquency, the larger the attendance the better, for the pontiffs' interpretive function is of such a nature that they have the power of judges; whereas in a matter of religious observance an elucidation can properly be given by a single experienced member of the college—which would be harsh and inequitable in a capital trial. And yet you will find that the pontiffs ruled on my house in larger numbers than have ever ruled on the rites of the Virgins.⁵⁴⁸

The similar sentences that bookend this passage nicely express Cicero's main point: more members of the pontifical college voted on the fate of his house than ever participated in the trial of a Vestal for *incestus*. Most significant for our purpose is the first sentence's emphatic "not even" (*ne...quidem*), which strongly suggests that these trials were traditionally the most well-attended meetings of the college. Equally significant is Cicero's remark that as many members of the college as possible should participate in an "inquiry into delinquency", *i.e.*, an *incestus* trial (*quamquam ad facinoris disquisitionem interest adesse quam plurimos*), for the words *adesse quam plurimos* suggest that attendance at these trials was not mandatory. If Cicero wanted to say that the members of the college were required to attend, he could have easily done so by writing *adesse omnes*.

Cicero thus reports that an *incestus* trial was the most well-attended meeting of the college, even though its members were not required to attend. Asconius tells us that the entire college participated in the three trials of 114. If we juxtapose these two passages

⁵⁴⁸ Cic. *Har. resp.* 13: *nego unquam post sacra constituta, quorum eadem est antiquitas quae ipsius urbis, ulla de re, ne de capite quidem uirginum Vestalium, tam frequens collegium iudicasse. quamquam ad facinoris disquisitionem interest adesse quam plurimos – ita est enim interpretatio illa pontificum ut eidem potestatem habeant iudicium - , religionis explanatio uel ab uno pontifice perito recte fieri potest – quod idem in iudicio capitis durum atque iniquum est -, tamen sic reperietis, frequentiores pontifices de mea domo quam unquam de caerimoniis uirginum iudicasse.* Text Maslowski 1981; trans. modified from Shackleton Bailey 1991.

we may reasonably conclude that the normal procedure was for the entire college to decide an accused Vestal's fate.⁵⁴⁹

3.4.2.4 Determining guilt or innocence

The ancient evidence for *incestus* trials, meager in most respects, is particularly unhelpful on what may be the most interesting part, how the college determined the guilt or innocence of the accused. The Vestals were not physically examined, for as Mekacher notes, "Die Körperinspektion als Nachweis der Jungfräulichkeit war in der Antike unbekannt. Der Hymen wurde nicht als virginales Zeichen anerkannt."⁵⁵⁰ Dionysius of Halicarnassus speaks of "tortures and revelations" used by the pontiffs to convict the Vestal in 483.⁵⁵¹ The words refer to the torture of slaves (on which see below, section 3.4.3.1) and the information given by witnesses. What is more frustrating, of the seven Vestals ever acquitted (three of whom were retried and condemned) we are informed

⁵⁴⁹ How then to square this interpretation with Cicero's boast that "the pontiffs ruled on my house in larger numbers than have ever ruled on the rites of the Virgins", a remark implying that Vestals were sometimes tried before a less than full pontifical court? Cicero is not lying, but he is not telling the truth either. Two things must be remembered: first, that trials for *incestus* were taken out of the hands of the pontifical college—permanently, as I shall argue below—by a *lex Peducaea* of 113 BC, and second, that Sulla in 81 had raised the number of pontiffs from nine to fifteen (see Liv. *Per.* 89: *Sylla dictator factus...pontificum augurumque collegium ampliavit, ut essent xv*). A full pontifical court before Sulla's measure would thus have had six fewer members than one after it. Accordingly, even if every trial for *incestus* took place before a full pontifical college, the total number of participating members would still have been less than the nineteen that voted on Cicero's house (see Cic. *Har. resp.* 12-13 for the complete list). We may also doubt the validity of the axiom that Cicero gives in the preceding section of the same speech—that the decision of three pontiffs was held to be the decision of the college. That rule applied only to the decisions made by the college about the status of a thing or an action; it did not concern the condemnation or absolution of a Vestal, Cic. *Har. resp.* 12: *quod tres pontifices statuissent, id semper populo Romano, semper senatui, semper ipsis dis immortalibus satis sanctum, satis augustum, satis religiosum esse visum est*.

⁵⁵⁰ Mekacher 2006, 38, citing I. Stahlmann *Der gefesselte Sexus*, 1997, 104 ff (*non uidi*).

⁵⁵¹ Dion. Hal. 8.89.3-5 (483): *καὶ σὺν χρόνῳ μὲνυσιν ἀποδίδεται τοῖς ἱεροφάνταις, ὅτι τῶν παρθένων μία τῶν φυλαττουσῶν τὸ ἱερὸν πῦρ, ὁπιμία ὄνομα αὐτῇ, τὴν παρθενίαν ἀφαιρεθεῖσα μαιίνει τὰ ἱερά. οἱ δ' ἐκ τε βασάνων καὶ τῶν ἄλλων ἀποδείξεων μαθόντες, ὅτι τὸ μνηνόμενον ἦν ἀδίκημα ἀληθές. Cf. Dion. Hal. 9.40 (472): *ἐπειδὴ καταφανὲς ἐγένετο ἐλεγχθεῖσα, ῥάβδοις τ' ἐμαστίγωσαν καὶ πομπεύσαντες διὰ τῆς πόλεως ζῶσαν κατώρυξαν*. Text Cary 1937-1950.*

about the manner of acquittal of but one, Tuccia, who famously absolved herself by carrying water in a sieve from the Tiber to the city.⁵⁵² Her story may, as Linderski suggests, point to a time when a suspected Vestal had to undergo an *iudicium dei* in order to prove her innocence.⁵⁵³ Beyond this it is hazardous to speculate. It is, however, clear that the Vestal would appear before the court to defend herself, as would her accused paramours and any necessary witnesses, especially any slaves who might have incriminating information.⁵⁵⁴

3.4.2.5 Voting and verdict

We do not know how the college arrived at its decision. Presumably every member possessed a vote of equal weight, although even this reasonable assumption, first advanced by Lipsius and Gutherius, was vigorously denied by Marquardt since it implied that the *pontifex maximus* could be outvoted, something that he, following Mommsen's interpretation of the powers of the *pontifex maximus*, could not accept.⁵⁵⁵ Mommsen,

⁵⁵² Livy (*Per.* 20), however, reports that Tuccia was condemned.

⁵⁵³ Linderski 1984, 176. Sources for Tuccia are: Liv. *Per.* 20; Dion. Hal. 2.69.1-3; Val. Max. 8.1, abs. 5; Plin. *NH* 28.12; Tertul. *Apol.* 22; Aug. *CD* 10.16. Somewhat similar is the case of Aemilia and the miracle of the fire relighting on its own after her appeal to Vesta (the relevant texts are quoted above in n. 533). Note also Cornelia's appeal to Vesta (Plin. *Ep.* 4.11.6: *illa nunc ad Uestam, nunc ad ceteros deos manus tendens, 'me Caesar incestam putat, qua sacra faciente uicit triumphauit.'*) Dionysus' ἔκ τε βασιάνων καὶ τῶν ἄλλων ἀποδείξεων also suggests something like a *iudicium dei*. I disagree with the following statement of Parker 2004, 586, "The execution of a Vestal was in itself her trial by ordeal. If she was pure, Vesta would no doubt rescue her. Since the goddess never did, the Vestal's guilt was proved."

⁵⁵⁴ That a Vestal would be present at her own trial is nearly self-evident, but can be concluded from Pliny's remark that Cornelia was condemned *absentem inauditamque* (Plin. *Ep.* 4.11.6).

⁵⁵⁵ See Lipsius 1603, 13 and Gutherius 1612, 2.2, both available in volume five of Graevius 1696 and both cited by Marquardt 1881-1885, 315-316, who writes that at *incestus* trials "das Collegium regelmässig zugezogen wird. Dass indessen das Collegium als solches nach Stimmenmehrheit richterlich entschieden und dabei auch wohl vorkommenden Falles den Pontifex Max. überstimmt habe, wie dies bei einem Gutachten über ein Votum, also in einem ganz disparaten Falle, einmal vorkommt, ist weder erweislich noch aus dem Verhältnisse, in welchem die Vestalinnen zum Pontifex Max. stehen, erklärbar. Vielmehr waren die Pontifices bei dem Process nur das Consilium des richtenden Pontifex Max., der für seinen

however, clearly thought that each member of the college voted, although he believed that the *pontifex maximus* could disregard a majority vote and even condemn a Vestal without convening the college to hear her case. In support of this view he cited from the above passage of Cicero (*Har. resp.* 13) the words *durum et iniquum*, taking them to describe the behavior of a *pontifex maximus* who did either of these things.⁵⁵⁶ This seems to read too much into Cicero's words. His is a general discussion in which the main point is that although one pontiff can rightly interpret a matter of religion, for one pontiff to decide a capital case is "harsh and inequitable." While it is clear that here Cicero refers to the trial of a Vestal, it is not at all obvious that these words apply to the decision of a *pontifex maximus* in such a case. In fact, Cicero's remarks strike me as decidedly hypothetical; I do not believe he is describing an actual event or the allowed power of the *pontifex maximus* in an *incestus* trial, but merely contrasting the traditional pontifical procedures for explaining a matter of *religio* and those for trying a Vestal accused of *incestus*. This passage simply cannot be used as evidence that the *pontifex maximus* could avoid convening his colleagues to try a Vestal, or that he could condemn her in spite of their collective vote of absolution. At most, it implies that one pontiff could judge an *incestus* trial, although again, because the passage is so general and hypothetical, it is dangerous to draw even this conclusion.

There is, in fact, only one passage that allows us a glimpse into pontifical voting procedure on any matter, and it appears to refute the view of Mommsen and Marquardt. It

Spruch allein verantwortlich und die Strafe zugleich an dem Verführer zu vollziehen berechtigt war." For Mommsen's view see Mommsen 1887-1888, 2.22-23 and 2.54-56.

⁵⁵⁶ Mommsen 1887-1888, 2.55 n. 2, "Auf die Frage, ob der Oberpontifex genöthigt war das Collegium bei diesen Prozessen zuzuziehen, wird dieselbe Antwort zu geben sein wie für die gleichen Gerichte des Vaters und des Ehegatten. Gesetzlich vorgeschrieben war die Zuziehung nicht und in geringeren Sachen

is the case of the vow in 200 BC, discussed above (section 3.3.2.4). I summarize my arguments from that section. In 200 BC the performance of a vow was delayed by the *pontifex maximus* P. Licinius Crassus Dives, and although the senate considered his authority and reasoning, it nevertheless referred the matter to the pontifical college, which then decreed that to perform such a vow was both possible and more than correct.

As I noted above in my discussion of this passage, we can conclude with certainty only that the *decretum* of the college could overturn the opinion of the *pontifex maximus*. Yet scholars have traditionally used this passage as evidence that the college arrived at its decision by simply majority vote, a view implying that each member possessed a vote of equal weight. I think this is the most reasonable interpretation, and I readily adopt it.⁵⁵⁷

We cannot know if in *incestus* trials the college voted in the same way as when considering the proper performance of vows, but since it is better methodologically to attempt to explain the unknown (the procedure at an *incestus* trial) from the known (the procedure when considering the propriety of a vow) than to hypothesize something for which we have no firm evidence, we may cautiously conclude as much. At any rate, Livy provides proof that the *pontifex maximus* could be overruled by his colleagues; we possess no evidence that he could do the same to them. I thus conclude, *contra* Mommsen and Marquardt, that in *incestus* trials the *pontifex maximus* could not overrule a decision of the pontifical college. I also submit, more cautiously, that as Lipsius and Guthorius proposed, each member of the college possessed a vote of equal weight and that their collective judgment could trump the vote of the *pontifex maximus*.

nicht üblich; aber in schweren Fällen galt das Verfahren ohne Consilium, wahrscheinlich auch das Urtheilsprechen gegen die Majorität des Consilium als *durum et iniquum*."

And yet, Mommsen was probably correct to assign to the *pontifex maximus* a special role in *incestus* trials. For consider the following excerpt of Asconius (45-6 C.) on the three trials of 114:

Sex. Peducaeus tribunus plebis criminatus est L. Metellum pontificem max. totumque collegium pontificum male iudicasse de incesto uirginum Uestalium, quod unam modo Aemiliam damnauerat, absoluerat autem duas Marciam et Liciniam.

The phrasing is curious. In the first sentence Asconius treats the *pontifex maximus* as separate from the pontifical college, saying that both he and the college misjudged these trials. One would think that since the *pontifex maximus* belonged to the *collegium pontificum*, the words *totum collegium pontificum male iudicasse* would have been sufficient to indicate that the chief pontiff participated in these trials.⁵⁵⁸ By saying that the *pontifex maximus* and the pontifical college misjudged these trials, Asconius seems to indicate that the *pontifex maximus* and the college performed separate functions at them, but that both were somehow still responsible for the final verdicts. What those roles were we cannot know, although we can profer a plausible hypothesis. I propose that Asconius' words indicate that the *pontifex maximus* supervised these *incestus* trials and managed their proceedings, and that the entire college, including the *pontifex maximus*, rendered the verdict. Or, to phrase it another way, the college was the jury, the *pontifex maximus* the judge⁵⁵⁹ (although, of course, the only vote that mattered was that of the college).

⁵⁵⁷ Also I would suggest that each of the participating Vestals voted in determining the *decretum* on Clodius' presence at the ceremony for Bona Dea.

⁵⁵⁸ Unless, of course, we posit that the Romans always viewed the *pontifex maximus* as in someway separate from the pontifical college. I have not found any evidence for this view.

⁵⁵⁹ Asconius appears to contradict himself (or at least, confuse his readers) when in the subsequent subordinate *quod* clause he refers to the misjudgment of the college and *pontifex maximus* with singular verbs (*damnauerat*, *absoluerat*) without specifying which of the two is the subject. One might have expected him either to state explicitly his subject or to use plural verbs with the understood subjects being

A passage from Livy also appears to show that the *pontifex maximus* played a special role in *incestus* trials. His account of the trial of 420 BC is as follows:

*eodem anno Postumia uirgo Uestalis de incestu causam dixit, crimine innoxia, ab suspicione propter cultum amoeniorem ingeniumque liberius quam uirginem decet parum abhorrens. eam ampliata, deinde absolutam pro collegii sententia pontifex maximus abstinere iocis colique sancte potius quam scite iussit.*⁵⁶⁰

The second sentence offers a concise summary of the trial: judgement was temporarily postponed (*ampliata*),⁵⁶¹ and when the trial resumed, Postumia was absolved, but ordered by the *pontifex maximus* to mend her ways. I do not think that in issuing this order the *pontifex maximus* was acting on his own initiative. As Cohee points out, the words *pro collegii sententia* go with *iussit*; that is, in ordering the Vestal to rectify her demeanor and dress, the *pontifex maximus* was reporting the results of the college's deliberations.⁵⁶² The passage thus strongly suggests that the *pontifex maximus* was responsible for announcing the college's verdict. This duty, however, does not seem to be limited to *incestus* trials. As several passages from Livy and Cicero show, the *pontifex maximus* routinely reported the college's findings on matters ranging from the performance of a sacred spring to the dedication of a statue or altar.⁵⁶³

the college and *pontifex maximus*. Cornell 1981, 301, following, Koch 1958, 1744, believes that the entire college was responsible for the verdict.

⁵⁶⁰ Liv. 4.44.11-12. See also the more abbreviated account given by Plutarch (*Mor.* 89E-F = *inim. util.* 6): Ποστουμίαν δὲ τὸ γελᾶν προχειρότερον καὶ λαλιᾷ χρῆσθαι θρασυτέρῳ πρὸς ἄνδρας διέβαλεν, ὥστε κριθῆναι φθορᾷς. εὐρέθη μὲν οὖν καθαρὰ τῆς αἰτίας, ἀπολύσας δ' αὐτὴν ὁ ἀρχιερεὺς Σπόριος Μινούκιος ὑπέμνησε ἢ χρῆσθαι λόγοις ἀσεμνοτέροις τοῦ βίου.

⁵⁶¹ On this meaning of *ampliata* see Cohee 1994, and the bibliography cited there. Ogilvie 1965, 602, thinks *ampliatio* is anachronistic here and that "It was peculiar to the jurisdiction of the *quaestiones*, which were only instituted in 147."

⁵⁶² Cohee 1994, 72.

⁵⁶³ Livy 22.9.10-22.10.1 (217): *senatus, quoniam Fabium belli cura occupatura esset, M. Aemilium praetorem, ex collegii pontificum sententia omnia ea ut mature fiant, curare iubet. his senatus consultis perfectis, L. Cornelius Lentulus pontifex maximus consulente collegium praetore omnium primum populum*

Although we have little direct evidence for the voting procedure of the pontifical college at *incestus* trials, the following conclusions appear highly probable. Each member possessed a vote of equal weight, and a simple majority determined the final verdict.

Although the *pontifex maximus* supervised the proceedings and announced the college's final verdict, he could not overrule a majority vote; in fact, his vote could be overruled by the majority's decision.

The voting and final verdict lead directly to the decrees of the college, and so I shall postpone discussion of the college's verdict until the section below in which I discuss the *decreta* issued at these trials.

3.4.2.6 The development of the pontifical supervision of *incestus* trials

For most of the Republic the pontifical college judged Vestals accused of *incestus*, but in 113 BC a *lex Peducaea*, proposed by a tribune, Sextus Peducaeus, dissatisfied at what he deemed the mishandling of the trials of three Vestals the year before, put *incestus* trials in the hands of a public court.⁵⁶⁴ Was the transference valid for this year only? Two

consulendum de uere sacro censet. Here the praetor Aemilius is ordered to solicit and follow the *sententia* of the *collegium pontificum*; he consults it, the members deliberate (although Livy omits this step), and the *pontifex maximus* reports the results of their deliberations back to Aemilius. Cf. also Liv. 34.44.1-3 (194 BC): *uer sacrum factum erat priore anno, M. Porcio et L. Ualerio consulibus. id cum P. Licinius pontifex [sc. maximus] non esse recte factum collegio primum, deinde ex auctoritate collegii patribus renuntiasset, de integro faciendum arbitrato pontificum censuerunt*; Cic. *Dom.* 136 (the first example dates to 154 BC; the second to 123): *habetis in commentariis uestris C. Cassium censorem de signo Concordiae dedicando ad pontificum conlegium rettulisse, eique M. Aemilium pontificem maximum pro conlegio respondisse, nisi eum populus Romanus nominatim praefecisset atque eius iussu faceret, non uideri eam posse recte dedicari. Quid? cum Licinia, uirgo Uestalis summo loco nata, sanctissimo sacerdotio praedita, T. Flaminio Q. Metello consulibus aram et aediculam et puluinar sub Saxo dedicasset, nonne eam rem ex auctoritate senatus ad hoc conlegium Sex. Iulius praetor rettulit? cum P. Scaeuola pontifex maximus pro conlegio respondit, quod in loco publico Licinia, Gaii filia, iniussu populi dedicasset, sacrum non uiderier.*

⁵⁶⁴ See MRR 1.534-7. The most important source for the transference of these trials is Ascon. *In Mil.* 40 C.: *L. Cassius fuit, sicut iam saepe diximus, summae uir seueritatis...ob quam seueritatem, quo tempore Sex. Peducaeus tribunus plebis criminatus est L. Metellum pontificem max. totumque collegium pontificum male iudicasse de incesto uirginum Uestaliu, quod unam modo Aemiliam damnauerat, absoluerat autem duas Marciam et Liciniam, populus hunc Cassium creauit qui de eisdem uirginibus quaereret. isque et utrasque eas et praeterea complures alias nimia etiam, ut existimatio est, asperitate usus damnauit.* Other

pieces of evidence suggest that it was not. First, Plutarch tells us that two *incestus* trials in 73 BC⁵⁶⁵ were heard by *δικασταί*,⁵⁶⁶ a Greek term which cannot mean *pontifices*, but which is clearly equivalent to Latin *iudices*, the exact word Valerius Maximus uses to refer to the secular court that decided the *incestus* cases of 113.⁵⁶⁷ Secondly, several authors mention that the Vestals in 73 were prosecuted by someone. Plutarch states that a certain Plotius formally prosecuted Licinia, and Cicero (*Brut.* 236) says *M. Piso ex uirginum iudicio magnam laudem est adeptus*, which shows that Piso, who was not a *pontifex*, played a central role (as the prosecutor or defender of another Vestal?) in these same trials. These statements are important because the only other time we hear of

passages mentioning or alluding to the trials of these Vestals or to the *lex Peducaea* are Cic. *Nat. D.* 3.74; *Brut.* 160; Liv. *Per.* 63; Val. Max. 3.7.9; 6.8.1; Plut. *Mor.* 284A-C = *Quaest. Rom.* 83; Obs. 37; Dio 26, fr. 87; Porphy. ad Hor. *Sat.* 1.6.30; Mac. *Sat.* 1.10.5 (= Fenestella *HRR* F 11*); Oros. 5.15.20-22. See also Niccolini 1934, 175-177. The account of Bouché-Leclercq 1871, 295, about the trials of 114/113 is confused.

⁵⁶⁵ We know of at least two Vestals tried in 73 BC; one, Fabia, was accused of relations with Catiline, the other, Licinia, with Crassus; both Vestals were acquitted. Scholars doubt whether Catiline or Crassus were formally charged with corrupting these maidens (see Gruen 1971, 61 n. 28, and Shackleton Bailey 1965a, 319). The relevant sources for both trials are Ascon. 91 C. (on *in Toga Candida*); Cic. *Brut.* 236; Cic. *Cat.* 3.9; Sal. *Cat.* 15.1; Plut. *Crass.* 1.2; Plut. *Cat. Min.* 19.3; Plut. *Mor.* 89E = *inim. util.* 6; Oros. 6.3.1. Gruen (1971, 60) implies that Clodius formally prosecuted Fabia and writes that "Cato intervened and forced the prosecutor to withdraw". I am not sure he is right. Plutarch (*Cat. Min.* 19.3)—whom I assume Gruen has before him—says only that Clodius was "calumniating to the people priests and priestesses, among whom Fabia...was in danger of conviction" and that Cato stopped him, ἐνστάς δέ ποτε Κλωδίῳ τῷ δημαγωγῷ, κινοῦντι καὶ πράττοντι μεγάλων ἀρχῶς νεωτερισμῶν, καὶ διαβάλλοντι πρὸς τὸν δῆμον ἱερεῖς καὶ ἱερείας, ἐν οἷς καὶ Φαβία Τερεντίας ἀδελφὴ τῆς Κικέρωνος γυναικὸς ἐκινδύνευσε, τὸν μὲν Κλώδιον αἰσχύνῃ περιβαλὼν ἠνάγκασεν ὑπεκστῆναι τῆς πόλεως. This seems to me to indicate general harangues on Clodius' part, not prosecution in court.

⁵⁶⁶ Plut. *Crass.* 1.2: καίτοι προῖὼν καὶ ἡλικίαν αἰτίαν ἔσχε Λικιννίᾳ συνιέναι, τῶν Ἑστιάδων μιᾷ παρθένων, καὶ δίκην ἔφυγεν ἢ Λικιννία Πλωτίου τινὸς διώκοντος. ἦν δὲ προάστειον αὐτῇ καλόν, ὃ βουλόμενος λαβεῖν ὀλίγης τιμῆς ὁ Κράσσος, καὶ διὰ τοῦτο προσκείμενος ἀεὶ τῇ γυναικὶ καὶ Σεραπέων, εἰς τὴν ὑποψίαν ἐκείνην ἐνέπεσε, καὶ τρόπον τινὰ τῇ φιλοπλουτίᾳ τὴν αἰτίαν τῆς φθορᾶς ἀπολυσάμενος, ὑπὸ τῶν δικαστῶν ἀφείδῃ. τὴν δὲ Λικιννίαν οὐκ ἀνῆκε πρότερον ἢ τοῦ κτήματος κρατῆσαι

⁵⁶⁷ Val. Max. 6.8.1: *M. Antonius auorum nostrorum temporibus clarissimus orator incesti reus agebatur. cuius in iudicio accusatores seruum in quaestionem perseuerantissime postulabant, quod ab eo, cum ad stuprum irent, lanternam praelatam contenderent. erat autem is etiam tum inberbis et stabat <in> corona uidebatque rem ad suos cruciatus pertinere, nec tamen eos fugitauit. ille uero, ut domum quoque uentum est, Antonium hoc nomine uehementius confusum et sollicitum ultro est hortatus ut se iudicibus torquendum traderet.*

persons prosecuting or defending Vestals on a charge of *incestus* is in the cases of 113. Valerius Maximus, in the above-cited passage, speaks of *accusatores* demanding to torture a slave of one of the accused Vestal's paramours, and Cicero says that Crassus defended Licinia at this time.⁵⁶⁸ There is no evidence that before the *lex Peducaea* anyone but the pontifical college prosecuted the accused Vestals, and there certainly is no evidence that in those cases anyone spoke in the Vestal's defense. These passages thus strongly suggest that the *lex Peducaea* was still in affect in 73 BC.⁵⁶⁹

All subsequent attested *incestus* cases occur under the Empire and were prosecuted by the Emperor, but only once are we told by what authority the Emperor did so: Pliny says that Domitian prosecuted Cornelia ca. 90 in his capacity as *pontifex maximus*.⁵⁷⁰ This would seem to indicate that by AD 90 the *lex Peducaea* was no longer in effect; if Domitian acted similarly in prosecuting four Vestals in 83,⁵⁷¹ we may push the date back to that year.

We may conclude that the *Lex Peducaea* was meant to take *incestus* trials permanently out of the hands of the pontifical college, but that sometime after 73 it was either rescinded or ignored, for under the Empire these trials seem to have been back in the hands of the pontifical college.

⁵⁶⁸ Cic. *Brut.* 160: *defendit postea Liciniam uirginem, cum annos xxvii natus esset*. Bouché-Leclercq 1871, 295, thinks that Crassus defended Marcia and Licinia in 114 ("Marcia et Licinia, défendues par les orateurs les plus célèbres de l'époque, sont acquittées par le P. M. L. Metellus." This cannot be correct. He does not cite this passage from Brutus, but clearly had it in mind, for it is the only one to mention Crassus' defense of Licinia; his defense of Minucia is nowhere attested. Crassus' defense of Licinia must date to the retrial in 113, so *MRR* 1.537 n. 3, and Mekacher 2006, 38 n. 264, rightly.

⁵⁶⁹ Rawson 1974, 208, using Plutarch's mention of *δικασταί* in the cases of 73, suggests the *lex Peducaea* was permanent, but she misses the reference to the prosecutor Plotius and the other evidence adduced here.

⁵⁷⁰ See above discussion of Pliny *Ep.* 4.11.6, section .3.4.1.

⁵⁷¹ For the evidence for the trials of 83 see Table 3.1.

It would be interesting to know whether under the *lex Peducaea* the pontifical college retained its role in punishing guilty Vestals or if that *lex* took both the trial and the punishment out of its hands. The question is difficult to answer, since we have no evidence on how the guilty Vestals of 113 were punished. Greenidge seems agnostic,⁵⁷² but Mommsen adopts the latter interpretation, citing in support a case from the late 4th century AD where the pontifical college investigated and condemned for unchastity a Vestal from Alba Longa, but left her punishment to the local governor.⁵⁷³ But we may reasonably question the relevance for the *lex Peducaea* of evidence so distant in time and space from Republican Rome. There is another passage Mommsen appears to have overlooked, and though definitive conclusions cannot be drawn from it, it merits discussion.

At *De Legibus* 2.21 Cicero writes *incestum pontifices supremo supplicio sanciunt*. Scholars are unsure whether *incestus* here refers to the unchastity of Vestals or the marriage of persons of close consanguinity, or both.⁵⁷⁴ But since we possess no evidence that the pontiffs investigated cases of *incestus* between blood relations, it seems best to take this provision as referring to the unchastity of Vestals alone.⁵⁷⁵ More important for

⁵⁷² Greenidge 1901, 379-380.

⁵⁷³ For this trial see Sym. *Ep.* 9.147, 9.148, cf. 9.108. Mommsen's remarks are at 1899, 24. I am skeptical as to how far this case reflects the procedure of the republican or even the early imperial pontifical college. It would be interesting to know if in the Republic the pontifical college at Rome oversaw the behavior of municipal, colonial, and provincial Vestals and other priests. Alba Longa may have been unique in this respect, for there seems to have existed a special sacral relationship between the Roman state religion and the religion of Alba Longa; see Wissowa 1912, 520. According to Livy the Vestal priesthood originated at Alba (Liv. 1.20.3: *uirginesque Vestae legit* [sc. Numa], *Alba oriundum sacerdotium*) see also Juv. 4.61: *Vestam colit Alba minorem* and CIL 6.2172; 14.2410; Asc. 40 C.

⁵⁷⁴ See Dyck 2004, *ad loc.* for apposite bibliography and a summary of the differing views.

⁵⁷⁵ In his commentary on his laws Cicero offers no useful commentary on this provision; at *Leg.* 2.41 he writes only, *iam de periuriis, de incesto nihil sane hoc quidem loco disputandum est*. Isidore remarks (*Orig.* 5.26.24), *incesti iudicium in uirgines sacratas uel in propinquas sanguine constitutum*. Yet, as both

our present purpose is the fact that Cicero does not say that the pontiffs are to judge cases of *incestus*; he says only that they are to punish them with the death penalty.⁵⁷⁶ Now, it may be objected that Cicero intended the pontiffs in his ideal state to judge *incestus*, but only failed to make the point explicit here because he thought the idea so self-evident as not to need expression. But note that, according to my interpretation, a secular court and not the pontifical college had adjudged all cases of *incestus* from 113 to at least 73 and probably beyond. This means that Cicero had only ever seen a secular court decide *incestus* trials, for the last case the pontiffs adjudged occurred in 114, eight years before he was even born. I thus think it likely that in failing here explicitly to ascribe to the pontiffs the duty to try cases of *incestus*, Cicero faithfully reports current Roman practice. He does not accord the pontiffs the duty to judge *incestus* because in his day they did not possess it.

