

Nature's Own Voice

Reason, Nature, and the Birth of Natural Law

by

Thomas Vierra

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Graduate Supervisory Committee:

Michael J. White, Chair
Ted Humphrey
Richard Dagger

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ABSTRACT

In this dissertation, I argue that the original development of Natural Law Theory (NLT) by the Stoics of the second and first centuries B.C. was not merely an outpouring or natural byproduct of an earlier philosophic achievement in Plato and Aristotle, but a *reaction* to it, specifically, an effort to correct certain problems that had surfaced as a result of discussion within and challenges to the broader eudaimonistic tradition. Prior to Cicero's writings in particular, the term "natural law" appears only occasionally in the philosophic texts, and never as a term signifying a coherent and developed moral theory. A central part of my argument will be to demonstrate the negative thesis that neither Plato nor Aristotle defended a version of NLT - a claim that current scholarship does not universally accept. The primary reason for my claim, I argue, is that neither Plato nor Aristotle accepted a conception of nature (*physis*) that contained a normative element that could be understood in terms of law (*nomos*) and its accompanying notions of command and obligation. This negative thesis is important because it clarifies the central modification the Stoics make on the eudaimonistic tradition, namely, the advancement of a distinct theory of nature, one in which they identify *physis* with "Divine Reason." The "theological conception" of *physis*, as I shall call it, entails a breakdown of the *nomos-physis* dichotomy that had been central to Greek thought for centuries prior and thereby makes possible the birth of NLT.

DEDICATION

To my wife, Tracey, for her tireless dedication and constant support, and to my children.

Ad majorem Dei gloriam.

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CHAPTER 1

INTRODUCTION

1.1 Metaphysics and Natural Law: The Contemporary Debate

The thesis of this dissertation rests on the key assumption that a close analysis of the original formation of Natural Law Theory (hereafter NLT) is relevant to current debates in natural law scholarship, especially the debate concerning the role of metaphysical claims in NLT. The primary purpose of the present chapter is to account for this assumption, beginning with the following observation: the attention given to the historical development of NLT by contemporary scholars and theorists has focused to a large extent on the thought of St. Thomas Aquinas, presumably with the assumption that a correct interpretation of Aquinas' NLT entails a correct understanding of NLT itself, or at least its most important commitments. I do not reject this assumption, but I believe that the approach is unsatisfactory because it is incomplete. More specifically, what this approach overlooks is the possibility that Aquinas was heavily indebted to a natural law tradition that had already seen over twelve-hundred years of development. Furthermore, this development occurred in the context of Stoic natural law, and insofar as we are right to think of NLT as a single tradition, it was (and is) a tradition in which the basic terms and assumptions were supplied, at least in part, by Stoic theorists. Hence we find in Aquinas' account of NLT, for example, a sizeable imprint of Stoic terminology, e.g. Divine Reason, Supreme Governor, and Divine providence.¹

¹ See Thomas Aquinas, *Summa theologiae*, trans. R.W. Dyson (Cambridge: Cambridge University Press, 2002), I.2.91-93.

But the value of an account of Stoic NLT is not limited to studies of Thomas' moral theory. Much of the increased interest in Aquinas' NLT among contemporary scholars and theorists has focused on the key debate regarding whether or not the basic principles of NLT are themselves metaphysical principles or derive from metaphysical principles. The debate began in earnest following Germain Grisez's 1965 essay on St. Thomas' first principle of practical reason.² According to Grisez, Aquinas' first principle of practical reason (as well as the first precept of natural law), namely, that "Good is to be done and pursued, and evil is to be avoided," is not a command or imperative such as expressed in the formula, "Do good and avoid evil." Rather, it should be understood as a descriptive claim that Aquinas believed was presupposed in all morally evaluable action. On this view, the ability of practical reason to grasp basic human goods and to direct the human agent toward realizing or achieving them provides the necessary *condition* for human action rather than an imperative or a command that results in moral success or failure. If correct, Grisez's account requires a significant revision of the traditional Neo-scholastic account of St. Thomas' theory. The effort to provide such a revised understanding constitutes a large part of what is known now as the New Natural Law (NNL) theory. One consequently finds that NNL in its origin and continuation has rested and continues to rest on a new understanding of Aquinas' conception of natural law and on a conviction that received interpretations of St. Thomas' theory were incorrect.

The central claim of NNL is that a worked out system of natural law and practical reason need not (because, on this view, it logically *cannot*) depend upon certain inferences from a prior philosophy of nature. As we find in John Finnis' *Natural Law*

² Germain Grisez, "The First Principle of Practical Reason: A Commentary on the *Summa theologiae*, 1-2, Question 94, Article 2" in *Natural Law Forum*, Vol. 10 (Notre Dame: Notre Dame School of Law, 1965).

and Natural Rights, the NNL theorist is Humean – or Humean enough – in his insistence upon the unbridgeable gap between fact claims and value claims, between “is” and “ought.” Hume wrote,

In every system of morality, which I have hitherto met with, I have always remarked, that the author proceeds for some time in the ordinary way of reasoning, and establishes the being of a God, or makes observations concerning human affairs; when of a sudden I am surprised to find, that instead of the usual copulations of propositions, *is*, and *is not*, I meet with no proposition that is not connected with an *ought*, or an *ought not*. This change is imperceptible; but is, however, of the last consequence. For as this ought, or ought not, expresses some new relation or affirmation, it is necessary that it should be observed and explained; and at the same time that a reason should be given, for what seems altogether inconceivable, how this new relation can be a deduction from others, which are entirely different from it.³

Regarding the Humean thesis, Finnis states that "the principle is both true and significant."⁴ We find the principle implied in Robert George's summary of NNL in his essay, “Natural Law and Positive Law.” According to George, NNL consists of three core principles:

[F]irst, and most fundamentally, a set of principles directing human choice and action toward intelligible purposes, i.e., basic human goods which, as intrinsic aspects of human well-being and fulfillment, constitute reasons for action whose intelligibility as reasons does not depend on any more fundamental reasons (or on sub-rational motives such as the desire for emotional satisfactions) to which they are mere means; second, a set of ‘intermediate’ moral principles which specify the most basic principle of morality by directing choice and action toward possibilities that may be chosen consistently with a will toward integral human fulfillment and away from possibilities the choosing of which is inconsistent with such a will; and third, fully specific moral norms which require or forbid (sometimes without exceptions) certain specific possible choices.⁵

³ David Hume, *A Treatise of Human Nature*, eds. David Fate Norton and Mary J. Norton (Oxford: Oxford University Press, 2000), III.1.1.

⁴ John Finnis, *Natural Law and Natural Rights* (Oxford: Oxford University Press, 1980), 39-42.

⁵ Robert P. George, “Natural Law and Positive Law” in *In Defense of Natural Law* (Oxford: Oxford University Press, 1999), 102.

The key point to notice is that nowhere in these three principles – beginning with the most general and abstract enumeration of non-inferred basic goods, e.g. friendship, and ending with the most concrete specifications of the natural law, e.g. “Do not commit adultery” – do we find a preexisting cosmological outlook, a natural setting as it were. What we have instead is an independent and organic system of practical reasonableness constituted by an intuited (or non-inferred) apprehension of certain basic goods.⁶ That is, NNL represents a theory in which moral knowledge of certain goods as truly good - that is, they are *bona fide* human goods - is possible apart from any inference from some prior metaphysical or anthropological truth.⁷ As J. Budziszewski summarizes, they are things "we can't not know."⁸

However, George writes elsewhere that NNL theory also contends that “basic human goods and moral norms are what they are because human nature is what it is,” and thus, contrary to the objections of Russell Hittinger and Lloyd Weinreb, NNL is not "natural law without nature."⁹ Grisez and his followers, George argues, rely on a fundamental distinction between *grounding* the natural law *in* nature and *inferring* the natural law *from* nature, and that one's acceptance of the former claim does not entail acceptance of the latter claim. George summarizes the point as follows: "the real issue is

⁶ By independent, I mean a moral theory, more specifically a moral epistemology, that is not derived from other non-moral (metaphysical) principles.

⁷ This claim suggests the possibility of enumerating the basic goods based on empirical evidence. NNL theorists have, consequently, made efforts along these lines. However, there continues to be substantial debate over what these goods actually are. Lists have been given. Some have been trimmed, others extended, leading to the unavoidable point that our intuiting certain things to be good is something quite different from our clearly and consciously apprehending their goodness, such that even to enumerate the goods things can be (as it has been) quite difficult.

⁸ See J. Budziszewski, *What We Can't Not Know* (San Francisco: Ignatius Press, 2003).

⁹ George, "Natural Law and Human Nature" in *In Defense of Natural Law*, 85. The phrase, "natural law without nature," is a chapter title in Weinreb's book, *Natural Law and Justice* (Harvard: Harvard University Press, 1990).

whether their claim that the most basic practical principles and moral norms are not inferred from prior knowledge of human nature somehow entails the proposition that morality is not grounded in nature."¹⁰ The NNL theorist therefore makes two distinct claims: (1) negatively, the most basic normative principles of NLT are known non-inferentially, that is, they are not derived or inferred from still more basic metaphysical principles; (2) positively, the most basic normative principles of the natural law are grounded in human nature. I will attempt to clarify these two claims in order, and then I will give attention to an additional key claim of NNL: (3) the basic principles of NLT are not imperatives or commands, but the necessary preconditions for practical argument and action.

Central to Grisez's interpretation of Aquinas on the first principle of practical reason, found in *Summa theologiae*, 1-2, question 94, is his treatment of the notion of self-evidence. For Aquinas, self-evidence has two senses: something may be self-evident in itself (though individual people may or may not recognize it), which Grisez calls "objectively self-evident"; or something may be self-evident to us ("subjectively self-evident"), and thus Aquinas describes it as knowledge that "falls within the grasp of everyone."¹¹ Aquinas introduces this distinction, Grisez argues, in order to state that the "basic principles of natural law on the whole...are self-evident to all men."¹² There are certainly principles of the natural law that are not known by all men - e.g. *God should be loved above all*, and *God should be obeyed before all* - even though these principles are "objectively self-evident." "However, the basic principles of natural law on the

¹⁰ George, 85.

¹¹ Grisez, 172-175.

¹² Ibid, 172.

whole...are self-evident to all men" - self-evident in the objective sense in that they are principles that cannot be derived from some prior principle(s), and self-evident in the subjective sense in that all people recognize their underivability and their status as the first principles of practical reasoning.

Grisez roots his analysis in Aquinas' treatment of the "intelligibility" of the subject of a self-evident principle. By "intelligibility," Grisez takes Aquinas to mean "all that would be included in the meaning of a word that is used correctly if the things referred to in that use were fully known in all ways relevant to the aspect then signified by the word in question."¹³ I cannot deal with all of what Grisez states here, but the basic point seems to be this: a universally recognized principle of natural law is self-evident because the predicate of that principle belongs to the intelligibility of the subject of that same principle. In other words, the basic principles of natural law are statements in which the predicate states something about the subject that is part of the meaning of the subject, and hence the truth of the statement is immediately grasped apart from additional arguments. This appears to be Grisez's point when he states that "the subjective aspect of self-evidence, recognition of underivability, requires that one have such an adequate understanding of what is signified by the principle that no mistaken effort will be made to provide a derivation for it."¹⁴ Based on this understanding of intelligibility, Grisez concludes that the basic principles of NLT, according to Aquinas, are not "tautologies derived by mere conceptual analysis," but rather genuine foundational principles of practical reason that people recognize as both intelligible and underivable.

