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THE EMERGENCE OF NATURAL LAW AND THE COSMOPOLIS

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ABSTRACT. Natural law and the cosmopolis are among Greek political thought's most influential metaphors. In this chapter, I track the emergence of four distinct ideas that they conveyed. Throughout, I emphasize the flexibility and rhetorical power of the metaphors, and the philosophical difficulty of justifying the most powerful claims they make.

1. Two influential metaphors

In his work *On Laws (De legibus)*, Cicero seeks to imitate Plato and portray a discussion of the best laws, just as he imitated Plato when he offered a dialogue concerning the ideal state in *On the Commonwealth (De re publica)* (*Leg.* 1.15 and 2.14).¹ His discussants agree that laws should be based on a "science of right," and they seek to ground his account not in the Twelve Tables of Roman history—the traditional foundation of Roman laws—but on "deepest philosophy" (*Leg.* 1.17).

Thus, the most learned men thought to proceed from law, as I am inclined to think is right if law is, as they define it, highest reason implanted in nature, which commands the things that ought to be done and prohibits the opposite. This reason, when made firm and complete in the mind of a human, is law. (*Leg.* 1.18)

Here Cicero identifies right reason as a foundation for civic laws. Cicero seems to say (at least at first) that this right reason occurs not independent of human minds but only in the perfected reason of some humans; he goes so far as to identify the "mind and reason of the

¹ For these works, I cite Powell 2006, and translations are mine. Where Powell's arrangements of the fragments of *De re publica* depart from the widely reproduced numbering in Ziegler 1969 (e.g., in Zetzel 1999), I also refer to Ziegler's placement of the passage.

wise" as "the rule of right and wrong" (*Leg.* 1.19). Even if right reason does not occur in nature independent of human minds, however, there remains on this view a natural determinant of right and wrong, and human beings who perfect their reason have access to it. Cicero calls it "law" not because right reason is the literal sense of 'law' (Latin *lex*, Greek *nomos*), but because it determines right and wrong just as conventional laws were traditionally thought to do. In this way, he grounds his account of ideal civic laws in a metaphorical law of nature (*Leg.* 1.20).

This metaphor soon leads to another. As it happens, Cicero does not think that right reason emerges only in the minds of some humans; he believes that gods are responsible for nature's law and our capacity to recognize it. And this gets Cicero thinking. Since the gods govern nature and give human beings the power of reason to discover what is right and wrong, the gods seem, by this gift, to establish community with humans:

Thus, since there is nothing better than reason and since reason exists in human and in god, the first fellowship of human with god is a fellowship of reason. But those who share reason must also share right reason. And since right reason is law, we must think that humans also have law in common with gods. In addition, those who share law must also share right, and those who share these things must also be thought to share the same political society. ... Thus, this whole world now must be thought to be a single political society shared by gods and humans. (*Leg.* 1.23)

In short, the gods govern nature with the natural law of right reason, and because humans and gods share right reason, they also share the metaphorical law and thereby a metaphorical political society. The universal "natural law" establishes a metaphorical "world-state" or "cosmopolis."

These metaphors are among the most influential ideas from ancient political thought.² Rationalizing medieval philosophers, none with greater impact than Thomas Aquinas, embraced the idea of "natural law" because it joins the notion of God's plan to the idea that human reason can discover some important practical truths about God's plan. Early modern political theorists, such as Grotius, Pufendorf, Hobbes, and Locke, made regular appeal to natural law. Sometimes, though not always, these appeals to natural law brought with them cosmopolitan ideas, and the cosmopolis as a special metaphor noisily re-entered political discourse as an Enlightenment ideal. Nor are these metaphors of merely historical interest: some contemporary political thinkers identify themselves as natural law theorists or cosmopolitans.³

Cicero did not invent these metaphors; he drew them from earlier Greek philosophers. The "learned men" he cites for his doctrine of natural law are the Stoics, who defined law as "right reason" that provides "the standard of right and wrong, prescribing to naturally political animals the things that ought to be done and proscribing the things that ought not."⁴ The Stoics also insisted that the cosmos is like a political society (a polis) shared by gods and human beings.⁵ Moreover, although the Stoics are Cicero's direct

² See also *Leg.* 1.33 and 42 and 2.8–13 and *Rep.* 1.16–29 (esp. 27) and 3.27 (33 in Ziegler 1969). Of these two texts, *On Laws* was the primary vehicle of transmission, as it appeared in eight printed editions of Cicero's works before 1600. *On the Commonwealth* was lost for hundreds of years until Cardinal Angelo Mai found large passages of it in a palimpsest in the Vatican library in 1820, although some of its references to natural law and the cosmopolis were known through others' quotations and paraphrases, including, e.g., *Rep.* 3.27 (33 in Ziegler 1969), which is a quotation from Lactantius, *Divine Institutions* 6.8.6–9.

³ For contemporary natural law theory, see especially Finnis 1980, George 2001, Murphy 2001 and 2006, and the essays in Finnis 1991 and George 1994 and 2001a. For the burgeoning literature on contemporary cosmopolitanism, one might start with the essays in Nussbaum et al. 1996, Cheah and Robbins 1998, Pogge 2001, Grieff and Cronin 2002, and Vertovec and Cohen 2002. For brief introductions, see Murphy 2002 and Kleingeld and Brown 2006.

⁴ For the formulaic definition, see Stobaeus 2.7.11d, vol. 2 p. 96.10–12 WH (WH = Wachsmuth and Hense) and 2.7.11i, vol. 2, p. 102.4–6 WH; Cicero, *Leg.* 1.18; Diogenes Laertius 7.88; and Alexander of Aphrodisias, *De fato* 207.5–21 Bruns. The slightly more elaborate expression I offer here is from the opening of Chrysippus' *On Law*, as quoted by Marcian 1 (SVF 3.314). ('SVF' refers to Arnim 1903–1905. Most of the Stoic texts I cite can be found translated in vol. 1 of Long and Sedley 1986 or in Inwood and Gerson 1997, but the translations here are mine.)

⁵ See Arius Didymus ap. Eusebius SVF 2.528; Cicero, *ND* 2.78 and 154; Cicero, *Fin.* 3.64; Cicero, *Parad.* 18; Clement SVF 3.327; and Plutarch, *Comm. not.* 1065e.

source, both metaphors were around in some form before the Stoics gave them their own stamp.

In this chapter, I chart the emergence of these two metaphors in ancient Greece so as to lay bare the possibilities and challenges they present to political thought. My story is episodic, and it concentrates on the clearest evidence for the emergence of the central ideas that the two metaphors typically advance.

2. Conventional and Unconventional Norms

The core idea of natural law responds to a basic problem of politics. Political communities are constituted in part by the explicit and implicit norms that govern how members of the community behave. If these communal norms were complete and consistent, one might well take them to define what is just for the community, so that justice requires only obedience to the norms. In this way, although perhaps because they were idealizing, Classical Greek thinkers widely insisted that justice requires obedience to communal norms (*nomoi*, singular *nomos*, conventionally translated "law" or "custom"), and many of them held that the *nomoi* define what is just.⁶

But communal norms are never complete and consistent. Even apart from the difficulty of making a *complete* set of norms—see §5 below—the norms that govern any real-world community are diverse in their origin and in their articulation. Some of them were made explicit by various legislators. Some remain implicit and emerge in a rich array of practices, including various religious ones. So it is not surprising that there was often tension among the *nomoi* the Greeks recognized. When there is such tension, to determine whether a particular action is right or wrong, one must decide which norm has greater authority. One might then think that one of the norms is a recent convention, not deserving

⁶ See, e.g., the common opinions noted by Aristotle, *EN* 5.1 (= *EE* 4.1), 1129b11 and *Rhet.* 2.9, 1366b9–11, with Dover 1974, pp. 185–86.

of the respect that the other is due. One might even think that one of the norms simply runs deeper than mere convention. This is the core idea of natural law theory: natural law must be an unconventional standard for right and wrong against which to measure convention.

This idea emerges dramatically in Sophocles' *Antigone*, which was first staged in or soon before 441 BCE.⁷ Antigone's brothers Polyneices and Eteocles have recently died in battle, after their power-sharing relationship had failed and Polyneices and his allies had attacked Eteocles and the Thebans. Their uncle Creon, now King of Thebes, has decreed that Polyneices must remain unburied while Eteocles receives full rites. But traditional religious norms call for Antigone and her sister Ismene to ensure proper burial for both brothers. There is, then, a conflict of norms, both of which demand obedience. Ismene thinks that nothing can be done (39–40, 90, 92), but Antigone insists that Creon does not have the authority to contravene traditional norms governing burial (cf. 48).