If my interpretation is correct, then this statement from *De Legibus* may be evidence that the *lex Peducaea*, which probably was still in effect when Cicero wrote that work, removed only the trials of *incestus* from the hands of the pontifical college, but left it the authority to punish Vestals found guilty of that charge.⁵⁷⁷

Dyck 2004, 318, and Koch 1958, 1749.36-44, note, we do not know that the pontiffs ever judged cases of *incestum* between blood relations. The only time we hear of them in connection with it is in Tacitus' (*Ann.* 12.8.1) report that they performand at Claudius' behest the *piacula* for the incestuous marriage between Silanus and Calvina: *addidit Claudius sacra ex legibus Tulli regis piaculaque apud lucum Dianae per pontifices danda, inridentibus cunctis, quod poenae procurationesque incesti id temporis exquirerentur.*

⁵⁷⁶ For this meaning of *sanciu*nto see *OLD* s.v. *sancio* 5 and *Lewis and Short* s.v. *sancio* II.

⁵⁷⁷ On the other hand Dionysius of Halicarnassus writes that the pontiffs both inquire into and punish cases of *incestum*, 2.67.3: *τιμωρίαι τε ἐπὶ τοῖς ἀμαρτανομένοις κεῖνται μεγάλαι, ὧν ἐξετασταί τε καὶ κολασταὶ κατὰ νόμον εἰσὶν οἱ ἱεροφάνται, τὰς μὲν ἄλλο τι τῶν ἐλαττόνων ἀμαρτανούσας ῥάβδοις μαστιγοῦντες, τὰς δὲ φθαρείσας αἰσχίστῳ τε καὶ ἐλεεινοτάτῳ παραδιδόντες θανάτῳ.* If Dionysius writes of the practice as it existed in his day, then this sentence is evidence that the *lex Peducaea* was no longer in effect during the late Republic. Plutarch, in his life of Numa, does not say who conducted the trial of a Vestal, but regarding her punishment he says that the *pontifex maximus* uttered imprecations at her entombment and that "other priests" (τῶν ἄλλων ἱερέων)—surely this means the pontiffs—were present at

Table 3.1a. Attested *incestus* trials of Vestals

In the following two tables I have attempted to record 1) all known trials of a Vestal accused of *incestus* 2) all known instances of the extinction of the fire that the Vestals guarded. From the first table I have excluded several unchaste Vestals who were never formally accused or whose existence seems uncertain or fanciful. I omit Rhea Silvia/Ilia, mother of Romulus and Remus, raped by Mars or her uncle Amulius;⁵⁷⁸ Publia Pinaria, the first unchaste Vestal to be buried alive (by Tarquinius Priscus);⁵⁷⁹ Claudia whose status as a Vestal seems to have been a late invention;⁵⁸⁰ Rubria whom Nero was said to have raped (Suet. *Nero* 28.1); and the Vestal, Iulia Aquilia Severa, who married Heliogabalus (Herodian 5.6.2; Dio 79.9.3; *SHA* 6.6-9).

	date	Vestal	paramour	outcome	judged by	evidence
1	483	name varies: Opimia, Oppia, Opillia, Popillia	two unnamed men	buried alive	pontifical college	Liv. 2.42.11; <i>Per.</i> 2; Dion. Hal. 8.89.4; Oros. 2.8.13; Euseb. 2.101
2	472	Orbinia	two unnamed men	buried alive	pontifical college	Dion. Hal. 9.40.3

the event, Plut. *Numa* 12.2: ὁ δὲ τῶν ἱερέων ἑξαρχος εὐχάς τινας ἀπορρήτους ποιησάμενος καὶ χεῖρας ἀνατείνας θεοῖς πρὸ τῆς ἀνάγκης, ἐχάγει συγκεκαλυμμένην καὶ καδίστησιν ἐπὶ κλίμακος εἰς τὸ οἶκον κάτω φερούσης. εἶτα αὐτὸς μὲν ἀποτρέπεται μετὰ τῶν ἄλλων ἱερέων. I am inclined, however, to trust Cicero over Dionysius and Plutarch and to take the accounts of these Greek authors as synchronic depictions culled from much earlier sources.

⁵⁷⁸ See Dion Hal. 1.77.-78.1; Liv. 1.3.11-1.4.2; Strabo 5.3.2; Plut. *Rom.* 3.3.

⁵⁷⁹ Dion. Hal. 3.67.2-3; Zonar. 7.8.

⁵⁸⁰ Mekacher 2006, 359, "Sie gilt nur nach einem Strang der Überlieferung und wohl erst in der Kaiserzeit als Vestalin." Pace Parker 2004, 594; see also on her Münzer 1937.

3	420	Postumia		acquitted, but warned <i>abstinere iocis colique sancte potius quam scite iussit.</i> (χρ□σθαι λ□γοις □σεμνοτ□ροις το□β□ου)	pontifical college	Liv. 4.44.11; Plut. <i>Mor.</i> 89E-F = <i>inim. util.</i> 6
4	337 ⁵⁸¹	Minucia	unknown	buried alive	pontifical college	Liv. 8.15.7-8; <i>Per.</i> 8; Hieron. <i>adv. Iovinian.</i> 1.41; Oros. 3.9.5; <i>P. Oxy.</i> 12, coll. III, 33-36 = <i>FGrH</i> IIb 255, 1155.6-8
5	273	Sextilia	unknown	buried alive	pontifical college	Liv. <i>Per.</i> 14; Oros. 4.2.8
6	266	Capparonia	unknown	suicide before judgment	pontifical college	Oros. 4.5.6-9
7	236 ⁵⁸²	unnamed	unknown	suicide (before trial?)	pontifical college	Euseb. 2.122f. Syncell. 524, 14

⁵⁸¹ Münzer 1937, 62, points out that the lacunose passage in the Oxyrhynchos papyri: EN ΔΕ ΡΩΜΗ, ΑΙ ΤΗC / ΕCΤΙΑC ΙΕΡΕΙΑ[Ι] ΠΑΡ[ΘΕ]ΝΟΙ / [[Μ]]ΙΟΥC[Α] ΔΙΑ ΒΙΟΥ ΚΑΤΗΓΟΡΗ / [ΘΗCΑ]Ν ΩC ΕΦΘΑΡΜΕΝΑΙ ΚΑΙ reports that in 336 multiple Vestals were accused, and he reasonably connects these trials with the one in 337 reported by Livy. He remarks (63), "Die Angabe der Zeittafel [sc. aus Oxyrhynchos] ist an sich keineswegs für schlechter als die Livianische zu halten; jedenfalls genügt schon das Vorhandensein einer stark abweichenden Version, um das Vertrauen zu jener zu erschüttern." If the papyrus fragment is correct, then we have evidence for at least one more Vestal tried during the Republic.

⁵⁸² See the Armenian translation of this (122b): *Uirgo Romae a seruo corrupta se ipsam interfecit*. See also Hieron. 123d: *Uirgo Uestalis Romae a seruo corrupta propria se manu interimit*. The Greek of Eusebius reads ἐν ῥώμῃ ὑπὸ δούλου διακορευθεῖσα παρθένης ἑαυτὴν διεχειρίσατο. I owe all these citations to Münzer 1937, 208 n. 67.

8	230 ⁵⁸³	Tuccia	unknown	uncertain; Livy say she was condemned; all others say she was acquitted by miracle of sieve.	pontifical college	Livy <i>Per.</i> 20; Dion. Hal. 2.69; Val. Max. 8.1 abs. 5; Plin. <i>HN</i> 28.12; Aug. <i>Ciu.</i> <i>Dei</i> 10.16; Tert. <i>Apol.</i> 22
9	216	Opimia	unknown	condemned; buried alive or suicide	pontifical college	Cass. Hem. Fr. 32 P.; Liv. 22.57.2- 7; <i>Per.</i> 22; Plut. <i>Fab.</i> 18.3
10	216	Floronia	L. Cantilius scriba pontificius	condemned; buried alive or suicide	pontifical college	Cass. Hem. Fr. 32 P.; Liv. 22.57.2- 7; <i>Per.</i> 22; Plut. <i>Fab.</i> 18.3
11	114	Aemilia	T. Betutius Barrus/L. Veturius Barrus; ⁵⁸⁴ Licinia's brother; Varrus	condemned: buried alive ?	pontifical college	Ascon. <i>In</i> <i>Mil.</i> 45-6 C.; Plut. <i>Mor.</i> 284A-C = <i>Quaest.</i> <i>Rom.</i> 83; Fenestella <i>HRR F</i> 11* = <i>Mac. Sat.</i> 1.10.5; Liv. <i>Per.</i>

⁵⁸³ The date is surrounded with controversy. See *MRR* 1.227-228 n. 2.

⁵⁸⁴ From Plut. *Mor.* 284A-C = *Quaest. Rom.* 83, it is unclear whether he was the lover of only one Vestal or all three.

						63; Obs. 37; Oros. 5.15.20-22; Porphy. ad Hor. <i>Sat.</i> 1.6.30
12	114	Licina	Vetutius Barrus; Aemilia's brother	acquitted	pontifical college	Ascon. <i>In Mil.</i> 45-6 C.; Plut. <i>Mor.</i> 284A-C = <i>Quaest. Rom.</i> 83; Fenestella <i>HRR F</i> 11* = Mac. <i>Sat.</i> 1.10.5; Liv. <i>Per.</i> 63; Obs. 37;
13	114	Marcia	Vetutius Barrus	acquitted	pontifical college	Ascon. <i>In Mil.</i> 45-6 C.; Plut. <i>Mor.</i> 284A-C = <i>Quaest. Rom.</i> 83; Liv. <i>Per.</i> 63; Obs. 37
14 ⁵⁸⁵	113	Licina	Vetutius Barrus; Aemilia's brother	retried, condemned; buried alive?	public court; defended by Crassus	Ascon. <i>In Mil.</i> 45-6 C.; Cic. <i>Brut.</i> 160
15	113	Marcia	Vetutius Barrus	retried, condemned; buried alive?	public court	Ascon. <i>In Mil.</i> 45-6 C.
16	73	Fabia	Catiline	acquitted	public court; perhaps	Cic. <i>Cat.</i> 3.9; Ascon. <i>In</i>

⁵⁸⁵ M. Antonius was accused of *incestus* with at least one of the Vestals of 113, which one is never named (see Val. Max. 3.7.9 and 6.8.1).

					prosecuted by Clodius; defending by M. Pupius Piso	<i>Tog. Can.</i> 91 C; <i>Sal. Cat.</i> 15.1; <i>Oros.</i> 6.3.1; <i>Cic. Brut.</i> 236
17	73	Licina	M. Licinius Crassus	acquitted	public court; accused by Plotius	<i>Cic. Cat.</i> 3.9; <i>Brut.</i> 236; <i>Plut. Crass.</i> 1.2; <i>Plut. Mor.</i> 89E = <i>inim. util.</i> 6; C
18	AD 82/83 ⁵⁸⁶	Oculatia ⁵⁸⁷ (maior?)		permitted choice of death	emperor Domitian as <i>pont. max.</i> probably with pontifical college	<i>Suet. Dom.</i> 8.3-4. <i>Phil. Ap.</i> 7.6; <i>Dio</i> 67.3.3-4; <i>Eus. Chron. Arm.</i> 217 K; <i>Hier. Chron.</i> 190d H.
19	82/83	Oculatia (minor?)		permitted choice of death	emperor Domitian as <i>pont. max.</i> , probably with pontifical college	<i>Suet. Dom.</i> 8.3-4. <i>Phil. Ap.</i> 7.6; <i>Dio</i> 67.3.3-4; <i>Eus. Chron. Arm.</i> 217 K; <i>Hier. Chron.</i>

⁵⁸⁶ On the date of trials 18-21 see Mekacher 2006, n. 230.

⁵⁸⁷ According to Aulus Gellius a girl whose sister was a Vestal could not herself be chosen for that office: *sed et eam, cuius soror ad id sacerdotium lecta est, excusationem mereri aiunt* (NA 1.12.6). Yet Suetonius reports that two sisters were among the Vestals punished by Domitian, *Suet. Dom.* 8.3-4: *incesta Vestalium uirginum, a patre quoque suo et fratre neglecta, uarie ac seuerè coercuit, priora capitali supplicio, posteriora more ueteri. nam cum Oculatis sororibus, item Uarronillae liberum mortis permisisset arbitrium corruptoresque earum relegasset*. Perhaps Gellius reports a law that was no longer observed in Domitian's time.

						190d H.
20	82/83	Varronilla		permitted choice of death	emperor Domitian as <i>pont.</i> <i>max.</i> , probably with pontifical college	Suet. <i>Dom.</i> 8.3- 4. Phil. <i>Ap.</i> 7.6; Dio 67.3.3-4; Eus. <i>Chron.</i> <i>Arm.</i> 217 K; Hier. <i>Chron.</i> 190d H.
21	82/83	Cornelia <i>Vestalis</i> <i>maxima</i>		acquitted	emperor Domitian as <i>pont.</i> <i>max.</i> , probably with pontifical college	Suet. <i>Dom.</i> 8.3- 4. Phil. <i>Ap.</i> 7.6; Dio 67.3.3-4; Eus. <i>Chron.</i> <i>Arm.</i> 217 K; Hier. <i>Chron.</i> 190d H. Plin. <i>Ep.</i> 4.11
22	<i>ca.</i> 90 ⁵⁸⁸	Cornelia <i>Vestalis</i> <i>maxima</i>	A Roman knight named Celer; Valerius Licinianus ⁵⁸⁹	buried alive	emperor Domitian as <i>pont.</i> <i>max.</i> with pontifical college	Suet. <i>Dom.</i> 8.3- 4; Plin. <i>Ep.</i> 4.11.6; Juv. 4.8.10; Eus. <i>chron.</i> <i>Arm.</i> 217 K.; Hier. <i>chron.</i> 191 d H.

⁵⁸⁸ On the date of this trial see Mekacher 2006, n. 238.

⁵⁸⁹ Plin. *Ep.* 4.11.6 reports that Licinianus was exiled *ob incestum*. But Pliny (*ibid.*) also shows that, strictly speaking, Licinius was exiled because he had hidden one of Cornelia's freedwomen (*quod in agris suis occultasset Corneliae libertam*).

23	212/213 ⁵⁹⁰	Clodia Laeta		buried alive	emperor Caracalla as <i>pont. max.</i> , probably with pontifical college	Dio 77.16.1-3; Herodian 4. 6
24	212/213	Aurelia Severa		buried alive	emperor Caracalla as <i>pont. max.</i> , probably with pontifical college	Dio 77.16.1-3; Herodian 4. 6
25	212/213	Pomponia Rufina		buried alive	emperor Caracalla as <i>pont. max.</i> , probably with pontifical college	Dio 77.16.1-3; Herodian 4. 6
26	212/213	Cannutia Crescentina		condemned; suicide	emperor Caracalla as <i>pont. max.</i> , probably with pontifical college	Dio 77.16.1-3; Herodian 4. 6
27	c. ante 382 ⁵⁹¹	Primigenia (Vestal at Alba Longa)		condemned; presumably executed	pontifical college	Sym. <i>Ep.</i> 9.147, 148

⁵⁹⁰ On the date of trials 23-26 see Mekacher 2006, n. 249.

⁵⁹¹ I take this date from Seeck who comments on these letters in his edition of Symmachus (1883, CCIX), "IX 147. 148 a magistratibus petit, ut poenam capitis de virgine Vestali incesti condemnata exigant; cuiusmodi iudicium habitum esse vix potest, postquam Gratianus a. 382 superstitioni gentilium auctoritatem publicam denegavit."

Table 3.1b. Vestals punished for extinction of fire

	date	Vestal	outcome	sources
1	206	unnamed	flogged <i>iussu P. Licini pontificis</i> ; <i>procuratio</i> and <i>supplicatio</i> follow	Liv. 28.11.6-7; Val. Max. 1.1.6
2	178 ⁵⁹²	unnamed	<i>Virgo iussu M. Aemilii pontificis maximi flagro caesa negavit ulterius interitum.</i>	Liv. <i>Per.</i> 41; Obs. 8
3?	88-63	unnamed	unknown	Plut. <i>Numa</i> 9.6
4?	88-63	unnamed	unknown	Plut. <i>Numa</i> 9.6

⁵⁹² It is tempting to posit that from this incident derives the fabulous case of Aemilia who was suspected of *incestus* because the fire went out on her watch and who vindicated herself by praying to Vesta and miraculously relighting the fire. The story is recounted at Dion. Hal. 2.68.3-5 and Val. Max. 1.1.7.

3.4.3 *decreta de incesto uirginum Uestalium*

I would now like to consider the pontifical decrees that the college issued in *incestus* trials. It is best to begin an examination of the pontifical decrees *de incesto uirginum Uestalium*⁵⁹³ with the condemnation of the Vestal Minucia in 337. Livy tells her story in the following passage:

In that year the Vestal Minucia was at first suspected because her dress was more elegant than allowed and then was accused by a slave informant before the pontiffs. And when by their decree (*decreto eorum*) she had been ordered to abstain from the rites (*sacris abstinere*), and to keep her family (*familia*) in her power, she was tried and buried alive at the Porta Capena on the right side of the road in the Accursed Field.⁵⁹⁴

The pontifical college issued a decree containing two provisions: Minucia was to 1) abstain from the *sacra* and 2) keep her *familia in potestate*. This is the only time the term *decretum* occurs with reference to the trial of a Vestal. This does not mean, however, that only in Minucia's case did the pontifical college issue a *decretum*. Consider Dionysius of Halicarnassus' report of the *incestus* trial of 472. In that year Rome suffered from a plague that carried off many women, and

[w]hile the commonwealth was suffering from such a calamity, information was given to the pontiffs by a slave that one of the Vestal virgins who have the care of the perpetual fire, Orbinia, had lost her virginity and, though unchaste (οὐκ οὔσα καθαρά), was performing the public rites (τὰ ἱερὰ θύει τὰ τῆς πόλεως). The pontiffs removed her from the rites (κακῆϊνοι μεταστήσαντες αὐτήν ἀπὸ τῶν ἱερῶν), brought her to trial, and after her guilt had been clearly established, they ordered her to be scourged with rods, to be carried through the city in solemn procession and then to be buried alive. One of the two men who had perpetrated the impious defilement

⁵⁹³ I take this phrase from Ascon. In *Mil.* 45-46 C.: *Sex. Peducaeus tribunus plebis criminatus est L. Metellum pontificem max. totumque collegium pontificum male iudicasse de incesto uirginum Uestalium.*

⁵⁹⁴ Liv. 8.15.7-8: *eo anno Minucia Uestalis, suspecta primo propter mundio rem iusto cultum, insimulata deinde apud pontifices ab indice seruo, cum decreto eorum iussa esset sacris abstinere familiamque in potestate habere, facto iudicio uiua sub terram ad portam Collinam dextra uiam stratam defossa Scelerato campo.* The other sources reporting this incident are summary treatments and do not mention the pontifical decree. Liv. *Per.* 8; Jerome (Hieron.) *Adv. Iov.* 1.41; Oros. 3.9. Cf. *FGrH* 2 B.1155 no. 255, col. 3.33 f.

killed himself; the other was seized by the pontiffs, who ordered him to be scourged in the Forum like a slave and then put to death. After this action the pestilence which had attacked the women and caused so great a mortality among them promptly ceased.⁵⁹⁵

Dionysius does not mention a pontifical decree, but his *κακέϊνοι μεταστήσαντες αὐτὴν ἀπὸ τῶν ἱερῶν* is so strikingly similar to Livy's *decreto eorum iussa esset sacris abstinere*, that we can hardly deny that the two authors are describing the same injunction. Conspicuously absent, however, is the second provision of the decree reported by Livy in Minucia's trial. Are we to conclude that in 472 the pontifical decree ordered Orbinia only to abstain from the rites and not to keep her *familia in potestate*? This is unlikely; as I shall show, the college must have passed the entire decree as given by Livy every time it tried a Vestal for *incestus*.

3.4.3.1 *familiam in potestate habere*

As most commentators of Livy recognize, the meaning of this injunction is clear: in telling Minucia "to keep her family in her power" the pontiffs were commanding her to refrain from freeing her slaves. But why was it necessary that her slaves remain her slaves? Most of the commentaries return the identical reply: so that the pontiffs could torture them for information. But this tells us only what the pontiffs intended to do with her slaves; it does not at all explain why the pontiffs ordered Minucia to keep them in her *potestate*. Let us phrase the question more precisely: why would the pontiffs suspect that Minucia, accused of *incestus*, would manumit her *serui*? On this question most

⁵⁹⁵ Dion. Hal. 9.40: ἐν τοιαύτῃ δὲ συμφορᾷ τῆς πόλεως οὕσης τοῖς ἐξηγηταῖς τῶν ἱερῶν γίνεται μὴνυσις ὑπὸ δούλου τινός, ὅτι μία τῶν ἱεροποιῶν παρθένων τῶν φυλαττουσῶν τὸ ἀθάνατον πῦρ ὀρβινία τὴν παρθενίαν ἀπολώλεκε καὶ τὰ ἱερὰ θύει τὰ τῆς πόλεως οὐκ οὔσα καθαρὰ. κακέϊνοι μεταστήσαντες αὐτὴν ἀπὸ τῶν ἱερῶν καὶ προθέντες δίκην, ἐπειδὴ καταφανὴς ἐγένετο ἐλεγχθεῖσα, ῥάβδοις τ' ἐμαστίγησαν καὶ πομπεύσαντες διὰ τῆς πόλεως ζῶσαν κατώρυχαν. τῶν δὲ διαπραξαμένων τὴν ἀνοσίαν φθορὰν ὁ μὲν ἕτερος ἑαυτὸν διεχρήσατο, τὸν δ' ἕτερον οἱ τῶν ἱερῶν ἐπίσκοποι συλλαβόντες ἐν ἀγορᾷ μάστιξιν αἰκισάμενοι

commentators fall silent.⁵⁹⁶ To answer it, and thus to elucidate the full importance of this decretal provision, let us turn to legal scholars and consider the Roman law on torture as it stood during the Republic.⁵⁹⁷

Roman law demanded that evidence given by slaves in court be extracted through torture. There was but one exception to this rule: slaves could not be tortured to give evidence against their owner.⁵⁹⁸ Since the pontiffs could not torture her slaves into informing against her, Minucia appears to have had no motive to free her slaves and every reason *familiam in potestate habere*. But alas—for Minucia and her slaves, too—to this rule the Romans made an exception, and that exception was cases *de incestu*.⁵⁹⁹

καθάπερ ἀνδράποδον ἀπέκτειναν. ἡ μὲν οὖν νόσος ἡ κατασκήψασα εἰς τὰς γυναῖκας καὶ ὁ πολὺς αὐτῶν φθόρος μετὰ τοῦτο τὸ ἔργον εὐθὺς ἐπαύσατο. Text Jacoby, 1885-1905; trans. Cary 1937-1950.

⁵⁹⁶ The note *ad loc.* in the edition of Livy in the *Bibliotheca Classica Latina* (Paris, 1822) reads, "retinere, id hoc est non manumittere, ut de iis, imprimis de servo illo indicare, quaestio haberi posset, adhibitis tormentis." The *editio nova auctior et emendatio* of Drakenborch's edition of Livy (1822) has "hoc est, ne manumitteret.... Id est, prohibita manumittere servos, ut essent, ex quibus quaestiones haberi possent." And in the third edition of the commentary of Weissenborn (1869), we find, "sie sollen ihre Sklaven nicht freilassen, damit das Zeugnis derselben, durch die Folter erpresst, von dem Ankläger bei dem Prozesse benutzt werden könne". Oakley, 1998, 580, does explain why Minucia would want to free her slaves, and has a good discussion of the role of slaves in these trials. Although he places this discussion somewhat misleadingly under the lemma *ab indice seruo*, and does not directly discuss the decree *familiam in potestate habere*.

⁵⁹⁷ For what follows I am particularly indebted to Mommsen's (1899, 412-16) discussion of the torture of slaves. See also Schumacher 1982, 22, for a discussion of Minucia's case. Mekacher 2006, 38, offers too cursory a treatment.

⁵⁹⁸ Mommsen 1899, 414, with much ancient evidence cited. See especially Cic. *Mil.* 59: *sed tamen maiores nostri in dominum quaeri noluerunt, non quia non posset uerum inueniri, sed quia uidebatur indignum et dominis morte ipsa tristius*; *Dig.* 48.18.1.16: *item Seuerus Scipio Antigono ita rescripsit: cum quaestio de seruis contra dominos neque haberi debeat neque, si facta sit, dicturi sententiam consilium instruat: multo minus indicia seruorum contra dominos admittenda sunt*. Similarly Cic. *pro Deiot.* 3; Tac. *Ann.* 2.30; Dio 55.5.4. I have found that many scholars (e.g., Lovisi 1998, 717-18), when citing the section from *pro Milone*, usually quote only the following passage, *de seruis nulla lege quaestio est in dominum nisi de incestu*. It should be noted, however, that this sentence is placed in square brackets (Teubner) or fully excised (OCT) by most editors. They appear to be following the first editor to do so, Christoph August Heumann (1681-1764), presumably in his edition of the speech published at Hamburg in 1733 (*non uidi*). See the entry on him in Eckstein 1871, 246 and Pökel 1882, 120.

⁵⁹⁹ Cic. *Part. Orat.* 118: *e nostrorum etiam prudentissimorum hominum institutis, qui cum de seruis in dominos quaeri noluissent, de incestu tamen, et coniuratione quae facta me consule est, quaerendum putauerunt*. As this passage makes clear, exceptions to the rule were made during the Republic; more were

Accordingly, Minucia, once charged with *incestus*, must have expected and feared that her slaves would be tormented into either revealing or fabricating under duress damning information against her. She also must have known that the only way she could prevent this from happening was by manumitting them, for then they would be freedmen, and Roman law did not allow the torture of freedmen or freemen.⁶⁰⁰ Manumitted her slaves would be safe, and, with their testimony of her unchastity now inaccessible to the rack, so would Minucia. We can now better understand the full purpose of this part of the pontifical decree. The order *familiam in potestate habere* was meant to ensure that the pontifical college could extract information about Minucia's unchastity from her slaves.⁶⁰¹

The passage from Livy is the only mention of this decree, but it must have been passed in at least one other *incestus* case, that of 483. Dionysius tells us that in that year the pontiffs learned ἔκ τε βασάνων καὶ τῶν ἄλλων ἀποδείξεων that the charge of unchastity against a Vestal was true. βάσανος here means "torture", and the person tortured was surely the Vestal's slave.⁶⁰² In fact, I submit that every time a Vestal who

made under the Empire; see Mommsen, 1899, 414-415. See *Dig.* 48.5.40.8: *de seruis quaestionem in dominos incesti postulatōs ita demum habendam respondi, si per adulterium incestum esse contractum dicatur*. Ibid. 48.15.5: *Marcianus libro secundo institutionum. si quis uiduam uel alii nuptam quia duplex crimen est et incestum, quia cognatam uiolauit contra fas, et adulterium uel cognatam, cum qua nuptias contrahere non potest, corruerit, in insulam deportandus est, stuprum adiungit. denique hoc casu serui in persona<m> domini torquentur*. See in general all of *Dig.* 48.18.

⁶⁰⁰ In the Republic torture was only used very rarely against freemen, but in the Empire with greater frequency; see Mommsen, 1899, 414-415. The same author (ibid. 414) says that freedmen could be tortured, but the case of Minucia proves this false.

⁶⁰¹ The same order appears to have been given in cases of adultery, *Dig.* 40.9.12.1: *Ulpianus libro quarto de adulteris. prospexit legis lator, ne mancipia per manumissionem quaestioni subducantur, idcircoque prohibuit ea manumitti certumque diem praestituit, intra quem manumittere non liceat*. If the accused managed to free his slaves, their emancipation was not recognized. See Mommsen 1899, 416 and 416 n. 4.

⁶⁰² *Dion. Hal.* 8.89.5: οἱ [*i.e.* the pontiffs] δ' ἔκ τε βασάνων καὶ τῶν ἄλλων ἀποδείξεων μαθόντες, ὅτι τὸ μνηυόμενον ἦν ἀδίκημα ἀληθές, αὐτὴν μὲν τῆς κορυφῆς ἀφελόμενοι τὰ στέμματα καὶ πομπεύσαντες δι'

owned slaves was accused of *incestus* the pontifical college ordered her *familiam in potestate habere*. Furthermore, I would contend that the college did this as soon as the accusation against the Vestal was made, in order to give her no opportunity to manumit her slaves.⁶⁰³

I would like to make two other points about the pontifical authority over slaves in *incestus* trials. First, the pontiffs probably could put to death slaves who knew that their mistress had committed *incestus* but did not inform against her. Such is the conclusion drawn by scholars from Orosius' report that in 266 after Caparronia hanged herself, *corruptor eius consciique serui supplicio adfecti sunt*.⁶⁰⁴ The *conscii serui*, however, may have belonged to Caparronia's *corruptor*. In that case we are faced with our second point: could the pontifical college interrogate the slaves of the Vestal's paramour?