¹³ Ibid, 174.

¹⁴ Grisez, 173.

The foregoing analysis clarifies George's point that the basic principles of natural law, while not inferred from nature, are nevertheless *grounded* in nature - the second of the aforementioned central claims. George's argument, directed primarily at Lloyd Weinreb's criticism that the New Natural Law is "deontological natural law" and hence detached from human nature, is as follows:

[O]nly that which is understood to be worthwhile can provide a reason for action. Only that which is humanly fulfilling can be understood as worthwhile. Intrinsic goods are basic reasons for action precisely because they are (intrinsic) aspects of human well-being and fulfillment. They perfect human beings, i.e., beings with a human nature. As human perfections, 'basic goods' belong to human beings as part of their nature.¹⁵

Because human beings readily and universally recognize the intelligibility of the basic principles of the natural law (which is to say that human beings naturally and non-inferentially recognize the worthiness or desirability of the basic goods which supply the content of the basic principles), and because these basic goods truly are intrinsic aspects of the "well-being and fulfillment of flesh and blood human beings," it follows that the basic principles must be *human* principles, which is to say, they refer to constituent aspects of human nature.¹⁶ In other words, we would not grasp the basic principles of human good if we were something other than what we are. D.J. O'Connor's aptly summarizes the position in this way: "Were man's nature different, so would be his duties."¹⁷

One might object to the foregoing position of NNL by stating that it is unclear how one could be practically *reasonable*, which is to say, that one's practical judgments are good ones, without first considering how one's practical judgments "fit" or "accord"

¹⁵ George, "Natural Law and Human Nature," 86.

¹⁶ George, "Natural Law and Positive Law," 103.

¹⁷ D.J. O'Connor, *Aquinas and Natural Law* (London: Macmillan Press, 1967), 18.

what is naturally good for human beings. O'Connor observes, for example, that "any form of a natural law theory of morals entails the belief that propositions about man's duties and obligations can be inferred from propositions about his nature."¹⁸ In response to this claim, John Finnis argues that

it is simply not true...nor is it true that for Aquinas 'good and evil concepts are analyzed and fixed in metaphysics before they are applied in morals'...Aquinas asserts as plainly as possible that the first principles of natural law...are *per se nota* (self-evident) and indemonstrable. They are not inferred from speculative principles. They are not inferred from facts. They are not inferred from metaphysical propositions about human nature, or about the nature of good and evil, or about 'the function of a human being,' nor are they inferred from a teleological conception of nature or any other conception of nature. They are not inferred or derived from anything."¹⁹

Finnis' terse treatment of O'Connor's position, however, seems to overlook a key point the latter is making: O'Connor's assertion is not exclusively about the first principles of the natural law, but about "propositions about man's duties and obligations," which is to say, about practical argumentation in general. It is not clear that O'Connor intends to suggest that any moral agent must first settle the fundamental metaphysical questions of life before he can make *any* practical judgments about how he ought to live. His argument, in other words, is not that soundness in practical reasoning depends entirely upon a prior soundness in theoretical reasoning, but rather that practical judgments *can* be inferred from metaphysical or anthropological principles - a weaker claim, though an important one insofar as it implies a rejection of the Humean thesis noted earlier.

Thus, O'Connor's foregoing position, and Finnis' rejection of it, further clarifies the position of NNL theory (insofar as it is represented by Finnis): *any* practical argument that contains a descriptive premise would, on that basis alone, be an invalid argument.

¹⁸ Ibid, 33.

¹⁹ John Finnis, *Natural Law and Natural Rights* (Oxford: Oxford University Press, 1980), 33-34.

According to the Finnis-Grisez interpretation of Aquinas, the reason why the first principles of practical reason (which are also the first principles of natural law) do not violate the fact/norm principle is that the principles "make no reference at all to human nature, but only to human good."²⁰ Hence, right (practical) reason does not amount to, or is not derived from, a theoretical understanding of human nature; rather, it is reasoning that is oriented or conducive to the human good. Finnis complicates his position, however, by granting that the observations of the "descriptive theorist" (which term he uses synonymously with the "social scientist") are still useful for the purposes of practical reasoning because the facts he reports, assuming they truly are facts about human beings, are value-laden, not value-free.²¹ Such facts are value-laden because the descriptive theorist's observations are made with a view to what people regard as important:

[T]he disciplined acquisition of accurate knowledge about human affairs - and thus about what other men have considered practically important, and about the actual results of their concern - is an important help to the reflective and critical theorist in his effort to convert his own (and his culture's) practical 'prejudices' into truly reasonable judgments about what is good and practically reasonable...But the knowledge [of the descriptive theorist] will not have been attained without a preliminary conceptualization and thus a preliminary set of principles of selection and relevance drawn from some practical viewpoint. "²²

Without further argument, Finnis concludes that there is "a movement to and fro between, on the one hand, assessments of human good and its practical requirements, and on the other hand, explanatory descriptions," and that in this movement "there is no question of deriving one's basic judgments about human values and the requirements of practical reasonableness by some inference from the facts of the human situation."²³ The

²⁰ Ibid, 36.

²¹ Ibid, 16-17.

²² Ibid.

²³ Ibid.

argument is unconvincing, I think, apart from some additional account of how the moral agent can make use of descriptive accounts of human nature in his practical judgments about what is good without violating the fact/norm principle at the same time.

In addition to the foregoing central claims of NNL theory we should add a third: the basic principles of the natural law are not commands or obligations but the necessary conditions for practical argument and action. In support of this claim, Grisez argues that St. Thomas intended a distinction between the first precept of the natural law, "Good should be done and pursued, and evil avoided," and the command, "Do good and avoid evil."²⁴ He objects to the received interpretation that regards the first principle of practical reason to be the command, "Do good and avoid evil," which, as an inscription written by God, man discovers in his conscience. Human beings then understand good as what accords with human nature, and evil as what opposes human nature; as a consequence, human beings seek to determine which actions are good and ought to be done and which are evil and ought to be avoided on that basis. Practical reason, then, works deductively from general claims about what is fitting for human nature to more concrete principles of action (e.g. stealing is bad) to still more concrete applications.²⁵

According to Grisez, the key mistake of this interpretation is that it overlooks the fact that in one formula, namely "Do good, and avoid evil," the notion of *pursuit* is omitted whereas the other incorporates it. The reason for this error is the apparent assumption that in the first precept Aquinas means by "good" the same as "morally good." But this assumption apparently neglects the idea of "final causes," an idea

²⁴ Grisez, 168.

²⁵ This summary of the received interpretation of St. Thomas is taken from Grisez, 168. Grisez footnotes that this interpretation can be seen in the work of Thomas J. Higgins, *Man as Man: The Science and Art of Ethics* (Charlotte, NC: Tan Books and Publishers, 1992).

underlying St. Thomas' entire NLT. The place of reason in Thomas' initial definition of law makes clear that his thinking about law is "intellectualistic," not "voluntaristic," and thus the notion of "end" and its intelligibility is foundational for his entire theory of practical reason and law.²⁶ Says Grisez, "What is noteworthy here is Aquinas' assumption that the first *principle* of practical reason is the last *end*."²⁷ The intelligibility of the final end implies that suitable or correct action does not adhere "to a static nature," but rather "to the ends to which nature inclines."²⁸ The end to which human nature tends is not, Thomas argues, correct moral action because moral action is a means to the final end and thus not the end itself.²⁹ The end, rather, is the manifestly metaphysical notion of participation in the goodness of God which is the ultimate good, one that transcends the goodness of morally laudable actions. On this point, Grisez asserts a parting of ways between St. Thomas and Aristotle, for the latter argued that virtuous activity is the final end whereas Aquinas "sees the end of man as the *attainment* of a good."³⁰ Thus, appropriate or good action is the means necessary for achieving the goods or ends that practical reason grasps naturally and universally as being good and worth pursuing. These ends or goods, then, are not things that ought or ought not to be done as though they were imperatives of some sort. Rather, because we seek them naturally and unavoidably, they provide the necessary condition for all practical thinking and action, whether good or bad.

²⁶ Ibid, 181.

²⁷ Grisez, 182.

²⁸ Ibid.

²⁹ As I will note, if this interpretation is correct, then Aquinas would be out of step with Aristotle on a critical matter of moral theory, namely the intrinsic goodness of moral (virtuous) activity. While this point does not in itself undermine Grisez's interpretation of Aquinas, it does raise questions about its plausibility.

³⁰ Ibid, 183.

Among the numerous criticisms of NNL, the "Hittinger-McInerny critique,"³¹ we may call it, is the most acute and comprehensive. The basic contention of Russell Hittinger and Ralph McInerny is that NNL theory is based on the historically inaccurate claim that natural law theorists, St. Thomas most of all, have held to a view of practical reason that dispenses with any methodological need for a knowledge of nature. McInerny in his *Ethica Thomistica* charges the New Natural Law, Grisez and Finnis most of all, with incorporating a thoroughly Humean understanding of practical rationality "which regards knowledge of the world to be irrelevant to [practical reason]."³² And as George correctly remarks, "Obviously, any theory of practical philosophical reasoning that merits identification with the practical philosophy of David Hume cannot plausibly be counted as a natural law theory."³³ Hittinger has perhaps been most pointed in assertion that the New Natural Law holds to what is essentially a Kantian understanding of practical reason. By arguing that ethics can be methodologically independent of metaphysics because the starting point of practical reflection is not nature but the non-inferential apprehensions of practical reason itself, the NNL theorist is in effect adopting deontological ethics and inherits all of its many problems, not least the problem that such a moral theory is not genuinely a *human* moral theory.

It is not necessary for my purpose to provide a detailed account of the Hittinger-McInerny critique here because their position, although compelling in some ways, does not give attention to developments in NLT that precede the work of Aquinas and the

³¹ This critique is largely based on Russell Hittinger's *A Critique of the New Natural Law Theory* (Notre Dame, Ind.: University of Notre Dame Press, 1987) and Ralph McInerny's *Ethica Thomistica* (Washington, DC: The Catholic University of America Press, 1982). George deals extensively with this critique in his essays "Recent Criticism of Natural Law Theory" and "Natural Law and Human Nature" in *In Defense of Natural Law*.

³² George, "Natural Law and Human Nature," 85.