This is not a simple conflict between politics and religion. Creon rests his law on religious authority, too, by arguing that the gods would not want honor given to Polyneices (282–89), who unjustly made himself an enemy to his city (182–208). But Antigone, while rightly recognizing that Creon's decree is a law (*nomos*, 452, cf. 449 and 481), rejects Creon's interpretation of the gods' wishes:

For me it was not Zeus who made that order.
Nor did that Justice who lives with the gods below
mark out such laws to hold among mankind. (450–52)

Without the gods on his side, Creon's authority would be sharply limited. So Antigone continues:

Nor did I think your orders were so strong

⁷ I cite the text of Lloyd-Jones and Wilson 1990, but with few alterations I quote the translation of Wyckoff 1954. For a reading of the play that emphasizes its complex tensions, see Nussbaum 1986, pp. 51–82. I here concentrate, instead, on how Antigone articulates natural law's core idea. Other early occasions in which divine laws are invoked (e.g., Sophocles, *Oedipus Tyrannos* 863–72) do not make the motivations or grounds for recognizing divine laws so clear.

that you, a mortal man, could over-run
 the gods' unwritten and unfailing laws (*nomima*).
 Not today or yesterday, they always live,
 and no one knows their origin in time. (453–57)

When Antigone starkly contrasts Creon's mortal decree with the immortal norms of the gods, she assumes that the divine "laws" (*nomima*) outstrip the authority of civil laws such as Creon's decree.

Although Antigone appeals to unconventional norms to trump conventional ones, she does not invoke *natural* laws, and this proves to be problematic. The trouble is not that her unconventional norms are supposed to be *divine*. In the ancient world, the natural and the divine are not necessarily opposed, and if, in this context, one supposes that humans can discover in nature the norms that the gods are responsible for, such norms can and should be deemed natural.⁸ But the trouble is that Antigone offers no hint as to how humans can discover the unconventional norms naturally.

⁸ By focusing on whether the law in question is epistemologically natural—accessible to human beings studying nature—I do not mean to deny the significance of whether the law is metaphysically natural—dependent on nothing outside of nature for its existence. If a law is epistemically natural but metaphysically supernatural, then there is the chance for disputes over the interpretation of the law between those who claim to understand it via their study of nature and those who claim to understand it via their access to the gods. That dispute would not arise over a law that is both epistemically and metaphysically natural. But if we reserve the title "natural law" for a law that is both epistemically and metaphysically natural, we will have to deny that there is any natural law theorist in antiquity and, even more perversely, that Aquinas is a natural law theorist. Hence, I focus on epistemic access.

Antigone certainly claims to know the divine laws, but it does not seem that she gets her knowledge from inquiring into nature.⁹ Rather, it seems that Antigone simply knows that the gods call for her to bury her brother, just as Teiresias knows that Creon has wronged the gods of the underworld who govern the dead (1074–75). This is problematic. If Antigone has no justification for her claim to know the divine laws, then her epistemic "authority" depends upon mere rhetorical force. That is, either her audience is persuaded by her claim—at least persuaded that there in fact is an unwritten divine law that conflicts with Creon's decree—or it is not. Antigone's ungrounded appeal to divine law encourages multiple interpreters of the divine to disagree, with tragic results.

There are two ways in which one might extract from Sophocles' play a way out of this tragic conflict. First, one might suppose that if civic laws and customs are supposed to answer to divine laws, as Antigone insists, then ultimate political authority should be vested with those who have special authority in interpreting the divine. Perhaps power should lie with people such as Teiresias, who has a reputation for successful prophecy. One might even suppose that natural facts can tell who has special authority. After all, the facts about what Teiresias foretold and what actually ensued are natural, and they either do or do not support his authority to interpret the gods' unwritten laws. But this connection between facts and

⁹ Antigone does at one point appeal to some natural facts in the course of justifying herself. In lines that some readers (e.g., Jebb 1900, pp. 164 and 258–63) have suspected to be interpolations and not original to Sophocles' play (contrast Griffith 1999, pp. 277–79), Antigone says that she was right to flout the civic law and to bury her brother Polyneices but that she would not have been right to do the same for a husband or child (904–14). To explain this striking interpretation of the divine law, she appeals to two natural facts: a young woman who has lost a child can (usually) bear another and a young woman whose parents are dead cannot have another sibling. (She also notes that a woman who has lost a husband can remarry, but this is no natural fact, as it depends upon some elaborate conventions.) Antigone supposes that she has obligations to the family that her parents started and obligations to any family that she starts, and she assumes that once her parents are dead, she cannot find new (in this case, male) members of the former family to uphold her obligations to that family whereas she can find new (male) members of the latter family and then uphold her obligations to that family (cf. Herodotus 3.119). But she might have supposed otherwise about her family obligations without denying the natural facts. She might have supposed that she is obligated to each member of her family whether she could somehow produce another person in that relationship or not. After all, there might be harm to each unbursed person, whether or not there could be another person similarly related to Antigone. So although Antigone takes natural facts to be relevant to her understanding of the divine laws, she cannot think that they determine that understanding, because they do not determine her particular conception of family obligations.

the divine law is indirect because the authority of the law's *interpreter*—not the content of the law—is inferred from certain easily observed facts. So although the factual grounding of Teiresias' authority would give *some* reason to believe that Teiresias is right about the divine laws, it would not establish that the divine law is natural, and it would leave the rest of us unable to know whether Teiresias' successful prophecies really signify special access to the divine laws. In this way, we would remain at the mercy of Teiresias and others who can persuade us that they have worked miracles or have successfully prophesied.

Creon might hint at a second way out of the conflict when he comes, eventually, to "fear that it is best to preserve the established laws (*nomoi*) to the end of life" (1113–14). Here Creon seems to say that the correct interpretation of the gods is the one that accords best with established tradition. This suggestion of deeply conservative politics has in its favor the thought that tradition represents the wisdom of many generations. But it is also plausible that humans over time have had the opportunity to learn from past mistakes and to improve their understanding of the world. Additionally, Creon's suggestion postpones some hard questions. If long-established *nomoi* are right, then what supported these *nomoi* before they were long-established? What reasons did those who first established these *nomoi* have for establishing them? Did they look to nature in a way that we cannot? Did they have privileged access to the gods? Or did they actually invent the laws themselves and merely pretend that the laws were divine? Creon does not say.

In sum, Sophocles' *Antigone* offers the core idea of natural law, but its unwritten divine laws are not natural. The rhetoric of "divine laws" can be very powerful—especially from an authority or from a person with a reputation for miracles or prophecy, and especially if it accords with tradition. But in the absence of natural facts to ground the divine laws, there seem to be few good reasons for preferring one interpretation of them over another, or, indeed, for thinking that they exist at all.

3. Nature and Normative Authority

Even before Sophocles' *Antigone* was first staged, some philosophers sought a way of discovering divine standards of right and wrong in nature. Beginning in Miletus in the sixth century BCE, some Greeks—often called "inquirers into nature" (*phusiologoi*) by ancients and "Presocratics" by us—began to find rational order in the world, and they sought to explain this order by identifying nature's fundamental causes (Greek *archai*, Latin *principia*). These philosophers also suggested connections between the standards that govern the workings of the cosmos and the standards that ought to govern the workings of the city. They frequently used the language of justice to describe the orderly workings of nature,¹⁰ and one of them also prominently invoked the language of law. Heraclitus, who was active in the late sixth and early fifth century BCE, introduced more clearly than anyone else the second core idea of natural law, the idea that the unconventional standards of right and wrong are embedded in nature, discoverable by humans studying the natural world.¹¹

Heraclitus takes the world to be a unified cosmos in which everything shares in a comprehensive account or reason (*logos*) (frr. 2 and 50; cf. frr. 30 and 113) that most humans fail to comprehend (frr. 1 and 34).¹² He links this *logos* to law:

Those who speak comprehendingly must base their strength on that which is comprehensive over all, as the city must base its strength on law (*nomos*), and even more strongly. For all human laws are nourished by a divine one. For it rules as far as it wills, and suffices for all, and is more than enough. (fr. 114)

¹⁰ See, e.g., Anaximander fr. 1 DK (DK = Diels and Kranz 1951–1952), Heraclitus fr. 94 DK, and Parmenides fr. 8.14–15 DK, with Vlastos 1947.

¹¹ There are other more isolated suggestions of natural law among the Presocratics. See, e.g., Empedocles fr. 135 DK (quoted in n. 35 below).

¹² I cite the fragments according to their presentation in Diels and Kranz 1951–1952. My translations and interpretations are significantly indebted to Kahn 1979 (see esp. pp. 117–18 for obvious borrowings), but when I use 'comprehensive', 'fail to comprehend', and (in the next fragment quoted above) 'comprehendingly' to capture the wordplay of *xunos* and *axunetoi* and *xun noōi*, I owe a debt to Bury 1935, pp. 72–73.

In the first sentence of this fragment, Heraclitus limits himself to an analogy: humans who want to speak with intelligence need to base their account on the universal *logos* (account or reason) just as a city that wants to flourish needs to base its strength on law. This analogy fits well with his insistence that understanding depends upon the universal *logos* (fr. 2 and 41) and his claim that "the people must fight on behalf of the law as for the city wall" (fr. 44). But the second and third sentences of fragment 114 go beyond analogy and suggest that civic laws are based on a divine law.