Unfortunately, the one passage that would appear to answer this question from a trial of 113 BC which was handled by a standing court and not the pontifical college.⁶⁰⁵ Worth noting, however, is the fact that the accused, M. Antonius, deliberated about whether to hand his young slave over to the judges for torture, for this shows that the court had not

ἀγορᾶς ἐντὸς τείχους ζῶσαν κατώρυξαν. For βάσανος meaning "torture" (esp. as extracted from slaves), see *LSJ* s.v. III.

⁶⁰³ Lovisi 1998, 715, comes to the same conclusion, albeit without explaining why, "Dès avant le jugement, un décret des pontifes ordonnait à la vestal de *sacris abstinere*.... Le même décret imposait à la vestale de conserver sa *familia* [sic] *in potestate*, lui interdisant donc d'affranchir ses esclaves." And at 715 n. 121 she notes that this decree is attested for Minucia but its occurrence is "vraisemblable dans les autres cas."

⁶⁰⁴ The full account is at Oros. 4.5.6-9. For the interpretation see Guizzi 145-8 and Schumacher 1982, 22.

⁶⁰⁵ Val. Max. 6.8.1: *restat ut seruorum etiam erga dominos quo minus expectatam hoc laudabiliorem fidem referamus. M. Antonius auorum nostrorum temporibus clarissimus orator incesti reus agebatur. cuius in iudicio accusatores seruorum in quaestionem perseuerantissime postulabant, quod ab eo, cum ad stuprum irent, lanternam praelatam contenderent. erat autem is etiam tum inerbis et stabat <in> corona uidebatque rem ad suos cruciatus pertinere, nec tamen eos fugitauit. ille uero, ut domum quoque uentum est, Antonium hoc nomine uehementius confusum et sollicitum ultro est hortatus ut se iudicibus torquendum traderet, adfirmans nullum ore suo uerbum exiturum, quo causa eius laederetur.* Text Briscoe 1998.

ordered him to do so, and suggests that it could not order him to do so. It is tempting to infer from this that the pontifical college, like the judges in Antonius' case, did not have the power to order the Vestal's paramour to hand over his slaves for torture.

Unfortunately, without more explicit evidence this inference must remain only a hypothesis.

3.4.3.2 *sacris abstinere*

Let us now examine the second provision of the pontifical decree.⁶⁰⁶ The first thing to note is the point at which it was issued. Livy has the college promulgate the decree against Minucia before the trial begins, and Dionysius does the same in his tale of Orbinia. Why was it issued then? Dionysius seems to provide the answer. By saying that "information was given to the pontiffs...that one of the Vestal virgins..., Orbinia, had lost her virginity and, though unchaste, was performing the public rites. The pontiffs removed her from the rites...", he implies that Orbinia was removed from the *sacra*⁶⁰⁷ because she had performed them while unchaste. But Dionysius has slightly misrepresented what actually happened. When the pontiffs removed Orbinia from the *sacra* they could not have known whether she was *incesta*; they could only suspect as much, and their investigation was meant to establish for certain whether she was or was not. It will thus be more precise to say that the pontiffs removed Orbinia from the rites, not because she had performed them while unchaste, but because the pontiffs suspected that she *might* have done so. In Minucia's case the pontiffs acted similarly, ordering her to

⁶⁰⁶ As far as I can ascertain this provision has not received significant scholarly attention. Oakley 1998, 576-581, devotes six pages to Minucia, but on *sacris abstinere* he cites only the parallel phrase in Dion. Hal. 9.40 and provides no comment on its meaning. Mekacher 2006, 33 and 38, does not discuss the purpose or import of this decree. The commentaries of *Bibliotheca Classica Latina* (1822), Drakenborch (1822), and Weissenborn (1869), *ad loc.*, provide no comment on *sacris abstinere*.

abstain from the rites as soon as her trial began, or, in other words, as soon as they suspected her of unchastity.

The provision *sacris abstinere* is attested only for two *incestus* trials, but it requires no perspicacity to see that the pontiffs must have issued the same injunction every time a Vestal was accused of unchastity and that they must have issued it as soon as the accusation was made. Or can we imagine that the *pontifices*, who, it must be remembered, oversaw the *sacra* and were thus obligated to ensure their correct performance, would allow any Vestal to administer them once her chastity was in doubt? I suspect also that if a Vestal were found innocent (as Postumia was in 420; see Liv. 4.44.11-12; Plut. *Mor.* 89E-F = *inim. util.* 6) she could return to the *sacra* once the college judged her *casta*. I thus propose that in such cases the college issued another decree that reinstated the Vestal to the rites.

Regarding the decree *sacris abstinere* we might say, as most scholars do, that this decree safeguarded against the possible unchaste performance of the *sacra*.⁶⁰⁷ This statement is, however, only partly correct; it disregards the several instances in which the Vestal had, in fact, performed the rites while unchaste. It is thus more precise to say that this decree was meant to accomplish one of two aims: it either prevented a Vestal from performing the rites while unchaste or it stopped her from continuing to do so.

But why was it so important to the pontiffs that an unchaste Vestal not perform the *sacra*?

⁶⁰⁷ The rites in question clearly belonged to the *publica sacra*; cf. Dionysius' τὰ ἱερὰ τὰ τῆς πόλεως.

⁶⁰⁸ Cf., e.g., Cohee 1994, 53, "The suspension of Minucia from services pending the verdict of the *pontifices* preserves the integrity of *sacra publica* from possible further pollution." Lovisi 1998, 715, notes that the decree was promulgated before the "judgement". She explains that the decree was a "mesure préventive destinée, dans le doute, à ne pas prolonger l'accomplissement *haud rite* des *sacra*." She seems to summarize here the work of Guizzi 1968, 150.

To answer this question let us turn to the *incestus* trial of 483. The relevant passages of Dionysius is worth quoting in full:

In Rome itself there appeared many prodigies⁶⁰⁹ strange to hear and see, which made clear that the gods were angry (θείου χόλου). All of them tended toward what the haruspices⁶¹⁰ and the pontiffs pooling their experience, decreed, namely, that when the sacrifices were made to them, some of the gods had not received the customary honors in a clean or holy fashion (οὐ κομίζονται τὰς νομίμους τιμὰς οὐ καθαρῶς οὐδὲ ὁσίως ἐπιτελουμένων αὐτοῖς τῶν ἱερῶν). After this there was a great inquiry from everyone, and in time a disclosure was given to the pontiffs that Opimia,⁶¹¹ one of the Virgins who guard the holy fire, having lost her virginity was polluting (μιαίνει) the rites (τὰ ἱερά = *sacra*). And they found out from other tests and revelations that the thing disclosed was a true crime, and they stripped her of her fillets and lead her through the forum, and buried her alive inside the walls. And after whipping the two men found guilty of violating her, they executed them at once, after which the rites (τὰ ἱερά) and the auguries⁶¹² became favorable, as the gods relented their anger (ἀφεικότων...τῶν θεῶν τὸν χόλον).⁶¹³

⁶⁰⁹ The Greek term is δαιμόνια σημεῖα, which the Loeb translates as "divine portents". This seems incorrect, for Livy, in his account of the same incident, speaks specifically of *prodigia*.

⁶¹⁰ The Loeb translates μάντις as *augures*; but it could also be *haruspices*, which is what I have substituted, cf. Magie [1904] 1905, s.v. Haruspex 148. The passage of Livy does not bring clarity; he speaks of *uates* who *nunc extis, nunc per aues consulti*, which seems to indicate both *haruspices* and augurs. Perhaps Dionysius' μάντις covers both.

⁶¹¹ There is confusion about the name; it is variously given as Oppia, Opimia, (Op)illia, Popillia, Pompilia; see *MRR* 1.23 n. 2, for sources and modern bibliography. For convenience I shall use Opimia.

⁶¹² The Greek term is τὰ μαντεύματα; I am not sure if the Loeb's translation, 'auguries', is correct.

⁶¹³ Dion. Hal. 8.89.3-5: ἐν αὐτῇ δὲ τῇ Ῥώμῃ πολλὰ δαιμόνια σημεῖα ἐφαίνετο δηλωτικὰ θείου χόλου κατὰ τε φωνὰς καὶ ὄψεις ἀήθεις. πάντα δ' εἰς τοῦτο συνέτεινεν, ὥς οἱ τε μάντις καὶ οἱ τῶν ἱερῶν ἐξηγηταὶ συνενέγκαντες τὰς ἐμπειρίας ἀπεφαίνοντο, ὅτι θεῶν [χολοῦσθαι] τινες οὐ κομίζονται τὰς νομίμους τιμὰς οὐ καθαρῶς οὐδὲ ὁσίως ἐπιτελουμένων αὐτοῖς τῶν ἱερῶν. ζήτησις δὲ μετὰ τοῦτο πολλὴ ἐκ πάντων ἐγένετο, καὶ σὺν χρόνῳ μὲνυσσι ἀποδίδεται τοῖς ἱεροφάνταις, ὅτι τῶν παρθένων μία τῶν φυλαττουσῶν τὸ ἱερόν πῦρ. ὀπιμία ὄνομα αὐτῇ, τὴν παρθενίαν ἀφαιρεθεῖσα μιαίνει τὰ ἱερά. οἱ δ' ἔκ τε βασάνων καὶ τῶν ἄλλων ἀποδείξεων μαθόντες, ὅτι τὸ μνηνόμενον ἦν ἀδίκημα ἀληθές, αὐτὴν μὲν τῆς κορυφῆς ἀφελόμενοι τὰ στέμματα καὶ πομπεύσαντες δι' ἀγορᾶς ἐντὸς τείχους ζῶσαν κατώρυξαν· δύο δὲ τοὺς ἐξελεγχθέντας διαπράξασθαι τὴν φθορὰν μαστιγώσαντες ἐν φανερῷ παραχρῆμα ἀπέκτειναν καὶ μετὰ τοῦτο καλὰ τὰ ἱερά καὶ τὰ μαντεύματα ὥς ἀφεικότων αὐτοῖς τῶν θεῶν τὸν χόλον, ἐγένετο. Text Jacoby, 1885-1905; trans. (modified) Cary 1937-1950. Livy (2.42.9-11) gives a much compressed version of these same events: *accessere ad aegras iam omnium mentes prodigia caelestia, prope cottidianas in urbe agrisque ostendentia minas; motique ita numinis causam nullam aliam uates canebant publice priuatimque nunc extis, nunc per aues consulti, quam haud rite sacra fieri; qui terrores tamen eo euasere ut Oppia uirgo Uestalis damnata incesti poenas dederit*. Text Ogilvie 1974.

The key term is 'anger of the gods' (Θείου χόλου; in Latin, *ira deorum*),⁶¹⁴ and in this case the gods⁶¹⁵ anger, manifested in numerous prodigies, was roused because Opimia had polluted their rites by performing them while unchaste. True, Dionysius writes only "having lost her virginity she polluted the rites" (τὴν παρθενίαν ἀφαιρεθεῖσα μαιίνει τὰ ἱερά). But this cannot be taken to mean that the pollution resulted from Opimia's loss of virginity *per se*, for as the response of the pontiffs and the *haruspices* (and possibly the augurs) makes clear, the gods were angry because their rites had been performed (οὐ καθαροῶς οὐδὲ ὁσίως ἐπιτελουμένων αὐτοῖς τῶν ἱερῶν) 'in an unholy and unclean fashion', not because a priest or priestess was unclean or unchaste. 'Polluting the rites' therefore, must here mean 'performing them while unchaste'.

The story of Opimia is strikingly similar to that of Orbinia in 472. In that year a plague which visited the women of Rome led a slave to inform the pontiffs that Orbinia "had lost her virginity and, though unchaste, was performing the public sacrifices" (τὴν παρθενίαν ἀπολώλεκε καὶ τὰ ἱερά θύει τὰ τῆς πόλεως οὐκ οὔσα καθαρά). Orbinia was

⁶¹⁴ On the connection between *prodigia* and the *ira deorum*, cf., e.g., Verg. *Aen.* 3.365-7 (*sola nouum dictuque nefas Harpyia Celaeno / prodigium canit et tristis denuntiat iras / obscenamque famem*), *quae prima pericula uito?* On the connection between sickness and the *ira deorum* cf., e.g., Liv. 3.6.5: *praeterquam quod infrequens senatus indicio erat sociis adflictam ciuitatem pestilentia esse, maestum etiam responsum tulere, ut per se ipsi Hernici cum Latinis res suas tutarentur: urbem Romanam subita deum ira morbo populari* and 4.9.3: *quam fames morbiue quaeque alia in deum iras uelut ultima publicorum malorum uertunt*. These examples could be multiplied. The anger of the gods has not received sufficient scholarly treatment; I propose elsewhere to offer a thorough study of the concept.

⁶¹⁵ Dionysius' *τινες* attracts attention; which gods were angry? In this connection it is interesting to note that the Vestal Cornelia, when suspected of *incestus*, protested her innocence with cries to Vesta and *ceteros deos*; Plin. Ep. 4.11.6: *illa nunc ad Uestam, nunc ad ceteros deos manus tendens, multa sed hoc frequentissime clamiabat: 'me Caesar incestam putat, qua sacra faciente uicit triumphauit'*. Likewise Tuccia prayed to Vesta to testify to her innocence; Val. Max. 8.1, abs. 5: *arrepto enim cribro 'Uesta' inquit, 'si sacris tuis castas semper admoui manus, effice ut hoc hauriam e Tiberi aquam et in aedem tuam perferam'*. It thus seems clear that Vesta was one of the *θεοί* aggrieved by an *incesta Uestalis* performing *sacra*. I would propose that the other angered deities were those whose *sacra* the unchaste Vestal had polluted. The deities were probably different in every case, but in some of them it may well have been the divinity mentioned by Pliny (NH 28.38-39): *quamquam religione <e>um <t>utatur et fascinus, imperatorum quoque, non solum infantium, custos, qui deus inter sacra Romana a Uestalibus colitur*.

tried, found guilty, and buried alive, and her two paramours met their end,⁶¹⁶ upon which the plague ceased. True, in his account of Orbinia's ordeal Dionysius neither mentions the *ira deorum* nor uses a term meaning "pollution," but he does explicitly connect Orbinia's unchaste performance of the rites with the plague,⁶¹⁷ and so we should conclude that in both cases the Romans saw the same chain of events at work.

And the chain of events seems to be as follows: the unchaste Vestal performs the *sacra*, thereby polluting them and angering the gods who then send prodigies to make their displeasure known; priests then determine that the gods are angry because of the unclean performance of their rites; the Vestal is found out, tried, judged guilty, and buried alive; her paramours are also killed; the gods relent their anger, as shown by the favorable rites and the auguries.

This last event is worth discussing. It is mentioned only by Dionysius in his account of Opimia's case. He writes that after Opimia was buried alive and her lovers scourged and killed "the rites and the auguries became favorable, as the gods relented their anger" (*καλὰ τὰ ἱερὰ καὶ τὰ μαντεύματα ὡς ἀφεικότων αὐτοῖς τῶν θεῶν τὸν χόλον, ἐγίνετο*). Without a parallel passage it is difficult to know to what rites and auguries Dionysius refers. I am tempted to think that he has misinterpreted his source(s) which probably reported that the *prodigia* that had revealed Opimia's unchaste performance of the rites ceased upon her and her lovers' deaths. But it is also probable that Dionysius refers to propitiatory sacrifices or prayers which were meant to restore the ruptured *pax deorum*. We have no evidence for such a rite in connection with these trials, and it hardly seems

⁶¹⁶ It is unclear to me whether the offended gods were appeased only if both the Vestal and her lover were punished or just the Vestal.

correct to consider the Vestal's death sufficient propitiation since it seems to have been only the punishment for her loss of chastity. We do know, however, that in 206 after the fire in the temple of Vesta went out, a procuration and supplication at the temple of Vesta was decreed, most probably by the pontifical college.⁶¹⁸ Moreover, Dionysius tells us that when in 178 Aemilia proved her innocence by miraculously relighting the extinguished fire of Vesta, there was no need of "expiations or a new fire" (μήτε ἀγνισμῶν μήτε νέου πυρός),⁶¹⁹ and again, in his general discussion about the extinction of the holy fire, he says that after its extinction "they bring fire again into the temple with many supplicatory rites" (πολλαῖς αὐτὸ θεραπείαις ἐξιλασκόμενοι κατὰγουσι πάλιν εἰς τὸ ἱερόν).⁶²⁰ These passages indicate that an expiation occurred each time the eternal fire went out. It is reasonable to contend that a similar expiation, supplication, or propitiation was made each time a Vestal had disturbed the *pax deorum* by performed the *sacra* while unchaste.

It is to such a rite that Dionysius is probably referring, along with the cessation of the baleful *prodigia*. I therefore propose that after the burial of an unchaste Vestal who had polluted the *sacra*, the pontifical college decreed a propitiatory rite to restore the broken *pax deorum*, perhaps similar to the one it ordered in 206 when Vesta's fire went out.

The cases of Orbinia and Opimia are the only two in which the cause and context of a Vestal's unchastity are discussed in detail. However, the same chain of cause and

⁶¹⁷ Note, that the Romans appeared to have understood a direct connection between plague and the wrath of the gods, cf. Liv. 3.6.5: *urbem Romanam subita deum ira morbo populari*.

⁶¹⁸ Livy 28.11.7: *id* [i.e. *ignis exstinctus*] *quamquam nihil portendentibus dis ceterum negligentia humana acciderat, tamen et hostiis maioribus procurari et supplicationem ad Uestae haberi placuit*.

⁶¹⁹ Dion. Hal. 2.68.5: ὥστε μηδὲν ἔτι δεῖσαι τῇ πόλει μήτε ἀγνισμῶν μήτε νέου πυρός.

⁶²⁰ Dion. Hal. 2.67.5: ἡ σβέσις τοῦ πυρός, ἣν ὑπὲρ ἅπαντα τὰ δεινὰ Ῥωμαῖοι δεδοίκασιν ἀφανισμοῦ τῆς πόλεως σημεῖον ὑπολαμβάνοντες, ἀφ' ἧς ποτ' ἂν αἰτίας γένηται, καὶ πολλὰς αὐτὸ θεραπείαις

effect—unchastity, polluted *sacra*, *ira deorum*, *prodigia* or *pestilentia*—may have led to the death of Caparronia in 266. In his account of this year Orosius mentions a *pestilentia* that the Sibylline books interpreted as signifying the *caelestis ira*; Orosius then remarks that at this same time Capparonia killed herself while on trial for *incestus*.⁶²¹ Orosius does not connect the plague and the angered gods with Capparonia's trial, but it seems likely, in comparison with the cases of Orbinia and Opimia, that the Romans saw Capparonia's unchaste performance of the *sacra* as responsible for the *pestilentia* affecting them.

It is, however, unclear whether the *prodigia* of 216 were similarly thought to have been sent by gods who were angry because Opimia and Floronia attended the rites while unchaste.⁶²² On the other hand it is very unlikely that the bizarre death of Helvia in 114 should not be taken as a *prodigium* occasioned by the unchastity of Aemilia, Licinia, and Marcia. Plutarch, the only source to mention Helvia's death, reports that the *μάντις* (= *haruspices*)⁶²³ interpreted it as portending a terrible disgrace for the Vestal Virgins and the *equites*.⁶²⁴ This indicates that the priests (probably the *haruspices*) viewed Helvia's

ἐξίλασκόμενοι κατάγουσι πάλιν εἰς τὸ ἱερόν; and *πρὸς ἱλασμοὺς θεῶν ἢ τεράτων ἀποτροπὰς συνηγόρευον οἱ μάντις, ἐπράττετο.* Text Jacoby 1885-1905.

⁶²¹ Oros. 4.5.6-9: *anno ab urbe condita CCCCLXXXI pestilentia ingens apud Romam conflagrauit, cuius atrocitatem significare contentus sum, quia uerbis implere non possum. si enim spatium temporis quo mansit inquiritur, ultra biennium uastando porrecta est; si depopulatio quam egerit, census indictus est, qui non quantum hominum deperisset, sed quantum superfuisset, inquireret; si uiolentia qua adfecerit, Sibyllini libri testes sunt, qui eam caelesti ira inpositam responderunt. sed, ne quemquam quasi temptatio cauillationis offendat, quod, cum Sibylla iratos deos dixerit, nos iram caelestem dixisse uideamur, audiat et intellegat, quia haec, etsi plerumque per aerias potestates fiunt, tamen sine arbitrio omnipotentis Dei omnino non fiunt. eodem tempore Caparronia uirgo Uestalis incesti rea suspendio periit: corruptor eius consciique serui supplicio adfecti sunt.* Text Zangemeister 1889.

⁶²² Pace Lovisi 700 n. 6, neither source for this event draws or suggests a connection between the *prodigia* and the Vestals, see Livy 22.57.2-7 and Plut. *Fab.* 18.3.

⁶²³ See Magie [1904] 1905, 148; accepted by Schumacher 1982, 24 n. 78.

death not as a *prodigium* revealing the anger of the gods, but as a sign portending ill for these two groups. Now Dio, in his account of how the unchastity of these three Vestals was discovered, mentions the anger of a god, but it is interesting to observe that he does not say that the anger was caused by the Vestals' unchaste performance of rites or loss of chastity. Quite the opposite: he claims that the punishment of the Vestals who were merely accused of *incestus* along with those who were actually guilty seemed due to the anger of some god.⁶²⁵ Thus, according to him, the treatment of the Vestals was not the cause, but the sign of the god's anger.⁶²⁶

The accounts of Orbinia and Opimia and, to a lesser extent, that of Caparronia, allow us to see the full theological significance of an unchaste Vestal performing the *sacra* and to understand why, whenever a Vestal was suspected of *incestus*, the pontiffs must have immediately decreed that she abstain from the rites: such unchaste performance polluted the *sacra* and roused the *ira deorum*. Now, the *ira deorum* is a central concept of Roman religion. Put simply, it indicates a breach in the *pax deorum*.⁶²⁷ We can thus state more

⁶²⁴ Plut. *Mor.* 284A = *Quaest. Rom.* 83: λέγεται γὰρ Ἑλβίαν τινὰ παρθένον ὀχουμένην ἐφ' ἵππου βληθῆναι κεραυνῷ, καὶ γυμνὸν μὲν εὐρεθῆναι κείμενον τὸν ἵππον, γυμνήν δ' αὐτὴν ὡς ἐπίτηδες ἀνηγμένου τοῦ χιτῶνος ἀπὸ τῶν ἀπορρήτων, ὑποδημάτων δὲ καὶ δακτυλίων καὶ κεκρυφάλου διερριμμένων χωρὶς ἄλλων ἀλλαχόθι, τοῦ δὲ στόματος ἔχω προβεβληκότος τὴν γλῶσσαν. ἀποφηνάμενων δὲ τῶν μάντεων δεινὴν μὲν αἰσχύνην ταῖς ἱεραῖς παρθένοις εἶναι καὶ γενήσεσθαι περιβόητον, ἄψεσθαι δὲ τινα καὶ ἱππέων ὕβριν....

⁶²⁵ Dio 26, fr. 87: ὅτι αἱ ἱέρειαι τὸ πλεῖστον αὐταὶ τοῦ τε ὀλέθρου καὶ τῆς αἰσχύνης ὄφλον, συχνοῖς δὲ θῆ καὶ ἄλλοις μεγάλων κακῶν αἰτίαι ἐγένοντο, ἢ τε πόλις ἅπασα ἀπ' αὐτῶν ἐταράχθη. ἐκλογιζόμενοι γὰρ ὅτι τὰ ὑπὸ τοῦ νόμου ἄχραντα καὶ τὰ ὑπὸ τῆς θρησκείας ἅγια ἐκ τε τοῦ φόβου τῆς τιμωρίας κόσμια ἐλυμάνθη, οὐδὲν ὅ τι οὕτως ὑπετόπουν τῶν αἰσχίστων καὶ ἀνοσιωτάτων δύνασθαι γενέσθαι. καὶ διὰ τοῦτο καὶ τὰς κολάσεις οὐ μόνων τῶν ἐλεγχθέντων ἀλλὰ καὶ τῶν ἄλλων πάντων τῶν αἰτιαθέντων μίσει τοῦ συμβεβηκότος ἐποιήσαντο. ὅθεν οὐκ ἐκ γυναικείας ἐτι ἀσελγείας, ἀλλ' ἐκ δαιμονίας τινὸς ὀργῆς σύμπαντα <τὰ> κατ' αὐτὰς συμβῆναι ἔδοξεν. V. 75 (p. 626). Text Boissvain 1895-1931.

⁶²⁶ Lovisi 1998, 700 n.7, believes that *pestilentia* in 273 led to Sextilia's trial, but there is no mention of a plague, pestilence or prodigy in Livy (*Per.* 14) or Orosius' (4.2.8) account of her death.

⁶²⁷ The connection between *pax deorum* and *ira deorum* is most concisely and clearly brought out at Liv. 3.7.8: *ueniam irarum caelestium finemque pesti exposcunt. inde paulatim, seu pace deum impetrata seu grauiore tempore anni iam circumacto, defuncta morbis corpora salubriora esse incipere, uersisque*

concisely the purpose behind the pontifical decree *sacris abstinere*: in removing the Vestals from the *sacra* the pontiffs sought to preserve the *pax deorum*.

But they were not always successful in the task. As in the cases of Orbinia and Opimia, the college's *decretum* could come too late to prevent the rites' pollution. In such cases, the decree only stopped the continued pollution of the *sacra*. But in at least one other instance the decree appears to have prevented the pollution from occurring at all. This seems to have happened with Minucia in 337. Livy expressly states that she fell under suspicion because of her dress (*suspecta primo propter mundiorem iusto cultum*). If *prodigia* or *pestis* had disclosed her unchastity, Livy would surely have said so. Apparently only her dress gave her away. The conclusion seems inescapable: Minucia was accused before she performed the rites while unchaste. For if she had performed them, then, according to the logic of Roman religion, *prodigia* or similar divine signs would have appeared, indicating the gods' displeasure at the sacral pollution. This interpretation seems preferable to the alternative, which is to contend that she did perform the rites, but that the pontiffs removed her from them before the gods could disclose their anger at the event.⁶²⁸

We thus should divide all guilty Vestals into two groups: those who, like Orbinia and Opimia, performed *sacra* while unchaste and those who, like Minucia, did not. Accordingly, we can postulate that at every *incestus* trial the pontifical college directed at least part of their investigations towards discovering whether the accused had performed

animis iam ad publicam curam, and Ver. G. 4.534: tu munera supplex / tende petens pacem, et facilis uenerare Napaeas; / namque dabunt ueniam uotis, irasque remittent.

⁶²⁸ It would be useful to know what led to the accusation of the other Vestals known to have been condemned for *incestus*. For example, did a plague lead to Sextilia's condemnation in 271, or was she suspected only because of her *cultus*? Unfortunately, the sources on her and all other Vestals report only their death on a charge of *incestus*.

the *sacra* while unchaste. Perhaps they even asked the accused, "*fecistine sacra incesta?*" Of course to the Vestal her answer did not much matter; either way she was consigned to burial alive. But to the pontifical college (and thus to us) it was a theologically significant distinction, for whereas polluted *sacra* broke the *pax deorum* and roused the anger of the gods, a merely unchaste Vestal does not appear to have caused such a breach in Rome's relationship with its deities. This is an important distinction, for scholars often claim that a Vestal's unchastity either broke the *pax deorum* or itself occasioned prodigies and plague.⁶²⁹ The preceding discussion has shown that claim to be incorrect. It was not the loss of chastity *per se* that broke the *pax deorum* or brought down *prodigia* on the Roman people, but the fact that an unchaste Vestal performed and thus polluted the *sacra*.

In this connection it should also be noted that the Romans did not interpret the extinction of the sacred fire as a sign that a Vestal had lost her virginity, but as a sign which, like the *prodigia* and *pestilentia* discussed above, revealed that she had performed the rites while unchaste. The relevant passage comes from Dionysius:

There are many indications, it seems, when a priestess is not performing her holy functions with purity, but the principal one is the extinction of the fire, which the Romans dread above all misfortunes, looking upon it, from whatever cause it proceeds, as an omen that portends the destruction of the city.⁶³⁰

In light of the pontifical concern with the unchaste Vestal's handling of the *sacra*, it is interesting to examine the utterances of the condemned Vestals Tuccia, Aemila, and Cornelia. Tuccia's sieve is famous, but her prayer has not, to my knowledge, received

⁶²⁹ See, e.g., Lorsch Wildfang 2006, 57, who appears to think that the loss of virginity itself could break the *pax deorum*; Cornell 1981, 31, who writes, "The unchastity of a Vestal Virgin would itself give rise to prodigies...". Lovisi 1998, 704, writes, "*L'incestus*, une fois avéré, expliquait la pollution de la cité et la rupture de la *pax deorum*."