³³ *Ibid*, 84.

medieval natural law tradition more broadly. Indeed, this omission is generally characteristic of current scholarship that has, for some reason or another, overlooked the importance of tracing the tradition of NLT back to its origins in ancient pagan philosophy, specifically Stoic philosophy. In Russell Hittenger's *The First Grace*, for example, he roots his "rediscovery of the natural law" in an essentially medieval Christian achievement that "emerged as part of the repertoire of moral and legal thought once the Greek *logos*-metaphysics was appropriated by the biblical theology of a creating and lawgiving God."³⁴ Hittenger dismisses the possibility of an earlier development of natural law, simply stating that prior to its Christian formulation beginning with St. Augustine the phrase "natural law," combining the Greek terms of *physis* and *nomos*, did not mean anything "more than a comical union of opposites, or a merely metaphorical extension of concepts that properly reside elsewhere."³⁵ Howard P. Kainz's book, *Natural Law: An Introduction and Re-Examination*, correctly acknowledges the Stoics as having provided the earliest articulation of NLT, but his treatment of ancient moral theory and Stoic natural law in particular is anemic. He generally disregards, for instance, the key philosophical developments that occur during the Hellenistic period, ones in which basic assumptions held by Plato and Aristotle were either modified or rejected altogether. Despite the fact that the Stoics advanced a fundamentally distinct conception of nature than that of Plato and Aristotle, as this dissertation will discuss, Kainz asserts with little argument that NLT is "foreshadowed" in Plato and Aristotle. Toward the end of *Natural Law and Natural Right*, Finnis gives some important and

³⁴ Russel Hittenger, *The First Grace: Rediscovering the Natural Law in a Post-Christian World* (Wilmington: ISI Books, 2003), xix.

³⁵ Ibid.

careful attention to Stoic natural law, particularly to the shifting role and meaning of *natura*, and correctly understands the core Stoic teaching of "following nature" (*homologia*) to rely upon deductive inferences from a definite philosophy of nature. However, Finnis also asserts that the reliance of Stoic natural law upon a theoretical understanding of nature is one of the reasons for current and widespread misunderstandings of Aquinas (based on the faulty supposition that Aquinas was heir to the Stoic approach).³⁶ In doing so, he makes two obvious assumptions: first, that an accurate representation of NLT must be in some sense an accurate representation of Thomas' NLT; and, second, that Thomas' NLT is incompatible with that of the Stoics. I am not interested in challenging the first assumption. In response to the second assumption, Finnis may be right in his assessment, but to make that argument he needs to provide a more thorough analysis of Stoic NLT, particularly of certain essential concepts that Thomas also relies upon in his own theory, e.g. providence and Divine Reason. As it stands, Finnis' argument is unconvincing.

It appears, then, that the effort to provide a sustained consideration of the formative period of natural law in ancient Greek and Hellenistic thought, a period that would subsequently provide the basis for the tradition within which Aquinas would later operate and to which he owes a substantial debt, is a generally unorthodox and unusual project in contemporary natural law scholarship. Yet as Lloyd Weinreb noted in a lecture to the Fordham Natural Law Colloquium: "Thomistic philosophy did not arise in the thirteenth century out of thin air. If it was a new beginning, nevertheless it emerged out of a long tradition that had developed over more than 1,500 years and continued to

³⁶ Finnis, 35.

develop after the fourteenth century in other directions. If Thomism represents the high point and the greatest flourishing of natural law, that larger tradition also has to be considered."³⁷ This dissertation is an attempt at such a consideration.

1.2 Nature and Normativity in Weinreb's Critique of NNL

Weinreb's work, especially in the book, *Natural Law and Justice*, is of particular importance to the present project because he, too, argues that NNL theory departs from the older conception, and he also roots his thesis in a particular account of the formation of natural law theory in the ancient world. Weinreb's primary thesis is that Grisez and subsequent NNL theorists mistakenly present the core natural law tradition as a "deontological" moral theory rather than as an "ontological" one. One of the main priorities of deontological ethicists, of course, is to articulate a fully rational normative system of principles and imperatives detached from questions of nature. According to Weinreb, however, the attempt of Grisez and his followers to salvage NLT without a theory of nature overlooks the critical problem that natural law in its original and traditional conception sought to address: the problem of how "man is a part of nature and yet apart from it." How can a human being be a part of the natural order of efficient causes and yet be a free moral agent, able to make his own decisions and be responsible for them? Weinreb summarizes the problem as follows:

Unless a person's act is free, that is, self-determined, he is not morally responsible for it. But unless the circumstances of his act and the personal qualities that make him act as he does are determinate, the act seems to be the product of arbitrary occurrences as far as he is concerned and not something for which he individually is responsible. Yet if the circumstances and his personal qualities are determinate and determine his act, then once again the act is not self-determined and he is not

³⁷ Lloyd L. Weinreb, "A Secular Theory of Natural Law," 72 *Fordham Law Review* (2004), 2287.

morally responsible. In order for a person to act freely in the relevant moral sense, his act must be determined; but if it is determined, he is not free.³⁸

Only within the context of a causally determined natural order can one's actions be non-arbitrary and morally significant; but that very causally determined order prevents one's actions from being truly free and thus prevents one from being responsible for those actions. As Weinreb summarizes, "Full moral responsibility seems to require that an act be *both free and determinate*."³⁹

The notion that "nature is normative" summarizes, Weinreb argues, the effort of traditional NLT to address this basic problem. Belief in a normative natural order, however, was not coeval with the birth of natural law in Stoic thought, but was rooted in earlier Greek thought in its various poetic, dramatic, and philosophic manifestations: "From the first, the idea of a normative order immanent in nature was a fundamental element of classical Greek speculation...[F]rom Homer until the transmission of Greek culture to Rome, the belief that the course of events fulfilled an inherent normative order affected Greek thought profoundly and pervasively."⁴⁰ The presupposition that *physis* comprises a normative dimension carries with it the key implication that the term was not originally considered antithetical to *nomos*, but only became so with the emergence of sophism in the fifth century. Only then, Weinreb claims, do we find introduced among Greek intellectuals the widespread confusion regarding the relation of law and nature, yielding varying responses that became strands in a rather complicated tapestry of philosophic discourse. There was Protagoras' celebration of *nomos* as the grand human

³⁸ Ibid, 6.

³⁹ Ibid.

⁴⁰ Ibid, 15.

achievement as well as Callicles' condemnation of *nomos* as a form of unnatural bondage upon great men, and various views in between. It would be Plato's and Aristotle's great achievement (despite important disagreements between them), in response to the attacks of the sophists and conventionalists who rejected the objective reality of moral standards by way of the *nomos-physis* antithesis, to restore the position that "law and morality are not changeable human dictates but are aspects of reality itself."⁴¹ For Plato and Aristotle, *physis* contained an explicitly normative dimension that serves as the basis for moral and legal theory; thus, although not properly natural law theorists themselves, "the ontological aspect of natural law, which became its distinctive characteristic, can fairly be described as Platonic."⁴²

Thus, according to Weinreb's analysis, the original NLT developed by the Stoics and presented by Cicero in the first century B.C. "does not compose a separate doctrine" but is rather a synthesis of earlier beliefs and attitudes regarding the human condition as being both determined and self-determining.⁴³ As Weinreb understands Stoic natural law and the subsequent tradition that developed from it, its primary assertion is that what *is* is what ought to be; thus, the freedom/determinism problem is averted by the claim that the natural order of determinate efficient causes is itself normatively ordered.⁴⁴ It follows from this claim that normativity and moral responsibility extends over not only all morally significant acts - that is, acts that are "self-determined" - but over *all* facts

⁴¹ Ibid, 30.

⁴² Ibid, 32.

⁴³ Ibid, 1.

⁴⁴ Ibid, pp. 6-7.

regarding a person, what he is and all the circumstances of his life.⁴⁵ This seems to require the belief that all the facts of one's life and circumstances, including whatever misfortunes one might encounter, e.g. deadly illnesses, are not merely how things are but how they *ought* to be or *must* be, which is to say, they are *deserved* - a claim that Weinreb finds to be "not only incomprehensible but morally outrageous."⁴⁶ NNL theory apparently avoids making such claims by basing normative claims on the intuited coherence of certain goods rather than on facts about the natural order. However, Weinreb insists that NNL theory, by doing so, merely avoids the central question of moral philosophy concerning freedom and moral responsibility and focuses instead on questions of obligation: "Everything seems to depend on the narrow question: Is law necessarily obligatory or not?"⁴⁷

Weinreb correctly asserts that traditional NLT depends upon a particular understanding of nature as normative or normatively ordered, and that such an understanding of nature is foundational to how one must understand natural law and practical reason - an interpretation that was largely uncontroverted prior to the work of Grisez and Finnis.⁴⁸ He is also correct in seeking to establish an historical context for understanding traditional NLT, one rooted in some fashion in ancient Greek thought. However, the question of freedom and determinism, while a central concern in modern moral theory and certainly not irrelevant to older debates, I find secondary to the more

⁴⁵ Ibid.

⁴⁶ Ibid, 7.

⁴⁷ Ibid, 4.

⁴⁸ Hume, for instance, assumes outright that "[i]n every system of morality, which I have hitherto met," there is an explicit inference of values from facts. Hart, similarly, betrays no hesitation in asserting that traditional natural law is dependent upon a teleological conception of the universe, and derives its basic principles from that conception.

fundamental question of the proper relation of *nomos* and *physis* in Platonic and Aristotelian moral theory and the subsequent birth of natural law. In the next two chapters, I challenge Weinreb's assertion that Plato's and Aristotle's understanding of *physis* contained an explicitly normative dimension, that "It was real, *and* it was normative."⁴⁹ I argue that at the center of their moral theories, despite important differences, is the claim that the philosopher contemplates the cosmic order, not to discover how to live his life, but to approximate the entirely amoral, asocial, and ideally happy lives of the gods. The primary concern for both Plato and Aristotle is to identify the necessary conditions under which human beings will thrive. In order to identify what those necessary conditions are, both rely upon a functionalistic understanding of human nature: human beings do best when they live in accord with their natural function or purpose (*ergon*), whatever that may be. Absent from their writings are the notions of law, command, and obligation understood in relation to the basic normative claims of the functionalistic model. More specifically, neither Plato nor Aristotle assert that there are certain normative requirements or obligations binding upon all human actions and laws that proceed from nature (*physis*) itself; and the reason for this is that neither Plato nor Aristotle maintain a conception of *physis* that could support such a claim. Plato and Aristotle defend, in other words, distinct theories of natural right rather than natural law.

Thus in the final chapter I argue that the subsequent development of natural law by the Stoics was not simply an extension or further development of basic assumptions and commitments in Plato's and Aristotle's moral theories, as Weinreb, Kainz, and others have argued. Rather, Stoic NLT developed as a direct response to the Epicurean position

⁴⁹ Weinreb, "A Secular Theory of Natural Law," 2289 (emphasis added).

on the central role of natural philosophy in moral theory and practical reasoning. As Torquatus in Cicero's *De Finibus* states,

So if the philosophy I have been describing is clearer and more brilliant than the sun; if it is all drawn from the fount of nature; if my whole speech gains credibility by being based on the uncorrupted and untainted testimony of the senses; if inarticulate children and even dumb beasts can, under the direction and guidance of nature, almost find the words to declare that there is nothing favorable but pleasure, and nothing unfavorable but pain – their judgment about such matters being neither perverted nor corrupted; if all this is so, then what a debt of thanks we owe to the man who, as it were, heard nature's own voice and comprehended it with such power and depth that he has managed to lead all those of sound mind along the path to a life of peace, calm, tranquility and happiness.⁵⁰

A critical point is that the Stoics did not reject the Epicurean claim that metaphysics is foundational to moral theory (as Plato and Aristotle would have), but that metaphysics, along with the moral virtues, possesses only *instrumental* value. Instead, the Stoics assert that a knowledge of nature *just is* moral knowledge, and in order to make this claim the Stoics rely upon a new "theological" conception of nature, one in which the natural order is understood in terms of law and divine providence. For the Stoics, "nature's own voice" is the voice of Divine Reason uttering commands that seek the good of the entire cosmos.