To appreciate what is distinctive in Heraclitus' claim, consider what is not. The idea that human laws have divine origin or support was old news. After all, Antigone's fellow-citizens agree with her that human laws should conform to the gods' wishes (*Antigone* 692–700). Hesiod had motivated this thought in the eighth century BCE:

This is the law (*nomos*) that Cronus' son [viz., Zeus] has established for human beings: that fish and beasts and winged birds eat one another, since there is no justice among them; but to human beings he has given justice, which turns out to be the best by far. For if someone who recognizes what is just is willing to speak out publicly, then far-seeing Zeus gives him wealth. But he who willfully swears a false oath, telling a lie in his testimony, is incurably hurt at the same time as he harms justice, and in later times his family is left more obscure; whereas the family of the man who keeps his oath is better in later times.¹³

Antigone simply extends this claim that because the gods gave humans the capacity for justice, they stand behind our norms of right and wrong. The claim also serves as the basis of Protagoras' "Great Speech" (Plato, *Protagoras* 320c–328d, esp. 321c–322d).

But Antigone, as we have seen, does not explain how to uncover the gods' norms in nature. And so far as Hesiod and Protagoras take it, the claim is compatible with the view that civic laws have merely conventional authority, for one might think that although Zeus

¹³ *Works and Days* 276–85. I follow closely the rendering of Most 2006 in translating the text in West 1978. See also Hesiod, *Theogony* 901–6.

gives humans the power of justice, humans realize justice through the laws that they invent. Hesiod insists that there is some defined content to the justice that Zeus gives to humans—it rules out lying, for example—but he does not suggest that Zeus has given humans a detailed legal code. Protagoras practically demands that Zeus' gift can be used to establish different codes of justice, if his Great Speech is supposed to cohere with his famous doctrine that "man is the measure" (esp. Plato, *Tht.* 152a). This relativist doctrine, according to which the wind is cool for me if it feels cool to me and is warm for you if it feels warm to you (152b), implies that what is just in Athens might be unjust elsewhere (171d–172b).

Heraclitus, by contrast, grounds human laws in the single rational order of nature, and so rejects both conventionalism and relativism.¹⁴ In fr. 114, he says that the source of human laws is something divine and sufficient that rules everything, which is to say that its source is the universal *logos* that determines how things happen (fr. 1). The whole fragment works like this. Heraclitus first compares the successful inquirer's dependence on the universal *logos* to the successful city's dependence on law, and then he identifies human law's dependence on the universal *logos*. Moreover, he supports the initial comparison by the identification that follows. Because the *logos* rules everything, human law takes its strength, its nourishment, from the *logos*, and because a city that takes its strength from law thereby

¹⁴ Some scholars, misled by fr. 102, miss this. (See, e.g., Strauss 1953, pp. 93–94.) Diels extracted fr. 102 from this scholion on Homer's *Iliad*: "Heraclitus also says these things, that to god all things are fine and good and just, but humans have taken some things to be unjust, others just." But the language of this report and of its introduction marks it as a paraphrase, and not a genuine fragment of Heraclitus' writing (see Kahn 1979, p. 183). Moreover, the scholiast is unlikely to have understood his point to involve conventionalism. The scholion concerns the opening sentence of *Iliad* 4, which has the gods drinking nectar from golden cups looking down at the city of Troy. The Homeric text, then, contrasts the experience of the divine or cosmic point of view with the human. This contrast does not require or otherwise suggest that human justice is merely conventional; it needs only the point that some human concerns do not matter to the divine or cosmic point of view. This point reminds the scholiast of a thought he associates with Heraclitus, namely, that the human concerns of justice and injustice do not touch the divine perspective because everything is good and just from the divine perspective. This thought might well be genuinely Heraclitean: Heraclitus could well think that at the cosmic level, the unity of opposites is simply good and just, so that the experience of injustice requires the more particular perspective of individual human beings. But whether the scholiast's paraphrase is accurate or not, it does not insist that Heraclitus adopted a conventionalist attitude toward justice, and given the clearly anti-conventionalist import of fr. 114, it would be perverse to read the scholiast's paraphrase that way.

takes its strength from the *logos*, a city depends on its law just as human understanding depends upon the *logos*.

Heraclitus, however, pulls up short of saying that the foundation for civic laws is a divine, natural *law*. He does not explicitly name the divine source of human laws, and his reticence is perhaps significant.¹⁵ He elsewhere declares, "The only one wise thing is willing and unwilling to be called by the name of Zeus" (fr. 32). Accordingly, Heraclitus might believe that the universal *logos* that is fundamental to understanding and to human laws is and is not well characterized as "law." Reasons for such caution emerge in the fifth section below.

Still, whatever one makes of Heraclitus' reticence, he clearly suggests the metaphor of natural law, for he affirms that there is a standard for human laws manifest in the order of the cosmos, to be discovered by successful human inquiry. This has significant political implications: if there is such a standard, it would seem that laws should be made by those who can inquire successfully into nature or at least by those who can judge well the testimony of those who purport to have inquired successfully. This need not lead to anti-democratic inclinations, but Heraclitus is pessimistic about the abilities of most people. He says, "Nature loves to hide" (fr. 123), and he thinks that most human beings fail to grasp how things really are (e.g., frs. 1, 17, 34). So he would apparently favor rule by exceptional experts: "One is ten thousand, if he is best" (fr. 49, cf. 33 and 41). There is a straight line between this thought and Socrates' search for a political expert, Plato's dream of philosopher-rulers, Aristotle's preference for aristocracy, and the Stoic paradox that only the

¹⁵ Nor in fact is he explicit about the nature of the law on which a city should base its strength: is it divine or human? My reading is neutral. Either way, Heraclitus ultimately means that a city should depend upon the *logos*, since (if it should depend upon human law) human law depends upon the *logos* and (if it should depend upon divine law) divine law is the *logos*. Some readers (e.g., McKirahan 1994, p. 148) suppose that if Heraclitus means that a city should depend upon human laws, then he is flirting with conventionalism. I disagree. To say that a city must strengthen itself on human laws is not to say that it can strengthen itself on any and all human laws, especially when one goes on to insist that human laws take their strength from the divine source that orders the cosmos.

sage is a king. But if expertise is not so hard or, conversely, if it is so hard that no one can achieve it, then a natural law theorist might well argue for more democratic government.

Heraclitus' suggestion of a natural law also prompts some philosophical questions. He claims to offer an account of how the world is, and he suggests that this account is the proper source of human laws. But why should the rational order of the cosmos ground prescriptive laws instead of merely descriptive ones? And how, in particular, could the rational order of the *cosmos* ground norms for *human* behavior?

In the fragments of Heraclitus, the first of these questions simply does not arise. The rational principles that order the cosmos are also "divine" and "governing." They are never conceived as merely descriptive regularities. They are always prescriptive norms. For the ancients, this often rests in turn on a deeper assumption. The world is ordered not just in a regular way, but in a good way.¹⁶ So any laws that capture the way the world is also capture the way it should be. Humean worries about shifting from descriptive regularities to prescriptive laws fail to get off the ground in this environment, and they continue to be grounded throughout antiquity. Those philosophers who denied that the cosmos is arranged in a good way—the atomists and their Epicurean heirs—also denied that it offers any rational principles to ground human norms.¹⁷

The fragments of Heraclitus do, however, admit of a response to the second question, and this response might even allay the worries that motivate the first. Heraclitus appears to believe that a human being can find within himself the universal *logos* that orders the cosmos (cf. fr. 45). His basic idea is proverbial: "it belongs to all human beings to know themselves and to be moderate (*sōphronein*)" (fr. 116). But the simplicity of this idea is deceptive. Given Heraclitus' standards of understanding, to know oneself and be

¹⁶ It is not clear to what extent Heraclitus accepts this, but there is some reason to think that he does, given the connection (discussed below) between the order of the cosmos and the order of the soul, which he clearly takes to be good for a human being. See also fr. 102, discussed in n. 14 above.

¹⁷ The Epicureans get their norms from their account of *human* nature and not from the cosmos.

moderate and so save one's thinking (*sō-phronein*), one must discover something more than private truths, which mark those who lack understanding (fr. 2); one must discover the universal *logos* on which intelligence depends (fr. 2, 41, 114). Heraclitus does not believe that self-examination suffices for understanding (fr. 35; cf. fr. 45), but he does make it clear that inquiry into the world is inseparable from self-examination. That is why Heraclitus, who expounds the universal *logos* (fr. 1), proclaims, "I searched into myself" (fr. 101).

If the rational principles that order the cosmos *also* order the human soul, then one might draw an intelligible connection between the rational principles of the cosmos and appropriate human behavior, for it is plausible that principles of psychology afford prescriptive norms. This is far from automatic, because the way the human soul typically works provides no obvious grounds for asserting how it *should* work. But if principles of psychology can reveal not how human souls typically work but how human souls are put into (good) order, then no one makes a category mistake by inferring norms from psychology. Here lies a tantalizing promise of natural law: it is not impossible to imagine a science of human nature or psychology that tells us how human psychology functions well and poorly.