⁶³⁰ Dion. Hal. 2.67.5: πολλὰ μὲν οὖν καὶ ἄλλα δοκεῖ μηνύματα εἶναι τῆς οὐχ ὁσίως ὑπερητούσης τοῖς ἱεροῖς, μάλιστα δὲ ἡ σβέσις τοῦ πυρός, ἣν ὑπερ ἅπαντα τὰ δεινὰ Ῥωμαῖοι δεδοίκασιν ἀφανισμοῦ τῆς πόλεως σημεῖον ὑπολαμβάνοντες. Text Jacoby 1885-1905; trans. Cary 1937-1950.

sufficient attention. Before vindicating her chastity she cried out the following *incesti deprecatio*⁶³¹:

Vesta, if I have always ministered your rites (*sacris tuis*) with chaste hands (*castas semper admoui manus*) then make it that I should with this sieve take water from the Tiber and bring it to your temple.⁶³²

Similarly prayed Aemilia, under suspicion because of the extinction of the sacred fire:

Thereupon, they say, Aemilia...stretched out her hands toward the altar and in the presence of the priests and the rest of the virgins cried: "O Vesta, guardian of the Romans' city, if, during nearly thirty years, I have performed the sacred offices to thee in a chaste⁶³³ (*όσίως*) and proper manner, keeping a pure mind and a chaste body (*ψυχὴν ἔχουσα καθαρὰν καὶ σῶμα ἄγνόν*), manifest thyself in my defence and assist me and do not suffer thy priestess to die the most miserable of all deaths; but if I have been guilty of any impious deed, let my punishment expiate the guilt of the city."⁶³⁴

⁶³¹ I take the term from Plin. *NH* 28.12: *extat Tucciae Uestalis incest<i d>eprecatio, qua usa aquam in cribro tulit anno urbis DXVIII*. The term apparently is not attested in manuscripts, but only in the Gelenii editio Baseleensis from 1554 (see Ian-Mayhoff 1892-1902, vol. 4, ix.)

⁶³² Val. Max. 8.1 abs. 5: 'Vesta' inquit, 'si sacris tuis castas semper admoui manus, effice ut hoc hauriam e Tiberi aquam et in aedem tuam perferam'. Other sources mention Tuccia's ordeal, but only Valerius Maximus quotes her prayer; cf. Liv. *Per.* 20; Dion. Hal. 2.69.1-3; Plin. *NH* 28.12; Tert. *Apol.* 22.12; Aug. *CD* 10.16; on the confusion surrounding the date of this incident see *MRR* 1.227-228, who dates it to 230. One cannot help but compare Tuccia's prayer with the following passage from Paulus ex Festo 94 L.: *Ignis Uestae, si quando interstinctus esset, uirgines uerberibus adficiebantur a pontifice, quibus mos erat tabulam felicitis materiae tamdiu terebrare, quousque exceptum ignem cribro aeneo uirgo in aedem ferret*. It would seem that Tuccia's ordeal was an inversion of a Vestal's common task.

⁶³³ The Loeb renders *όσίως* as "holy"; but it is clear from comparison with the other similar passages adduced in this section (see *e.g.* n. 613) and from context that the word is the Greek equivalent to *casta*; thus my translation.

⁶³⁴ I quote the entire passage (Dion. Hal. 2.68.3-5): *λέγεται δὴ ποτε τοῦ πυρὸς ἐκλιπόντος δι' ὀλιγωρίαν τινὰ τῆς τότε αὐτὸ φυλαττοῦσης Αἰμιλίας ἐτέρᾳ παρθένῳ τῶν νεωστὶ κατειλεγμένων καὶ ἄρτι μανθανουσῶν παραδόσης τὴν ἐπιμέλειαν ταραχὴ πολλὴ γενέσθαι κατὰ τὴν πόλιν ὅλην καὶ ζήτησις ὑπὸ τῶν ἱεροφαντῶν, μὴ τι μίαισμα περὶ τὸ πῦρ τῆς ἱερείας ἐτύγχανε γεγονός· ἔνθα δὴ φασὶ τὴν Αἰμιλίαν ἀναίτιον μὲν οὔσαν, ἀπορουμένην δ' ἐπὶ τῷ συμβεβηκότι παρόντων τῶν ἱερέων καὶ τῶν ἄλλων παρθένων τὰς χεῖρας ἐπὶ τὸν βωμὸν ἐκτείνασαν εἰπεῖν· "Ἐστία τῆς Ῥωμαίων πόλεως φύλαξ, εἰ μὲν ὁσίως καὶ δικαίως ἐπιτετέλεκά σοι τὰ ἱερὰ χρόνον ὀλίγου δέοντα ριακονταετοῦς καὶ ψυχὴν ἔχουσα καθαρὰν καὶ σῶμα ἄγνόν, ἐπιφάνηδὶ μοι καὶ βοήθησον καὶ μὴ περιίδῃς τὴν σεαυτῆς ἱέρειαν τὸν οἴκτιστον μόρον ἀποθανοῦσαν· εἰ δὲ ἀνόσιόν τι πέπρακταί μοι ταῖς ἐμαῖς τιμωρίαις τὸ τῆς πόλεως ἄγος ἀφάγνισον." ταῦτ' εἰποῦσαν καὶ περιρρήξασαν ἀπὸ τῆς καρπασίνης ἐσθῆτος, ἣν ἔτυχεν ἐνδεδυκυῖα, βαλεῖν τὸν τελαμῶνα ἐπὶ τὸν βωμὸν μετὰ τὴν εὐξὴν λέγουσι καὶ ἐκ τῆς κατεψυγμένης πρὸ πολλοῦ καὶ οὐδένα φυλαττοῦσης σπινθῆρα τέφρας ἀναλάμψαι φλόγα πολλὴν διὰ τῆς καρπάσου, ὥστε μηδὲν ἔτι δεῆσαι τῇ πόλει μήτε ἀγνισμῶν μήτε νέου πυρός. Text Jacoby 1885-1905; trans. (modified) Carey 1937-1950.*

And Cornelia, condemned by Domitian, met her fate with repeated protestations of innocence:

Alternately stretching her hands to Vesta and to other gods she shouted many things but this one thing again and again: "Caesar thinks I am unchaste (*incestam*), though he conquered and triumphed while I performed the rites (*sacra*)!"⁶³⁵

These passages raise several important points. First, they seem to me to indicate that it was a standard occurrence for an accused Vestal to pray to Vesta (and often other deities, too) for aid. Secondly, and more importantly for the purpose of this section, it is striking to note that Tuccia, Aemilia, and Cornelia do not counter their accusation or condemnation by merely claiming that they are chaste. Instead all three emphasize their chaste performance of *sacra*. Tuccia and Aemilia make their claim explicit, while Cornelia implies that Domitian could not have enjoyed military success had she been performing the *sacra* as an *incesta*. A miracle vindicated Tuccia and Aemilia; Vesta heard their prayers and saved them. Cornelia's appeal was to reason—the reasoning of Roman religion⁶³⁶—but her cry went unheard, and Vesta and the other gods allowed her to perish.

⁶³⁵ Plin. *Ep.* 4.11.6: *illa nunc ad Uestam, nunc ad ceteros deos manus tendens, multa sed hoc frequentissime clamitabat: 'me Caesar incestam putat, qua sacra faciente uicit triumphauit!'* Editors usually punctuate with a period; context demands an exclamation point.

⁶³⁶ I was first inclined to think that Cornelia intended her remarks as proof of her innocence: the fact that Domitian could triumph while she performed the *sacra* testifies to her status as *casta*; that is, if she were unchaste, then Domitian could not have won victories and triumphed. (This is the view of Lovisi 1998, 703 n. 29.) This interpretation would seem possible in view of an inscription which establishes a connection between Rome's *felicitas*, a Vestal's chastity and her performance of the *sacra*, see *ILS* 4932: *cuius egregiam morum disciplinam et in sacris peritissimam operationem merito res publica in dies feliciter sensit*. But I am not sure if this is correct. I would like to know why her unchastity would prevent him from triumphing. Pliny (*loc. cit.*) notes that Cornelia's words can be taken two ways: *blandiens haec an inridens, ex fiducia sui an ex contemptu principis dixerit, dubium est*. But how would we interpret her words as issuing *ex contemptu principis*? I suspect that Cornelia was making a specific theological point about Domitian's victories and triumphs, not triumphs and victories in general. Unfortunately the matter cannot be pursued here, although I note that there may be a close connection between Domitian's triumph and Cornelia's *incestus*, for in 83 the Emperor celebrated a triumph over the Chatti, and in either that year or the next Cornelia and three other Vestals were charged with *incestus*; Cornelia alone was absolved. (Her

We find a similar emphasis on the performance of *sacra* in the formula the *pontifex maximus* spoke when 'seizing' a girl for the priesthood of Vesta. Aulus Gellius quotes the formula from a book (probably on *ius pontificium*) by Fabius Pictor:

*in libro primo Fabii Pictoris, quae uerba pontificem maximum dicere oporteat, cum uirginem capiat, scriptum est. ea uerba haec sunt: 'sacerdotem Uestalem, quae sacra faciat, quae ius siet sacerdotem Uestalem facere pro populo Romano Quiritibus, uti quae optima lege fuit, ita te, Amata, capio.'*⁶³⁷

It is striking that there is no mention of chastity in this formula. Instead, the emphasis is on the *sacra* that the soon-to-be Vestal must perform.

3.4.4 Summary remarks

These are the only reports of an unchaste Vestal to mention *sacra*. The remaining accounts of *incestus* trials or accusations are too summary to contribute anything to this discussion beyond the name of the Vestal and the final verdict. Nevertheless, from the passages I have analyzed I think we can conclude the following. Whenever a Vestal went on trial for *incestus* the pontifical college immediately issued a decree, one of whose provisions was that she abstain from rites (*sacris abstinere*). Broadly speaking this provision sought to prevent the Vestal from polluting the *sacra* by performing them *incesta*, but it was successful in this regard only if the Vestal had not yet handled the *sacra*; if she had handled them, then the decree served only to stop further pollution. Accordingly, the pontifical college directed at least part of its investigation in an *incestus* trial at determining whether the accused had performed *sacra* while unchaste or not.

retrial and condemnation, recounted here by Pliny, cannot be precisely dated; see Sherwin-White 1966, *ad loc.*, and Mekacher 2006, 259, for a summary of the possible dates).

⁶³⁷ Gell. NA 1.12.14 (text Hosius 1903). The *lex* referred to is the *lex Papia*, which Gellius has just discussed.

Either way she was buried alive, but if she had handled the rites, then the college probably undertook to restore the broken *pax deorum* through some prayer, sacrifice, or rite.

The most important conclusion from this investigation is that it was not the Vestal's chastity so much as her chaste performance of the *sacra* which was of paramount importance to Roman religion. Of course, the Vestals had to be virgins, but a loss of virginity appears technically to have affected the guilty Vestal and her paramour.⁶³⁸ On the other hand, her unchaste performance of the *sacra* had dire consequences for the *pax deorum* and thus all of Rome. I do not mean to deny the importance of a Vestal's virginity. Rather I am calling attention to the emphasis readily apparent in the ancient sources in an attempt to understand better the exact relationship between the pontifical law, the Vestal Virgins and the *pax deorum*.

⁶³⁸ Curiosity (perhaps shameful curiosity) compels me to wonder: could a Vestal be accused of committing unchastity with another woman?

CHAPTER FOUR: CONCLUSIONS AND DIRECTIONS FOR FURTHER STUDY

In the preceding pages I have attempted to understand better the pontifical law, one of the central subjects of Roman religion. My first major conclusion was to show that scholars are wrong to attribute to the pontiffs wide reaching and long lasting influence over the civil law. The evidence usually cited for this influence comes from Cicero's *de Legibus* and is always taken out of context. I analyzed this passage (and several others that seem to carry the same implications) and showed that, in fact, the pontiffs never in historical times changed or dominated the civil law. At the most they could only uphold the public law as it pertained to religious acts. Thus the college could decree that Clodius' dedication of Cicero's property would be religiously invalid, if it could be shown that it was legally invalid. Moreover, I showed that the one example of pontiffs dealing with the civil law in a more extended fashion shows a pontiff using his knowledge of the civil law to circumvent the demands of the pontifical law, something that previous scholars have not noticed.

I also showed that the pontifical law was concerned exclusively with matters of Roman religion. In an attempt to delimit the areas over which the pontifical law held sway, I showed first that the term *pontifices* is used frequently to mean the entire college and not just the pontiffs proper; I then showed that the college presided over the *sacra* and *caerimoniae* of the Roman state religion. After defining the *sacra* and *caerimoniae*, I discussed a term frequently used of the pontiffs, *ius sacrum*. After analyzing the few ancient passages in which this word occurs, I showed that the term has no good ancient pedigree. It is a phantom and not a valid description of any concept in Roman religion, let alone one concerning the pontiffs. I then investigated a more grammatically suitable term,

ius sacrorum. It is attested twice, but each time in a strong connection with the pontiffs. I thus contended that *ius sacrorum* should replace *ius sacrum* in the scholarly literature as a valid concept within pontifical law and Roman religion.

In the next chapter I investigated the duties of the pontifical college. I showed that the Romans themselves differentiated between duties of the college and duties of its individual members. I therefore contended that we should too. I identified three collegiate duties: the guarding of the pontifical discipline, the issuing of decrees and responses, and the supervision of the *incestus* trials of Vestal Virgins. I devoted most of this chapter to investigating the last two. In discussing the issuance of decrees and responses I offered a detailed consideration of the procedure at the meetings of the pontifical college at which decrees were formulated and issued. I discussed the location of these meetings, noted that the Regia, though a likely meeting place, is by no means the only choice, as scholars regularly imply. I called attention to the fact that the pontifical college would have had at least two fundamentally different types of meetings and I postulated that one type, the one to which members alone had access, were held in the Regia, and that the other, open to outside observers, may have taken place in the Curia Calabra. I also discussed the voting procedure for the college, the number of members who would participate in any meeting, and the power of the *pontifex maximus* to convene the college and return its decisions to the Senate.

I then analyzed the contents of the pontifical *responsa*. I looked at all attested *responsa* in three areas: dedications, the calendar, and vows. For dedications I showed that the college possessed the power to block a dedication if it believed the dedication would contravene a religious statute, such as was the case with Marcellus' dedication of

the temple to Honor and Virtue. On the other hand, I showed that if the matter concerned the validity of a dedication in public law, then the college could only intervene if asked to do so by the Senate or a magistrate. In the course of discussing Marcellus' dedication I pointed out what I believe is the element of pontifical theology on which the college based its decision to block his dedication.

In my discussion of the *responsa* on the calendar I showed that the term *dies ater* is a non-technical term and should not be treated as such, as it often is in the scholarly literature. Building on a suggestion of Gruppe and Michels, I contended that the original pontifical decree did not mention 'black days', but merely 'days after the Kalends, Nones, and Ides,' which may originally have been termed *dies atrus* meaning 'the day after'. I also tried to show the theological basis for the defeats and disasters that led the college to make this decree. The pontifical college must have determined that the collective disasters on the days after the Kalends, Nones, and Ides, demonstrated that the gods did not wish to receive sacrifices on these days.

In discussing vows, my conclusions were similar to those reached in my discussion on dedications. The college could freely order anyone to fulfill his vow if it deemed its fulfillment necessary. Thus the college ordered the consuls of 195 to perform the Sacred Spring that had been vowed twenty-one years before. This is in keeping with my theory that on matters of religion the college possessed the power to do as it wished, including ordering consuls to perform a vow or not to make a dedication. When the issue of a vow was not its religious performance, but the contents of the vow, the college could not intervene unless the Senate first referred the matter to them, and then the college's concern seems to have been only to see that the conditions of the vow be fulfilled.

In my discussion of the Vestals I arrived at several important conclusions. First, I showed that the *pontifex maximus* did not, as Mommsen and those under his influence have contended, possess the power to try a Vestal Virgin on his own or condemn her against the wishes of the pontifical college. In the trials of Vestals the *pontifex maximus* probably managed the proceedings, but he voted with the college and the verdict was reached by simple majority vote with each member possessing a vote of equal weight (although this last point is somewhat hypothetical). More importantly, I clarified the relationship between the Vestals' virginity, the pontifical college, and the *pax deorum*. It was not a Vestal's loss of virginity that endangered the *pax deorum*, but her performance of the *sacra* while unchaste. Some Vestals, I contend, were unchaste, but discovered before they could perform and thus pollute the *sacra*. Others were caught only after they had polluted the *sacra* and angered the gods thereby. Of course an unchaste Vestal had still committed a terrible offense and must die for it (so enjoined Roman religion), but her actions on this count affected her alone; the Roman state, I assert, was not harmed by this act so long as the Vestal had not touched the *sacra* in her impure state.

Also important is the appendix of this dissertation in which I have collected and translated all ancient passages containing references to the pontifical law. This appendix shows the distribution of the terms and reveals that *ius pontificium* was the most frequent and probably the closest to a technical term to describe the pontifical law. It also demonstrates that most of our references to the pontifical law cover what I term in chapter 2 the 'public pontifical law', rather than the pontifical law proper. I intend to use this appendix as a basis for future work on the pontifical law, and I hope other scholars will also find it a useful work.

For all that, several aspects of the pontifical law remain to be investigated, and I believe that my dissertation has paved the way for such works. Although Rüpke's three volume prosopography of the priests of Rome is an impressive achievement,⁶³⁹ it is not exhaustive, and there is still room for a year-by-year list of the actions undertaken by the pontifical college, listing all known members, their status (plebeian or patrician), years in office, and whether they were elected or co-opted. Such a list, in order to be comprehensive and maximally useful, would have to take into account not only the explicitly attested pontifical decrees and responses, but also the actions that could be reasonably inferred. Thus, if we know that a temple was dedicated in 295, and we know that the entire college usually attended dedications, we could confidently list as a collegiate action in 295 the attendance of a temple dedication.

Another *desideratum* is a full-scale investigation of the process and theology of dedications and consecrations. I think that I have made some important strides on this subject in Chapter Three, but I covered only the role of the college in dedications. What is needed now is a study of an individual pontiff's role in the ceremony. I have found no modern scholarship that addresses this matter. The ideal treatment would first attempt a step-by-step reconstruction of a dedication and consecration and then present a detailed commentary on the entire procedure, focusing on technical terms, but also adducing relevant iconographical sources, and keeping in mind the gestures that accompanied the act. Finally, such a study would provide an understanding of the concepts underlying a dedication: what did a dedication accomplish? If it transferred something to the property of the gods (as seems likely), when during the ceremony did the transference occur? What is the significance of the holding of the post (*postem tenere*) during the ceremony?

⁶³⁹ Rüpke 2005.

Where on the temple did the officiator hold the post? The answers to such questions would, I believe, shed much light on what was one of the most frequent and important acts in Roman religion.

Also needed is a full collection and commentary of all known pontifical documents. I have made some progress toward this end with my appendix of passages, and there do exist the collections of Peter, Rowoldt, and Rohde.⁶⁴⁰ Yet, helpful as these works are, they are incomplete and lack the necessary detailed commentary. Such a work would be a valuable contribution to our knowledge of Roman religion as well as pontifical law.

A similarly useful work, and one for which my appendix provides a useful starting point, is a pontifical statute book with commentary. Such a work would list all known rules of pontifical law. The material would probably be best arranged categorically and chronologically within each category. Thus under the calendar one would find the rule, originating from the pontifical decree of 389, that no sacrifice could be performed on the days immediately after the Kalends, Nones and Ides. Then in 254-243, one would note the modification to this statute effected by the pontifical decree that *feriae praecidaneae* could occur on such days (see above, section 3.3.1.1). We possess year-by-year accounts of the magistrates of Rome and the laws of Rome; it would be useful to have a similar collection of the 'laws' of the Roman state religion.

The study of the pontifical law is far from complete. But I hope in this dissertation not only to have drawn several important conclusions, offered a better understanding of the subject, and laid the groundwork for future work on the topic, but also to have demonstrated that the religion of ancient Rome is as interesting, complex, and as worthy of serious study as that of any other society, ancient or modern. More importantly I hope

to have corrected, at least in part, the tendency in scholarship on the classical world to ignore Roman religion or treat it as a subject unworthy of serious study. In fact, it is worthy of our keenest attention, for the Romans believed it was in *religio* that they excelled all other nations and that their devotion to the gods won them an empire. At the center of the *religio* lay the *ius pontificium*, and I hope that this dissertation has shown not only how that law worked and what its main tenets were, but also revealed its central importance to Roman religion and the Roman world.

⁶⁴⁰ Peter 1874 and 1878; Rowoldt 1906; Rohde 1936.

APPENDIX I: Passages Containing Latin Terms for 'Pontifical Law'

This appendix contains the text and translation of every passage from Latin literature that preserves a direct reference to the pontifical law. Its contents are analyzed and summarized in Chapter Two and Table 2.1.

A full discussion of my methodology in gathering the data for this appendix will be found in Chapter Two. Here I touch upon only the points most important for using this appendix. The reader will find below every occurrence of the word *pontificium*, *pontificum*, *pontificalis*, or *pontificale* in combination with another word or words that could reasonably be taken to mean 'law', 'custom', 'precept', etc. There are fourteen such terms attested a total of eighty times. I have arranged these terms in descending order of frequency. Under each term the relevant passages are presented in chronological order. When multiple terms occur with equal frequency—such as **D-F**, each attested thrice—I give the earliest attested term first. I have also included eight terms (**T81-T89**) that do not fit the above search-criterion, but, nevertheless, clearly refer to a precept of the pontifical law. I have not attempted to be exhaustive in collecting these latter terms, but rather have included them here so that the reader may see the variety of periphrases used to refer to the pontifical law.

When I cite a passage containing the text of both Servius and *Servius Danielis*, I distinguish the text of the latter by enclosing it within wavy brackets, but give in boldface only the date of the author in whose text the pertinent term occurs (see **T45 & 46** for an example). Elsewhere these boldface dates refer to the date of composition of the relevant work; I note the dramatic date of a work (*e.g.*, one of Cicero's dialogues) only if it differs from the date of composition. Translations are my own unless otherwise specified. The

passages from Servius and *Servius Danielis* I have tried to translate accurately, but I must confess that I have found the meaning of several places so opaque, the standard dictionaries and lexica so unhelpful, or the text so corrupt, that I have been all but forced to use the context as the primary guide to translating them. The dangers of this practice are lessened, however, by the fact that the places in question do not preserve important tenets of the pontifical law, but merely relate the tortuous attempts of Servius or another author to explain Vergil's brilliance or explain away his inconsistencies.

I use the following abbreviations:

- Br. = F. P. Bremer (ed.) *Iurisprudentiae Antehadrianae Quae Supersunt*. Vols. 1, 2.1, 2.2. Leipzig: Teubner, 1896, 1898, 1901.
- Hu. = Ph. Edward Huschke (ed.) *Iurisprudentiae Anteiustinianae Reliquiae*. 6th edition expanded and corrected by E. Seckel and B. Kübler. Vol. 1. Leipzig: Teubner, 1908.
- P. = Hermann Peter. *Historicorum Romanorum Reliquiae*. 2nd edition. Leipzig: Teubner, 1914 [Reprinted with bibliographical addenda, Stuttgart: Teubner, 1967].
- Pr. = Paul Preibisch. *Fragmenta librorum pontificiorum*. Program der königlichen Gymnasiums. Tilsit: I. Reyländer and Son, 1878.
- Strz. = Wladyslaw Strzelecki (ed.) *C. Atei Capitonis Fragmenta*. Leipzig: Teubner, 1967.

A. IUS PONTIFICIUM (37x)⁶⁴¹

T1] 149 BC⁶⁴² Cato the Elder *ORF*⁴ 79-80 no. 197 = *Origines* 109 P. (= Gell. *NA* 1.12.15-17): *plerique autem 'capi' uirginem solam debere dici putant. sed flamines quoque Diales, item pontifices et augures 'capi' dicebantur.... M. Cato de Lusitanis, cum Seruium Galbam accusauit tamen dicunt deficere uoluisse. ego me nunc uolo ius pontificium optime scire; iamne ea causa pontifex capiar? si uolo augurium optime tenere, ecquis me ob eam rem augurem capiat?*

Many people, moreover, think that the term 'to be seized' ought to be applied only to a Vestal Virgin. But *flamines Dialis*, too, and likewise *pontifices* and *augures* were said 'to be seized'.... Marcus Cato in his accusation of Servius Galba said of the Lusitanians,⁶⁴³ "Nevertheless they say that they wanted to revolt. Well, I want to know thoroughly **pontifical law**; for that reason shall I now be seized as pontiff? If I want to understand augural law thoroughly, is there anyone who would on that account seize me as augur?" (text Hosius 1903, vol. 1)

T2] post 120 BC⁶⁴⁴ Lucius Calpurnius Piso Frugi *Annales* 11 F.⁶⁴⁵ = 19 P. (= Plin. *HN*

13.84-87; **date of incident**: 181 BC; see **T27, T51 & T52**): *ingentia exempla contra M.*

⁶⁴¹ The term *ius pontificium* (or perhaps *ius pontificum*; but not *ius pontificale*, for Cicero uses that term only twice and only in *de Legibus*) also occurs, or rather, is implied at Cic. *Dom.* 122 when Cicero addresses the pontifical college thusly, *quamquam quid ego de dedicatione loquor, aut quid de uestro iure et religione contra quam proposueram disputo.*

⁶⁴² For the date see *ORF*⁴ 79.

⁶⁴³ Or we may translate, "When he accused Servius Galba in his speech on the Lusitanians", for there are two possible titles for this speech, *Contra Ser. Galbam* or *Pro Direptis Lusitanis*.

*Uarronis sententiam de chartis reperiuntur. namque Cassius Hemina, uetustissimus auctor annalium, quarto eorum libro prodidit Cn. Terentium scribam agrum suum in Ianiculo repastinantem effodisse arcam, in qua Numa, qui Romae regnavit, situs fuisset. in eadem libros eius repertos P. Cornelio L. filio Cethego, M. Baebio Q. filio <T>amphilo cos., ad quos a regno Numae colliguntur anni DXXXV. hos fuisse e charta, maiore etiamnum miraculo, quod infossi durauerint....hoc idem tradit Piso censorius primo commentariorum, sed libros septem **iuris pontificii**, totidem Pythagoricos fuisse; Tuditanus tertio decimo Numae decretorum fuisse. ipse Uarro humanarum antiquitatum VII, Antias secundo libros fuisse XII pontificales Latinos, totidem Graecos praecepta philosophiae continentes; idem tertio et SC. ponit quo comburi eos placuerit.*

There are important instances that tell against the opinion of Marcus Varro on the history of paper. Cassius Hemina, a historian of great antiquity, has stated in book four of his *Annales* that the scribe Gnaeus Terentius⁶⁴⁶ dug up a coffin when he was plowing his field on the Janiculum. In it was buried king Numa; it also contained some of his books. This occurred when Publius Cornelius Cethegus, son of Lucius, and Marcus Baebius Tamphilus, son of Quintus, were consuls [181 BC], which was 535 years after Numa's reign. He relates that the books were made of paper, which is an even greater miracle

⁶⁴⁴ On the date of composition of Piso's *Annales* see Forsythe 1994, 32-36, esp. 35: "The work was therefore probably not published before 120."

⁶⁴⁵ The abbreviation F refers to the edition of the fragments of Piso by Forsythe 1994.

⁶⁴⁶ Rüpke 2005, 1315-1316 no. 3222, identifies this *scriba* as a *pontifex minor* and supposes the uncovering of the books to have been a pontifical conspiracy of sorts, "Da die Pontifices diejenigen waren, die sich durch die *septem (scil. libri) Latini de iure pontificio*... den größten Legitimationsgewinn erhoffen konnten, liegen sie also Urheber des Fundes am nächsten" (1315 n. 6). But why would the *pontifices* need 'Legitimationsgewinn' when they were arguably the most important religious authorities of the Roman state religion and had been so from time immemorial (note also that Rüpke's thesis ignores the Greek tomes

seeing as they had survived being buried.... Piso the Censor relates the same thing in the first book of his commentaries, but writes that there were seven books of **pontifical law** and a like number of Pythagorean philosophy. Tuditanus says in his book thirteen⁶⁴⁷ that they were books of decrees of Numa; Varro himself says that there were seven volumes of *On Human Antiquities*, and Antias in his second book writes that there were twelve volumes *On Matters Pontifical* written in Latin and the same number in Greek containing philosophical teachings; in his third⁶⁴⁸ book Antias also gives the resolution of the senate (*senatus consultum*), by which it was decided that the books were to be burnt. (text Ian-Mayhoff, 1892-1909, vol. 2; trans. (modified) Rackham 1945)

T3&4] 57 BC Cic. *Dom.* 36: *dico apud pontifices: nego istam adoptionem **pontificio iure** esse factam, primum quod eae uestrae sunt aetates ut is qui te adoptauit uel fili tibi loco per aetatem esse potuerit, uel eo quo fuit, deinde quod causa quaeri solet adoptandi ut et is adoptet qui, quod natura iam adsequi non potest, legitimo et **pontificio iure** quaerat et ita adoptet ut ne quid aut de dignitate generum aut de sacrorum religione minuatur, illud in primis, ne qua calumnia, ne qua fraus, ne qui dolus adhibeatur, ut haec simulata adoptio fili quam maxime ueritatem illam suscipiendorum liberorum imitata esse uideatur.*

discovered in the chest)? For a more reasonable account of the scribe's identity and the "Urheber des Fundes" see Forsythe 1994, 212-213, building on the arguments of Prowse 1964.

⁶⁴⁷ Forsythe (1994, 457) prints *Tuditanus XIII* and translates, "Tuditanus says that there were fourteen books of Numa's decrees."

⁶⁴⁸ Forsythe (1994, 457) prints *idem* [*L. et*] *tertio* and translates, "In his [fifty] third book he even quotes...."