⁵⁰ Cicero, *De Finibus*, trans. Julia Annas (Cambridge: Cambridge University Press, 2001), I.71.

HAPPINESS AND THE HUMAN FUNCTION: PLATO'S THEORY OF NATURAL RIGHT

2.1 Some Preliminary Observations on *physis* in Plato and Aristotle

With few exceptions, the term "natural law" is absent from ancient Greek philosophical literature. Helmut Koester has pointed out that the term occurs fewer than six times in ancient Greek writings from the pre-Socratics until Philo of Alexandria, with whom we see for the first time a liberal use of the term.⁵¹ There is apparently good reason for this relative absence. The Greeks often understood the notions of *nomos* (law) and *physis* (nature) as opposites. They understood nature as the realm of unchanging realities and eternal truths that stood in opposition to art and especially to law, the latter here to include all matters of custom, convention, contractual agreement, and civil legislation. Thus, "the notion of natural law (*nomos tes physeos*)," as Leo Strauss points out, "is a contradiction in terms rather than a matter of course."⁵²

However, there are three specific uses of the term worth noting. First, in Plato's *Gorgias* Callicles argues that superior men act according to the law of nature when they seek a greater share of goods than others. The second and third uses appear in Aristotle's *Nicomachean Ethics* and *Rhetoric* (1134b and 1373b-18 respectively). In the former Aristotle distinguishes between "natural justice" and "legal justice"; and, in the latter, between "particular law" and "universal law," the latter of which he also describes as the "law of nature." I focus on the passage from Plato in the present chapter and on the

⁵¹ Helmut Koester, "The Concept of Natural Law in Greek Thought," *Religions in Antiquity*, ed. Jacob Neusner (Leiden: E.J. Brill, 1968), 534-35.

⁵² Leo Strauss, "On Natural Law," *Studies in Platonic Political Philosophy* (Chicago: University of Chicago Press, 1983), 141.

passages from Aristotle at the outset of the chapter to follow. With these and other passages in mind, my primary intention in Chapters 2 and 3 is to argue that both Plato and Aristotle hold that some things are good or just by nature, the position of "natural right" (*physei dikaion*). Natural right theorists make such claims as, "It is naturally good (or good by nature) for person x to do action y," or "it is natural for person x to be inclined to do action y, because doing y is part of what x needs to do to realize his optimum state of well-being." However, if we are to assert that Plato and Aristotle are early advocates of natural *law*, we must first demonstrate in their thought the technical use of *physis* that underlies the following sorts of claims: "Nature obliges person x to do action y and forbids person x to do any action contrary to y," or "at least one natural law requires person x to do action y and forbids person x to do any action contrary to y." These claims take into account that in Greek philosophic texts the notion of law or custom (*nomos*) was invariably connected with the notion of some prior author of the given law or custom that one is obligated to obey. *Nomos* entails artifice and hence is closely connected with the notion of *techne*. Thus, if something is to exist by *nomos*, it requires something else that intends its existence and is capable of bringing it into existence. Neither Plato nor Aristotle accept such a conception of *physis*, I argue, and thus neither is a natural law theorist.

However, there is an immediate and rather obvious problem with the foregoing thesis. Much like the English term "nature," *physis* admits of so wide a range of meanings that it appears one can discern no stable use of the term across the relevant philosophic texts. At times Plato uses *physis* to convey the essence or distinguishing quality of a thing, as we find in the *Philebus*: "If we wanted to know the nature of any

character, like that of hardness, would we get a better understanding if we looked at the hardest kinds of things rather than what has a low degree of hardness?"⁵³ This sense of nature is closely related to Socrates' demand for the forms (*eide*) of things as expressed in his definitional questions, e.g. "What is courage?" (which one may rephrase to read: "What is the *physis* of courage?"). Similarly, in the *Cratylus* the correct naming of things, on Cratylus' naturalist view, depends upon naming "according to the nature" of the thing in question.⁵⁴ His position (which, as Socrates shows, is not without problems) is that the nature of x is equivalent to the natural activity or function (*ergon*) of x, that is, what x does on its own without external influence, particularly human influence. Thus, the correct name for x will accurately express what x does by or in accord with its own nature, no more and no less. This view comes close to Aristotle's understanding of *physis* as the abstract noun cognate with *phuesthai* ("grow" or "be born") which serves as an etymological basis for insisting that anything with a nature possesses a "principle of motion" - that is, a natural impulse or inclination - toward a particular end.

Cratylus defends his naturalism against the conventionalist argument of Hermogenes who holds that the correct name for something amounts to nothing more than community agreement.⁵⁵ Thus the main dispute in the *Cratylus* strongly resembles - and, one can hardly doubt, *intentionally* resembles - the central moral debate over whether the virtues exist by *nomos* or *physis*. Adeimantus summarizes this debate in the *Republic* in his challenge to Socrates to demonstrate that justice "is among the greatest goods - those that are worth having for what comes from them but much more for

⁵³ Plato, *Philebus*, in *Plato: Complete Works*, John M. Cooper and D.S. Hutchinson, eds. (Indianapolis: Hackett Publishing Co., 1997), 44e.

⁵⁴ Plato, *Cratylus*, in *Plato: Complete Works*, 384d; 390e-391a.

⁵⁵ *Ibid*, 384d.

themselves, such as seeing, hearing, thinking, and, of course, being healthy and all the other goods that are fruitful by their own *physis* and not by opinion."⁵⁶ It makes the most sense, I think, to read Adeimantus' use of *physis* as the one we find in Cratylus' argument. If so, Adeimantus' question may be rephrased to ask, "Is it natural (or naturally good) for a human being to be just, or should a person be just because we have agreed as a community that being just is right or good?" If this rephrasing is correct, then Socrates' argument on behalf of the former is explicitly an argument cast in terms of natural right, not natural law.

Aside from conveying what a thing is or does by nature, however, Plato also uses *physis* to capture in a broad sense the natural world of material substances *as distinct from* the human world. Socrates says in the *Phaedrus* that "landscapes and trees have nothing to teach me." By this he implies that "natural science," the particular preoccupation of the Pre-Socratic philosophers which he elsewhere describes as the study of "the causes of everything, why it comes to be, why it perishes and why it exists," is not relevant to moral discourse because it does not teach us how to live.⁵⁷ The fundamental distinction between natural and moral philosophy continues (if not more clearly and directly) in Aristotle's argument that ethics - more specifically, the virtuous use of practical reason - by definition is "productive" of action (*praxis*), and hence is about making good choices. In contrast, the use of theoretical reason to study nature reveals only changeless eternal truths about which we can do nothing.⁵⁸

⁵⁶ Plato, *Republic*, Allan Bloom, trans. (New York: Basic Books, 1968), 367c-d.

⁵⁷ Plato, *Phaedo*, in *Plato: Complete Works*, 96b.

⁵⁸ I develop Aristotle's view in the following chapter.

But the distinction between the natural and human domains, resembling and perhaps in some ways overlapping the *nomos/physis* distinction, is at best only an incomplete paradigm. A central assumption of Plato's argument in the *Republic* (though the point recurs in the *Gorgias* and elsewhere) is that *physis* may also refer to the natural *result* of a particular activity or set of conditions. Socrates argues that when each member of a city has been given a task that is best suited to him, and each member attends only to his own task and does not meddle in the tasks of others, then "the whole city will naturally grow to be one and not many."⁵⁹ The difference between this use of *physis* and Catylus' natural activity is obvious: the growth of the healthy city is not natural in the same sense because unlike a tree growing in the woods, untouched by human hand, a well-formed city requires direct human involvement. Making this very point to Calicles, Socrates says that the natural result of the human body under the guidance of a trained doctor is health; and, likewise, under the guidance of a pastry chef the natural result is illness.⁶⁰ Thus, the growth of plants and trees is an analogy of moral and political development only in the most general sense. For this reason Plato's thinks of the *physis* of the guardian, for instance, as the result of *both* inborn talent and disposition (having a "gold soul") and proper habituation.⁶¹ Thus, although it is generally accurate to conceive of the *nomos/physis* distinction along the lines of "nature versus nurture," and hence to consider the two notions as generally antithetical, we do not find in Plato or Aristotle a uniform use of *physis* as that which exists or operates altogether

⁵⁹ *Republic*, 423d.

⁶⁰ Plato, *Gorgias*, Donald J. Zeyl, trans. (Indianapolis: Hackett Publishing Co., 1987), 464b-466a.

⁶¹ *Republic*, 395c-d.

separately from human involvement and influence.⁶² In other words, a good deal of nurture is involved in the *physis* of a just person.

Against this broad background of *physis*, the most interesting, and for my purposes the most significant, expression of the term is in Callicles' assertion of "the law of nature":

But I believe that nature itself reveals that it's a just thing for the better man and the more capable man to have a greater share than the worse man and the less capable. Nature shows that this is so in many places; both among the other animals and in whole cities and races of men, it shows that this is what justice has been decided to be: that the superior rule the inferior and have a greater share than they...I believe that these [superior] men do these things in accordance with the nature of what's just - yes, by Zeus, in accordance with the law of nature, and presumably not with the one we institute.⁶³

Callicles' attempt to ground true human virtue (*arête*) in *physis* is stunning, not simply because the great majority of his fellow sophists argued that justice is entirely a matter of *nomos*, but also because his assertion appears to demand a novel conception of *physis*, one that somehow "reveals" the fundamental principles of justice (though he does not explain what this conception means or how it works) by way of laws that are knowable to humankind. However, whether Callicles is committed to a conception of *physis* as primary and authoritative lawgiver is unclear. Indeed, it is evident that by "law" he only means certain empirical regularities and does not mean to include any of the theoretical complexities of a preexistent legislator of nature. Certainly Callicles relies upon a "functionalistic" conception of the human *physis* - that is, *physis* understood as the natural function or activity (*ergon*) of a thing - as the foundation for making claims about how people ought to behave if the ideal *polis* is to be achieved. But how his specific

⁶² See White's discussion of *nomos* and *physis* in *Political Philosophy: An Historical Introduction* (Oxford: Oneworld Publications, 2003), 12-14.