Of course, none of this is easy. It is far from clear what practical norms can be grounded in a science of psychology and entirely obscure how the rational order of the soul is supposed to be the same as or part of the rational order of the cosmos as a whole. Still, Heraclitus set the agenda by suggesting that the divine standard for human laws is discoverable by rational inquiry into the way the world and the soul work.¹⁸ To consider the plausibility of this agenda, we can examine the two kinds of controversies it engendered.

4. Contesting the Norms of Nature

¹⁸ For Heraclitus' influence on Plato, see Irwin 1977 and Menn 1995. See also the discussion in the next section. For Heraclitus' influence on the Stoics, see Long 1975–1976 and Kahn 1979, esp. p. 5.

First, in fifth-century Greece, there was an explosion of contrasts between nature (*phusis*) and law or convention (*nomos*) that brought controversy concerning what nature recommends.¹⁹

Some appealed to natural law not to endorse moderation, as Heraclitus had, but to justify imperialist greed. Callicles, in Plato's *Gorgias*,²⁰ maintains that moderation and traditional justice are merely conventional values, asserted by the many weak to check the powerful few (483a–c). Against the many, he asserts that it is in accordance with a "law of nature" that the powerful have more than the weaker (483c–e).²¹ Thucydides has some Athenian ambassadors appeal to something similar when they ask the Spartan colonists on Melos to surrender before the Athenian forces attack (5.84–116).²² Like Callicles, Thucydides' Athenians encourage their interlocutors to set aside conventional values, warning that the Melians will be destroyed by their conventional commitments (*nomima*) (esp. 5.105.4 with 111.3). Like Callicles, again, these ambassadors place traditional justice among the values to be set aside. But unlike Callicles, the Athenians set justice aside only because the relevant parties are greatly unequal (esp. 5.89 and 105.4), and they do not replace traditional justice with natural justice. Instead, they say, "It is a general necessity of nature to rule whatever one can," and they call this a "law (*nomos*)" that "we found already

¹⁹ The contrast between *nomos* and *phusis*, which Guthrie 1971, p. 21, calls "the most fundamental" feature of the fifth-century Sophists' outlook, has been much discussed. For a good recent contribution, see Barney 2006.

²⁰ I cite the text of Dodds 1959, and my translations are generally light revisions of Zeyl's, in Cooper 1997.

²¹ Dodds 1959, ad 483e3, suggests that this might be the first occurrence of the phrase 'law of nature' in Greek, since Plato has Callicles mark the phrase as strange with an interjection. Earlier surviving intimations of natural law, including Thucydides 5.105 (quoted below), do not conjoin *nomos* and *phusis* so closely in a single phrase.

²² I cite the text of Jones 1900–1902, and I quote, with some alteration, the translation of Warner 1954. I also agree with the scholarly consensus that Thucydides is liberally interpreting what the Athenians might have said so as to make a point he wants to make, since it is highly unlikely that the actual Athenian envoys would have given up all talk of justice. See, e.g., Gomme, Andrewes, and Dover 1970, pp. 161 and 164.

in existence" and that "we shall leave to exist forever among those who come after it" (5.105.1–2).

There is a difference between Callicles and Thucydides' Athenians, but it is often misunderstood. Because the Athenians ostentatiously set justice aside and do not replace ordinary justice with natural justice, many readers suppose that the Athenians appeal to something like a descriptive regularity rather than a prescriptive norm. So understood, whereas Callicles believes that it is just for the stronger to get more power, the Athenians think it is merely inevitable. The Athenians' rhetoric of "necessity" dupes these readers. The fact is that the Athenians' actions are not inevitable. There are anti-imperialists in Athens, but the Athenians *choose* to find their self-interest in conquering Melos and consequently *choose* to threaten the Melians with destruction. The reading also ignores the sentences that immediately precede and succeed the passage just quoted:

Nor do we think that that we will be left without the good will of the gods ...

And therefore, so far as the gods are concerned, we see no good reason why we should fear being at a disadvantage. (5.105.1 and 105.3)

The Athenians argue that they "must" conquer Melos in order to show that the gods permit their behavior.

This is their difference with Callicles. Callicles' natural law is fully prescriptive: it prescribes that the powerful should get more. Thucydides' Athenians, by contrast, appeal to a natural law to determine what is proscribed. Knowing that they want to conquer Melos, they need to be sure that this is permissible to the gods (and thus in their rational self-interest). Fortunately for them (but not so much for the Melians), they find a natural law that is remarkably permissive. (The Athenians do not even say what it proscribes. For their purposes, it is even to say that it does not proscribe their proposed course in Melos.) So the difference here is between a law that prescribes—love your neighbor—and one that proscribes—do not murder. The latter sort of law does not determine exactly what behavior

one should do and is in this sense not fully prescriptive. But it is certainly prescriptive in the sense that it establishes standards for right and wrong.²³

Despite this difference, both Callicles and Thucydides' Athenians find in nature a standard for assessing right and wrong human behavior and for justifying domination by the strong.²⁴ But that is just one side of a debate. Socrates opposes Callicles in Plato's *Gorgias*. He argues that one should pursue "organization and order" in one's soul, and he calls this psychological order justice and moderation or self-control (504d). Socrates even suggests his own notion of natural law to oppose Callicles' when he calls psychological order "law" (504d1–3).²⁵

This debate raises questions about how one could determine what the natural norms are. To justify their finding, both Callicles and the Athenians appeal to how actual humans tend to behave and especially how whole peoples behave toward others (presumably because such behavior is less constrained by conventions). But there is little reason to suppose that the naturally common is the naturally normative. What if, as Socrates' inquiries suggest, we are all unwise about how to live? Socrates therefore appeals instead to

²³ There will be objections to my reading of Thucydides. What if the Athenians address what the gods permit only because the Melians raised the question and not because they themselves take the gods seriously? It still does not follow that the Athenians are appealing to a merely descriptive natural law. What follows is that they are appealing to a normative law for merely *ad hominem* purposes. And what if, despite my claim to the contrary, the Athenians are arguing that the gods must permit their imperialist behavior because everyone really must, given the opportunity, pursue empire? The Athenians are still appealing to divine standards of right and wrong and judging their contents based on their study of nature.

²⁴ Compare Antiphon, and especially fr. 44 of his *Truth*, with Gagarin 2002 and Pendrick 2002. Antiphon does not explicitly invoke natural law, but he does argue against following convention.

²⁵ Plato's Socrates does not do much with this way of talking, and he probably goes for it here to heighten the contrast with Callicles. Also, although he says nothing in the *Gorgias* to encourage this reading, Socrates might mean that psychological order and harmony require agreement with conventional, civic laws. He elsewhere appears deeply devoted to obeying civic law, and he might well think that successfully ordering one's soul requires conformity with communal norms. (See Plato, *Ap.* 32a–c and *Cr. passim*, and Xenophon, *Mem.* 4.4, esp. 4.4.4. For the general thought, see also Anonymus Iamblichi 6.1. For discussion, see Balot 2006, pp. 113–20.) Of course, if Socrates is attached to conventional laws, he might be attached to all and only those conventional laws that genuinely deserve the name 'law', and he might think that the only conventional laws that genuinely deserve the name 'law' are those that represent the natural law of psychological order. This way of defining conventional laws is familiar in the subsequent natural law tradition (see, e.g., Cicero, *Leg.* 2.11–13), and it is not entirely absent from Socratic texts. See Plato, *Hp. Ma.* 284a–285b and Pseudo-Plato, *Min.* 314e, and compare Plato, *Rep.* 422e and *Pol.* 293e.

what is common among those who know what they are doing—the cobblers, shipbuilders, and other craftsmen—and argues that just as craftsmen seek to impart order and harmony to their products in order to make good products so too we should try to impart order and harmony to ourselves in order to be good people (*Gor.* 503e–504d).

Callicles also appeals briefly to animal behavior to support his claim that nature prescribes that the stronger get more (*Gor.* 483d3). But this kind of appeal, very common and easily parodied,²⁶ is vulnerable. One might appeal to cooperative animal behavior, as the Stoics would do (e.g., *Cic., Fin.* 3.62–63), or as Socrates does, to a more abstract feature of animal life, namely the importance of order in the animal body (*Gor.* 506d5–8). Additionally, all such appeals are vulnerable to the objection that humans are or at least should be different from other animals.

Socrates suggests a third way of finding evidence of natural norms when he appeals, as Heraclitus had, to the geometric order and harmony of the whole cosmos (507e6–508a8). Unfortunately, Socrates makes no more clear than Heraclitus had how this sort of natural fact is relevant to norms for human behavior.