I am speaking before the Pontiffs. I maintain that this adoption of yours was not in accordance with **pontifical law**. First, because of your ages: the person who adopted you was of an age to be your own son or—what he actually was. Second, because there is customarily an inquiry into the motive for adoption, to ensure that the adopting parent is seeking under standard **pontifical law** something he can no longer obtain in the course of nature, and that the adoption is not detrimental to the status of the families or to ritual obligations: above all to ensure that there is no trickery, fraud, or subterfuge in the case. The fictive acquisition of a son must appear to have imitated as closely as possible the acknowledgment of real children. (text Maslowski 1981; trans. (modified) Shackleton Bailey 1991)

T5] 57 BC Cic. *Dom.* 121: *nihil loquor de **pontificio iure**; nihil de ipsius uerbis dedicationis, nihil de religione, caerimoniis; non dissimulo me nescire ea quae, etiam si scirem, dissimularem, ne aliis molestus, uobis etiam curiosus uiderer; etsi effluunt multa ex uestra disciplina quae etiam ad nostras auris saepe permanent.*

I say nothing of **pontifical law** or the words of the actual dedication or religious sanction or ritual. I do not disguise my ignorance of such matters; even if I had knowledge of them, I should conceal it, not wishing to seem tiresome to others and meddlesome to yourselves. (text Maslowski 1981; trans. Shackleton Bailey 1991)

T6] 57 BC Cic. *Dom.* 128: *neque ego nunc de religione sed de bonis omnium nostrum, nec de **pontificio** sed de **iure** publico disputo. lex Papiria uetat aedis iniussu plebis*

consecrari. sit sane hoc de nostris aedibus ac non de publicis templis: unum ostende uerbum consecrationis in ipsa tua lege, si illa lex est ac non uox sceleris et crudelitatis tuae.

Nor am I now arguing about religion, but about the property of us all; nor yet about **pontifical law**, but about public law. The Papirian law forbids the consecration of buildings except by the order of the Plebs. Let us grant, if you will, that this relates to our homes and not to public temples: show me one word about consecration in that same bill of yours; if it is a bill and not the voice of your crime and cruelty. (text Maslowski 1981; trans. Shackleton Bailey 1991)

T7] 55 BC (dramatic date: September 91 BC) Cic. *de Orat.* 3.136 [Crassus]: *nunc contra plerique ad honores adipiscendos et ad rem publicam gerendam nudi ueniunt atque inermes, nulla cognitione rerum, nulla scientia ornati. sin aliquis excellit unus e multis, effert se, si unum aliquid affert, aut bellicam uirtutem et usum aliquem militarem—quae sane nunc quidem obsoleuerunt—, aut iuris scientiam—ne eius quidem uniuersi; nam pontificium, quod est coniunctum, nemo discit—, aut eloquentiam, quam in clamore et in uerborum cursu positam putant;*

[Crassus]: Nowadays on the contrary men usually come to the pursuit of office and to positions in the government quite naked and unarmed, not equipped with any acquaintance with affairs or knowledge. Or if a single one among many stands out as an exception, he is proud of himself if he brings to his duties a single qualification, either

soldierly valor and some military experience—these no doubt being things that are quite out of date nowadays—or knowledge of law—and not even then of the whole of the law, for nobody studies **pontifical law**, which is connected with it—or eloquence, which they fancy to consist in shouting and in a flow of words; (text Kumaniecki, 1969; trans. (modified) Rackham 1942)

T8; cf. T14&T39] ca. 54-51 BC (dramatic date: 129 BC) Cic. Rep. 4.8 (= Non. p. 174.7-9): *eosdem terminos hominum curae atque uitae: sic **pontificio iure** sanctitudo sepulturae...*

<They did not believe> that men's concerns ended with their life. Hence the sacredness of burial is part of **pontifical law**... (text Lindsay 1903, vol. 1; trans. Rudd 1998)

T9] ca. 52/51 BC Cic. Leg. 2.45-47: *Atticus: habeo ista. nunc de sacris perpetuis et de Manium iure restat.*

Marcus: o miram memoriam Pomponi tuam! at mihi ista exciderant.

*Atticus: ita credo. sed tamen hoc magis eas res et memini et <ex>specto, quod et ad **pontificium ius** et ad ciuile pertinent.*

Marcus: uero, et a peritissimis sunt istis de rebus et responsa et scripta multa, et ego in hoc omni sermone nostro, quod ad cumque legis genus me disputatio nostra deduxerit, tractabo quoad potero eius ipsius generis ius ciuile nostrum, sed ita locus ut ipse notus sit, ex quo ducatur quaeque pars iuris, ut non difficile sit, qui modo ingenio possit moueri, quaecumque noua causa consultatioue acciderit, eius tenere ius, quom scias a

quo sit capite repetendum. sed iuris consulti, siue erroris obiciundi causa, quo plura et difficiliora scire uideantur, siue, quod similis ueri est, ignoratione docendi—nam non solum scire aliquid artis est, sed quaedam ars <est> etiam docendi—saepe quod positum est in una cognitione, id <in> infinita dispertiuntur. uelut in hoc ipso genere, quam magnum illud Scaeuolae faciunt, pontifices ambo et eidem iuris peritissimi! sae<pe>, inquit Publi filius, ex patre audiui, pontificem bonum neminem esse, nisi qui ius ciuile cognosset. totumne? quid ita? quid enim ad pontificem de iure parietum aut aquarum aut ullo omnino <ni>si eo quod cum religione coniunctum est? id autem quantulum est! de sacris credo, de uotis, de feriis et de sepulcris, et si quid eius modi est. cur igitur haec tanta facimus, cum cetera perparua sint, de sacris autem, qui locus patet latius, haec sit una sententia, ut conseruentur semper et deinceps familiis prodantur, et ut in lege posui perpetua sint sacra?

ullo omnino | luminum : Turnebus

Atticus: You have given me a clear idea of these subjects; now the perpetual sacred rites and the privileges of the spirits of the dead await your treatment.

Marcus: Yours is an amazing memory Pomponius! Indeed, I had forgotten those subjects.

Atticus: No doubt you had; but my chief reason for remembering them and looking forward to your discussion of them was the fact that they are concerned with both the **pontifical law** and the civil law.

Marcus: True; and a great deal has been said and written on these subjects by men of great learning. And it is my intention, during the whole of our conversation, to take up, as far as I can, in connection with every branch of law to which our discussion leads us,

the corresponding division of our own civil law; but my treatment will extend only far enough to make clear the source of every one of these divisions. For thus it will not be difficult for anyone who is capable of following a line of thought to know the law with respect to any strange case or knotty problem which may come up, when the basic principle underlying it is once understood.

But legal experts often divide up into an infinite number of parts what is really based on a single principle, either for the purpose of deception, so that their knowledge may seem greater in amount and more difficult to acquire, or else, as is more likely, through lack of skill in teaching; for an art consists not merely in the possession of knowledge, but also in skill in imparting it to others. To take an example from this very branch of law, how extensive do the Scaevolae (both of them pontiffs and also most learned in law) make that very subject of which we have just been speaking! Scaevola, the son of Publius,⁶⁴⁹ says: "How often have I heard my father say that no one could be a good pontiff without a knowledge of the civil law!" A knowledge of the whole of it? Why so? For of what use to a pontiff is the law of house-walls or aqueducts, or, in fact, any⁶⁵⁰ part of the civil law at all except that which is connected with religion? And that is a very small part of the whole, including only the provisions in regard to sacrifices, vows, holidays, graves, and things of like nature, I believe. Why, then, do we make so much of these matters, when all the rest except this one problem of the rites amounts to very little? Indeed, even this subject, which is of somewhat wider importance, can be reduced to one basic principle; namely, that these rites shall ever be preserved and continuously handed

⁶⁴⁹ Publius Mucius Scaevola, *cos.* 133 BC, *pontifex* ?-115, *pontifex maximus* 130-115; his son is Quintus Mucius Scaevola, *cos.* 95, *pontifex* 115-82 (he succeeded to his father's place in the pontifical college), *pontifex maximus* 89-82; see Bardt 1871, 6 no. 17 and 8.

down in families, and, as I said in my law, that they must be continued forever. (text Ziegler 1974; trans. (modified) Keyes 1928)

T10-13; cf. T61 & T73] ca. 52/51 BC Cic. *Leg.* 2.52-53: [Marcus]: *hoc ego loco multisque aliis quaero a uobis, Scaeuolae, pontifices maximi et homines meo quidem iudicio acutissimi, quid sit quod ad **ius pontificium** ciuile adpetatis; ciuilis enim iuris scientia **pontificium** quodam modo tollitis. nam sacra cum pecunia pontificum auctoritate, nulla lege coniuncta sunt. itaque si uos tantummodo pontifices essetis, pontificalis maneret auctoritas; sed quod idem iuris ciuilis estis peritissimi, hac scientia illam eludistis. placuit P. Scaeuolae et Ti. Coruncanio pontificibus maximis itemque ceteris, eos qui tantundem caperent quantum omnes heredes sacris alligari. habeo **ius pontificium**. quid huc accessit ex iure ciuili? partitionis caput scriptum caute, ut centum nummi deducerentur: inuenta est ratio cur pecunia sacrorum molestia liberaretur. quodsi hoc qui testamentum faciebat cauere noluisse, admonet iuris consultus hic quidem ipse Mucius, pontifex idem, ut minus capiat quam omnibus heredibus relinquatur. *superi<ores>* dicebant, quicquid cepisset, adstringi: rursus sacris liberatur. hoc uero nihil ad **pontificium ius** sed e medio est iure ciuili, ut per aes et libram heredem testamenti soluant et eodem loco res sit, quasi ea pecunia legata non esset, <et> si is cui legatum est stipulatus est id ipsum quod legatum est, ut ea pecunia ex stipulatione debeatur, sitque ea non <adligata sacris.>*

adligata sacris : Lambinus

⁶⁵⁰ For my reading of the text see above, chapter two, n. 74.

[Marcus]: Regarding this situation and many others, I would like to ask the Scaevolae, who were supreme pontiffs and, in my view, extremely shrewd men: why do you want to add a command of civil law to a knowledge of the **pontifical law**? For by your knowledge of the civil law you tend to cancel out the **pontifical law**. Rites go with the deceased's property by the authority of the pontiffs, not by any law. So if you were only pontiffs, the pontiffs' authority would be upheld; but being at the same time great experts in civil law, you use this knowledge to circumvent that authority. It was the opinion of the *pontifices maximi* Publius Scaevola [*pont. max.* 130-115] and Tiberius Coruncanius [*pont. max.* 254-243], and of the others too, that those who received bequests of as large an amount as all the heirs put together should be obliged to perform the rites. I understand the **pontifical law**. What is added from the sphere of civil law? The section on the division of the estate has been carefully drafted to allow the deduction of one hundred *nummi*; thus a device was discovered for relieving the estate of the burden of performing the rites. As if the testator had not wished to forestall such a maneuver, this legal expert, Mucius himself, who is also *pontifex maximus*, advises the legatee to accept less than the sum left to all the heirs. Previous men used to say that the legatee was bound to perform the rites, whatever he received. Once again, such men are freed from that obligation.

This other thing has nothing to do with **pontifical law**, and is taken over directly from civil law—the device whereby they formally declare the heir free from his obligation to pay the legacy by means of bronze and balance. The situation is then the same as if the money had never been bequeathed at all, provided that the legatee has obtained a formal promise of payment in respect of the amount bequeathed, so that it is

owed to him under the terms of a contract and not as the result of <a legacy>. (text Ziegler 1974; trans. (modified) Rudd 1998)

T14; cf. **T8&T39**] **ca. 52/51 BC** Cic. *Leg.* 2.57-58 (= Pr. 13 no. 59A [*quod nunc... complectitur*]; 13 no. 62 [*in eo, qui...et ferias*]): [Marcus]:...*nam siti dicuntur ii qui conditi sunt. nec tamen eorum ante sepulcrum est quam iusta facta et porcus caesus est. et quod nunc communiter in omnibus sepultis uenit usu <ut> humati dicantur, id erat proprium tum in iis quos humus iniecta contexerat, eumque morem ius pontificale confirmat. nam prius quam in os iniecta gleba est, locus ille ubi crematum est corpus nihil habet religionis; iniecta gleba tum et ille humatus est et sepulcrum uocatur, ac tum denique multa religiosa iura complectitur. itaque in eo qui in naue necatus, deinde in mare proiectus esset, decreuit P. Mucius familiam puram, quod os supra terram non extaret; porcam heredi esse contrac<tam>, et habendas triduum ferias et porco femina piaculum faci<undum>. si in mari mortuus esset, eadem praeter piaculum et ferias.*

Atticus: uideo quae sint in pontificio iure, sed quaero ecquidnam sit in legibus.

Marcus: pauca sane, Tite, et, ut arbitror, non ignota uobis. sed ea non tam ad religionem spectant quam ad ius sepulcrorum.

[Marcus]: For 'laid' (*siti*) is used of those who are buried. Yet their place of burial is not called a grave until the rites have been conducted and the pig has been slain. The expression which has now come into general use in regard to all who have been buried—*i.e.*, that they are 'interred'—was then specifically used of those who had been covered by having earth thrown over them. Pontifical law testifies to that custom; for until a piece of

earth is thrown upon the bone, the place where a body has been cremated has no religious sanction.⁶⁵¹ Once the earth has been thrown, the person is said to be interred, and the place is called a grave. At that point it becomes entitled to many religious rites. In the case of a man killed on board a ship and then thrown into the sea, Publius Mucius decided that the family was free from pollution because his bones did not remain above the earth. Yet the heir had to sacrifice a sow, hold a three-day holiday, and sacrifice a female pig by way of expiation. If the man had drowned, the same procedure would have been prescribed except for the expiation and the holidays.

Atticus: I see what is laid down in the **pontifical law**, but I wonder if there is anything in the laws.

Marcus: Really just a few things, Titus; and I expect you know them already, but they pertain not so much to religion as the laws governing tombs. (text Ziegler 1974; trans. (modified) Rudd 1998)⁶⁵²

T15] 46 BC Cic. *Brut.* 156: *tum Brutus: ita prorsus, inquit, et antea putabam—audiui enim nuper eum [sc. Seruius Sulpicius] studiose et frequenter Sami, cum ex eo ius nostrum pontificium, qua ex parte cum iure ciuili coniunctum esset, uellem cognoscere—et nunc meum iudicium multo magis confirmo testimonio et iudicio tuo;*

⁶⁵¹ Rudd misses the mark in translating *nihil habet religionis* as "no element of sanctity". The pontiffs (and the Romans) differentiated carefully between *locus sanctus* and *locus religiosus*, cf. Mac. Sat. 3.3.1: *inter decreta pontificum hoc maxime quaeritur, quid sacrum, quid sanctum, quid religiosum*.

⁶⁵² A relevant passage can be found at Var. *Ling.* 5.23 (= Pr. 13 no. 59): *ab eo, quom Romanus combustus est, si in sepulcrum eius abiecta gleba non est aut si os exceptum est mortui ad familiam purgandam, donec in purgando humo est opertum (ut pontifices dicunt, quod inhumatus sit), familia funesta manet*.

Then Brutus spoke, "That is precisely the opinion of him [*i.e.*, Servius Sulpicius, *cos.* 51 BC] that I had already formed; for only recently at Samos, when I was bent on learning how our **pontifical law** was related to the civil law, I listened with great interest to his replies to my many questions. Now I have greater confidence in the opinion I had formed, seeing it confirmed by your testimony." (text Malcovati 1970; trans. (modified) Hendrickson 1988)

T16] 45 BC Cic. *Tusc.* 1.27: *itaque unum illud erat insitum priscis illis, quos 'cascos' appellat Ennius, esse in morte sensum neque excessu uitae sic deleri hominem, ut funditus interiret: idque cum multis aliis rebus, tum e pontificio iure et e caerimoniis sepulcrorum intellegi licet, quas maxumis ingeniis praediti nec tanta cura coluissent nec uiolatas tam inexpiabili religione sanxissent, nisi haereret in eorum mentibus mortem non interitum esse omnia tollentem atque delentem, sed quandam quasi migrationem commutationemque uitae, quae in claris uiris et feminis dux in caelum soleret esse, in ceteris humi retineretur et permaneret tamen.*

Accordingly we find in those men of old whom Ennius styled the 'ancients' (*cascos*) the fixed belief that there is sensation in the state of death, and that in quitting life man is not annihilated so as to perish utterly; this may be gathered, among many other instances, from **pontifical law** and the rites of burial, for these rites would not have been so scrupulously observed by men of commanding ability and their profanation forbidden under penalty of guilt admitting of no atonement, if there had not been a fixed conviction in their minds that death was not annihilation obliterating and destroying all things, but a

kind of shifting and changing of life; for eminent men and women this changed existence often served to lead them up to heaven, while for all others their existence though changed stays in the ground, but remains in existence nonetheless. (text and (modified) trans. King 1960)

T17] 45/44 BC (dramatic date: ca. 77-75 BC) Cic. *Nat. Deor.* 3.43: [Cotta]: *quando enim me in hunc locum deduxit oratio, docebo meliora me didicisse de colendis diis immortalibus iure pontificio et more maiorum capedunculis his, quas Numa nobis reliquit, de quibus in illa aureola oratiuncula dicit Laelius, quam rationibus Stoicorum.*

[Cotta (*cos.* 75; *pont.* at least 77-?)⁶⁵³]: since my discourse has led me to this topic, I shall demonstrate that I have gained better instruction on worshipping the immortal gods, guided by **pontifical law** and ancestral custom, from those miniature sacrificial bowls, bequeathed to us by Numa and described by Laelius in his little speech which is pure gold, than from the explanations of the Stoics. (text Pease 1955-1958; trans. (modified) Walsh 1998)

T18] 44 BC (dramatic date: 150 BC) Cic. *Sen.* 38: [Cato]: *septimus mihi liber Originum est in manibus; omnia antiquitatis monumenta colligo, causarum inlustrium quascumque defendi nunc cum maxime conficio orationes, ius augurium pontificium civile tracto.*

⁶⁵³ On the dates of his pontificate see *RE* (96) *MRR* 2.23, 2.25 n. 12, 96, 113-114. Rüpke 2005, 2.801-802; Bardt 62; Szemler 39; Taylor 1942, 393 n. 22 thinks that he "had probably secured the priesthood before his exile in 90."

[Cato]: I am presently engaged in the seventh book of my *Origines*; I am gathering all the chronicles of our ancient history and at this very moment am polishing up all my speeches from the illustrious cases I pleaded; I am investigating the augural, **pontifical**, and civil **law**. (text Powell 1988)

T19] 44 BC (dramatic date: 150 BC) Cic. *Sen. 50: quid de P. Licini Crassi et pontificii et ciuilis iuris studio loquar aut de huius Publi Scipionis qui his paucis diebus pontifex maximus factus est?*

What should I say about the zeal of Publius Licinius Crassus [*pont. max.* 212-183 BC] for both **pontifical** and civil **law** or about that of Publius Scipio [*sc. Nasica Corculum, pont. max.* ca. 150 BC] who was made *pontifex maximus* but a few days ago? (text Powell 1988)

T20] 59BC-AD 17 (date of narrative: 203 BC) Livy 30.1.5-6: *nobilis idem [sc. Publius Licinius Crassus] ac diues erat; forma uiribusque corporis excellebat; facundissimus habebatur, seu causa oranda, seu in senatu et apud populum suadendi ac dissuadendi locus esset; iuris pontificii peritissimus; super haec bellicae quoque laudis consulatus compotem fecerat.*

He [*sc. Publius Licinius Crassus, pont. max.* 212-183 BC] was noble and wealthy, preeminent in strength and appearance; he was thought the most charming speaker whether pleading a case or arguing for acceptance or rejection of a proposal in the senate

and before the people; he was most learned at **pontifical law**.... (text Conway and Johnson 1935)

T21] late 2nd c. AD Fest 164 L.: *nauteam ait Opi>llus Aurelius, herbae <genus esse granis nigris> qua coriari utuntur, <cuius uideri a naue duc>tum nomen, quia nauseam fa<cit, permutatione t et> s litterarum interme . . . Plautus in Artemone: . . . <mu>lionum nauteam fecisset . . . lem atque aro . . . <Idem Curculione [101]: "nam omnium u>nguenum o<dor prae tuo nautea est", et in Casina [1018]: "ei> [pro scorto sup<ponetur hircus unctus nautea." Labe>o in commen<tario iuris pontifici ait rubi>dum quiddam <esse quo pontificum uestimenta quaedam> colorant (= Br. 1898, 76 no. 1 = Hu. 57 no. 8).*

ponetur...quaedam : suppl. Ursinus

Opillus Aurelius says that nautea is a type of plant with black seeds that tanners use; its name seems to come from the word for 'ship' (*navis*), because it causes nausea, but with the 't' and 's' changed...Plautus in Artemone writes, '...of mule-drivers (?) he made *nautea*'...and likewise in Curculio [101], 'for compared to your [sc. smell] the smell of all perfumes is *nautea*,' and in Casina [1018], 'he'll have a goat greased with *nautea* instead of a mistress.' Labeo in his commentary on the **pontifical law** says that it is something red that is used to color certain pontifical garments. (text Lindsay 1913)

T22] late 2nd c. AD Fest. 298 L. (= Br. 1898, 80 no. 16 = Hu. 56 no. 3 = Pr. 21 no. 131): *prox, bona uox, uel ut quidam proba, significare uidetur, ut ait Labeo de iure pontificio lib. XI.*

uelut quidam praesignificare F : corr. Preibisch 21 n. 131

Prox seems to signify 'good voice', or, as some think, 'proper' voice, as Labeo says in the eleventh book of his work on the **pontifical law**. (text Lindsay 1913)

T23] late 2nd c. AD Fest. 474 L. (= Br. 1898, 80 no. 15 = Hu. 56 no. 2 = Pr. 16 no. 82):

spurcum uinum est, quod sacris adhiberi non licet, ut ait Labeo Antistius lib. X.

*commentari iuris pontifici, cui aqua admixta est defru[c]tumue, aut igne tactum est, mustumue ante quam deferuescat.*⁶⁵⁴

'Dirty wine' (*spurcum uinum*) is that whose use is not allowed in sacred rites, as Antistius Labeo says in book ten of his commentary on the **pontifical law**; it is wine that either has been mixed with water or has been boiled down or to which fire has been applied or which is unfermented before it ceases boiling. (text Lindsay 1913)

T24] late 2nd c. AD Fest. 476 L. (= Br. 1898, 80 no. 17 = Hu. 56 no. 4 = Pr. 21 no. 126):

sistere fana cum in urbe condenda dicitur, significat loca in oppido futurorum fanorum constituere: quam<quam> Antistius Labeo ait in commentario XV **iuris pontifici**, fana

⁶⁵⁴ I have not included in this study a passage normally attributed to Labeo's work on the pontifical law, Festus 294 L., (see Bremer 1898, 77 no. 4) for the text is lacunose and the title a supplement of Scaliger; in Lindsay's 1913 edition of Festus the relevant part of the passage reads, "<**Posimirium** esse ait Antistius... <ponti-> ficalis pomerium, id est l.... Scaliger proposed reading <in commentario iuris ponti>ficalis, which Lindsay prints in his 1930 edition of Festus and which Bremer adopts. See also, Pernice 1873-1892, 40. Also, note that the title of Labeo's work is more frequently reported by the ancient sources as *de iure pontificio*; the title *de iure pontificali* is attested only once; For the title *de iure pontificio* see **T21**, **22**, **23**, **24** (Antistius) and **T26** (Ateius). Note, however, the variant *ius pontificale* in **T40** (Ateius) and **T41** (Antistius).

sistere esse lectisternia certis locis et dis habere. subigere arietem, in eodem libro Antistius esse ait dare arietem, qui pro se agatur, caedatur.

When 'to establish shrines' (*sistere fana*) is said at a city's foundation it signifies to constitute the places in town for future shrines; although Antistius Labeo says in the fifteenth book of his commentary on the **pontifical law** that it means to hold *lectisternia* in certain places and for certain gods. In the same book Antistius says that 'to supply a ram' is when someone gives a ram that is used and slaughtered in place of himself. (text Lindsay 1913)

T25] ca. AD 180 Gell. NA pr.13: *quod erunt autem in his commentariis pauca quaedam scrupulosa et anxia uel ex grammatica uel ex dialectica uel etiam ex geometrica, quodque erunt item paucula remotiora super augurio iure et pontificio, non oportet ea defugere quasi aut cognitu non utilia aut perceptu difficilia.*

Now just because there will be found in these notes some few topics that are knotty and troublesome, either from grammar or dialectics or even from geometry, and because there will also be some little material of a somewhat recondite character about augural or **pontifical law**, one ought not therefore to avoid such topics as useless to know or difficult to comprehend. (text Hosius 1903; trans. Rolfe 1946)

T26] ca. AD 180 Gell. NA 4.6.10 (= Br. 1898, 272 no. 1 = Hu. 64 no. 8 = Strz. 8 no. 10 =

Pr. 8 no. 33): *propterea uerba Atei Capitonis ex quinto librorum, quos de **pontificio iure** composuit, scripsi: Tib. Coruncanio pontifici (sic) maximo feriae praecidaneae in atrum diem inauguratae sunt. collegium decreuit non habendum religioni, quin eo die feriae praecidaneae essent.*

Therefore I have quoted a passage from the fifth book of Ateius Capito's work on **pontifical law**, "For Tiberius Coruncanius, *pontifex maximus*, preliminary festivals (*feriae praecidaneae*) were inaugurated on a 'black day' (*dies ater*). The college passed a decree that religious scruple must not prevent preliminary festivals from occurring on that day." (text Hosius 1903)

T27] AD 303-313 (date of incident: 181 BC; see T2, T51 & T52) Lact. *Diu. Inst.*

1.22.5-6: *nam post annos plurimos Cornelio et Baebio consulibus in agro scribae Petili sub Ianiculo arcae duae lapideae sunt repertae a fossoribus, quarum in altera corpus Numae fuit, in altera septem Latini libri de **iure pontificio**, item Graeci totidem de disciplina sapientiae scripti, quibus religiones, non eas modo quas ipse instituerat, sed omnes praeterea dissoluit. qua re ad senatum delata, decretum est, ut hi libri abolerentur: ita eos Q. Petilius Praetor urbanus in contione populi concremauit.*

For after many years, in the consulships of Cornelius and Baebius, under the Janiculum in a field belonging to the scribe Petilius two stone chests were found by some men who were digging there. In one of these chests was the body of Numa, in the other seven

books in Latin on the **pontifical law**,⁶⁵⁵ and the same number in Greek on systems of philosophy, with which Numa annulled not only the religious rites that he himself had instituted but all others as well. When the matter was referred to the senate, it was decreed that these books should be destroyed. Therefore the urban praetor Quintus Petilius burnt them in an assembly of the people. (text Brandt 1890)

T28] Late 4th-mid 5th c. AD (dramatic date: 16 Dec. AD 383 (??) Mac. Sat. 1.15.21

[*Praetextatus*]: *nec hoc praetermiserim, quod nuptiis copulandis kalendas nonas et idus religiosas, id est deuitandas, censuerunt [sc. nostri maiores]. hi enim dies praeter nonas feriati sunt, feriis autem uim cuiquam fieri piaculare est: ideo tunc uitantur nuptiae in quibus uis fieri uirgini uidetur. sed Uerrium Flaccum iuris pontificii peritissimum dicere solitum refert Uarro, quia feriis tergere ueteres fossas liceret, nouas facere ius non esset, ideo magis uiduis quam uirginibus idoneas esse ferias ad nubendum.*

[*Praetextatus*]: I should not fail to mention that they [*sc.* our ancestors] thought that the Kalends, Nones, and Ides were 'religious' days (*religiosas*) for getting married (*i.e.*, they must be avoided), because these days (except for the Nones) are holidays (*feriati*), and any violence (*uim*) done to anyone on such days must be atoned for. Accordingly, one avoids celebrating on such days marriages, in which violence (*uim*) appears to be inflicted upon a virgin. But Varro reports that Verrius Flaccus, a man most learned in the **pontifical law**, used to say that because it was permitted (*liceret*) to clean old ditches on holidays (*feriis*), but unlawful (*non ius*) to dig new ones, holidays (*ferias*) were more suitable for widows than virgins to get married on. (text Willis 1970)

⁶⁵⁵ Bowen and Garnsey 2003, 114, translate incorrectly, "on the rights of the priesthood."

T29] Late 4th-mid 5th c. AD (dramatic date: 16 Dec. AD 383 (?)) Mac. Sat. 1.24.16: *et Uettius: equidem inter omnia quibus eminet laus Maronis hoc adsiduus lector admiror, quia doctissime **ius pontificium** tamquam hoc professus in multa et uaria operis sui parte seruauit et, si tantae dissertationi sermo non cesserit, promitto fore ut Uergilius noster pontifex maximus adseratur.*

"Of all the high qualities for which Vergil is praised," said Vettius, "my constant reading of his poems leads me, for my part, to admire the great learning with which he has observed the rules of the **pontifical law** in many different parts of his work. One might well suppose that he had made a special study of this law, and if my discourse does not prove unequal to so lofty a topic, I undertake to show that our Vergil may fairly be regarded as a *pontifex maximus*." (text Willis 1970; trans. Davies, 1969)

T30] Late 4th-mid 5th c. AD (dramatic date: 16 Dec. AD 383 (?)) Mac. Sat. 3.2.11 (= Br. 1896, 11 no. 5 = Pr. 20 no. 125 = P. 115 no. 5): *nam primo pontificii iuris libro apud Pictorem uerbum hoc positum est uitulari: de cuius uerbi significatu Titius ita retulit: uitulari est uoce laetari. Uarro etiam in libro quinto decimo rerum diuinarum ita refert, quod pontifex in sacris quibusdam uitulari soleat, quod Graeci παλαίῳζεν uocant.*

For example in the first book of Fabius Pictor's treatment of the **pontifical law** one encounters the word *uitulari*. Commenting on the meaning of this word, Titius said, "*uitulari* is to use the voice to express joy"; and Varro in the fifteenth book of his

Religious Antiquities reports, "Inasmuch as the pontiff in certain sacred rites is wont to utter a joyful chant (*uitulari*), and this is what the Greeks call 'chanting a paean' (*παιανίζειν*).\" (text Willis 1970; trans. (modified) Davies 1969)

T31; cf. T65 & T74] Late 4th-mid 5th c. AD (dramatic date: 16 Dec. AD 383 (??) Mac.