⁶³ *Gorgias*, 483d-e.

understanding of the specifically human *physis* relates to the broader notion of *physis* as "nature itself" (as he puts it) is vague. He merely points out (1) that nature has so ordered things that both human beings and "the other animals" recognize that the strong ought to rule the weak and have a greater share of goods that bring pleasure, and (2) that human beings are capable of acting contrary to the "natural law" by inventing customs and laws that bind superior natures with such norms as "no one should get more than his fair share."⁶⁴

However, Callicles does not explain why we must consider as *unnatural* the fact that human beings often act against the principle of superior rule. What particular conception of nature must we have to bolster such a claim? Significantly, Callicles does not defend his position against an obvious and relevant criticism with a further development of *physis* itself; moreover, Socrates does not seek such a metaphysical defense from Callicles. This fact strongly suggests that Callicles' primary interest (which Socrates recognizes) is *not* to articulate and defend a bona fide theory of nature that can support his radical pseudo-natural law thesis. Rather, his main commitment is to denying any claim that the human *physis* is essentially political and, subsequently, that the *polis* is in some sense natural rather than man-made. On this interpretation, Callicles' use of natural law is non-technical and serves a largely rhetorical purpose, an approach we find elsewhere in Plato. For instance, Glaucon's well-known challenge to Socrates involves a defense of conventional justice and a noticeably Calliclean understanding of *physis* that Glaucon himself does not advocate. The point of Callicles' and Glaucon's arguments is not to construct a natural law theory of the state, but rather to articulate a conventionalist

⁶⁴ Ibid, 484a.

theory of justice that asserts that one ought to seek the good of the state only so long as it serves one's interest and not a moment longer. Such a position would, quite obviously, be an effective challenge to Socrates' claim that one ought always to be just, come what may.

The conventionalism of fifth century Athens grew out of the assumption that earlier philosophers, by a careful study of nature, had penetrated the layers of myth and ancestral law that belonged to the city and had discovered an independent means to provide rationally justifiable explanations for various phenomena (e.g. solar eclipses, outbreaks of plague, and so forth). Under this assumption, it only made sense that the traditional norms of the *polis*, long taken as the concrete expressions of the divine law (e.g. customary burial of kin as seen in Sophocles' *Antigone*), would be regarded as fictitious imposters of nature that serve to sever mankind from the truth of things. As Allan Bloom points out, "Glaucou presents the political supplement to pre-Socratic natural philosophy: the city limits men in the pursuit of good things, but its only justification for doing so is the need to preserve itself."⁶⁵ Thus, the *nomos/physics* dichotomy, insofar as it penetrates into the philosophic discourse of the time, was the essential foundation of the conventionalist argument. It is unsurprising that a reconsideration of the selfsame dichotomy would figure prominently in Plato's and Aristotle's defenses of natural right against conventionalist objections.

⁶⁵ Bloom, "Interpretive Essay," *Republic*, 341.

In the ethical thought of Plato and Aristotle, therefore, *physis* is a nuanced concept with shifting meanings.⁶⁶ Neither perceived the need to provide an alternative technical conception of *physis* itself that would support their respective ethical claims. Rather, the need was for a conception of the specifically human *physis* that can support the claims of natural justice. (Perhaps the most important of the later Stoic departures from the Platonic and Aristotelian tradition, at least with respect to the development of natural law theory, is their constant assertion of a close kinship between human beings and nature itself, summarized by the critical term *homologia*. This point is treated in Chapter 4.) It did not occur to either Plato or Aristotle that nature itself must somehow be both normative and foundational to moral theory, that it must make certain authoritative ethical pronouncements, if natural justice is to be a tenable position.⁶⁷ I seek to defend this claim in the remainder of this chapter.

2.2 The Forms as Non-Normative

Regarding the role of metaphysics in ethics, the central debate between Plato and Aristotle concerns what *practical* value there is in having knowledge of the Good itself.⁶⁸ Plato had argued that knowing the Form of the Good somehow deepens and enriches one's overall virtue as nothing else can, so much so, in fact, that one cannot be truly virtuous and happy without this knowledge. But it is quite reasonable to ask, as Aristotle

⁶⁶ Of course, Aristotle treats *physis* as a technical theoretical term in the *Physics*. But his technical use of *physis* is limited to the context of natural science while theoretical reason is noticeably absent in his moral thought.

⁶⁷ There is some scholarly debate regarding whether "morality" and "ethics" should be treated as synonyms when discussing Plato and Aristotle. For the purposes of this dissertation, I will use the terms synonymously.

⁶⁸ Some have argued that Plato's theory of Forms is merely a metaphysical prop to support Socrates' quite radical (and otherwise untenable) ethical claims, e.g. it is always better to suffer injustice than to commit it. I address this approach to Plato later in this chapter.

does, "how a weaver or carpenter will be helped in practicing his skill by knowing this good-in-itself, or how someone who has contemplated the Form itself will be a better doctor or general. For apparently it is not just health the doctor attends to, but human health, or perhaps rather the health of a particular person, given that he treats each person individually."⁶⁹ The obvious implication of Aristotle's critique is that philosophers are *not* the most qualified to be rulers, as Plato claims, because their knowledge of the Good is useless for all practical purposes.⁷⁰ We need not read Aristotle as rejecting outright the possibility of a general definition of goodness (he consistently relies upon a functionalistic conception of goodness that we find in Socratic arguments, e.g. a good ship is a ship that functions well according to its natural purpose as a ship); nor is he objecting to the Socratic principle that the genuine expert of a particular discipline must possess complete authority within that discipline, and all others must submit to that authority. He objects, rather, to the idea that philosopher-kings (*qua* philosophers) have morally relevant knowledge *at all*. More specifically, he rejects the view that normative truth is contained in (or "built into") the content of the theoretical or "scientific" understanding of the natural philosopher. He does so because the Forms which are the objects of the philosophers' expertise, being permanent and universal, do not contain content that is relevant for how one ought to handle the practical and highly particular matters of human life, all of which occur in the ever fluctuating context of space and time.

⁶⁹ Aristotle, *Nicomachean Ethics*, Roger Crisp, trans. (Cambridge: Cambridge University Press, 2006), I.6.1097a.

⁷⁰ *Ibid*, VI.7.1141b.

Along similar lines, some modern scholars have suggested that Plato developed his metaphysics, his theory of the Forms in particular, as a *post hoc* foundation for the radical moral claims of Socrates, claims that are assumed to be otherwise incomplete or untenable.⁷¹ On this interpretation, Socrates' bold claims, e.g. that one is better off suffering injustice than committing it and that one is better off suffering just punishment than escaping it, rise and fall depending on the soundness of the theory of Forms advanced in the *Republic*. Implied in this interpretation is a developmental view of Plato's Dialogues: Socrates (or early Plato) entertained stunning and revolutionary ethical notions but had no final secure grounding for them until a more mature Plato could provide it with a new metaphysical theory. Although the developmentalist interpretation of Plato differs widely from Aristotle's interpretation, both assume that Plato understood the Forms to contain content relevant to the moral agent in his attempt to answer the question, "Should I do x or should I do y?"

However, the developmentalist reading may not be the best way to approach Plato. For one thing, Plato may not have intended to assert so close a connection between metaphysics and ethics. To be sure, we can hardly think that Plato did not envision some relation between the two realms such that, in a very general sense, moral excellence depends upon a correct view of reality. Aristotle could hardly be said to disagree: his normative anthropology consists in the claim that what is good for a human being depends on what will contribute to the overall fulfillment of the natural ends of human nature. Quite clearly, then, Plato's critics assert a much stronger connection between the metaphysical and the ethical, one that has Plato assert that the philosopher is

⁷¹ Julia Annas provides a more complete account and critique of this modern interpretation in her *Platonic Ethics, Old and New* (Ithaca: Cornell University Press, 1999), 96-116.

morally excellent or possesses moral knowledge *because of* what he has apprehended in his study of the Forms. This claim is closely associated with the stronger intellectualist claim of Socrates that moral excellence just is moral knowledge, and moral knowledge just is the theoretical knowledge of the philosopher (as the Stoics would later insist). On this interpretation of Plato, the philosopher is uniquely qualified to rule the city because his knowledge of the Forms yields the necessary normative insight in the same way that the pilot of a ship, and the pilot alone, possesses the knowledge requisite for seafaring and is thus naturally qualified to take the helm.

But what is the content of the pilot's knowledge, and in what way is it analogous to the philosopher's knowledge? In the *Republic* Plato has Socrates say that "it is not because of sailing that he is called a pilot but because of his art and his rule over sailors."⁷² He develops the meaning of the pilot's art later on: "[F]or the true pilot it is necessary to pay careful attention to year, seasons, heaven, stars, winds, and everything that's proper to the art, if he is really going to be skilled at ruling a ship."⁷³ Quite clearly, Socrates holds that the pilot is the master of sailors because he knows best what is required for successful navigation and thus the crew ought to heed his authority. Less clear is how the pilot's particular seafaring knowledge *itself* equips him for the task of successfully ruling a ship. It is difficult to see, as Aristotle observes, how the pilot's ability to read the heavens and gauge the winds (and other such skills) would help him keep subordinate sailors on task, resolve disputes, manage illnesses, and other likely challenges. That kind of knowledge and ability must, it would seem, come some other way. Plato admits as much by making clear that the knowledge of the true pilot is

⁷² *Republic*, 341c.

⁷³ *Ibid.*, 488d.

insufficient for commanding respect and obedience on a ship: "the true pilot will really be called a stargazer, a prater and useless to [the crew]" by his own crewmembers.⁷⁴ His point is that because of the pilot's expertise he *ought* to be heeded; and, thus, the best crew, or the one most likely to achieve maritime success, is the one whose subordinates are already inclined to heed the commands of the true pilot. That Plato fails to develop what is involved in the skill of ruling, and does not answer such important questions as how subordinate sailors are to know that the true pilot possesses the requisite knowledge apart from having that knowledge themselves, makes plain that those are side-issues for him. We may balk at the claim that the true pilot is simultaneously the best commander of a ship, but that does not require us to attribute to Plato the stronger and much more questionable claim (one I believe he rejects), that the content of the pilot's knowledge *qua* pilot is both necessary *and* sufficient for virtuous rule on board a ship.

Plato's Socrates takes the point of the analogy to be obvious: the true philosopher, like the pilot, possesses precisely the sort of knowledge necessary for guiding a city to a flourishing condition; and, furthermore, without his leadership, without his complete authority, the city will forever be entangled by false conceptions of justice and its citizens that much less happy for that fact.⁷⁵ But what does the philosopher know? For Plato, the philosopher does not merely apprehend "that which is," or the eternal Forms, which are eternally perfect and hence are not subject to generation and decay. The more important point is that the philosopher is *disposed* to appreciate permanent things, that his character is of a certain shape, formed by years of education that began with training in music and gymnastic. He is not inclined to regard faddish things of the *polloi*, nor is he at all

⁷⁴ Ibid.