There remains one reason for Socrates to suppose that his conception of natural norms is superior to Callicles'. He has his experiences of examining himself, Callicles, and many others. So far as he can tell, his views are consistent, and he can produce arguments for his contentious claims, whereas "no one I've ever met" can contradict his claims "without being ridiculous" (508e–509a, with 482a–c, quoting from 509a5–7). This includes Callicles, who contradicts himself several times in their conversation before he finally refuses to answer any more questions sincerely.²⁷

In this way, Plato's *Gorgias* suggests a minimal test for an ethical theory in general and a natural law theory in particular: it must be coherent. The *Gorgias* also suggests that

²⁶ See, e.g., Herodotus 2.64 and the parody of Aristophanes, *Birds* 755–68. Diogenes of Sinope (discussed below) earns his nickname "the Cynic" ("Dog-like") from behavior that befits this trope.

²⁷ See Woolf 2000.

Socrates' ideas pass this test. So although the dialogue illustrates a debate about the content of natural norms, it also offers some promise for a particular approach to natural law. If Socrates is right about his experiences and if his experiences are telling, then perhaps human nature is so robust that it allows only one consistent theory of right and wrong, namely, Socrates'. In the absence of a psychology that could justify the bold assumptions that underpin Socrates' claims about what makes an orderly soul possible, philosophers can do nothing but continue as they have. They must answer Heraclitus' call for self-examination, and they must see if he and Socrates are right to insist on moderation, by testing what views are at least consistent. If Socrates' approach continues to pass the test and if the rivals continue to fail, the promise of a natural standard for right and wrong abides.

5. Contesting the Law-likeness of Natural Norms

Another set of controversies addresses more directly the propriety of the metaphor "natural law." Even if unconventional standards of right and wrong are discoverable by human study of nature, are they law-like enough to be called natural law? Moderns might worry that they fail to be law-like because they fail to have a legislator. But the ancients do not much worry about this, perhaps because the Greek *nomos* applies to conventions that arise gradually without any particular agents doing any particular convening.²⁸ Plato does, however, argue that natural norms cannot be fully law-like because right and wrong are not codifiable into exceptionless rules, and Aristotle and the Stoics provide divergent responses to the problem.

²⁸ Nor, as it happens, are ancient theological cosmologies friendly to the claim that god *made* natural law. Plato embraces the thought that the natural world is made by god, but not the thought that the norms governing the natural world are made by god. (Goodness exists independently of the creator in the *Timaeus*, probably because Plato continues to believe that although divine approval might attach to the right things, it does not make the right things right (*Eu.* 9a–11b).) Aristotle and the Stoics, on the other hand, deny that the world is created by a transcendent deity.

In Plato's *Statesman*, the Eleatic visitor expresses skepticism about civic laws.²⁹ He insists that ultimate authority should rest not with such laws but with a wise ruler (294a6–8), and to explain why, he notes,

law could never accurately embrace what is best and most just for all at the same time, and so prescribe what is best, for the dissimilarities among human beings and their actions, and the fact that practically nothing in human affairs ever remains stable, prevent any sort of expertise whatsoever from making any simple decision in any sphere that covers all cases and will last for all time. (294a10–294b6, cf. 294e–295b)

That is, fully law-like rules—general prescriptions and proscriptions—might capture what is right and wrong most of the time, for most people, in most circumstances. But right and wrong depend upon the particulars, and so even the best general laws will prescribe what is, in some special circumstances, wrong or proscribe what is, in some special circumstances, right. It would be better, then, to be ruled by someone who is wise and who can use his expertise itself as "law" (296e–297a). This is not to say that it would be better to live without laws. The Eleatic Visitor recognizes the necessity of laws (294c–295a), and he acknowledges that the ideally wise ruler (at least in our time, as opposed to the age of Cronus [cf. 275c]) would make use of them (305e, 309d, 310a). But the wise ruler must be above the law, as the proper normative authority is not to be found in the generalizations of the laws but in reason or wisdom, which cannot be codified.³⁰

²⁹ For the *Statesman* (also known by its Latin title *Politicus*), I cite the text of Duke et al. 1995, and I follow closely the translation of Rowe, in Cooper 1997.

³⁰ The roots of this critique are also evident in *Republic* 1, where Socrates impugns "returning what is owed" as a defining characteristic of justice on the grounds that in some circumstances, such as when one owes a weapon to a friend gone mad, it is not just to return what is owed (331c). The critique is also assumed in the *Laws* (text in vol. 5 of Burnet 1900–1907). There, the Athenian concedes that it would be better to be ruled by one person's wisdom but argues that because this is not possible (875b–d; cf. 691c–d and 713c–d), the rule of law is the practicable best. Even still, the Athenian insists that laws should be made as regulations of reason (*nous*) (713e–715b, cf. 890d), and should be safeguarded by "men who are likened to reason (*nous*)" (965a1 with 960b–e and 961c).

This critique of laws suggests that any "natural law" would have to be less than fully law-like.³¹ Anyone persuaded by Plato's critique but still drawn to the promise of natural law is faced with two main options. The first option is to forge ahead on the assumption that one can talk meaningfully of "natural law" despite its lack of full codifiability. The second is to scale back one's ambitions and to use the metaphor of "natural law" not for the standard for all right and wrong but only for more isolated, particular judgments.

Aristotle takes the second of these options.³² In the *Ethics* (*Nicomachean* 5.6–7 = *Eudemian* 4.6–7), Aristotle distinguishes between one part of political justice that holds by mere law and another that holds by nature. This is not the distinction between civic and natural law. Rather, it is the distinction between laws whose authority is *merely* conventional and those whose authority is natural. *Mere* law—*mere* convention—can make only what is naturally neither just nor unjust into something unjust (such as driving on a particular side of the road). Injustice so defined is (merely) legally unjust. But other laws articulate what is naturally just or unjust; they specify a justice that everywhere has the same force.

This might suggest that Aristotle wants to defend a robust conception of natural law, with a broad set of general rules that everywhere have the same force. But it cannot be said that Aristotle develops this idea in the *Ethics*. First, Aristotle argues that the natural, including natural justice, is changeable (1134b24–30). It is unclear what exactly he means by this, but it seems to suggest local variations more than general rules that everywhere have the same force. Second, Aristotle does not explain how civic laws can articulate what is naturally just. He says that it is "clear" which laws are by nature and which merely by

³¹ This might explain why Plato does not develop more fully a natural law theory of his own and why so many scholars have said so little about the explicit hints of natural law in Plato's dialogues. But see Maguire 1947, Morrow 1948, and Hall 1956, pp. 201–5.

³² For the *Ethics* and *Rhetoric*, I cite Bywater 1894 and Ross 1959, respectively, and my translations borrow from the renderings in Barnes 1984. With *EN* 5.7 (= *EE* 4.7), compare *Magna Moralia* 1.33, a text I set aside for now.

convention (1134b30–33), but as the debate between Callicles and Socrates shows, it is not clear.³³

In the *Rhetoric*, Aristotle distinguishes between "particular" and "universal" laws (1.10, 1368b7–9; 1.13, 1373b4–6), where the former are established by a particular community for its members and the latter hold "by nature" (1.13, 1373b6). It is tempting to use this to illuminate the distinction between merely legal and natural justice, so that merely legal justice is specified by particular laws whereas natural justice is specified by universal laws. But Aristotle says nothing explicitly to encourage this reading.³⁴ He does, however, explicitly discuss natural law and even quotes Antigone twice (1.13, 1373b9–13; 1.15, 1375a33–b2).³⁵ Unfortunately, although he seems to approve of Antigone's appeal to unwritten laws (esp. 1.13, 1373b6–13), he does not explain why he thinks that these

³³ Indeed, Yack 1993, esp. pp. 140–49, asserts that Aristotle does not even say that there are natural standards of right and wrong. On his view, merely legal justice is derived "from agreements to designate as just or unjust actions about which we would otherwise be indifferent," and natural justice is derived "from judgments about the appropriate obligations to impose on members of political communities in particular situations" (p. 144). I disagree. Natural justice has its force independent of human judgments: it "does not depend upon thinking this or that" (1134b19–20). The traditional interpretation—that Aristotle does mean to invoke natural standards for right and wrong—is developed with more optimism than I offer here by Miller 1991 (and Miller 1995, pp. 74–79) and Kraut 2002, pp. 125–32.

³⁴ Indeed, he seems to discourage it. In the *Ethics*, he insists that natural law can change (*EN* 5.7, 1134b24–34), but in the *Rhetoric*, he suggests otherwise (1.15, 1375a31–32). But one should not be discouraged. The *Rhetoric* passage is not in Aristotle's own voice: he is reporting what one "must say" if the written law is against one. (Even more obviously: in *Rhetoric* 1.13, it is Antigone and not Aristotle who says that the unwritten laws are eternal.) By contrast, when Aristotle endorses the idea of natural law in his own voice in *Rhetoric* 1.13, 1373b6–9, he does not say whether it is changeable or not.