Sat. 3.3.11 (= Pr. 8 no. 31A): in transcurso et hoc notandum est quod et ipse uelut praeteriens sub unius uerbi significatione proiecit. cauetur enim in iure pontificio ut, quoniam oues duabus ex causis lauari solent, aut ut curetur scabies aut ut lana purgetur, festis diebus purgandae lanae gratia oues lauare non liceat, liceat autem, si curatione scabies abluenda sit.

Here, in passing, we should also note the following point, which the poet himself has made, as though casually, by the force of a single word. For there are, as a rule, two reasons for washing sheep—either to cure mange or to clean the wool—and so the **pontifical law** provides that on holy days (*festis diebus*) sheep may not be washed for the latter reason, although it is permissible to wash them on such days if the aim is to effect a cure. (text Willis 1970; trans. (modified) Davies 1969)

T32] Late 4th-mid 5th c. AD (dramatic date: 16 Dec. AD 383 (??) Mac. *Sat. 3.10.1-3:*

hic cum omnes concordi testimonio doctrinam et poetae et enarrantis aequarent, exclamauit Euangelus diu se succubuisse patientiae, nec ultra dissimulandum quin in medium detegat inscientiae Uergiliana uulnera.'et nos, inquit, manum ferulae aliquando

*subduximus, et nos cepimus **pontificii iuris** auditum: et ex his quae nobis nota sunt Maronem huius disciplinam iuris nescisse constabit. quando enim diceret,*

caelicolum regi mactabam in litore taurum,

si sciret taurum immolari huic deo uetitum, aut si didicisset quod Ateius Capito comprehendit? cuius uerba ex libro primo de iure sacrificiorum... (= Br. 1898, 279 no. 1 = Hu. 66 no. 14 = Strz. 12 no. 16)

Hereupon all the others were unanimous in asserting that Vergil and his interpreter, as men of learning, were equally matched. But Evangelus exclaimed that he had long since come to the end of his patience and could no longer hide his feelings nor refrain from disclosing the scars of ignorance on the body of Vergil's work. "I too," he said, "have at times 'slipped my hand from under the cane'; I too have attended lectures on **pontifical law** and from what I know of this law I shall establish Vergil's ignorance of its teaching. Is it likely that he would say: 'On the shores I was slaying a bull in sacrifice to the king of the gods of heaven' [*Aen.* 3.21], if he knew that it was forbidden to sacrifice a bull to this god, or if he had learned what Ateius Capito has to say on the subject in the first Book of his work *On the Law of Sacrifices...?*" (text Willis 1970; trans. Davies 1969)

T33&34] Late 4th-mid 5th c. AD (dramatic date: 16 Dec. AD 383 (?)) Mac. Sat. 6.9.5-7 (= Pr. 18 no. 111): *Publius autem Nigidius in libro quem de extis composuit bidentes appellari ait non oues solas sed omnes hostias bimas. neque tamen dixit cur ita appellentur. sed in commentariis ad **ius pontificium** pertinentibus legi bidennes primo dictas, d littera ex superfluo, ut saepe adsolet, interiecta. sic pro reire redire dicitur et*

*pro reamare redamare, et redarguere, non rearguere. ad hiatum enim duarum uocalium procurandum interponi solet d littera. ergo bidennes primum dictae sunt quasi biennes et longo usu loquendi corrupta est uox ex bidennibus in bidentes. Hyginus tamen, qui **ius pontificium** non ignorauit, in quinto librorum quos de Virgilio fecit bidentes appellari scripsit hostias quae per aetatem duos dentes altiores haberent, per quos ex minore in maiorem transcendisse constaret aetatem.*

Moreover, Publius Nigidius in his book *Divination by Entrails* says that the term *bidentes* is applied not to sheep alone but to all sacrificial animals that are two years old. He has not indeed said why these victims are so called, but I have read in the commentaries on **pontifical law** that they were originally called *bidennes* (an extra letter, 'd,' being inserted, as often happens; just as we say *redire* for *reire*, *redamare* for *reamare*, and *redarguere* not *rearguere*); for it is the custom to introduce this letter 'd' as a precaution against any unhappy consequence of a hiatus of two vowels. The victims, then, were first of all called *bidennes* for *biennes*, but by long use of the word in speech *bidennes* was corrupted to *bidentes*. Nevertheless, I should add that Hyginus, who was far from being unacquainted with the **pontifical law**, wrote in the fifth book of his work on Vergil that the name *bidentes* is given to victims that by reason of their age have two teeth longer than the rest, and so indicate that they have passed from infancy to a more advanced age. (text Willis 1970; trans. (modified) Davies 1969)

T35] Late 4th-mid 5th c. AD (dramatic date: 16 Dec. AD 383 (?)) Mac. Sat. 7.13.11-17
(= Br. 1898, 276 no. 15 = Hu. 65-66 no. 10 = Strz. 10 no. 12): *inter haec Caecina*

Albinus, si uolentibus uobis erit, inquit, in medium profero quae de hac eadem causa
 apud Ateium Capitonem **pontificii iuris** inter primos peritum legisse memini. qui cum
 nefas esse sanciret deorum formas insculpi anulis, eo usque processit, ut et cur in hoc
 digito uel in hac manu gestaretur anulus non taceret. ueteres, inquit, non ornatus sed
 signandi causa anulum secum circumferebant. unde nec plus habere quam unum licebat,
 nec cuiquam nisi libero, quos solos fides deceret quae signaculo continetur: ideo ius
 anulorum famuli non habebant. inprimebatur autem sculptura materiae anuli, seu ex
 ferro seu ex auro foret, et gestabatur, ut quisque uellet, quacumque manu, quolibet
 digito. postea, inquit, usus luxuriantis aetatis signaturas pretiosis gemmis coepit
 insculpere, et certatim haec omnis imitatio lacessiuit, ut de augmento pretii quo
 sculpendos lapides parassent gloriarentur. hinc factum est ut usus anulorum exemptus
 dexteræ, sinistrae relegaretur, quae otiosior est, ne crebru motu et officio manus
 dexteræ pretiosi lapides frangerentur. electus autem, inquit, in ipsa laeua manu digitus
 minimo proximus quasi aptior ceteris cui commendaretur anuli pretiositas. nam pollex,
 qui nomen ab eo quod pollet accepit, nec in sinistra cessat, nec minus quam tota manus
 semper in officio est: unde et apud Graecos ἀντίχειρ, inquit, uocatur quasi manus altera.
 pollici uero uicinus nudus et sine tuitione alterius adpositi uidebatur. nam pollex ita
 inferior est ut uix radicem eius excedat. medium et minimum uitauerunt, inquit, ut
 ineptos, alterum magnitudine, breuitate alterum; et electus est qui ab utroque clauditur et
 minus officii gerit et ideo seruando anulo magis accommodatus est. haec sunt quae lectio
 pontificalis habet: unus quisque ut uolet uel Etruscam uel Aegyptiam opinionem
 sequatur.

At this point Caecina Albinus intervened and said, "If it is your pleasure, my friends, I propose to tell you what I remember having read on this very point in that leading authority on **pontifical law**, Ateius Capito. After explaining that it was sacrilegious to engrave representations of the gods on rings, he went on to give the reason why a ring was worn on this, the fourth, finger of this, the left hand. 'Of old,' he said, 'men used to carry a ring around with them not as an ornament but for use as a seal. That is why only a single ring was allowed. And, since only a free man could give an assurance under seal, only a free man might wear a ring; a slave therefore used not to have the right to wear a ring. A device was engraved on the material of the ring (which might be made of iron or of gold), and the ring was worn on whichever hand and finger the wearer chose.

Afterward, it became the practice of an age of luxury to engrave the sealing device on precious gems, and this practice, generally followed, led to rivalry, as men boasted of paying more and more for procuring stones for engraving. Consequently, rings ceased to be worn on the right hand, since much of one's work is done by that hand, and they were worn instead on the left, which has less work to do, the object being to ensure that the precious stones should not be broken by the frequent movement and use of the right hand. Of the fingers of the left hand the fourth was chosen, as being better fitted than the rest to take charge of a precious ring, for even on the left hand the thumb (called *pollex*—from *polleo*—because of its strength) is never idle and always has as much work to do as a whole hand (which is why, according to Capito, the Greeks call the thumb *ἀντίχειρ*, as though it were a second hand). The finger next to the thumb seemed to be bare and to lack the protection of its neighbor, since the thumb is so far below it as scarcely to rise above the level of its root. The middle and little fingers were avoided as unsuitable, the

one because it was too large and the other because it was too short, and so the choice fell on the finger enclosed between these two, which, having less work to do, is thus better adapted to protect a ring."

"These are what the pontifical text contains. But let each man subscribe to the Etruscan or the Egyptian theory as he sees fit." (text Willis 1970; trans. (modified) Davies 1969)

T36] 7th–8th c. AD *Serv. Dan.* at *Aen.* 4.103 (= Pr. 3 no. 11C): *quid est enim aliud <'permittere> dextrae', quam in manum conuenire? quae conuentio eo ritu perficitur, ut aqua et igni adhibitis, duobus maximis elementis, natura coniuncta habeatur: quae res ad farreatas nuptias pertinet, quibus flaminem et flaminicam iure pontificio in matrimonium necesse est conuenire. sciendum tamen in hac conuentione Aeneae atque Didonis ubique Uergilium in persona Aeneae flaminem, in Didonis flaminicam praesentare.*

For what else does 'to entrust to the right hand' mean except to enter into a marriage *cum manu*? This type of wedding occurs by a ceremony in which the two greatest elements, water and fire, are used, so that nature is regarded as united in a single force; this pertains to confarreate marriages, by which ceremony, according to **pontifical law**, the *flamen* and *flaminica* must be married. Yet we should realize that in this wedding of Aeneas and Dido Vergil everywhere presents Aeneas as the *flamen* and Dido as the *flaminica*. (text Thilo-Hagen 1881-1902)

T37a] 7th–8th c. AD *Serv. Dan. at Aen. 8.552: exortem Aeneae. 'exortem' autem, ut 'exlegem'. et multi hoc loco reprehendunt Uergilium, quod, cum Aeneam ubique pontificem ostendat, et pontificibus non liceat equo uehi, sed curru, sicut et in septimo a Latino ei currum missum dicit, cur hic equo eum usum faciat, dicens 'ducunt exortem Aeneae, quem fulua leonis pellis obit totum praefulgens unguibus aureis' item 'iamque adeo exierat portis equitatus apertis Aeneas inter primos'. cuius rei haec redditur ratio: Aeneam non tantum **pontificii iuris**, sed omnium sacrorum et peritum et primum fuisse,*⁶⁵⁶

T37b = T84] *Uergilium autem inuenta occasione **ritum Romanarum caerimoniarum** exponere.*

T37c = T83] *etenim **ueteri sacrorum ritu** neque Martialis neque Quirinalis flamen omnibus caerimoniis tenebatur, quibus flamen Dialis: neque diurnis sacrificiis destinabantur, et abesse eis a finibus Italiae licebat, neque semper praetextam, neque apicem nisi tempore sacrificii gestare soliti erant. ergo si ire eis in prouinciam licebat, et equo sine religione uehi licuit: quod hic ostendit, uelut in prouinciam misso Aeneae equum datum: nam Euander hoc ait 'sed tibi ego ingentes populos opulentaque regnis iungere castra paro', deinde infra de potestate obtinendae prouinciae subtexit 'ipse oratores ad me regnique coronam cum sceptro misit', et excusatione interposita hortatur Aeneam, ut Etruscis, regem et ducem desiderantibus, praesit: ait enim 'tu, cuius et annis et generi fatum indulget, ingredere'.*

T37d = T48] *ergo et equo merito uti potuit, si ei ire in prouinciam fas erat. sciendum tamen poetam contentum esse uniuersum **ius pontificale**, dum aliud narrat, attingere.*

⁶⁵⁶ Compare the similar statement of *Serv. at Aen. 10.228: quod Uergilius iure dat Aeneae, quasi et regi et quem ubique et pontificem et sacrorum inducit peritum.*

(37a) A choice steed for Aeneas. *Exortem* ('choice'), moreover, is similar to *exlegem* ('lawless'). And many criticize Vergil here, because, although he presents Aeneas everywhere as a *pontifex*—and *pontifices* are not permitted to ride on horseback,⁶⁵⁷ but in a chariot; thus in Book Seven [7.280] he says that a chariot was given to him by Latinus—why does he here have him use a horse, saying 'for Aeneas they bring out a choice steed covered by a lion's tawny pelt, resplendent with golden claws' [8.552-3] and likewise 'and now the cavalry had exited from the open gates, Aeneas at the vanguard'

⁶⁵⁷ This is incorrect; we have no evidence that this prohibition applied to the pontiffs; it appears to have constrained only the *flamen Dialis*, cf. Gell. NA 10.15.3 (= Pr. 2 no. 7): *equo Dialem flaminem uehi religio est*; Paul. Fest. 71 L.: *equo uehi flamini Diali non licebat, ne, si longius digrederetur, sacra neglegerentur*. Wissowa 1912, 506 n. 1, writes that this passage "scheint auf Verwechslung mit dem Flamen Dialis zu beruhen." For a similar confusion between pontiffs and flamens see Boethius' commentary on Cicero's *Topica* 3.14 (*FIRA* 2.307): *sed confarreatio solis pontificibus conueniebat*, where certainly we should read *flaminibus*; and Tert. *de exhort. cast.* 13.1; *de monog.* 17.3; *de praescr. haeret.* 40.5; *ad uxor* 1.7.5. I owe these references to Linderski 1995, 579.

After spending much time translating and trying to understand the passage of *Servius Danielis*, I came across the following discussion of it on page 11 of Julia Dyson's book, *King of the Wood* (Univ. of Oklahoma Press, 2001):

Similarly, Aeneas is nearly faulted for riding on horseback (ad 8.552), an activity forbidden to the *flamen Dialis*. He is saved by the commentator's realization that other *flamines* (of Mars and Quirinus) were allowed to travel to provinces and hence must have ridden horses.

That the opening statement is phrased in the passive voice raises suspicions that Dyson has misconstrued the passage. In fact, she appears not to have read it at all. I count four errors. First it is not Aeneas who is 'nearly faulted', and second, the fault is not that he has ridden on a horse. What the text of *Servius Danielis* clearly says is that many people (*multi*) criticize Vergil because, although throughout the poem he portrays Aeneas as a pontiff, here he has him ride a horse, and pontiffs were not permitted to do so (*et pontificibus non liceat equo uehi*). Although, to be precise, in the relevant passage of the *Aeneid* Vergil never says that Aeneas rode the horse! Third, although it is true, as Dyson claims, that the *flamen Dialis* was not permitted to ride a horse, she cannot use this passage as proof of that fact; the text explicitly states that pontiffs were not permitted to ride a horse. Having made this mistake, she is all but bound to make her next one, that of assuming that Vergil here portrays Aeneas as a *flamen Dialis*. If anything *Servius Danielis* implies that by having Aeneas ride a horse Vergil portrays him as a *flamen Quirinalis* or *flamen Martialis* since, according to *Servius Danielis*, these two priests were probably permitted to ride a horse. Needless to say, Dyson's misinterpretations not only have grave implications for her "dark reading of the poem" (24), but also form an inauspicious beginning to a book one of whose express aims is "...to incorporate insights from more technical analyses of Roman religion into the interpretation of a literary text" (13). Dyson may be repeating the interpretation of the author she cites in her next paragraph, Raymond Starr ("*Aeneas as the Flamen Dialis*" *Vergilius* 43 (1997): 63-70), who has also misread the passage of *Servius Danielis* (see pg. 68). Since Dyson and Starr could not have obtained their misinformation from the text, one wonders whence they got it. Perhaps from Vanggaard (1988, 101 n. 12), although the error may go back even earlier.

The logic of Vergil's ancient devotees and commentators is often contorted, but I have found, as in this instance, that his modern successors are no less adept in the contortions they perform in order to fit Aeneas, Vergil, and *Servius* into their preconceived theories and onto their pet hobby-horses.

[8.585-6]? The reason for this is as follows: Aeneas had been both first in and skilled at not only **pontifical law**, but the law of all rituals (*omnium sacrorum*),

(37b = 84) moreover, whenever the opportunity arises Vergil describes the **rite of Roman ceremonies**.

(37c = 83) The fact is that according to the **old ritual of sacred rites** neither the *flamen* of Mars nor the *flamen* of Quirinus were constrained by all the ceremonial regulations (*omnibus caerimoniis*) by which the *flamen* of Jupiter was: they were not bound fast to daytime sacrifices; and they were allowed to depart from Italy's borders;⁶⁵⁸ nor did they always wear the purple-bordered toga (*praetexta*) or priestly hat (*apex*) except at the time of a sacrifice. Therefore, if they were permitted to go to a province, they were also permitted to travel on horseback without religious scruple (*sine religione*). This Vergil illustrates here by giving Aeneas a horse as if he was sent into a province: for Evander says 'but I am preparing to ally with you great peoples and camps rich in kingdoms,' [8.475-6] then later he makes mention of the power of holding a province, 'he himself has sent me envoys and a kingdom's crown and scepter' [8.505-6], and after making an excuse he urges Aeneas to lead the Etruscans who are in need of a leader and king, saying, 'you upon whose years and family fate looks kindly, take up your task' [8.511-13].

(37d = 49) Therefore Aeneas could justly ride on horseback if it were proper for him to go to a province. Nevertheless it must be noted that the poet is content to touch on

⁶⁵⁸ The *locus classicus* for this prohibition and perhaps the source for the comment in *Servius Danielis* is Tac. Ann. 3.58: *frustra uulgatum dictitans* [sc. *Ser. Cornelius Lentulus Maluginensis* (*suff. cos.* 10; *flamen Dialis* 11 BC-23 AD)] *non licere Dialibus egredi Italia, neque aliud ius suum quam Martialium Quirinaliumque flaminum; porro si hi duxissent prouincias, cur Dialibus id uetitum?*

general **pontifical law**, while discussing something else. (text Thilo-Hagen 1881-1902, vol. 2)

B. IUS PONTIFICALE (11x)

T38] ca. 52/51 BC Cic. *Leg. 2.55*: *iam tanta religio est sepulcrorum, ut extra sacra et gentem inferri fas negent esse, idque apud maiores nostros A. Torquatus in gente Popillia iudicauit. nec uero tam denicales, quae a nece appellatae sunt, quia residentur mortuis, quam ceterorum caelestium quieti dies feriae nominarentur, nisi maiores eos qui ex hac uita migrassent in deorum numero esse uoluissent. eas in eos dies conferre ius, ut nec ipsius neque publicae feriae sint. totaque huius **iuris** conpositio **pontificalis** magnam religionem caerimoniamque declarat, neque necesse est edisseri a nobis, quae finis funestae familiae, quod genus sacrificii Lari ueruecibus fiat, quem ad modum os resectum terra obtegatur, quaeque in porca contracta iura sint, quo tempore incipiat sepulcrum esse et religione teneatur.*

So great is the religious scruple attached to graves that they [sc. the pontiffs] deny that it is religiously correct to inter anyone in them who does not belong to the clan or practice its rites. In the time of our ancestors that was the decision of A. Torquatus in the case of the Popillian clan. Nor would the days of purification (*denicales*), whose name is derived from death (*nex*) because they are celebrated in honor of the dead, be counted as holidays along with the rest-days (*dies feriae*) of the other gods had not our ancestors intended that those who had departed this life should be included among the gods. The law requires that that these days of purification should be fitted into the religious calendar in such a way that they do not clash with other private or public holidays. The whole manner in which this **pontifical law** is put together manifests great reverence and veneration. I need not specify how long a family should remain in mourning, what details should be

observed in offering gelded rams to the household gods, what procedures should be followed in burying the severed bone, what obligations are involved in connection with the sow, or what point in time the burial becomes a grave and bound by religious scruple. (text Ziegler 1974; trans. (modified) Rudd 1998)⁶⁵⁹

T39; cf. **T8 & T14**] **ca. 52/51 BC** Cic. *Leg.* 2.57 (= Pr. 13 no. 59A): *et quod nunc communiter in omnibus sepultis uenit usu <ut> humati dicantur, id erat proprium tum in iis quos humus iniecta contexerat, eumque morem ius pontificale confirmat. nam prius quam in os iniecta gleba est, locus ille ubi crematum est corpus nihil habet religionis; iniecta gleba tum et ille humatus est et sepulcrum uocatur, ac tum denique multa religiosa iura complectitur.*

The expression which has now come into general use in regard to all who have been buried (*i.e.*, that they are 'interred' [*humati*]) was then specifically used of those who had been covered by having earth thrown over them. **Pontifical law** testifies to that custom; for until a piece of earth is thrown upon the bone, the place where a body has been cremated has no religious sanction. Once the earth has been thrown, the person is said to be interred, and the place is called a grave. At that point it becomes entitled to many religious rites. (text Ziegler 1974; trans. Rudd 1998)

⁶⁵⁹ A similar statement at Var. *Ling.* 5.23 (= Pr. 13 no. 59): *ab eo, quom Romanus combustus est, si in sepulcrum eius abiecta glaeba non est, aut si os exceptum est mortui ad familiam purgandam, donec in purgando humo est opertus (ut pontifices dicunt, quoad inhumatus sit), familia funesta manet.*

T40] late 2nd c. AD Fest. 144 L.: *mundus ut ait Capito Ateius in lib. VI pontificali* (= Br. 1901, 272 no. 2 = Hu. 64 no. 9 = Strz. 9 no. 11), *ter in anno patere solet, diebus his: postridie Volkanalia et ante diem <III. Non. Oct. et ante diem> VI. Id. Nou.*

The *mundus*, as Ateius Capito writes in his sixth book on the **pontifical** [*sc. law*], is open three times a year: the day after the *Volcanalia* (August 24th) and October 5th and November 8th. (text Lindsay 1913)

T41] late 2nd c. AD Fest. 298 L. (=Br. 1898, 79 no. 14= Hu. 55 no. 1 = Pr. 21 no. 128): *proculiunt, promittunt ait significare Antistius de iure pontificali lib. IX.*

Antistius (Labeo) in his ninth book on the **pontifical law** says *proculiunt* means "they send forth."⁶⁶⁰ (text Lindsay 1913)

T42] 3rd c. AD Porphyrio in *Horati Epistulas* 2.1.26: *pontificum libros. utrum annales, an ius pontificale signif(icat)?*

The books of the pontiffs. Does this mean the *annales* [*sc. maximi*] or the **pontifical law**? (text Hauthal 1866)

⁶⁶⁰ Other possible and more religiously connotative translations of *promittunt* (and thus *proculiunt*) are "they portend," "they prophesy," "they promise." Cf., e.g., Plaut. *Poen.* 3.5.47: *haruspices si quid boni promittunt, pro spisso euenit; id quod mali promittunt, praesentarium est.* A similar religious connotation may be present in the passage from Labeo.

T43] 7th-8th c. AD *Serv. Dan.* at *Aen.* 2.57 (= Pr. 2 no. 2A): *ecce manus. haec particula prope rem gestam ante oculos lectoris inducit. sane saepe dictum est, Uergilium inuenta occasione mentionem iuris pontificalis facere in quacumque persona. antiquis itaque caerimoniis cautum erat, ne uinctus flaminiam introiret, si introisset, solueretur uinclaque per impluuium effunderentur inque uiam publicam eicerentur. flaminia autem domus flaminis dicitur, sicut regia regis domus. [quod] hic de Sinone rem flaminis a rege factam debemus accipere, 'ipse uiro primus manicas atque arta leuari uincla iubet Priamus'.*

Behold the hand. This particle (*ecce*) brings the subject almost before the reader's eyes.

To be sure it is often said that Vergil mentions pontifical law whenever he gets the chance and uses whatever character to do so. Accordingly, it was enjoined by ancient ceremonial regulations (*caerimoniis*) that a man bound in chains could not enter the *flaminia*; if he had entered, he was released from his bonds and the chains were taken out through the *impluuium* and cast into the public road. The *flaminia*, moreover, is the house of the *flamen*, just as the *regia* is the house of the king. Here regarding Sinon we should accept that the the task of the *flamen* is being performed by the king [*i.e.*, Priam], 'Priam himself was first to bid the manacles and tight bonds be loosed' [2.146-7]. (text Thilo-Hagen 1881-1902)⁶⁶¹

⁶⁶¹ Compare the similar passage of Gell. *NA* 10.15.8-9 (= Pr. 1 no. 2): *uinctum, si aedes eius [sc. flaminis Dialis] introierit, solui necessum est et uincla per impluuium in tegulas subduci atque inde foras in uiam demitti. nodum in apice neque in cinctu neque in alia parte ullum habet.*

T44] 7th-8th c. AD *Serv. & Serv. Dan.* at *Aen.* 2.119 (= Pr. 20 no. 122): argolica quia occurrebat occidi potuisse captivum. {ergo ideo addidit 'Argolica', ne non esset triste oraculum. uidetur sane peritia **iuris pontificalis** animalis hostiae mentionem fecisse, cum dicit 'animaque litandum Argolica'; nam et 'animam' dixit, et 'litare' uerbo pontificali usus est, id est sacrificiis deos placare.}

He⁶⁶² uses the word 'Greek' (*argolica*) because it occurred to him that a captive could have been killed. {Therefore he appropriately adds 'Greek' (*Argolica*), so that the oracle not be ominous (*triste*). Indeed it seems that Vergil's knowledge of **pontifical law** has led him to mention sacrificial animals, when he says 'propitiation must be made with a Greek life' [2.118-19], for he says life (*anima*) and he uses 'to propitiate' (*litare*), a pontifical word, i.e., 'to placate the gods with sacrifices'.} (text Thilo-Hagen 1881-1902)

T45&46] 7th-8th c. AD *Serv. & Serv. Dan.* at *Aen.* 3.607 (= Pr. 3 no. 14B): genua amplexus. *physici dicunt esse consecratas numinibus singulas corporis partes, ut aurem memoriae, hinc est 'Cynthius aurem uellit et admonuit': frontem genio, unde uenerantes deum tangimus frontem: dexteram fidei, unde paulo post 'atque animum praesenti pignore firmat': genua misericordiae, unde haec tangunt rogantes. {sane sicut frequenter dictum est, etiam hic ostenditur subtiliter, Anchisen et Aenean tam **pontificalis**⁶⁶³ quam*

⁶⁶² The subject is probably Vergil, but it could also be Sinon.

⁶⁶³ Although Thilo-Hagen prints *pontificatus*, the correct reading is surely *pontificalis* (the reading of *Ambros.*): as seen in this appendix the term *ius pontificatus* is unattested, while *ius pontificalis* is not only the second most frequently occurring term for pontifical law, but also the very term used in the next sentence of this passage.

flamonii iuris et peritos et praesules fuisse. iure autem pontificali, si quis flamini pedes uel genua fuisset amplexus, eum uerberari non licebat. }

pontificalis Ambrosianus : pontificatus Turonensis

He embraced his knees. Natural philosophers say that the body's individual parts are consecrated to certain deities, such as the ear to memory, thus 'Cynthius pulled his ear and warned him' [*Ecl.* 6.3-4]; or the forehead to one's tutelary divinity, whence we touch our forehead when venerating a deity; or the right hand to trust, whence Vergil writes a little later, 'and so he [*sc.* Anchises] strengthened his spirit with a present pledge' [3.611]; or the knees to pity, whence those beseeching someone touch that person's the knees. {Of course as has been frequently said so here it is displayed with a fine touch, that Anchises and Aeneas were as learned and eminent in **pontifical law** as flaminial law. Indeed, according to **pontifical law** if anyone embraced the feet or knees of the *flamen*, it was not permitted to beat that person.} (text (modified) Thilo-Hagen 1881)⁶⁶⁴

T47] 7th-8th c. AD *Serv. & Serv. Dan.* at *Aen.* 8.363: *uictor Alcides subit. hic ius pontificale quibusdam uidetur subtiliter tangere: domus enim, in qua pontifex habitat, regia dicitur, quod in ea rex sacrificulus habitare consuesset, sicut flaminia domus, in qua flamen habitat dicebatur: quod hic ostendit ex persona Euandri, quem facit orantem ut Aeneas suam ingrederetur domum, non utique profanam, sed sacratam, scilicet quae fuerit hospitium Herculis, illis uersibus 'haec,' inquit, 'limina uictor Alcides subiit, haec illum regia cepit.' quem etiam honore diuinae dignationis sociat adiciens 'aude hospes*

*contemnere opes et te quoque dignum finge deo': haec enim dicendo quid aliud agit, quam ut sacratae religionis usum tribuat antisti *diuina communia, utpote quem etiam pontificali honore nuncupauerat, dicens 'maxime Teucrorum ductor': neque enim quia ductor eo maximus, sed quia maximus eo *omnia. regiae autem uerius meminit dicendo 'tectis subibant pauperis Euandri' (et) 'Romanoque foro': quis enim ignorat regiam, ubi Numa habitauerit, in radicibus Palatii finibusque Romani fori esse?*

antisti lacunam significauit Daniel : *antisti et diuina communia* Masuicius

post *omnia* lacunam indicauit Daniel : *eo omnia regit* Masuicius : mihi hoc fere modo sententia supplenda uidetur sed

quia maximus eo (*ductor: maximus autem quia pontifex qui curat sacra*) omnia Thilo

Hercules, victorious, entered. To some people Vergil appears here dexterously to touch on the **pontifical law**. For the house in which the *pontifex* (*maximus?*) lived is called Regia, because the king of sacrifices (*rex sacrificulus*) was wont to live there, just as the house in which the *flamen* lives was called the Flaminia. Here Vergil shows this in the person of Evander—whom he portrays beseeching Aeneas to enter his house, not as a profane, but as a hallowed, house, undoubtedly because it had been a lodging of Hercules—with the following verses, 'these doors,' he (*sc.* Evander) said, 'Hercules, victorious, entered, this palace (*regia*) received him' [8.362-3]. Additionally, Vergil associates him (*sc.* Hercules) with the honor of divine esteem by writing, 'dare, guest, to scorn wealth and fashion yourself, too, to be worthy of a god' [8.364-5]. For by saying these things what else is he doing than attributing use of sacred religion to the guardian....common divine, inasmuch as he had named him with pontifical honor too, saying 'greatest leader of the Teucrians' [8.470], for he is greatest not because he is a

⁶⁶⁴ Compare the similar passage of Gell. NA 10.15.10 (= Pr. 3 no. 14A): *si quis ad uerberandum ducatur, si ad pedes eius supplex procubuerit, eo die uerberari piaculum est*. For an incisive comparison of

leader, but greatest becauseall. Moreover he more truly recalls the regia when he says 'they were entering the roofs of poor Evander' [8.359-360] (and) 'the Roman Forum' [8.361]. Now who does not know that the Regia where Numa lived is at the foot of the Palatine and the edges of the Roman Forum? (text (modified) Thilo-Hagen 1881)

T48 = T37d] see above, **T37d**.