⁷⁵ Ibid, 489a.

interested in temporary gains and praises of the moment. The philosopher is preoccupied with the permanent and unfading things of the world, and because of this he is not only the happiest of men but also the best qualified to see to it that the city as a whole would enjoy something of the goodness of activities that seek lasting or permanent goods, however possible such may be in the concrete physical world. Plato adds the key point that the philosopher, once freed from the cave and enlightened, does not want to rule and thus is best fit to rule. The suggestion here is that the philosopher's character or moral disposition and not his theoretical insight is of primary importance when it comes to political rule.⁷⁶

So much would indicate, apparently, that Plato rejects what may be called political knowledge or "political science," preferring to see it as a matter of developed skill or *technê* rather than a matter of *epistêmê*. But the distinction between *technê* and *epistêmê* in Plato is a dubious one, so often does he blur the distinction. In *Charmides*, for example, Socrates says that the doctor's craft (*iatrikê technê*) is the *epistêmê* of health. Similarly in the *Gorgias* the primary contrast to *technê* is not knowledge but knack or experience (*empeiria*), the latter having no knowledge "of the nature of whatever things it applies by which it applies them."⁷⁷ Implied in the *Gorgias* is the point that *technê* admits of a certain kind of knowledge but one limited to the nature or form of the craftsman's particular discipline, implying that his knowledge is specialized. The doctor, to be a genuine doctor, must have knowledge of the form of health, the ideal state of the

⁷⁶ Ibid, 520d. One might object to the point by arguing that knowledge and what I am calling character run together, that is, to have one is to have the other, and hence there is no relevant distinction to be drawn in this context. This would entail that moral excellence just is theoretical excellence, a position otherwise known as intellectualism. Although Socrates seems to have had this position, Plato may not have and Aristotle rejected the position outright. Thus, I believe the distinction is a relevant one for understanding Plato's position in the *Republic* and Aristotle's in the *Nicomachean Ethics*.

⁷⁷ *Gorgias*, 465a.

human body; but his knowledge *qua* doctor will not help him in other parts of his life. It will not help him repair a roof or heal a broken friendship. Analogously, one would think the statesman must have knowledge of the form of the *polis* to be a true statesman. What is hardly obvious is why the philosopher, whose knowledge *qua* philosopher is not about political matters or the state itself, nor about one specific area of daily human life, but instead concerns the eternal and unchanging realities of the cosmos, is best qualified to rule. What is the basis of his political *technê*? There appears to be a breakdown in the *technê*-based analogy that Plato has relied upon so heavily.

However, we might do well to remember that, for Plato, the question of political rule is authoritarian in nature: who is most capable of guiding the lives of others? It must be, he assumes, perhaps problematically, that the one who best manages his own life is best able to manage the lives of others. Julia Annas makes an observation along similar lines: "The authoritarianism of the *Republic's* claim about a philosopher's moral knowledge springs not from their intellectual training, nor from grasp of the Form of the Good, but from Socrates' idea that you should do what the expert says."⁷⁸ Annas' contention is that the authority of the expert, be it the doctor or the pilot or the philosopher, is an *epistemological* authority, ultimately rooted not in the content of the expert's knowledge but in the fact that he is the expert of his field and thus, whether one understands the expert or not, one ought to listen to him.⁷⁹ Annas' point has strength, particularly when one keeps in mind that Plato does not allow for individual autonomy in

⁷⁸ Annas, 99.

⁷⁹ Annas' argument is part of a broader argument concerning the role of political discourse in Plato's *Republic*. Her argument, which I discuss in the next section, is that the ideal state serves an essentially analogical purpose in the text: the state images the soul in its optimal condition. Thus, practical or logistical questions concerning the possibility of such a regime of philosopher-kings (e.g. How could a philosopher-king guide the lives of individuals?) fundamentally misses the point Plato is trying to make.

such matters: the patient should listen to the doctor, not because he understands something about health and sees that the doctor does too, but because the doctor is the expert and he is not. Just as the doctor is the expert of the body, the philosopher is the expert of the soul, which fact is the reason why Socrates in *Theages* urges young men to care for the state of their souls *before* embarking on politics: they can hardly care for the souls of others if they fail to care properly for their own.

But how the foregoing argument answers the apparent breakdown in the analogy is difficult to see: if the power to manage the lives of others should be given to those who best manage their own lives, it follows that the best doctor is not the one who best understands health but the one who is healthiest. But Plato never makes this suggestion. In the *Gorgias*, for instance, the pastry baker differs from the doctor because he does not know what he is doing (or more precisely, he does not understand the nature of his activity); moreover, because the baker lacks the relevant knowledge concerning the human body, he utilizes his knowledge of what people will enjoy and thus produces gratification rather than health.⁸⁰ What makes the doctor an expert, then, is not that he is healthiest but that he understands what is necessary for good health and is capable of guiding people to that end. Even if we assume that with such knowledge the doctor would be healthy too - a precarious assumption, it seems to me - the assumption is irrelevant for the point that Socrates is making, one that insists upon an understanding of *technê* as knowledge-based expertise. In the *Meno*, for example, Socrates argues that by knowledge statesmen effectively guide their cities.⁸¹ However, Plato never suggests that

⁸⁰ *Gorgias*, 464d-465a.

⁸¹ Plato, *Meno*, in *Five Dialogues*, 2nd Edition, G.M.A. Grube, trans. (Indianapolis: Hackett Publishing Co., 2002), 99c.

the philosopher's understanding of the Forms in particular entails moral knowledge, more specifically, knowledge of the mechanics of daily life in the *polis* in its ideal condition. In this light I believe it best to consider the *technê*-based analogy as limited: the analogy is useful as a general image of the nature of authority, but also one that Plato must eschew in order to maintain, as I think he does, that the Forms are non-normative through and through and thus it cannot be by knowledge of them *simpliciter* that the philosopher knows how to rule.

What basis, then, does one have for asserting the non-normativity of the Forms? One might argue that the transformative experience of the philosopher, having entered into an enlightened state following the long, steep path out of the cave, will have some impact on his understanding of value. How else are we to explain the prominent place of metaphysics and epistemology in the *Republic* than as foundational for what the philosopher thinks is good? Richard Kraut, for example, has argued that the Forms play a central role in Plato's defense of justice because one who apprehends the Forms is alone capable of avoiding the pernicious assumption that such material goods as pleasure and power are the only goods.⁸² Because the philosopher's attitudes are transformed by his love of the Forms as a radically different kind of good, he is no longer prone to those antisocial tendencies of those for whom worldly goods are the only kind of good.⁸³ In Kraut's interpretation, then, it appears that Plato (in contrast to Aristotle) believes human beings do not possess a natural inclination toward social behavior independent of selfish and utilitarian motives. Rather, human beings acquire a genuine (non-utilitarian) desire

⁸² Richard Kraut, "The defense of justice in the Republic," *The Cambridge Companion to Plato*, Kraut, ed. (Cambridge: Cambridge University Press, 1992), 319.

⁸³ *Ibid.*, 323.

for harmonious social order only after an education in the Forms. The philosopher apprehends in the Forms a certain orderliness that he loves and desires to implement in the world about him *apart from* considerations of personal gain. Thus, the philosopher's desire to rule is the natural result of his enlightenment, and does not arise through compulsion. "So it is clear," Kraut writes, "that when the philosophers rule, they do not stop looking to or imitating the Forms. Rather, their imitative activity is no longer merely contemplative; instead, they start acting in a way that produces a harmony in the city that is a likeness of the harmony of the Forms."⁸⁴ He immediately adds that if the philosophers were to refuse to rule, they would be allowing disorder in the city to increase, a result they would naturally abhor: "And in creating this disharmony, the philosopher would in one respect cease to imitate the Forms."⁸⁵

Kraut's interpretation is problematic for two main reasons. First, although he offers a rather sensible response to critics of Plato's philosopher-kings, the suggestion that philosophers rule willingly as an extension of contemplative activity does not appear to be one Plato himself offers. Kraut is aware of the potential difficulty for his interpretation and is right to attempt an explanation of 520a-521b of the *Republic*. Here Glaucon asks Socrates whether the founders of the imaginary city would be doing an injustice by forcing philosophers to rule and thereby compelling them to live "a worse life when a better is possible for them." Kraut's take on the passage depends almost entirely on Socrates' remark that "each of [the philosophers] will certainly approach ruling as a necessary thing - which is the opposite of what is done by those who now rule in every city." Socrates' suggestion is that the philosophers rule willingly out of a

⁸⁴ Ibid, 328.

⁸⁵ Ibid.

perceived need.⁸⁶ Indeed, Kraut's account noticeably diminishes the role of compulsion in Socrates' position almost to the point of irrelevance. Yet the compulsion of the philosophers to rule, which presupposes that philosophers do not want to rule and would not rule unless forced to do so, is essential, I think, to Socrates' argument. In 519c-d Socrates states that it is "likely and necessary...that those who have been allowed to spend their time in education continuously to the end...won't be willing to act, believing they have emigrated to a colony on the Isles of the Blessed." Thus it follows, Socrates argues, that

our job as founders is to compel the best natures to go to the study which we were saying before is the greatest, to see the good and to go up that ascent; and, when they have gone up and seen sufficiently, not to permit them what is now permitted...[T]o remain there and not be willing to go down again among those prisoners or share their labors and honors, whether they be slighter or more serious.

Nowhere does Socrates suggest Kraut's point that true philosophers would naturally detest the disorder of their cities and want to do something about it, lest they fail in some way to emulate the order of the Forms in political life. The philosopher's entrance into political affairs, rather, comes by way of injunction; otherwise it appears the philosophers are unconcerned about the ebb and flow of the city. At bottom, Kraut seems to overlook Plato's commitment to the claim that living like the gods is necessary and sufficient for happiness.

Second, if we are to assume that Plato held metaphysics to be an essential foundation for the sort of practical knowledge necessary for governance, then he says surprisingly little about this connection. How a metaphysical comprehension of the Forms in turn shapes the content of the philosopher's moral theory is nowhere developed

⁸⁶ *Republic*, 520d.

in Plato's writings. Indeed, unlike Aristotle, Plato does not develop a theory of practical rationality, one in which the moral agent utilizes his calculative intellect rather than his theoretic intellect. Consequently, Kraut can say very little on the subject beyond the vague suggestion that philosophers "start acting in a way that produces a harmony in the city that is a likeness of the harmony of the Forms."⁸⁷ But this claim only serves to highlight the fact that it would be stunning if the course of study Plato outlines for the philosopher, focusing as it does on a radically abstract and mathematical kind of intellectual training, should turn out to possess normative value for the statesman.⁸⁸ That Plato would be silent on such a radical thesis strikes me as unlikely, especially when it is equally plausible to read Plato as arguing that it is precisely a departure (though not a permanent one) from the mundane and transient features of everyday life that he has in mind for the philosopher. The central point of this interpretation is that the philosopher's education is valuable, not because it enlightened him to the fundamental mechanics of the *polis*, but rather because it made clear to him that the *polis* is not all that there is, nor is it by any stretch the most important thing there is.⁸⁹

Plato does assert the thesis that to possess *complete* virtue one must be a philosopher. But he does not say or imply that only philosophers are virtuous people or are the only ones who correctly understand virtue. For Plato to accept the stronger claim, he must show how the Forms directly and substantially alter the content of the virtuous

⁸⁷ Kraut, 328.

⁸⁸ One may reject this point by asserting that Plato adopted the Pythagorean position that saw substantive normative value in mathematical reasoning. However, we may grant the point and still hold that Plato did not see any normative value in the study of nature in the sense that of Aristotle's "physics."