³⁵ In *Rhetoric* 1.13, he tries to give two other examples, but they fail to illuminate. He first quotes Empedocles fr. 135 DK (1373b14–17), but this mentions natural law without specifying its content ("But what is lawful for all extends continuously through the wide-ruling air and through the boundless light"). Then he notes a reference to natural law in Alcidas' Messeniatic Oration (1373b18), but he does not identify what Alcidas said, at least not according to the surviving manuscripts. A scholiast suggests that he originally identified or meant to identify the following quotation: "God has set all men free, nature has made no man a slave." This would be a startling example for Aristotle to have used (or to have had in mind), given his belief that there are natural slaves (*Politics* 1.4–7). Of course, given his purposes in the *Rhetoric*, Aristotle need not be saying that each of these examples succeeds in pointing out a natural law; he could intend them merely as examples of rhetorical appeal to natural law (cf. 1.15, 1375a27–b8). But we still have little reason to suppose that the scholiast knew what passage in Alcidas' speech Aristotle had in mind, and so I seriously doubt that Ross is right to print the scholion as though it reports Aristotle's original words, subsequently lost in the manuscripts.

"unwritten laws" are genuine universal or natural laws. He certainly does not think that their being unwritten does the trick (despite the appearances at 1.10, 1368b7–9 and 1.15, 1375a27–b25), as he recognizes that particular laws can be unwritten (1.13, 1373b4–6). He simply assumes that Antigone's burial of Polyneices is an example of a naturally just action and so an action defined as just by a natural, universal law.

A wider view of Aristotle's discussion in the *Rhetoric* leaves two plain options to work out how to identify "universal," "natural" laws. The first is cynical. Since orators will appeal to "universal" or "natural" law whenever written, civic laws tell against their case and they will argue against "universal" or "natural" laws whenever written, civic laws favor their case (1.15, 1375a27–b25), perhaps we should see these appeals as mere rhetorical devices. I doubt that Aristotle intends for his readers to take this option, since he seems to endorse the reality of natural law (esp. 1.13, 1373b6–13).³⁶

The second option is to take the contrast between "universal" and "particular" literally, and to identify as "universal" those laws that are recognized by everyone, across all the various particular communities (see 1.10, 1368b8–9 and 1.13, 1373b6–9).³⁷ Unfortunately, this is problematic. First, how should we specify what counts as agreement and how much agreement is enough? Presumably, Aristotle does not mean that a universal law has to command full and immediate assent from literally every human being. Antigone's

³⁶ Contrast Yack 1993, pp. 144 and 146. Yack also doubts that the *Rhetoric*'s talk of "unchanging" natural law directly explains anything about the *Ethics*' changeable natural justice. But see n. 34 above.

³⁷ Cf. Xenophon, *Mem.* 4.4.19. Aristotle appears to assume that all universal, natural laws are unwritten (1.10, 1368b8–9 and 1.15, 1375a27–b25), even though he does not assume that all unwritten laws are universal and natural (1.13, 1373b4–6; contrast, perhaps, 1.10, 1368b7–9). This needs explaining if universal agreement is sufficient to make a law universal and natural. But Aristotle might think that there is never universal agreement on all the details of some *written* law, given natural variations among human communities. Hence, the universal, natural laws are unwritten. Note that they had better not be unwritten merely because they are so much more general than written laws, though, since they have to retain enough specificity to warrant the conclusion, e.g., that Antigone is right to bury Polyneices. It is, in fact, more plausible to think that they are unwritten because they are too particular. On this view, human beings can agree about some particular judgments of justice—and these are the "universal, natural laws"—but they cannot all agree on general judgments, since there are so many different ways in which we can generalize from the same set of particular judgments, let alone from various overlapping sets. Cf. Strauss 1953, pp. 159–61. See also the remarks about Cicero and the Roman jurists below.

laws do not do that, at least as long as Creon thinks it right to leave Polyneices unburied. Perhaps he means that everyone must be disposed to assent eventually (as Creon does), under the right conditions, or that all but a few must be so disposed. But problems remain to specify the right conditions of assent or the principles that explain why some dissent is irrelevant. Second, and more problematically, why should one infer that something is natural from the fact that everyone accepts it? Cannot everyone be wrong? One might be tempted to think that Aristotle is trading the normative notion of natural law for an empirical observation of perfectly regular causal relations. On this view, it is not natural law that torturing babies for fun is wrong; it is natural law that humans find torturing babies for fun to be wrong.³⁸ But this temptation should be resisted: Aristotle cannot duck the normative question so easily.

In sum, Aristotle shies away from developing an ambitious theory of natural law. He certainly recognizes the rhetorical power of the metaphor. But he does not invoke it in his own theorizing (in the *Ethics* and *Politics*), and when he does show some sympathy for it (in the *Rhetoric*), he leaves the ideas behind it undeveloped. In place of a natural standard of right and wrong for all civic laws and all human behavior, Aristotle offers "natural law" as a rhetorical device for some particular occasions, concerning some particular laws and behavior, and he assigns this device the plausibility that depends upon taking widespread agreement as a sign of what is natural.³⁹

The Stoics, by contrast, continue in the tradition of Heraclitus and Plato to insist that there is a natural standard for all civic laws and all human behavior, and they continue to

³⁸ Compare the "descriptive" reading of Thucydides 5.105.1–2, discussed in §3 above. For descriptive natural law, see also Plato, *Tim.* 83e.

³⁹ I here agree with Strauss' (1953, pp. 146–63) broad distinction between the "Socratic-Platonic-Stoic" (I would add "Heraclitean") and "Aristotelian" conceptions of natural right. On this view, Thomas Aquinas misunderstands the historical roots of his natural theory to the extent that he thinks of it as deeply Aristotelian. I also agree with Strauss 1953, pp. 163–64, that the Thomistic conception of natural right is another thing altogether, although it is deeply influenced by the ancients.

apply the word "law" to this standard.⁴⁰ But at least the early Greek Stoics, like Aristotle (esp. *EN* 5.10 = *EE* 4.10), heed Plato's caution about exceptionless prescriptions or proscriptions. They recognize no exceptions to prescriptions of the tautologous form "act virtuously," but they accept no universal, non-tautologous prescriptions. On their view, it is generally appropriate to pursue, say, health, but sometimes inappropriate: "If healthy people had to serve a tyrant and by this be destroyed, while sick people were freed from service and so also freed from destruction, the sage would choose to be sick in this circumstance, rather than to be healthy" (Sextus, *M.* 11.66).⁴¹ As the Stoics put it, pursuing health is generally appropriate, and pursuing sickness is appropriate "in special circumstances (*kata peristasin*)" (see DL 7.109). Despite this, the Stoics make heavy appeal to law as right reason that pervades and organizes the cosmos, prescribing what one ought to do and proscribing what one ought not to do.⁴²

Since they are insisting that right reason is *law* despite their awareness that it is not codifiable and so not fully law-like, the Stoics need some reason for sticking with the talk of natural law. One motivation is no doubt broadly Cynical. The Cynics were followers of Socrates who rejected conventional values of all sorts in favor of living in accordance with nature. Diogenes of Sinope, for example, was notorious for masturbating in the *agora*, which, though shocking, was only *conventionally* shocking (Plutarch, *Stoic. rep.* 1044b; DL 6.46 and 69). Like the Cynics and, for that matter, like Socrates, the Stoics called traditional values into question. Greeks traditionally cherished honor, wealth, and health, but Stoics insisted that these things do not matter to whether one is living well or poorly. At least

⁴⁰ For the Stoic conception of natural law, see Watson 1971; Striker 1986 and 1991, pp. 248–61; Vander Waerdt 1989, 1994, and 2003; Schofield 1991; and Mitsis 1994 and 2003. My account in this section draws heavily on ideas that I develop more fully in Brown forthcoming.

⁴¹ Although the renegade Stoic Ariston of Chios used this example to argue that there is no general preference for health, and no general distinctions of value to be drawn among conditions other than virtue, such as health, the example was not unwelcome to Chrysippus and orthodox Stoics as it makes the perfectly orthodox point I am describing.

⁴² See the texts cited in n. 4 above.

some early Stoics also took their commitment to nature over convention to naughty, Cynical extremes: Zeno, the founder of Stoicism, and Chrysippus, its most prolific and ingenious expositor, both defended incest.⁴³ (Later Stoics, especially in Rome, recoiled and purged such Cynicism from the Stoa.) The metaphor of natural law (*nomos*) neatly serves Cynical aims, because it wrests the traditional source of normativity (*nomos*) away from convention (which is how *nomoi* were traditionally recognized) and ties it exclusively to nature. That the metaphor also rings of paradox in the face of a sharp distinction between nature and law or convention (*nomos*) is just icing on the cake, since the Stoics, like Socrates, loved the way paradox stimulates thought.⁴⁴ That Plato and his Socrates had invoked the idea of calling right reason (wisdom) "law" would be something like the cherry on top (*Gor.* 504d, *Plt.* 297a).