C. *IUS PONTIFICUM* (9x)

T49] 57 BC Cic. *Dom.* 38: *dixi apud pontifices istam adoptionem nullo decreto huius conlegi probatam, contra omne **pontificum ius** factam, pro nihilo esse habendam; qua sublata intellegis totum tribunatum tuum concidisse.*

Speaking before the Pontiffs, I have stated that your adoption was not approved by any decree of this college, that it took place in contravention of all **pontifical law**, that it is to be regarded as null and void. But the adoption once invalidated, you realize that your entire tribunate has collapsed. (text Maslowski 1981; trans. Shackleton Bailey 1991)

T50] 57 BC Cic. *Dom.* 138: *dixi a principio nihil me de scientia uestra, nihil de sacris, nihil de abscondito **pontificum iure** dicturum.*

I have said from the outset that I shall say nothing about your science, or about sacred observances, or arcane **pontifical law**. (text Maslowski, 1981; trans. Shackleton Bailey 1991)

T51] 59BC-AD17 (date of incident: 181 BC; see **T2**, **T27** & **T52**) Livy 40.29.6: *in altera duo fasces candelis inuoluti septenos habuere libros, non integros modo sed recentissima specie. septem Latini de **iure pontificum** erant, septem Graeci de disciplina sapientiae quae illius aetatis esse potuit.*

In the other were two bundles, tied with waxed rope, containing seven books each, not merely whole, but looking absolutely fresh. The seven Latin books dealt with **pontifical law**, the seven Greek with a system of philosophy which might have been current at that time. (text Walsh 1999; trans. Sage and Schlesinger 1938)

T52] Mid 1st c. AD (date of incident: 181 BC; see T2, T27 & T51) Val. Max. 1.1.12: *magna conseruandae religionis etiam P. Cornelio Baebio Tamphilo consulibus apud maiores nostros acta cura est: si quidem in agro L. Petillii scribae sub Ianiculo cultoribus terram altius uersantibus, duabus arcis lapideis repertis, quarum in altera scriptura indicabat corpus Numae Pompili fuisse, in altera libri reconditi erant Latini septem de iure pontificum totidemque Graeci de disciplina sapientiae, Latinos magna diligentia adseruandos curauerunt, Graecos, quia aliqua ex parte ad soluendam religionem pertinere existimabantur, Q. Petillius praetor urbanus ex auctoritate senatus per uictimarios facto igni in conspectu populi cremauit: noluerunt enim prisci uiri quicquam in hac adseruari ciuitate, quo animi hominum a deorum cultu auocarentur.*

pontificio coniecit Briscoe (sic Liuius T50)

Notable also for the conservation of religion taken among our ancestors in the Consulship of P. Cornelius and Baebius Tamphilus. On land belonging to L. Petilius, a scribe, below Janiculum, as farmers turned the soil rather more deeply than usual, two stone chests were discovered. One of them writing showed to have contained the body of Numa Pompilius, in the other were hidden seven Latin volumes concerning **pontifical law** and as many Greek on a system of wisdom. They saw to the preservation of the Latin with all diligence, but the City Praetor Q. Petilius by the senate's authority publicly burned the

Greek in a fire made by the sacrificial attendants because they were thought in part to pertain to the dissolution of religion. For the men of old disliked that aught be preserved in this community by which men's minds might be turned away from the worship of the gods. (text and trans. Shackleton Bailey 2000)

T53&54] ca. AD 180 Gell. NA 16.6.12-14: *P. autem Nigidius in libro, quem de extis composuit* (= Swoboda 1964, 92, no. 81 = Pr. 18 no. 111), *'bidentes' appellari ait non oues solas, sed omnes bimas hostias, neque tamen dixit apertius, cur bidentes; sed, quod ultro existumabamus, id scriptum inuenimus in commentariis quibusdam ad ius pontificum pertinentibus 'bidennes' primo dictas 'd' littera inmissa quasi biennes, tum longo usu loquendi corruptam uocem esse et ex bidennibus bidentes factum, quoniam id uidebatur esse dictu facilius leniusque. Hyginus tamen Iulius, qui ius pontificum non uidetur ignorasse, in quarto librorum, quos de Uergilio fecit, 'bidentes' appellari scripsit hostias, quae per aetatem duos dentes altiores haberent.*

Now Publius Nigidius, in the book that he wrote *On Entrails*, says that not only sheep but all sacrificial animals two years old are termed *bidentes*, but he did not make it clear why they are so called. But we find written in certain commentaries pertaining to **pontifical law** that which we were ourselves thinking, namely that *bidennes* was the original term (that is, *biennes* with a 'd' insterted). Then through long use the word was corrupted and was changed from *bidennes* to *bidentes*, since this seemed easier and more gentle to pronounce. However, Julius Hyginus, who seems not to have been ignorant of **pontifical law** writes in the fourth book of his work *On Vergil* that those sacrificial animals are

called *bidentes* which were so young that they had only two prominent teeth. (text Hosius 1903; trans. Rolfe 1946)

T55] ca. AD 310-395 Auson. *Prof. Burd.* 22.5-11

†*quod ius **pontificum**†, quae foedera, stemma quod olim
ante Numam fuerit sacrifici Curibus,
quid Castor cunctis de regibus ambiguus, quid
coniugis e libris ediderit Rhodope,
quod **ius pontificum**, ueterum quae scita Quiritum,
quae consulta patrum, quid Draco quidue Solon
sanxerit et Locris dederit quae iura Zaleucus,...*

†What was the **pontifical law**†, what the treaties, what the pedigree
of the sacrificial priest at Cures long before Numa's day,
what Castor had to say on all the shadowy kings, what
Rhodope published out of her husband's books,
what the **pontifical law**, what the resolutions of the old Quirites,
what the decrees of the Senate, what measures Draco or Solon
passed and what laws Zaleucus gave the Locrians,
(text Green 1999; trans. Evelyn White 1919)

T56] 7th-8th c. AD *Serv. Dan.* at *Aen.* 1.179 (= Pr. 2 no. 10B): *sane his uersibus 'tum
Cererem corruptam undis' et 'torrere parant flammis et frangere saxo' **ius pontificum***

latenter attingit. flamines autem farinam fermentatam contingere non licebat. cum autem dicit 'Cererem corruptam undis' et 'torrere p. f. et f. s.', quid aliud ostendit, quam mox eos sine fermento panem coxisse, qui omnes fruges corruptas protulerunt? non autem exspectasse eos fermentum, docet illo uersu 'tum uictu reuocant uires'.

Of course in these verses—'then Ceres corrupted by the waves' [1.177] and 'they prepare to dry it with fire and crush it with the rock' [1.179]—Vergil secretly touches on **pontifical law**. Indeed, *flamines* were not allowed to touch fermented flour.⁶⁶⁵

Furthermore, when he writes 'Ceres corrupted by the waves' and 'they prepare to dry it with fire and crush it with the rock' what else does he indicate except that those who have brought out all the ruined grain will soon bake bread without yeast? And Vergil shows that they did not require yeast by the verse 'then they restore their strength with food (*uictu*)' [1.214]. (text Thilo-Hagen 1881-1902)

T57; cf. **T64 & 77**] 7th-8th c. AD Serv. Dan. at Aen. 2.351 (= Pr. 14 no. 64A): *inde est, quod Romani celatum esse uoluerunt, in cuius dei tutela urbs Roma sit. et iure pontificum cautum est, ne suis nominibus dii Romani appellarentur, ne exaugurari possint. et in Capitolio fuit clipeus consecratus, cui inscriptum erat 'genio urbis Romae, siue mas siue femina'. et pontifices ita precabantur 'Iuppiter optime maxime, siue quo alio nomine te appellari uolueris' (= Pr. 14 no. 64A & 15 no. 70A): nam ipse ait 'sequimur te, sancte deorum, quisquis es'.*

Whence it is, that the Romans wished the identity of their city's tutelary deity to be concealed. And addressing the Roman gods by their own names is cautioned against by the **pontifical law**, lest they be able to be exaugurated. And on the Capitoline [in the Temple to Jupiter?] was consecrated a shield on which had been inscribed 'To the presiding divinity of the city of Rome, whether male or female.' And the pontiffs thus used to pray, 'Jupiter Best and Greatest, or by whatever other name you will have wished to be addressed'; for Aeneas himself says, 'we follow you, holy deity, whoever you are' [4.576-7]. (text Thilo-Hagen 1881-1902)⁶⁶⁶

⁶⁶⁵ Relevant passages occur at Gell. *NA* 10.15.19 (= Pr. 2 no. 10A): *farinam fermento inbutam adtingere ei fas non est*; Fest. 494 L. (= Pr. 16 no. 83): *tauri uerbenaque in commentario sacrorum significat ficta farinacea*.

⁶⁶⁶ In addition to **T64** and **T77** there are the following parallel and relevant passages: Plin. *NH* 3.65: *superque Roma ipsa, cuius nomen alterum dicere <nisi> arcanis caerimoniarum nefas habetur optimaque et salutari fide abolitum enuntiavit Ualerius Soranus luitque mox poenas*; Solin. 1.6; Serv. *Aen.* 1.281: *consilia in melius referet quia bello Punico secundo ut ait Ennius placata Iuno coepit fauere Romanis*. Serv. at *G.* 1.498 (= Pr. 14 no. 64B): *nam uerum nomen eius numinis, quod urbi Romae praeest, sciri sacrorum lege prohibetur: quod ausus quidam tribunus plebis enuntiare in crucem leuatus est*; Schol. Bernens. ad Verg. *G.* 1.498 (= Pr. 14 no. 64C): *uerum numen, quod urbi praeest, sacrorum lege prohibitum est scire*. For more on the concept of a city's tutelary deity see Mac. *Sat.* 3.9.1-9, who preserves the formula of *euocatio* at 3.9.7-8. The Roman *euocatio* of *Iuno regina* at Veii, the most detailed case, is found at Liv. 5.21 and is more summarily treated at Val. Max. 1.8.3.

D. PONTIFICALIA SACRA (3x)⁶⁶⁷

T58] 48-46 BC⁶⁶⁸ Varro *De Vita Populi Romani* fr. 52.4-9 (= Non. 877 L. [547 M.])

*urceolum aquae manale uocamus, quod eo aqua in trulleum effundatur; unde manalis lapis appellatur in **pontificalibus sacris**, qui tunc mouetur cum pluuiiae exoptantur; ita apud antiquissimos manale sacrum uocari quis non nouerit? unde nomen illius.*⁶⁶⁹

We call a pitcher of water *manale*, because water is poured from it into a basin; whence the stone that is moved when rains are desired is in the **pontifical rites** called *manalis*; and who does not know that among the Romans of long ago this rite (*sacrum*) was called *manale*, whence its name? (text Lindsay 1903; Riposati 1972, 295)

T59] mid 1st c. AD Val. Max. 5.8.3: *T. autem Manlius Torquatus, propter egregia multa rarae dignitatis, iuris quoque ciuilis et **sacrorum pontificalium** peritissimus, in consimili facto ne consilio quidem necessariorum indigere se credidit...*

⁶⁶⁷ Although it may be a tenuous proposition to take *pontificalia sacra* as meaning 'pontifical law' I have included these three passages here both for the sake of completeness and because in them *pontificalia sacra* appears to approach very closely the meaning 'pontifical law' (note especially **T59** where the phrase is juxtaposed with the *ius ciuile* as elsewhere (**T9**, **T19**, *inter alia*) the *ius pontificium* is. In **T58** Varro seems to use *pontificalia sacra* to mean both a specific pontifical rite and the doctrine governing the performance of that rite. The same may be true for **T60**.

⁶⁶⁸ On the date of composition see Riposati 1972, 84-86.

⁶⁶⁹ See the related passages at Fest. 115 L. *manalem lapidem* putabant esse ostium Orci, per quod animae inferorum ad superos manarent, qui dicuntur manes. manalem vocabant lapidem etiam petram quondam, quae erat extra portam Capenam iuxta aedem Martis, quam cum propter nimiam siccitatem in urbem pertraherent, insequeretur pluvia statim, eumque, quod aquas manaret, manalem lapidem dicere; Serv. Dan. at Aen. 3.175: *manabat fluebat*. hinc et lapis manalis quem trahebant pontifices, quotiens siccitas erat; and at Fulgentii expositio sermonum antiquorum 4, the basic text of which, that of R. Helm Fulgentii opera 1898, I have not seen. Thus I quote the following translation from Whitbread 1971, 162, "What *manales lapides* are. Labeo, who in fifteen volumes described the rituals of the Etruscans for Tages and Bacitides, says: 'When the liver entrails were a dark red color, then it was the task to drag the spirit stones,' that is, those which the ancients used to drag round the boundaries of lands like rollers, for ending a drought." Whitbread mistakenly says Labeo is Cornelius Labeo of the 3rd-4th century A.D. The reference is rather to the Cornelius Labeo of the Augustan Age.

In a similar action, T. Manlius Torquatus, a man of rare prestige founded on many outstanding merits, also a great expert on civil law and **pontifical rituals**, did not think he needed even a council of relatives and friends. (text and trans. Shackleton Bailey 2000)

T60] late 2nd c. AD Fest. 364 L.: 'Recto fronte ceteros sequi si norit.' Cato in *dissertatione consulatus. antiquae id consuetudinis fuit, ut cum ait Ennius quoque: 'a stirpe supremo', et: 'Ilia dia nepos', et: 'lupus feta', et: 'nulla metus.' etiam in commentariis sacrorum pontificalium frequenter est hic ouis, et haec agnus, ac porcus. quae non ut uitia, sed ut antiquam consuetudinem testantia, debemus accipere.*

'If he has learned to follow the others with unfurrowed brow.'⁶⁷⁰ Thus Cato in his essay on the consulship (fr. 47 Malcovati 1976). This was an ancient practice, as when Ennius too says 'from the highest stock' (*Ann.* 166 Sk. = 178 V² = 172 W) and 'Ilia, divinely descended granddaughter' (*Ann.* 60 Sk. = 55 V² = 52 W), and 'pregnant wolf' (*Ann.* 65 Sk. = 68 V² = 71 W), and 'no fear'. (*Trag.* 374 J = 387 V² = 411 W) Even in the commentaries of **pontifical rites** there frequently occur the forms 'this sheep' (*hic ouis*), 'this lamb' (*haec agnus*), and 'this pig' ([*haec*] *porcus*). We ought not treat these forms as mistakes, but as evidence of an ancient practice. (text Lindsay 1913)

⁶⁷⁰ Of course *recto fronte* can be translated other ways, but without more context it is impossible to tell what translation is best.

E. *PONTIFICALIS AUCTORITAS* (3x)

T61; cf. **T10-13 & T73**] **52/51 BC** Cic. *Leg.* 2.52: *hoc ego loco multisque aliis quaero a uobis, Scaeuolae, pontifices maximi et homines meo quidem iudicio acutissimi, quid sit quod ad ius pontificium ciuile adp<lic>etis. ciuilis enim iuris scientia pontificium quodam modo tollitis. nam sacra cum pecunia pontificum auctoritate, nulla lege coniuncta sunt. itaque si uos tantummodo pontifices essetis, **pontificalis** maneret **auctoritas**; sed quod idem iuris ciuilis estis peritissimi, hac scientia illam eluditis.*

[Marcus]: Regarding this situation and many others, I would like to ask the Scaeuolae, who were supreme pontiffs and, in my view, extremely shrewd men: why do you want to add a command of civil law to a knowledge of the pontifical law? For by your knowledge of the civil law you tend to cancel out the pontifical law. Rites go with the deceased's property by the authority of the pontiffs, not by any law. So if you were only pontiffs, the **pontiffs' authority** would be upheld; but being at the same time great experts in civil law, you use this knowledge to circumvent that authority. (text Ziegler 1974; trans. (modified) Rudd 1998)

T62] **d. AD 212** Papinian in *Dig.* 5.3.50: *quamuis enim stricto iure nulla teneantur actione heredes ad monumentum faciendum, tamen principali uel **pontificali auctoritate** compelluntur ad obsequium supremae uoluntatis.*

[Papinian], Questions, book 6: For although in strict law there is no action to make heirs build a monument, yet they are compelled by the **pontifical authority** and the authority

of the emperor to comply with the last wish. (text and trans. (modified) Mommsen-Krueger-Watson 1985)

T63] Late 4th-mid 5th c. AD (dramatic date: 16 Dec. AD 383 (?)) *Mac. Sat.* 1.15.18-19:

*ut autem idus omnes Ioui, ita omnes kalendas Iunoni tributas et Uarronis et **pontificalis** adfirmat **auctoritas**. quod etiam Laurentes patriis religionibus seruant, qui et cognomen deae ex cerimoniis addiderunt, kalendarem Iunonem uocantes, sed et omnibus kalendis a mense Martio ad Decembrem huic deae kalendarum die supplicant. Romae quoque kalendis omnibus, praeter quod pontifex minor in curia Calabra rem diuinam Iunoni facit, etiam regina sacrorum, id est regis uxor, porcam uel agnam in regia Iunoni immolat: a qua etiam Ianum Iunonium cognominatum diximus, quod illi deo omnis ingressus, huic deae cuncti kalendarum dies uidentur adscripti.*

And both **pontifical authority** and the authority of Varro confirm that as all Ides are assigned to Jupiter, so all Kalends are to Juno. And, moreover, the Laurentines keep up this tradition in their ancestral observances, for from their ritual they have given the goddess a distinctive epithet, calling her 'Juno of the Kalends,' and, further, they make prayer to this goddess on the Kalends of every month from March to December. At Rome, too, on all Kalends, in addition to the offering made to Juno by the minor pontiff in the curia Calabra, the queen of sacrifices (*regina sacrorum*), i.e., the wife of the king of sacrifices (*rex sacrorum*), sacrifices a sow or a female lamb to Juno in the Regia. And it is from this goddess that we have said that Janus is surnamed Junonius, for it appears

that just as all places of entry are regarded as belonging to him so all the Kalends are assigned to Juno. (text Willis 1970; trans. (modified) Davies 1969)

F. PONTIFICUM DISCIPLINA (3x)⁶⁷¹

T64; cf. **T57 & 77**] **AD 23/4 –79** Plin. *HN* 28.18: *Uerrius Flaccus auctores ponit, quibus credat in obpugnationibus ante omnia solitum a Romanis sacerdotibus euocari deum, cuius in tutela id oppidum esset, promittique illi eundem aut ampliorem apud Romanos cultum. et durat in **pontificum disciplina** id sacrum, constatque ideo occultatum, in cuius dei tutela Roma esset, ne qui hostium simili modo agerent.*

Verrius Flaccus cites trustworthy authorities to show that it was the custom, at the very beginning of a siege, for the Roman priests (*sacerdotes*) to call forth the divinity under whose protection the besieged town was, and to promise that deity the same or even more splendid worship among the Roman people. Down to the present day this ritual has remained part of the **doctrine of the pontiffs**, and it is certain that the reason why the tutelary deity of Rome has been kept a secret is to prevent any enemy from acting in a similar way. (text Ian-Mayhoff 1892-1902; trans. Jones 1963)

T65; cf. **T31 & T74**] **7th-8th c. AD** *Serv. and Serv. Dan.* at *G.* 1.270: *deducere id est siccare: nam 'inrigare' inducere est, ut 'deinde satis fluuium inducit'. sane sciendum, secundum Uarronem contra religionem esse si uel rigentur agri uel lauentur animalia festis diebus: nymphae enim sine piaculo non possunt moueri. sed scimus necessitati religionem cedere: unde perite Uergilius ait 'balantumque gregem fluuio mersare*

⁶⁷¹ Note also the indirect references to the 'pontifical discipline' in Cic. *Dom.* 121 (**T5**): *etsi effluunt multa **ex uestra disciplina** quae etiam ad nostras auris saepe permanant*; and Mac. *Sat.* 3.10.1-3 (**T32**): *et nos cepimus pontificii iuris auditum: et ex his quae nobis nota sunt Maronem **huius disciplinam iuris** nescisse constabit.*

*salubri', id est salutifero; nam dicturus est in tertio, scabie temptari nisi lauentur animalia. de inrigatione uero nihil ad hunc pertinet locum, quia 'deducere', ut diximus, siccare significat. {sed qui **disciplinas pontificum** interius agnouerunt, ea die festo sine piaculo dicunt posse fieri, quae supra terram sunt, uel quae omissa nocent, uel quae ad honorem deorum pertinent, et quidquid fieri sine institutione noui operis potest: ut riuorum inductionem sic accipiamus, per fossam uel pratum purgatum deducere, id est emittere, quoniam cautum in libris sacris est 'feriis denicalibus aquam in pratum ducere nisi legitimam non licet, ceteris feriis omnes aquas licet deducere' [= Pr. 8 no. 32A]. ergo hic, ut aliquibus uidetur, 'deducere' purgare est et sordes emittere, quae praecludant aquam, ideo quia a pontificibus, ut nouum fieri non permittitur feriis, ita uetus purgari permittitur. alii hoc secundum augurale ius dictum tradunt, quod etiam in bello obseruetur, ne nouum negotium incipiatur. ergo 'riuos deducere' non est nouum negotium, et potest hoc ad illud referri 'quique paludis collectum umorem bibula deducit harena'. sane quae feriae a quo genere hominum uel quibus diebus obseruentur, uel quae festis diebus fieri permissa sint, siquis scire desiderat, libros pontificales legat.}*

'To lead down' (deducere) means 'to dry out' (*siccare*): for 'to irrigate' (*inrigare*) is 'to lead in' (*inducere*), as in 'then he brought enough water in' [1.106]. Of course one should note that according to Varro it is against religious scruple (*contra religionem*) to water fields or wash animals on feast days (*festis diebus*). For waters (*nymphae*) cannot be moved without religious infraction (*piaculum*). But we know that religious scruple yields to necessity; hence Vergil perceptively says, 'to dip the bleating flock into a salubrious stream' [1.272], *i.e.*, a river whose waters heal; for in Book Three [441] he was about to

say that the animals will suffer an attack of scurvy if they are not washed. In truth, irrigation is irrelevant here since, as we said, 'to lead down' means 'to dry out'. {but those with a more intimate understanding of **the doctrine of the pontiffs** say that on a feast day (*die festo*) those things can be done without incurring religious infraction which are above the earth, or whose omission would bring harm, or which pertain to honoring the gods, and whatever is done without beginning a new task. So that we might thus accept that the irrigation of rivers is meant here and that *deducere* means 'to lead rivers down through a ditch or cleansed field', that is 'to send water out' (*emittere*), since in the sacred books (*libris sacris*) it is enjoined 'on feast days of purification (*feriae denicales*) it is not permitted to bring water into a field unless it is lawful (*legitimam*) water, but on other feast days it is permitted to bring down all types of waters.' Here, therefore, as it seems to others, 'to lead down' (*deducere*) means 'to clean' (*purgare*) and 'to cast out filth' (*sordes emittere*), which block up the water, because just as the *pontifices* permitted nothing new to be done on feast days, so they permitted something old to be cleaned. Others report that this is said according to the augural law, which is observed even in war lest a new task be started. Accordingly 'to lead down rivers' is not a new business, and the following quote can refer to that, 'each draws down the swamp's collected moisture with the thirsty sand' [1.113-114]. To be sure, if anyone wants to know what feasts should be kept and by which type of men or on which days, or what is permitted to be done on feast days, he should read the pontifical books.} (text Thilo-Hagen 1881-1902)

T66] 7th-8th c. AD *Serv. and Serv. Dan. at Aen. 2.693: intonuit laeuum sinistrum, prosperum, quia caeleste est; {quae enim nobis laeua sunt <caelestibus> dextra sunt,} ut*

diximus supra. 'sinistrum' autem a sinendo dictum, quantum ad auguria pertinet, quod nos agere aliquid sinat, {unde alibi 'siquem numina laeua sinunt'. sed hoc loco pontificalis inducitur disciplina. nam ostendit Anchisen, cum uellet fugam filii sequi, omine quod de Ascanii †pro capite auspicii se obtulit, a diis commotum petisse de caelo confirmationem; subiungit enim 'uix ea fatus erat senior, subitoque fragore intonuit laeuum'.

pro et auspicii delevit Masvicius | fotasse de Ascanii capite pro auspicio s. o. cf. ad Aen. 4.340 Thilo

It thundered on the left. The left, prosperous, because it is heavenly; {for our right is the gods' left] as we said above. 'Left' (*sinistrum*), moreover comes from 'to allow' (*sino*), in as much as it pertains to augury, because it allows us to do something { whence elsewhere Vergil says 'if favorable deities (*laeua numina*) allow anyone' [*G.* 4.6-7]. But here **the doctrine of the pontiffs** is introduced. For when Anchises wanted to follow his son in flight, Vergil shows him moved by the gods to seek from the sky confirmation of the omen that presented itself in place of an auspice above Ascanius' head; for he adds, 'the elder had scarcely spoken and immediately it thundered on the left' [2.692-3]. (text Thilo-Hagen 1881-1902)⁶⁷²

⁶⁷² The text may be corrupt, but it may be that here the commentator has confused the augurs and the pontiffs, for only the latter were concerned with the auspices. Compare **T37ab** where the same text (perhaps the same author) has similarly confused the *pontifices* and *flamines*.

G. PONTIFICALIS RITUS (3x)

T67] ca. 4th c. AD⁶⁷³ Serv. at Aen. 6.366: *terram inice bene ante maius petiit, ut uel hoc impetraret. terrae autem iniectio secundum pontificalem ritum poterat fieri et circa cadauer et circa absentium corpora quibusdam sollemnibus sacris.*

Cast the earth. He does well to ask for even this before he seeks something greater.

Moreover the casting of earth (*iniectio terrae*) according to **pontifical ritual** could be done both around a corpse and, by certain sollemn rites, around the bodies of absent people. (text Thilo-Hagen 1881-1902)⁶⁷⁴

T68] ca. 4th c. AD Serv. at Aen. 8.275: *communemque uocate deum aut quia Argiuius est Hercules et supra dixit Aeneas tam Graecos quam Troianos de uno sanguinis fonte descendere: aut communem deum dixit {inter deos atque homines: unde medius fidius dictus: aut} utriusque naturae medium, id est inter mortalitatem et diuinitatem. sunt enim numina aliqua tantum caelestia, aliqua tantum terrestria, aliqua media: quos deos Apuleius medioximos uocat, hoc est qui ex hominibus dii fiunt. alii communem deum ideo dictum uolunt, quia secundum pontificalem ritum idem est Hercules, qui et Mars: nam et stellam {Chaldaeis dicentibus} unam habere dicuntur, et nouimus Martem communem*

⁶⁷³ For the date of composition of Servius' commentary see Murgia 2003, especially at 68, "Although the supposition that Servius' commentary was written by 410 is not secure, it will have to do as a working hypothesis until some scholar discovers better evidence."

⁶⁷⁴ For *terram iniectio* and its connection with the pontiffs see also Serv. at Aen. 6.176: *PRAECIPUE PIUS AENEAS* *ubique Aeneas supra ceteros inducit mortem cuiuslibet dolere, ut 'nunc Amyci casum gemit', item 'casuque animum concussus amici.' hinc ei dat circa sepulturam etiam sordida officia, quae in aliis denegat locis. qui enim de pietatis generibus scripserunt primum locum in sepultura esse uoluerunt: unde cum pontificibus nefas esset cadauer uidere, magis tamen nefas fuerat si uisum insepultum relinquerent. genus autem fuerat sepulturae iniectio pulueris: unde est 'aut tu mihi terram inice.' Horatius, 'non est mora longa; licebit iniecto ter puluere curras.'*

dici: Cicero 'Martemque communem', Uergilius 'et dis communibus aras'. item paulo post dat salios Herculi, quos Martis esse non dubium est.