⁸⁹ The point is the same in Plato's allegory of the cave: one cannot properly understand political life apart from undergoing a radical break from it by way of gradual intellectual enlightenment, that is, ever increasing mental or philosophic activity produced by Socratic *elenchos*. The light produced by the Forms does not illuminate the figures inside the cave. The enlightened philosopher, upon reentry into the cave, cannot see the things inside of it until his eyes have adjusted to its relative darkness.

person's ethical understanding. That Plato never offers such a defense strongly suggests that the ancient scholarly tradition was correct in supposing that Plato treats ethics and metaphysics as independent topics.⁹⁰ The Stoics, for instance, would find no problems in simultaneously accepting Plato's ethics and rejecting his metaphysics. Ancient Platonist scholars such as Alcinous were in the habit of treating Plato's ethical commitments, e.g. that virtue is necessary and sufficient for happiness, as entirely independent claims that did not rise or fall with the soundness of his metaphysical claims, particularly those concerning the theory of Forms.⁹¹

2.3 Does Human Nature Have a Social Function?

Thus far I have interpreted Plato as having taken for granted that politics, or the art of getting along well with fellow members of one's *polis*, is an entirely natural activity for a human being to pursue. I have presented him as one who believes in seeking the good for one's city, not merely out of self-interest (as Glaucon's argument would have it), but genuinely and wholeheartedly as Socrates argues in the *Apology*. Callicles and Glaucon both insisted that nature gives us a desire for power and pleasure, and only by conventional agreement does one advocate living justly by obeying the laws of one's city. Thus, Plato's argument on behalf of justice apparently must depend upon a claim that concerns the naturalness of being just, which is another way of affirming that man is political by nature and not by convention.

⁹⁰ See Annas, 102-103.

⁹¹ See Alcinous, *The Handbook of Platonism*, trans. John Dillon (Oxford: Oxford University Press, 1996). Alcinous deals with the Forms in 9.1-4 and treats Plato's moral philosophy as an independent subject beginning with the chapter entitled "The Highest Good and Happiness" (27.1-5). As a separate note, I accept the current scholarly consensus that distinguishes Alcinous from Albinus and credits the former with authorship of *The Handbook*.

But one plausible reading of Plato sees him as an ethical intellectualist: the position that morality amounts to knowing the truth. In the *Meno*, where Plato presents the intellectualist position most clearly, Socrates argues that one always does what one believes to be good and thus implies that knowledge of what is good is both necessary and sufficient for moral virtue.⁹² This reading of Plato is rooted in his assumption that human beings are ultimately (or essentially) intellects, and thus the human business is to contemplate the Forms - that is, to do what the gods do and to become what the gods are. The theme of "becoming like God," notably pronounced in the *Theaetetus*, was a favorite among ancient Platonists and such Christian thinkers as Athanasius.⁹³ Assuming the intellectualist interpretation of Plato is correct, it follows that human beings, like the gods, are hardly social creatures by nature, though we might be out of convention because of certain circumstantial need. In other words, human nature lacks a clear social function (*ergon*) that must be realized for its own sake if people are to be happy. But if attending to political and social concerns is a mere circumstantial and temporary necessity, a mere means to some other end, then how do we account for the extensive treatment Plato gives to social and political issues, particularly in the *Republic* and the *Laws*? More specifically, what purpose could Plato's political discourse serve if not to demonstrate the proper fulfillment of a basic social function of human nature?

Some scholars, following the ancient scholarly tradition, have argued that the *Republic* is not a work of political philosophy where the ideal form of state is the primary concern.⁹⁴ Rather, Plato's central concern is the moral status of the individual human

⁹² *Meno*, 78a-b.

⁹³ Athanasius wrote in his *De Incarnatione*, "God became man so that man could become God."

⁹⁴ Annas provides a compelling argument for this interpretation in *Platonic Ethics*.

soul, specifically, what the best form of soul is, the form that will yield optimal happiness. This moral (or perhaps "eudaimonistic") reading of the text presupposes that the *Republic* is either a predominantly ethical text *or* a predominantly political text but cannot be both equally. Desmond Lee has rejected this presupposition, suggesting that the work "is as much about ethics and education and philosophy as about politics in the strict sense."⁹⁵ Lee makes this claim so as to deflect some of what he correctly sees as an overly political reading of the *Republic* by many modern scholars. But Lee also regards the text as a teaching manual that Plato developed primarily for use in his Academy. Thus, the text does not represent a sustained and systematic inquiry into a single philosophical topic, but rather an introduction to a wide variety of topics without any underlying or unifying theme. However, the fact that there is a such a range of topics in the text does not in itself undermine (as Lee apparently assumes) the possibility that the central question of justice - namely, what it is and why it is supremely good - unifies the text by grounding the various topics in the purpose of demonstrating why the philosopher is the happiest individual.

The eudaimonistic reading of the *Republic* relies on a particular assumption about the overall argument structure that Socrates employs in the text, one essentially analogical and rooted in work Socrates undertakes in Book II. Socrates suggests that to understand the nature of the just and the unjust as it exists in the individual, an image (*eikon*) is necessary, one that will illustrate justice on a larger scale, namely, as it would exist in a city.⁹⁶ Thus, the purpose of the entire subsequent conversation, centering on the soul-state analogy, is to gain an understanding of what it means for the *individual* to be

⁹⁵ Desmond Lee, "Introduction," *Republic*, Lee, trans. (New York: Penguin Books, 1987), xxxii.

⁹⁶ *Republic*, 369a.

just and why such an individual would be happiest of all; moreover, the task of imagining the ideally just city is useful only insofar as it throws light on the ideally just individual.⁹⁷ As a result, we cannot assume that Socrates is committed to the picture of the ideal *polis* as he describes it in Books III-V, that is, as a picture that contains genuine features of what we might call Platonic political theory. There are places, for example, where one might well suspect Socratic irony regarding the city, perhaps most notably in Book V which Bloom regards as Socratic comedy akin to Aristophanes' *Ecclesiazusae*.⁹⁸ Book V begins with a recapitulation of the opening scene of the dialogue: Polemarchus joining with Adeimantus (and this time they have added Glaucon and Thryasymachus) to "arrest" Socrates and compel him to explain how the citizens of the city could have all things in common, including women and children. The political model is similar to the Spartan regime which is both familiar and attractive to his Laconophile interlocutors. However, as Allan Bloom observes, while Socrates' interlocutors are absorbed by questions of how the actualization of this city is to occur, he "expects [his suggestions about the full equality of men and women] to be ridiculed....[to] provoke both laughter and rage in its contempt for convention and nature, in its wounding of all the dearest sensibilities of masculine pride and shame, the family, and statesmanship and the city."⁹⁹ Bloom concludes that Book V "can only be understood as Socrates' response to his most dangerous accuser, Aristophanes, and his contest with him."¹⁰⁰ Whether or not Bloom's final point is accurate, Socrates clearly attempts, at least in part, to expose the faulty

⁹⁷ Although one might argue that the individual soul may illuminate the state or some aspect of it, and thus the soul and the state are mutually illuminating, Socrates never makes or implies this point.

⁹⁸ Bloom, "Interpretive Essay," 380-381.

⁹⁹ *Ibid.*, 380.

¹⁰⁰ *Ibid.*

assumption of his interlocutors that the construction of the imaginary city is the necessary prologue a discussion regarding the actualization of the ideal city in the concrete physical world. Thus, Book V serves as a reminder of the analogical purpose of the concept of the ideal state.

Building from Bloom's observation, Plato may not have been committed to the claim that the best city must be ruled by philosopher-kings. We find, for example, that the philosopher of the *Theaetetus* is inept in all practical matters. He cannot find the *agora* or the law courts. He is ignorant about the laws and the political struggles and personalities of his time. In short, he is like Thales who fell into a well while contemplating the heavens.¹⁰¹ "Only his body lives and sleeps in the city," while his mind is absorbed with the eternal Forms in his singular pursuit to "make all haste to escape from earth to heaven; and escape means becoming as like God as possible; and a man becomes like God when he becomes just and pure, with understanding."¹⁰² The philosopher as presented here, one who cannot navigate his way to the most important places of the city, is hardly a qualified ruler, much less an ideal one. If we are to accept Plato's philosopher-king as a genuine thesis of political theory, then we must show either that in the *Republic* Plato boldly announces a new conception of the philosopher, and thereby rejects the older one of the *Theaetetus*, or that the philosopher of the *Theaetetus* is not a true philosopher and that Plato never meant to represent him as one. Even if we accept the developmentalist thesis, however, the former suggestion fails for the fact that the *Theaetetus* is not an early dialogue, and for all we know may be as "late" as the

¹⁰¹ See Annas, p.54.

¹⁰² Plato, *Theaetetus*, in *Plato: Complete Works*, 176a-b.

Republic, if not later. It follows, then, that we would have just as much evidence to argue that the philosopher of the *Theaetetus* is the later one, the one that reflects the more developed and mature thought of Plato. The latter suggestion also suffers from want of evidence: we have no reason to doubt that Socrates' philosopher in the *Theaetetus* is a bona fide philosopher because Socrates never suggests otherwise. In fact, Socrates explicitly identifies political rule among the "common things" of the world which the good and wise man, i.e. the philosopher, must *escape* in his pursuit to be as much like God as possible.¹⁰³

But perhaps the two philosophers are not as dissimilar as at first glance. The philosopher of the *Theaetetus* may just be one who has yet to realize his political obligations, or has yet to be compelled to enter political life as the *Republic* describes. He may just be a genuine philosopher, a true contemplator of the eternal Forms, but an incomplete one; thus, there is no necessary reason to dispose of the philosopher-king in the overall scheme of Plato's political theory. This approach is in line with the foregoing interpretation of Richard Kraut who has argued that the Platonic notions of becoming like God and exercising political rule are not mutually exclusive. The contemplative life of the philosopher, "in the open air illuminated by the Form of the Good," trains the philosopher's character to love just things and to seek just things in the world about him (and likewise to detest disorder and to seek a remedy for disorderly things in the world). Philosophical training, in fact, turns out to be precisely the sort of training that politicians need to do their job well because it inculcates in them a love of justice rather than a love of power, gain, or praise. It follows for Kraut, then, that the political life does not stand

¹⁰³ Ibid, 176c-d.

in contrast to the philosophical life, as though one must give up contemplation to rule; instead, political rule is a natural result of the philosophical life. Kraut states that for the philosopher-king, the life of imitating the Forms "is no longer merely contemplative...instead, [he] starts acting in a way that produces a harmony in the city that is a likeness of the harmony of the Forms."¹⁰⁴ Kraut adds that the true philosopher realizes that his political inactivity "creates a certain disharmony in the world...And in creating this disharmony, the philosopher would in one respect cease to imitate the Forms. She would gaze at the order that is appropriate among the Forms but would thereby upset an order that is appropriate among human beings."¹⁰⁵

To suggest that Plato intended the point that philosophers in some way *create* or *cause* disorder in the human political world by their abdication is almost certainly an exaggeration. Plato is quite clear that the lower parts of the city, as with the lower parts of the soul, are disorderly on their own, that is, by nature and not by consequence of some prior condition. Hence, although it may be true that the philosopher is the person most qualified to promote order within the city (again, a claim that is itself questionable), it does not follow that (1) the philosopher in any way *causes* disorder by not taking on power, and (2) that the philosopher in any way *desires* such power as a natural result of his enlightenment. As I have argued, Plato is explicit that the true philosopher does *not* desire political power and thus he must be compelled to rule.¹⁰⁶ An additional drawback to Kraut's reading is that because he limits his discussion to the *Republic* and does not consider the philosopher of the *Theaetetus*, he fails to address the problem of reconciling

¹⁰⁴ Ibid, 328.