The Stoics not only reclaimed the rhetoric of "natural law" as a standard for all right and wrong, they also made some progress toward justifying their particular account of what nature prescribes and proscribes. The Cynics on this score offered very little beyond what Callicles does. But the Stoics, to judge from the handbook summary of Cicero (in *De finibus* 3), offered a relatively sophisticated developmental psychology, starting with observation of infant behavior.⁴⁵ Their principal thought seems to have been that we *should* value what we *would* value had we developed naturally, without being corrupted by society and misleading appearances, and so they looked carefully into what constitutes natural development.

But they did not limit themselves to a study of human nature. Following Heraclitus, Socrates in the *Gorgias*, and several other Platonic dialogues, the earliest Stoics also believed that the pinnacle of human development requires agreeing with the harmonious

⁴³ See especially Sextus, *P.* 3.245-246 = *M.* 11.191-92, citing Zeno and Chrysippus' *Republic*; and DL 7.188, citing Chrysippus' *On Republic*. The Stoics need not be endorsing incest quite generally; they could be defending it only in special circumstances (see Origen SVF 3.743). But Origen's testimony might (and I think likely does) reflect a later, well-scrubbed version of Stoicism and not the actual doctrine of Zeno and Chrysippus.

⁴⁴ See Brown 2006.

⁴⁵ Compare Cicero, *Fin.* 3.16-22 and Seneca, *Ep.* 121 with the undeveloped "appeal to the cradle" at Aristotle, *EN* 6.13 (= *EE* 5.13), 1144b4-6 and *Pol.* 1.5, 1254a23.

organization of the cosmos.⁴⁶ That is, they maintained first that living well is living virtuously or with knowledge, and that knowledge is psychological coherence, the reasoned agreement with oneself in the face of new experience and in the face of full Socratic examination.⁴⁷ But they also maintained that this coherence exists not just in the mind of any human being who has achieved wisdom but also, and more importantly (because, like Socrates, they do not recognize anyone who has achieved wisdom), in the rational order of the cosmos.

This gives them, like Socrates in the *Gorgias*, two routes to justify their account of what is natural. First, they have the empirical evidence of what is natural. They have improved on this score by adding some sophisticated developmental psychology, but Stoic writings still leave empirical investigations very much in their infancy. But they also have their insistence that Stoic values—the Stoic account of what is prescribed and proscribed—are required for psychological coherence. This is open to continued investigation by Socratic examination, and it is, in its way, an empirical hypothesis. Either it is or it is not the case that psychological harmony requires the commitments of the Stoic sage. If it is, then there is, after all, a natural law in the right reason of the Stoic sage.

Of course, this natural law is not fully codifiable, given the Stoic caution about non-tautologous universal prescriptions.⁴⁸ But this does not mean that the Stoics take themselves to be using 'law' in a very loose metaphor. They have much to say about general

⁴⁶ See, e.g., DL 7.87–88 and Cleanthes' *Hymn to Zeus* [Stobaeus, *Anthology* 1.1.12, vol. 1 pp. 25.3–27.4 WH].

⁴⁷ For the identity of virtue and knowledge, see Stobaeus, *Anthology* 2.7.5b, vol. 2 p. 58.9–11 WH and 2.7.5b4, vol. 2 p. 62.15–20 WH, and DL 7.90. All of the standard virtues are defined as forms of knowledge (*epistēmai*): see Stobaeus 2.7.5b1–2, vol. 2 pp. 59.4–62.6 WH and DL 7.92–93. For the definition of knowledge as a cognitive grasp or system of cognitive grasps that is secure, firm, and unshakable by argument, see Stobaeus 2.7.5l, vol. 2 pp. 73.19–74.1 WH; DL 7.47; Sextus, *M.* 7.151; Pseudo-Galen SVF 2.93; Philo SVF 2.95; and cf. Cicero, *Academica* 1.41–42, who attributes the account to Zeno of Citium, the founder of Stoicism. For a secondary definition of knowledge as a state of receiving impressions that is unshakable by argument, see Stobaeus 2.7.5l, vol. 2 p. 74.1–3 WH; DL 7.47; and Pseudo-Galen SVF 2.93.

⁴⁸ The literature on the early Stoic conception of natural law (see n. 40 above) has been dominated by a dispute over whether Stoic natural law is codifiable or not. I here try to minimize the dispute.

rules in ethics. They emphasize the importance of such rules in moral education and advice.⁴⁹ And more importantly, although this point is contested, it seems likely that the Stoics appealed to general rules to explain how all the correct particular prescriptions and proscriptions cohere, since they say that all the virtues are share the same "theorems" (DL 7.125). On this view, right reason—which is virtue and natural law—comprises a wide range of rules all of which admit of exceptions, and it grasps how these *agree* in every particular judgment that it makes. In this way the Stoics demand a revised conception of law, so that a fixed code of rules does not accurately capture the *form* of real law. Real law, instead, is just what reason sees, both in general (which tolerates exceptions) and in particular. There is no exhaustive codification of such law and no algorithms for applying its loose generalizations. But there is also no running from the explanation of prescriptions and proscriptions in light of a complex web of interlocking generalizations.

This conception of natural law can still serve as a standard for civic laws. But first, it would seem to allow a range of statutory codes, each of which is an appropriate interpretation of the general prescriptions and proscriptions that are most salient for its particular community. That fits the Stoic recommendation to engage in politics wherever one can, in order to improve others' lives by bringing the life of the community closer to agreement with the law of right reason,⁵⁰ and their conception of civic laws as rules such as one would give in advice, but with sanctions attached, to help the advice take.⁵¹ It also fits

⁴⁹ The fullest surviving discussion is Seneca, *Ep.* 94–95, but Seneca is drawing on a considerable earlier literature that is lost. The "paraenetic" or "perceptive" (from Greek and Latin words for "rule," respectively) branch of ethical philosophy that Seneca draws on (*Ep.* 95.1) is attested for the earliest Stoics (see Sextus, *M.* 7.12 on the renegade Ariston of Chios' rejection of the paraenetic branch, and cf. DL 7.84 on the part of ethics concerned with turning toward and away from appropriate actions).

⁵⁰ See esp. DL 7.121, with Brown forthcoming, chs. 7–10.

⁵¹ See Seneca's defense of civic laws (*Ep.* 94.37) and the general report that the Stoic sage would make laws and educate (Stobaeus 2.7.11b, vol. 2 p. 94.7–20 WH).

their "situationism" about politics, their recognition, for example, that the best regime for a community depends upon the particular composition of the community.⁵²

It does not, however, fit Cicero's understanding of natural law in *On Laws*. He says, with the Stoics, that natural law is the same for all, but he also tries to offer a single best codification of that natural law. He admits that the codification cannot be complete (*Leg.* 2.18), but he does not suggest that an entirely different codification could be the best representation of natural law for a different community, just as his deeply Roman (see, e.g., *Leg.* 2.23–24) codification might be the best representation of natural law for Rome. This just shows that the metaphor of natural law retained its flexibility, and it meant something a bit different for Cicero than it did for the earliest Stoics.

The Stoics' comprehensive, unfolding conception of natural law is also ideally suited to serve as the metaphorical basis for civic laws that are conceived as a rich, open-ended body of thinking that includes interpretation of particulars. The fit between the Stoic ideal and Roman law is tight, which explains why the jurists included a trace of the philosophers' natural law as a fundamental element of Rome's *Corpus Iuris Civilis*.⁵³

6. The Cosmos as a Polis

Once one supposes that there is a law, right reason, governing the cosmos, it is natural to compare the cosmos to a well-ordered city. But the additional step is not mandatory for all conceptions of natural law. Aristotle conceives of natural law as something that holds *outside* of community (*Rhet.* 1.13, 1373b6–9), and Callicles' natural law does not

⁵² See, against Erskine 1990, Vander Waerdt 1991 and Brown forthcoming, §7.7.2.

⁵³ In Justinian's *Institutiones* (1.2.1, following Gaius, *Inst.* 1.1), the philosophers' natural law appears *not* as *ius naturale*, which is there said to govern animals and humans equally and to concern, e.g., sexual reproduction, but as *ius gentium*. But the jurist's definition of *ius gentium* conflates the Platonic-Stoic natural law as right reason with the law actually agreed to by all peoples: "That which natural reason has made between all human beings and holds among all peoples uniformly is called *ius gentium* because all peoples use this law." The same conflation is encouraged by Cicero, *Off.* 3.23 and 69, and by Aristotle, *Rhet.* 1.10, 1368b8–9 and 1.13, 1373b6–9 (discussed above).

establish a cosmic city. But if the natural law is right reason organizing the whole cosmos as law should organize a city, then the cosmos is like a city. This is the Stoic metaphor of the cosmopolis.⁵⁴ The ideas it expresses inherit their warrant from the Stoic defense of natural law: if Stoics have a plausible case for their account of a natural standard for right and wrong, they can use that case to defend their particularly cosmopolitan ideas. But what particular ideas are expressed by the metaphor of the cosmopolis that were not already advanced by the metaphor of natural law?