Call upon the common god. Either because Hercules is an Argive and Aeneas said above that the Greeks and Trojans descended from the same stock; or he says 'common god' {between gods and men: whence 'so help me god' (*medius fidius*) is said; or} and it is the middle of both natures, *i.e.*, between mortality and divinity. For there are some deities (*numina*) that are only celestial, others only terrestrial, others of a middle ground. These gods Apuleius calls 'intermediate' (*medioximos*), meaning those mortals who become gods. Others want the god to be called 'common' because according to **pontifical ritual** Hercules and Mars are identical; for they are said to have one star {according to the Chaldaeans}, and we know that Mars is called 'common'. Cicero says, 'and common Mars' [*Mil.* 56 & *Phil.* 10.20], Vergil says, 'altars to the common gods' [12.118]. Again a little bit later he gives Hercules *Salii*, which of course belong to Mars. [text Thilo-Hagen 1881-1902)

T69a] 7th-8th c. AD *Serv. and Serv. Dan. at Aen. 4.262: laena genus {est} uestis. est autem proprie toga duplex, amictus auguralis. {alii amictum rotundum: alii togam duplicem, in qua flamines sacrificant infibulati. quidam tradunt bene filio Ueneris habitum laenae datum, quia hunc sibi amictum genus Ueneris uindicauit: unde Popilii 'Laenates' propter hunc habitum, qui se de Ueneris genere ortos ferebant. alii inuentorem huius uestis ab hac ipsa ueste Laenatem appellatum tradunt. quidam muliebre uestem quasi amatori aptam uolunt. quidam pontificalem ritum hoc loco expositum putant.*

T69b = T75] (= Pr. 1 no. 1 [*ueteri enim...uti debere*] & 16 no. 79 [*secespita est...sacra est*]) *ueteri enim religione pontificum praecipiebatur inaugurato flmini uestem, quae laena dicebatur, a flaminica texi oportere: quam uestem cum cultro, quae secespita appellabatur, †uti debere. secespita autem est culter oblongus ferreus, manubrio eburneo, rotundo, solido, uincto ad capulum argento auroque, fixo clauis aeneis, quo <flamines>, flaminicae, uirgines pontificesque ad sacrificia utuntur, eaque iam sacra est. appellatur autem secespita a secando. hic ergo Uergilius in Aenea, quem sacratum intellegere uult, omnia supra dicta latenter amplexus est: nam inaugurationis meminit, cum dicit 'paribus nitens Cyllenius alis' et 'aui similis' et 'uolat aequora iuxta': ostendit enim Aeneam auspicato et iussum a Carthagine abire. togam autem duplicem, quam purpuream debere esse non dubium est, hoc uersu declarat 'Tyrioque ardebat murice laena'. secespita autem, quoniam gratum non erat ipsius nominis facere mentionem, ita meminit 'stellatus iaspide ensis erat'. ensem ergo pro cultro longiore debemus accipere; stellatum autem pro 'clauis aeneis uinctum'.*

T69c = T85] *iaspidem autem ideo intulit, ne totus a rege discedere uideretur: cui propositum est ueterum caeremoniarum ritum aliud agens contingere.*

† *uti debere* Thilo-Hagen | *geri oportere* Masvicius | *qua ueste...uti deberent* coniecit Hagenus

flamines inseruit Masvicius

agens] *agere* Floriacensis | *autem...appellatur autem secespita* hoc loco omitta post *contingere* addidit Floriacensis

A mantle (*laena*) is a type of attire. It is properly a double toga (*toga duplex*), an augural cloak. {some say it [*i.e* the *laena*] is a circular (*rotundum*) cloak, others the double toga

which the flamens wear, clasping it together with a pin (*infibulati*)⁶⁷⁵ when they sacrifice. Some say that Vergil does well to present Venus' son dressed in a mantle, because the family of Venus claimed this cloak as their own: hence the Popilii, who maintained that they were descended from Venus, are called 'Laenates' after this garment. Others say that the inventor of this garment, Laenas, was named after this type of clothing. Some want it be a womanly garment as if fit for a lover. Certain people think that here a **pontifical rite** is related.

(69b = 75) For by the **old religious scruple of the pontiffs** it was enjoined that the garment that the inaugurated *flamen* wore, which was called a mantle (*laena*), had to be woven by his wife, the *flaminica*, and that he ought to use this garment with the knife that was called the *secespita*.⁶⁷⁶ And a *secespita* is a long iron knife with a solid round ivory handle, with gold and silver bound to its hilt and studded with bronze nails. The flamens, *flaminicae*, Vestal Virgins and pontiffs use it at sacrifice and it is, in fact, sacred (*sacra*). Moreover, the *secespita* gets its name from the word for 'cutting' (*secando*). Here then Vergil secretly includes all the above-mentioned things in the figure of Aeneas, whom he wants to understand as worshipful (*sacratum*).⁶⁷⁷ He recalls an inauguration when he says, 'Cyllenius on paired wings resplendent' [4.252] and 'like a bird' [4.254] and 'he flies next to the seas' [4.255], for this shows that Aeneas, having taken the auspices, was ordered to leave Carthage. Furthermore the double toga is undoubtedly purple as the verse, 'the cloak was bright with Tyrian myrex' [4.262] declares. And Vergil makes mention of the

⁶⁷⁵ Related passages occur at Paul. Fest. 71 L.: *exinfulabat exer[c]ebat: infulas enim sacerdotum filamenta uocabant*; Paul. Fest. 100 L.: *infibulati sacrificabant flamines propter usum aeris antiquissimum aereis fibulis*.

⁶⁷⁶ I have tried to give a reasonable translation of this corrupt sentence.

⁶⁷⁷ My attempt at a reasonable translation.

secespita with the words, 'the sword was studded with jasper' [4.261], because it was not pleasing to mention the actual name of the *secespita*. Therefore we should take the sword to be a rather long knife and take studded (*stellatum*) to mean 'bound with bronze nails.' (69c = 85) Moreover, Vergil puts jasper (*iaspis*) on Aeneas' sword so that Aeneas not appear to deviate entirely from the figure of a king [*sc.* of Carthage?], whose purpose it is to touch upon something dealing with the **rite of old ceremonies**.⁶⁷⁸ (text Thilo-Hagen 1881-1902)

⁶⁷⁸ I am at a loss as to how to translate this sentence and I do not follow the author's train of thought. In particular, I would like to know the connection between *iaspis* and *rex*. Perhaps the text is corrupt (see the *app. crit.* above), perhaps the author assumed his readers would know what he is talking about, or perhaps the author was himself confused.

H. INSTITUTUM PONTIFICUM (2x)

T70] 52/51 BC Cic. *Leg* 2.29: *iam illud ex institutis pontificum et haruspicum non mutandum est, quibus hostiis immolandum quoique deo, cui maioribus, cui lactentibus, cui maribus, cui feminis.*

Now no change should be made in the **ordinances of the pontiffs** and haruspices as to which victims must be sacrificed to which god, *i.e.* which one gets full-grown victims, which sucklings, which males, which females. (text Ziegler 1974; trans. (modified) Keyes 1928)

T71] late 2nd c. AD Fest. 424 L.: sacer mons Gallus Aelius ait *sacrum esse, quocumque modo atque instituto ciuitatis consecratum sit, siue aedis, siue ara, siue signum, siue locus, siue pecunia, siue quid aliud, quod dis dedicatum atque consecratum sit: quod autem priuati[s] suae religionis causa aliquid earum rerum deo dedicerent, id pontifices Romanos non existimare sacrum. at si qua sacra priuata succepta sunt, quae ex instituto pontificum stato die aut certo loco facienda sint, ea sacra appellari, tamquam sacrificium; ille locus, ubi ea sacra priuata facienda sunt, uix uidetur sacer esse.*

Gallus Aelius says that is 'sacred' (*sacer*) which has been consecrated by any method and institution of the city, whether it be a shrine, altar, statue, a place, money, or something else that has been dedicated and consecrated to the gods. But whatever of their property private persons dedicate to a god for the sake of their own religion, the pontiffs do not count that as sacred. But if any private rites (*sacra priuata*) are undertaken which,

according to the **ordinances of the pontiffs** have to be done on a certain day or in a certain place, these are called sacred (*sacer*), as if they were a 'sacrifice' (*sacrificium*); the place where these private rites must be performed scarcely seems to be sacred (*sacer*).

(text Lindsay 1913)⁶⁷⁹

⁶⁷⁹ A similar passage occurs at *Serv. Dan. at. Ecl.* 7.31: *in libris sacrorum refertur, sacrum dici, quod rite sacratur, ut aedes, arae, simulacra, dona.*

I. PONTIFICUM AUCTORITAS (2x)⁶⁸⁰

T72] 52/51 BC Cic. *Leg.* 2.48: *hoc posito haec iura [sc. de sacris perpetuis] pontificum auctoritate consecuta sunt, ut, ne morte patris familias sacrorum memoria occideret, iis essent ea adiuncta, ad quos eiusdem morte pecunia uenerit.*

Clearly our present laws on the subject (*sc.* of the inheritance of familial *sacra*) have been laid down by the **authority of the pontiffs**, in order that the performance of the rites may be imposed upon those to whom the property passes, so that the memory of them [*i.e.*, the familial *sacra*] may not die out at the death of the father of the family. (Text Ziegler 1974; trans. Keyes 1928)

T73; cf. **T10-13 & T61]** 52/51 BC Cic. *Leg.* 2.52: *hoc ego loco multisque aliis quaero a uobis, Scaeuolae, pontifices maximi et homines meo quidem iudicio acutissimi, quid sit quod ad ius pontificium ciuile adp<lic>etis. ciuilis enim iuris scientia pontificum*

⁶⁸⁰ The phrases *pontificum auctoritas* and *pontificalis auctoritas* (above, sub **E**) present a difficulty: does one include every occurrence of the phrase, explicit and implied? For the purposes of this appendix I have chosen to include only those instances in which the term signifies a general rule of pontifical law, rather than a verdict or judgment of the pontiffs in an individual case. Nevertheless I collect here other occurrences of the phrase *pontificum auctoritas*. I note that it is implied frequently in Cicero's *de Domo Sua* (for example, Cic. *Dom.* 2: *sin autem uestra auctoritate sapientiaque, pontifices, ea quae furore improborum, timore bonorum, re publica ab aliis oppressa, ab aliis deserta, ab aliis prodita gesta sunt rescinduntur...*; 43: *hanc uos igitur, pontifices, iudicio atque auctoritate uestra tribuno plebis potestatem dabit...*; 45: *uobismet ipsis, pontifices, et uestris liberis ceterisque ciuibus pro uestra auctoritate et sapientia consulere debetis*; 120: *domum eius per pontificem dedicauerit, id uos ista auctoritate constituetis ratum esse oportere*); Cicero uses it to describe the verdict of the pontifical college in 123 BC on the dedication performed by the Vestal Virgin Licinia (*Dom.* 137: *post autem senatus in loco augusto consecratum iam aram tollendam ex auctoritate pontificum censuit*). At Pliny *Ep.* 7.19-12 (*angit me Fanniae ualetudo. contraxit hanc dum adsidet Iuniae uirgini, sponte primum (est enim adfinis), deinde etiam ex auctoritate pontificum*) the term occurs with the apparent meaning of 'by order of the pontiffs.' Cf. the expression in Liv. 34.44.1: *uer sacrum factum erat priore anno, M. Porcio et L. Ualerio consulibus. id cum P. Licinius pontifex non esse recte factum collegio primum, deinde ex auctoritate collegii patribus renuntiasset*. The same holds for the inscription ILS 8386: *ex auctoritate / et iudicio pontificum*.

quodam modo tollitis. nam sacra cum pecunia pontificum auctoritate, nulla lege coniuncta sunt.

[Marcus]: Now with reference to this and many other matters, I wish to ask the Scaevolae, supreme pontiffs, and the cleverest of men in my opinion, a question: why do you wish to add an acquaintance with the civil law to your familiarity with the **rules of the pontiffs**? For by your knowledge of the civil law you have to some extent nullified the rules of the pontiffs. For the rites are connected with the property by the authority of the pontiffs, not by any law. (text Ziegler 1974; trans. Keyes, 1928)

J. RELIGIO PONTIFICUM (2x)

T74; cf. **T31 & T65**] **ca. AD 60-65** Columella *Rust.* 2.21.1-6 (= Pr. 7 no. 31 [*quamquam pontifices...omne licet*] & 8 no. 36 [*feriis publicis hominem...non licet*] & 8 no. 32B [*nos apud...ceteris licere*]): *sed cum tam otii quam negotii rationem reddere maiores nostri censuerunt, nos quoque monendos esse agricolas existimamus, quae feriis facere quaeque non facere debeant. sunt enim, ut ait poeta*

*quae festis exercere diebus*⁶⁸¹

fas et iura sinunt: riuos deducere nulla

religio uetuit segeti praetendere saepem,

insidias auibus moliri, incendere uepres

balantumque gregem fluuio mersare salubri.

*quamquam pontifices negant segetem feriis saepiri debere; uetant quoque lanarum causa lauari oues nisi si propter medicinam. Uergilius, quod liceat feriis flumine abluere gregem, praecipit et idcirco adicit fluuio mersare salubri, id est salutari; sunt enim uitia, quorum causa pecus utile sit lauare. feriis autem ritus maiorum etiam illa permittit: far pinsire, faces incidere, candelas sebare, uineam conductam colere, piscinas, lacus, fossas ueteres tergere et purgare, prata sicilire, stercora aequare, faenum in tabulata componere, fructus oliueti conductos cogere, mala, pira, ficos pandere, caseum facere, arbores serendi causa collo uel mulo clitellario adferre; sed iuncto aduehere non permittitur nec adportata serere neque terram aperire neque arborem conlucare, sed ne sementem quidem administrare, nisi prius catulo feceris, nec faenum secare aut uincire aut uehere. ac ne uindemiam quidem cogi per **religiones pontificum** feriis licet nec ouis tondere, nisi si catulo feceris. defrutum quoque facere et uinum defrutare licet. uuas*

*itemque oliuas conditu legere licet. pellibus oues uestiri non licet. in horto quicquid
holerum causa facias, omne licet. feriis publicis hominem mortuum sepeliri non licet. M.
Porcius Cato mulis, equis, asinis nullas esse ferias ait, idemque boues permittit
coniungere lignorum et frumentorum aduehendorum causa. nos apud pontifices legimus
feriis tantum denicalibus mulos iungere non licere, ceteris licere. hoc loco certum habeo
quosdam, cum solemnia festorum percensuerim, desideraturos lustrationum
ceterorumque sacrificiorum, quae pro frugibus fiunt, morem priscis usurpatum. nec ego
abnuo docendi curam sed differo in eum librum, quem componere in animo est, cum
agricolationis totam disciplinam praescripsero.*

denicalibus R pauci dett.: dentalibus M : deuualibus S : denibalibus A : dominicalibus R plerique

But inasmuch as our ancestors saw fit to render an account of their leisure hours as well as of their times of non-leisure, I also believe that farmers should be advised of what they should do on holidays and what they should leave undone. For here are things which, as the poet says,

Divine and human laws (*fas et iura*) let be performed on festive days:

No sacred law (*religio*) forbids to fetch the irrigating rills,

A hedge along the field to stretch, for birds a snare to lay,

And briars to burn, and bleating flocks to dip in wholesome stream [Ver. G. 1.268-272].

And yet the pontiffs assert that a grain-field should not be fenced on holidays; they also forbid the washing of sheep for the good of the fleece, except as a curative measure.

Vergil is instructing us as to the lawfulness of washing the flock in a river on holidays,

⁶⁸¹ The correct line of Vergil is *quippe etiam festis quaedam exercere diebus*.

and for that reason he adds 'to dip in wholesome stream'—that is, in a healing stream; for there are ailments because of which it is expedient to bathe the cattle. Furthermore, the religious observances of our forefathers permit these tasks also on holidays: the braying of spelt; the cutting of torches; the dipping of candles; the tilling of a leased vineyard; the clearing out and cleaning of fish-ponds, cisterns, and old ditches; the sickling of meadows; the spreading of manure; the sorting of hay in the loft; the gathering of the fruits of a leased olive-grove; the spreading of apples, pears, and figs to dry; the making of cheese; the carrying of trees for planting, either on our own shoulders or with a pack mule. But it is not permitted to haul them with a yoked animal, nor to plant them after they are transported, nor to open the ground, nor to thin a tree; and not to assist in the sowing either unless you have first sacrificed a puppy, nor to cut hay or bind it or haul it; and it is not permissible either by the **ordinances of the pontiffs** for the vintage to be gathered on feast days (*feriis*), nor to shear sheep, unless you have sacrificed a puppy. It is also lawful to make boiled must and to boil wine. To gather grapes and olives for preserving is likewise lawful. It is not lawful to clothe sheep with skins. Anything that you may do in your garden for the good of your vegetables is lawful. It is not lawful to bury a dead person on public feast days. Marcus Porcius Cato says that there are no holidays for mules, horses, and asses; the same authority permits the yoking of oxen for the purpose of hauling wood and grain. We ourselves have read in the books of the pontiffs that only on the holidays called *denicales* is it unlawful to have mules in harness, but on other holidays it is lawful.

I am well aware that at this point, after my survey of the observances of feast days, some people will miss the customs observed by the ancients in the matter of purificatory

ceremonies and other offerings which are made for the good of the crops. And I am not declining the task of offering this instruction, but am postponing it for that book which I intend to put together after I have written precepts on the whole science of agriculture.

(text and trans. (modified) Ash 1941)

T75 = T69b] see above, **69b**.

K. *PONTIFICUM MOS* (2x)

T76] 7th-8th c. AD *Serv. & Serv. Dan.* at G. 1.21: *dique deaeque omnes post specialem inuocationem transit ad generalitatem, ne quod numen praetereat, {more pontificum, <per> quos ritu ueteri*⁶⁸²*in omnibus sacris post speciales deos, quos ad ipsum sacrum, quod fiebat, necesse erat inuocari, generaliter omnia numina inuocabantur}. quod autem dicit 'studium quibus arua tueri', nomina haec numinum in indigitamentis inueniuntur, id est in libris pontificalibus, qui et nomina deorum et rationes ipsorum nominum continent, quae etiam Uarro dicit.*

And all gods and goddesses. After addressing an invocation to a specific god, he turns to a general invocation, so that he not omit any deity {according to **the custom of the pontiffs** in all sacral acts ancient ritual required that the pontiffs first invoke the particular gods to whom the sacred act pertains, and then invoke all deities in general.} Moreover, when he says, 'who are eager to guard the fields' [1.21], the names of these deities are found in the indigitamenta, *i.e.*, the pontifical books that contain both the names of the gods and the explanations of their names, which Varro also says. (text Thilo-Hagen 1881-1902)

T77; cf. **T57 & 64]** 7th-8th c. AD *Serv. Dan.* at Aen. 4.577 (= Pr. 15 no. 70B): *uel 'quisquis es' secundum pontificum morem qui sic precantur 'Iuppiter omnipotens, uel quo alio te nomine appellari uolueris'.*

⁶⁸² This phrase (*ritus uetus*) is similar to those at **T81**, **T83**, **T85**, and **T87**.

Or 'whoever you are' according to the custom of the pontiffs, who pray, 'All-powerful Jupiter, or whatever other name by which you want to be addressed'. (text Thilo-Hagen 1881-1902)

L. *LEX PONTIFICUM* (1x)⁶⁸³

T78] 4th c. AD Aur. Vict. *Caes.* 28.4: *nam cum pontificum lege hostiae mactarentur, suis utero maris feminarum genitalia apparuere.*

For when the sacrificial animals were being sacrificed in accordance with **pontifical law**, the genitals of the female animals appeared in the belly of the male pig. (text Pichlmayr 1966)

⁶⁸³ With the phrase *lex pontificum* compare *lex sacrorum* in the two (late) texts cited above in n. 666.

M. PRAECEPTUM PONTIFICUM (1x)

T79] Late 4th-mid 5th c. AD (dramatic date: 16 Dec. AD 383 (?)) Mac. Sat. 3.2.1-3 (= Pr. 20 no. 121A): *uerborum autem proprietas tam poetae huic familiaris est ut talis obseruatio in Uergilio laus esse iam desinat; nullis tamen magis proprie usus est quam sacris uel sacrificalibus uerbis. et primum illud non omiserim, in quo plerique falluntur: extaque salsos porriciam in fluctus,*
*non, ut quidam 'proiciam' aestimantes dixisse Uirgilium proicienda exta, quia adiecit 'in fluctus.' sed non ita est. nam et ex disciplina haruspicum et ex **praecepto pontificum** uerbum hoc sollemne sacrificantibus est, sicut Ueranius ex primo libro Pictoris (= Br. 1896, 11 no. 4 = P. 115 no. 4*) ita dissertationem huius uerbi executus est: 'exta porriciunto, dis danto, in altaria aramue focumue eoue quo exta dari debebunt.'*

Our poet so habitually uses the proper word that such exactitude of observance ceases to be a ground for praising him, but it is worth noting that this propriety of usage is nowhere more in evidence than in his use of words that relate to religious rites or to sacrifices. I shall refer first to a word which misleads very many. In the line

'I will place (*porriciam*) the entrails as an offering on the waves' [Aen. 5.237]

note that the word is not *proiciam*, as some would read, supposing Vergil said that the entrails were to be 'cast forth' (*proicienda*) since the words 'on the waves' follow.

Certainly not, for according to the teaching of the soothsayers and the **precept of the pontiffs** this word (*porricere*) is regularly used of those who offer a sacrifice. Veranius, for example, has commented thus on the word, with reference to a passage from the first

book of Fabius Pictor: 'Let the entrails be placed as an offering (*porriciunto*), let them be given to the gods, on altar or place of offering or hearth or wherever the entrails should be so given'.⁶⁸⁴ (text Willis 1970; trans. (modified) Davies 1969)

⁶⁸⁴ This term is discussed also at Var. *Rust.* 1.29 extr.: *sic quoque exta deis cum dabant, porricere dicebant*; Paul. Fest. 243 L.: *porriciam porro iaciam*.

N. PONTIFICALIS OBSERUATIO (1x)

T80] Late 4th-mid 5th c. AD (dramatic date: 16 Dec. AD 383 (?)) Mac. Sat. 3.4.1-2:

*nomina etiam sacrorum locorum sub congrua proprietate proferre **pontificalis**
obseruatio est. ergo delubrum quid pontifices proprie uocent, et qualiter hoc nomine
 Uirgilius usus sit, requiramus. Uarro libro octauo rerum diuinarum: delubrum ait alios
 aestimare in quo praeter aedem sit area adsumpta deum causa, ut est in Circo Flaminio
 Iouis Statoris: alios in quo loco dei simulachrum dedicatum sit, et adiecit: sicut locum in
 quo figerent candelam candelabrum appellatum, ita in quo deum ponerent nominatum
 delubrum.*

It is also a pontifical rule to make known the names which properly belong to sacred places. Let us ask, then, what particular meaning the pontiffs give to a shrine (*delubrum*), and how Vergil has used the word. In the Eighth Book of his *Religious Antiquities* Varro says that some regard as a *delubrum* an open space in front of a temple that is devoted to the service of the gods (as, for example, the place consecrated to Jupiter Stator in the Flaminian Circus) but that others apply the term to the place in which a statue of a god has been dedicated, adding that, just as the object which held a candle (*candela*) would be called a *candelabrum*, so the place which housed a god (*deus*) would be called *delubrum*.
 (text Willis 1970; trans. (modified) Davies 1969)

O. RITUS MAIORUM (1x)

T81 = T74 (*partim*)] **ca. AD 60-65** Columella *Rust.* 2.21.3: *feriis autem ritus maiorum etiam illa permittit: far pinsire, faces incidere, candelas sebare, uineam conductam colere, piscinas, lacus, fossas ueteres tergere et purgare, prata sicilire, stercora aequare, faenum in tabulata componere, fructus oliueti conductos cogere, mala, pira, ficos pandere, caseum facere, arbores serendi causa collo uel mulo clitellario adferre; sed iuncto aduehere non permittitur nec adportata serere neque terram aperire neque arborem conlucare, sed ne sementem quidem administrare, nisi prius catulo feceris, nec faenum secare aut uincire aut uehere.*

Furthermore, the **religious observances of our forefathers** permit these tasks also on holidays: the braying of spelt; the cutting of torches; the dipping of candles; the tilling of a leased vineyard; the clearing out and cleaning of fish-ponds, cisterns, and old ditches; the sickling of meadows; the spreading of manure; the sorting of hay in the loft; the gathering of the fruits of a leased olive-grove; the spreading of apples, pears, and figs to dry; the making of cheese; the carrying of trees for planting, either on our own shoulders or with a pack mule. But it is not permitted to haul them with a yoked animal, nor to plant them after they are transported, nor to open the ground, nor to thin a tree; and not to assist in the sowing either unless you have first sacrificed a puppy, nor to cut hay or bind it or haul it. (text and trans. (modified) Ash 1941)

P. RITUS OCCULTIOR SACRORUM (1x)

T82] Late 4th-mid 5th c. AD (dramatic date: 16 Dec. AD 383 (?)) Mac. Sat. 1.12.21:

auctor est Cornelius Labeo huic Maiae id est terrae aedem kalendis Maiis dedicatam sub nomine Bonae Deae: et eandem esse Bonam Deam et terram ex ipso ritu occultiore sacrorum doceri posse confirmat: hanc eandem Bonam Faunamque, et Opem et Fatuam pontificum libris indigitari...

Cornelius Labeo is the authority for the statement that it was on the Kalends of May that a temple was dedicated to Maia, *i.e.*, the earth, under the name of 'the Good Goddess' (Bona Dea), and he affirms that it can be shown from the more **secret rite of sacrifices** that the Good Goddess and the earth are identical. He says that in the books of the pontiffs this same goddess is invoked as the Good Goddess and as Fauna, Ops and Fatua... (text Willis 1970; trans. (modified) Davies 1969)

Q. UETUS RITUS SACRORUM (1x)

T83 = T37c] see above, **T37c**.

R. RITUS ROMANARUM CAERIMONIARUM (1x)

T84 = T37b] see above, **T37b**.

S. RITUS UETERUM CAERIMONIARUM (1x)⁶⁸⁵

T85 = T69c] see above, **T69c**.

⁶⁸⁵ Similar phrasing at Tac. Ann. 1.62: *neque imperatorem auguratu et uetustissimus caerimoniis praeditum adtrectare feralia debuisse.*

T. IUS CAERIMONiarum (2x)

T86] 57 BC Cic. *Dom.* 31: *qua re istam orationem qua es usus omittas licet, post illam sententiam quam dixeram de annona pontificum animos esse mutatos; proinde quasi isti aut de Cn. Pompeio aliter atque ego existimo sentiantaut etiam, si cuius forte pontificis animum, quod certo scio aliter esse, mea sententia offendit, alio modo sit constituturus aut de religione pontifex aut de re publica ciuis quam eum aut caerimoniarum ius aut ciuitatis salus coegerit.*

So, Clodius, you may as well drop that line of talk in which you intimate that, after my proposal in the Senate about the grain supply, the pontiffs' attitude changed. Do you really think that their sentiments concerning Gnaeus Pompeius are any different from mine?... Or do you imagine that, even if my proposal did offend one or other of these gentlemen—which I am sure it did not—he is going to reach any other decision as a pontiff on a matter of religion and as a citizen on a matter of public concern than that imposed by **ritual law**, and the good of the community? (Text Maslowski 1981; trans. Shackleton Bailey 1991)

T87] 7th-8th c. AD *Serv. Dan.* at *Aen.* 4.137 (= Pr. 2 no. 3): *uetere caeremoniarum iure praeceptum est, ut flaminica uenenato operta sit. operta autem cum dicitur pallium significatur, uenenatum autem infectum.*⁶⁸⁶

⁶⁸⁶ A related passage occurs at Gell. *NA* 10.15.26-28: *eadem ferme caerimoniae sunt flaminicae Dialis; <alias> seorsum aiunt obseruire, ueluti est, quod uenenato operitur....*

By an old **law of ceremonies** it was enjoined that the wife of the *flamen* (*Dialis*?) must be dressed in a colored garment (*uenenato*). And here 'dressed' (*operta*) means a 'cloak' (*pallium*) and 'colored' (*uenenatum*) means 'dyed' (*infectum*). (text Thilo-Hagen 1881-1902)

U. *UETUS RITUS CAERIMONIARUM* (1x)

T88] 7th-8th c. AD *Serv. Dan.* at *Aen.* 1.706 (= Pr. 3 no. 10D): *et quidam uolunt hoc secundum ueterem caerimoniarum ritum aduerti debere, quod flameni Diali mensa inanis non anteponebatur; nam cum dicit 'qui dapibus mensas onerent et pocula ponant' et alibi 'et uina reponite mensis', quid aliud ostendit, quam mensam uacuam non antepositam Aeneae, quem ubique omnia sacerdotia inducit habuisse?*

And some people want that this should be understood according to **the old rite of ceremonies**, whereby an empty table was not set before the *flamen Dialis*. For when he says 'who should load the tables with feasts and set out the cups' [1.706] and elsewhere 'and put the wine back on the tables' [7.134] what else is Vergil saying than that an empty table was not set before Aeneas, whom he everywhere portrays as having held every priesthood? (text Thilo-Hagen 1881-1902)

V. *DISCIPLINA CAERIMONIARUM* (1x)

T89] 7th-8th c. AD *Serv. Dan.* at *Aen.* 12.171: *illi ad svrgentem non utique nunc solem surgentem dixit: iamdudum enim dies erat: sed disciplinam caerimoniarum secutus est, ut orientem spectare diceret eum qui esset precaturus.*

They to the rising. He said this phrase, not as we do now, to the rising sun: for it was already day; but he has followed the **discipline of ceremonies**, which says that anyone about to pray ought to look to the east. (text Thilo-Hagen 1881-1902)

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