The great Stoic Chrysippus seems to have invoked the cosmopolis not directly for ethics or politics but for theology. He argued that since right reason made gods and wise human beings common citizens of the cosmos and since a city is made for the sake of its members, with everything in the city belonging to its citizens, the cosmos is made for the sake of gods and wise human beings, with everything in the cosmos belonging to gods and wise human beings. The cosmopolis is a premise in an argument for divine providence.⁵⁵

Still, there is ethical and political import to this premise. The core idea that the cosmopolis expresses is of *community*. According to the standard ideology of the Greek city-state, the polis is the primary locus of the goods shared with other human beings. The metaphor of the cosmopolis calls this into question. Its negative import is that one's native city is not the appropriate locus of community and so not the source of so much normative authority. The positive import of the metaphor is that one does or should cultivate community with human beings outside of one's native city. This positive import can be articulated in elite or democratic terms, depending upon whether the community is conceived as a special achievement or a given feature of humanity. The evidence for the

⁵⁴ See n. 5 above. For Stoic cosmopolitanism, see Schofield 1991 and Brown forthcoming. For broader discussion of cosmopolitanism in ancient thought, see Baldry 1965.

⁵⁵ For the basic argument, see Cicero, *Nat. D.* 2.154 and Arius Didymus ap. Eusebius SVF 2.528. Unfortunately, both of these sources are a bit confused as to whether only the wise or all human beings are citizens of the cosmopolis. But the evidence for Chrysippus' elitist view is unambiguous: see Philodemus, *Piet.* 7.12–8.4 and Plutarch, *Comm. not.* 1065e–f. For discussion, see Brown forthcoming, §5.3–4.

negative thesis is uncertain, but it would seem that Cynicizing Stoics incline toward it and Roman Stoics decline away from it.⁵⁶ The evidence concerning the positive thesis is much clearer. Chrysippus thinks that the cosmopolis is an elite community of the wise by virtue of their expertise in the natural law, but later Stoics assume that all human beings are citizens of the cosmos by virtue merely of being subjects of the natural law.⁵⁷

But these theses by themselves do not require belief in natural law, and they were far from unknown in the fifth and fourth centuries. Negative cosmopolitanism expressed itself in two main ways. Some, such as Anaxagoras, rejected obligations to their native polis in favor of contemplative withdrawal, and were at least thought to have fancied this an attachment to the cosmopolis.⁵⁸ Others such as Socrates and Diogenes the Cynic rejected traditional political engagement in their native city in favor of an unusual sort of politics that they shared not just with native compatriots but with foreigners. Insofar as these latter "negative cosmopolitans" embrace their mission of helping human beings as such, they also

⁵⁶ See Brown forthcoming, chs. 7-10. I argue that Chrysippus and Marcus Aurelius accept the negative thesis and that Cicero's *De officiis* and Seneca reject it.

⁵⁷ For Chrysippus, see especially Philodemus, *Piet.* 7.12–8.4 and Plutarch, *Comm. not.* 1065e–f. For confused moves in a more democratic direction, see Cicero, *Nat. D.* 2.154 and Arius Didymus ap. Eusebius SVF 2.528. And for a perfectly democratic cosmopolis, see Cicero, *Fin.* 3.64. The democratic version is the one Cicero invokes at *De legibus* 1.23 (quoted in §1 above), and the one that is prominent in the work of Roman Stoics (e.g., Seneca, *De otio* 4.1, and Marcus Aurelius 4.4).

⁵⁸ See the anecdote at DL 2.7. The anecdote might not be reliable evidence for Anaxagoras' attitudes, but it is certainly reliable evidence of at least a later ancient conception of the contemplative life.

offer a clear example of positive cosmopolitanism.⁵⁹ There are other hints of this ethos among those who sought to follow nature instead of convention.⁶⁰

Already it is clear that the ideas behind the metaphor of the cosmopolis tolerate a wide range of political commitments. It certainly did for the Stoics. Many Stoics favored political engagement but argued that one should be willing to take up politics wherever one can best help people and not just in one's native city.⁶¹ The political consequences here involve the spread of the Stoic ideology. Of course, the Stoic ideology is flexible because it insists that appropriate action fits its particular circumstances. But the ideal remains a world-wide agreement on a single, Stoic way of life manifested in a variety of separate communities.⁶²

Empire is another way in which the Stoic metaphor of the cosmopolis could be put to political use. There is no good evidence that the earliest Greek Stoics favored this approach, despite the occasional assertion of Alexander the Great's influence.⁶³ But there are hints of a connection in Cicero's writings. In *On the Commonwealth*, Laelius appeals to Stoic natural law to defend justice against Philus' attacks. His invocation of natural law suggests the

⁵⁹ It is disputed whether Diogenes' cosmopolitanism (see, e.g., DL 6.63) is merely negative or also positive. Contrast Schofield 1991, pp. 141–45, with Moles 1995, 1996, and 2000. (I favor Schofield's negative reading: see esp. DL 6.38, which expresses the negative cosmopolitanism of the homeless wanderer who is at home everywhere, for which see also Democritus fr. 247 DK and Euripides fr. 1047 TGF.) Socrates was recognized as a cosmopolitan by the later Stoic tradition: see the Stoics Musonius (fr. 9 [*That Exile is no Evil*] 42.1–2 Hense = Stobaeus 3.40.9, vol. 3 p. 749.2–3 Hense) and Epictetus (*Diss* 1.9.1) and the Stoicizing *Tusculan Disputations* of Cicero (5.108) and *De exilio* of Plutarch (600f–601a). Brown 2000 argues that Plato's Socratic dialogues give good cause for this interpretation. The Socratics in the Cyrenaic tradition also show at least negative cosmopolitanism. For Aristippus the Elder, see Xenophon, *Memorabilia* 2.1.13, and Plutarch, *On whether virtue can be taught* 2.439e, and for the later Cyrenaic Theodorus, see Diogenes Laertius 2.99 with 2.98, and compare Epiphanius, *Against heresies* 3.2.9.

⁶⁰ See, e.g., Hippias' remarks at Plato, *Prot.* 337c–d and Antiphon fr. 44 DK.

⁶¹ See Brown forthcoming, chs. 7–10, where I argue that various Stoics disagree about whether one has special obligations to benefit native compatriots that must be balanced against one's reasons to emigrate.

⁶² See the evidence for Zeno's *Republic*, including esp. Plutarch, *De Alex. fort.* 329a–b, with Brown forthcoming, ch. 6.

⁶³ On this, readers have been misled by Plutarch, *De Alex. fort.* 329a–b. See Badian 1958 and Baldry 1965, pp. 113–27, against Tarn 1933 and 1948, vol. 2 pp. 399–449.

cosmopolis, as he stresses that one law joins all nations and he says that "the person who does not obey it exiles himself."⁶⁴ But Laelius also defends Rome's imperialism in this same speech.⁶⁵ Given the fragmentary state of Cicero's text, it is impossible to know whether Laelius drew together his suggestion of a cosmopolis and his defense of empire, but he certainly made the connection possible. Cicero elsewhere embeds a defense of Roman imperialism in his Stoic theory of duties (*Off.* 1.34–38 and 2.26–27), joining together in close proximity praise for Rome's wars of expansion and insistence on the fellowship of all human beings with all human beings. And in *On Laws*, Cicero constructs an idealized version of the ancestral Roman laws to serve as a codification of natural law—exactly the law that is supposed to apply to all human beings. In both of these texts, too, there is no explicit suggestion that Rome is the cosmopolis, and it is perhaps noteworthy that Cicero does not put the Stoic metaphor to this use more readily. But the connections between real-world imperialism and the doctrine of the cosmopolis are not difficult to make. The early Christians made them, and they cultivated a worldwide city of god as the cosmopolis of the wise.⁶⁶

The Greek metaphors of natural law and the cosmopolis have exerted tremendous influence through Cicero's writings, Roman law, and Christianity, and many have found them irresistible. But a glance at their emergence is enough to show how flexible they are, and how difficult it is to translate the metaphors in their richest, most suggestive form into persuasive non-metaphorical claims. These two lessons are related, and they encourage some skepticism. After all, flexibility gives these metaphors a specious semblance of power and plausibility if they are plausible but weak on some interpretations and powerful but much less plausible on others. Nevertheless, the bold claims that Heraclitus, Plato, and the

⁶⁴ Cicero, *Rep.* 3.27 (33 in Ziegler 1969).

⁶⁵ Cicero, *Rep.* 3.21–26 (34–37 in Ziegler 1969).

⁶⁶ See *Ephesians* 2:20 and Augustine, *City of God*. The Christians also had a place for natural law (*Romans* 1:14), but theirs tends to be an especially otherworldly cosmopolis.

Stoics made have not yet been shown false, and they have not lost their attraction. The skepticism called for is ancient: the skeptic keeps on inquiring.⁶⁷

⁶⁷ I thank Steve Salkever and Jill Delston for their comments on an earlier draft.