¹⁰⁵ Ibid.

¹⁰⁶ *Republic*, 519c.

the two accounts. What is more, Kraut does not address the key point that, according to Plato, the gods are asocial and apolitical beings; thus, it is not obvious how the philosopher, insofar as he is an imitator of the gods, would somehow naturally desire to take on political power.

According to the eudaimonistic reading, therefore, Plato's claim regarding philosopher-kings could only be intentionally ridiculous - that is, ridiculous as a claim of political theory - because his primary purpose is not to illustrate some truth about the "outward" earthly *polis* but a truth about the inward *polis* of the individual soul. Socrates makes this point explicitly toward the end of Book IV:

But in truth justice was something [like the model]; however, not with respect to a man's minding his *external* business, but with respect to what is *within*, with respect to what truly concerns him and his own. He doesn't let each part in him mind other people's business or the three classes in the soul meddle with each other, but really sets his own house in good order and rules himself; he arranges himself, becomes his own friend, and harmonizes the three parts, exactly like three notes in a harmonic scale, lowest, highest, and middle.¹⁰⁷

The rule of philosophers in the ideal city turns out to be a concrete analogical way for Plato to illustrate that individuals are to be ruled by their intellect. By extension, the tripartite composition of the state, made up of guardians (rulers), auxiliaries, and laborers, is an image of the tripartite composition of the individual soul consisting in the rational, spirited, and appetitive aspects, each with its own appropriate virtue (wisdom, courage, and self-restraint, respectively), by which each aspect can do its particular task well. We find Socrates, as late as Book IX, continuing to develop the tripartite arrangement of the state in explicitly analogical terms in order to explain the desires or pleasures specific to

¹⁰⁷ *Republic*, 443c-d (emphasis added).

each part: "just as a city is divided into three forms, so the soul of every single man also is divided in three...It looks as though there were also a threefold division of pleasures corresponding to these three, a single pleasure peculiar to each one; and similarly a threefold division of desires and kinds of rule."¹⁰⁸ Each part must be properly harmonized such that the "truly musical man" (by which Socrates means the truly just man) "looks fixedly at *the regime within him* and guards against upsetting anything in it by possession of too much or too little substance."¹⁰⁹

One can nonetheless argue that Plato needs to establish the best form of state, not merely to serve the analogical argument of illustrating the best form of soul, but to show why the happiness of the philosopher depends to a degree on the quality of the state in which he finds himself. This thesis implies that justice is not sufficient for happiness after all. Arguing for the "comparative thesis," Terence Irwin suggests that although the philosopher is always happier than the non-virtuous person all things being equal, the philosopher does not enjoy optimal happiness apart from the favorable conditions afforded him by the ideal political community; consequently, the ideal regime is supposed to constitute one part of Socrates' main argument in the dialogue.¹¹⁰ Irwin's suggestion has the obvious advantage of attributing to Plato a more likely thesis, one that avoids the radical claim that the philosopher in the worst possible political regime - one in which he is regarded as the most unjust of men and thus deserving of the worst possible punishments - is still happier than the most unjust of men in the best possible

¹⁰⁸ 580d.

¹⁰⁹ 591d-e (emphasis added).

¹¹⁰ Terence Irwin, *Plato's Ethics* (Oxford: Oxford University Press, 1995), 192.

political situation, one in which he is regarded as the most just of men and thus worthy of all appropriate honors.

We cannot doubt, however, that Socrates does defend the radical position, known by modern scholars as the "sufficiency thesis," in Books I and II. In response to Glaucon's challenge (358b-362c), Socrates must argue that the perfectly just individual - that is, the person who truly is just and yet "is stripped of everything except justice" and thus is given the greatest reputation for injustice with all the terrible consequences of that reputation - is still happier than the perfectly unjust individual who, though thoroughly unjust, seems just to everyone and consequently enjoys unlimited access to conventional goods. So long as one understands Glaucon's challenge as the primary context for interpreting Socrates' main argument for justice, the comparative thesis suffers. Glaucon's demand is not for Socrates to show that the just individual is the happiest individual all things being equal, but that the just individual is happiest *come what may*. Irwin's position, therefore, turns out to depend on the developmentalist assumption that what Socrates defends early in the dialogue he eventually abandons later on.¹¹¹

Evidence for Irwin's claim is lacking. At no point in Book II or beyond does Socrates answer the obvious question of the comparative claim, noted by Annas, of how virtue can somehow have the power to make the just man happier than the unjust man

¹¹¹ According to Irwin, Socrates makes this transition later in Book II, soon after Glaucon's challenge. Thus, on Irwin's reading Socrates never intended to defend the sufficiency thesis, despite his indications otherwise.

and yet not quite enough power to make the just man happy.¹¹² Moreover, at a key juncture in Book II Adeimantus offers a summary of the challenge to Socrates:

Now, don't only show us by the argument that justice is stronger than injustice, but show what each in itself does to the man who has it that makes the one bad and the other good. And take away the reputations, as Glaucon told you to...Now, since you agreed that justice is among the greatest goods - those that are worth having for what comes from them but much more for themselves... - praise this aspect of justice.¹¹³

Socrates' central thesis, at least as far as Adeimantus is concerned, is the sufficiency thesis - the same thesis, Adeimantus adds, Socrates has held since his exchange with Thrasymachus in Book I. That Adeimantus refers back to Socrates' exchange with Thrasymachus is important because it suggests that Socrates' thesis has not been revised. Adeimantus in no way indicates, either in Book II or beyond, that he expects Socrates to show that the just man is happier than the unjust all things being equal. Thus, for the comparative claim to be correct, Adeimantus must be wrong about Socrates' position, at least in this passage. But Socrates provides no indication, here or elsewhere, that such a misunderstanding has taken place. Indeed, Socrates responds to Adeimantus' demand with the initial sketch of the analogical argument for justice, thus implying that Glaucon and Adeimantus understood the central issue quite well.

The comparative thesis also fails to explain some of Socrates' remarks late in the *Republic*. If we suppose he abandoned the thesis at some point, we must somehow account for Socrates' explicit return to the "inner city" as the analogical image of the unconditionally good and happy soul in the final two Books.¹¹⁴ In pointing out, for

¹¹² Annas, 85.

¹¹³ *Republic*, 367c-d.

¹¹⁴ *Ibid*, 591d-e; 618b-619b.

example, that "a man is like his city" so that "the same arrangement [in a tyrannical city] be in him and that his soul be filled with much slavery and illiberality," Socrates makes clear that his purpose in describing the tyrannical state was to make clear the miserable condition of the "tyrannic soul."¹¹⁵ In Book X (612b-d), a passage Irwin takes to imply that the just man will secure happiness only when certain "external goods" have been added to his justice, we in fact find Socrates urging a return to and a reconsideration of the original hypothetical challenge of Glaucon. Just prior to the passage that Irwin has in mind, Glaucon accepts the sufficiency claim that "justice *by itself* is best for the soul itself, and that the soul must do just things, whether it has Gyges' ring or not, and, in addition to such a ring, Hades' cap."¹¹⁶ From this agreement, Socrates then recommends a revision of Glaucon's original challenge, one that reflects what is most appropriate, namely, "to give back to justice and the rest of virtue the wages...that they procure for the soul from human beings and gods, both while the human being is still alive and when he is dead."¹¹⁷ Socrates' point is that it is right or appropriate that the just man receive appropriate honors and "wages," not that his happiness still depends upon such things. For Socrates to imply that the just man would not be happy apart from these additional conventional goods, we must assume, as Irwin apparently does, that Socrates intends a further commentary on *eudaimonism*, an intention that the passage and its context simply do not warrant. Rather, Socrates clearly assumes that *that* discussion is finished, that he has won Glaucon's agreement, and that the radical (sufficiency) thesis must stand. The truly just man is happier than anyone else, come what may.

¹¹⁵ Ibid, 577d-578a.

¹¹⁶ Ibid, 612b (emphasis added). Athena used Hades' cap to hide from Ares and thus serves the same purpose as that of Gyges' ring.

¹¹⁷ Ibid, 612b-c.

If, as I have argued, Plato defends the sufficiency thesis, and if he holds that "the human *ergon*," as Michael J. White puts it, "is to understand or know the truth - period," then it becomes difficult to see a specifically social component in Plato's conception of the human *ergon*. That the just man or philosopher is devoted to a proper ordering of his inner city is clear. But why must he also be devoted to the proper ordering of the "outer" regime in which he lives? If we are to read Socrates as being genuinely devoted to the good of his state, as he claims in the *Apology* and the *Crito*, it is not all that clear why he should be. In fact, White points out that on Plato's view both biological and social realities can deflect us from fulfilling the human *ergon*; thus, he rightly concludes that "[t]his fact makes for an ambivalent attitude on Plato's part to the place of the political in human life."¹¹⁸

If I have been right in asserting that the knowledge of Plato's philosopher affords the philosopher no additional insight or wisdom in ethical and political matters, it is hard to see how we could regard Plato as an advocate of natural law. If the philosopher pays attention to the state, concerning himself with its affairs, he does so not because nature obligates him or his happiness in any way depends upon doing so. Quite broadly, then, we might say that while nature is at the heart of Plato's ethical thought, ethics broadly construed is absent from his conception of nature. The same is true, we shall see, of Aristotle.

¹¹⁸ White, 29.

CHAPTER 3

A REVISED CASE FOR NATURAL RIGHT: CONTEMPLATION AND MORAL VIRTUE IN ARISTOTLE

3.1 *Nicomachean Ethics* V.7 and *Rhetoric* I.13

In this chapter, I argue that Aristotle's moral theory should be understood as a revised version of Plato's core thesis of natural right rather than as a version of NLT. Unlike Plato, Aristotle's functionalistic anthropology contains an explicit social dimension (entailed by his claim that "man is a social animal") and thus part of human flourishing, according to Aristotle, must presumably incorporate social or political activity. In addition, in at least two places Aristotle apparently affirms a conception of natural justice which, according to some scholars, amounts to an affirmation of NLT.¹¹⁹ My first priority is to look closely at these two passages.

In the first passage, V.7 of the *Nicomachean Ethics* (hereafter *NE*), Aristotle distinguishes between justice that is natural (*phusikon*) and justice that is legal (*nomikon*). Although the text is notoriously perplexing, Tony Burns takes it as obvious that Aristotle's main purpose is to reject the view that all of political justice is merely conventional or legal and that the primary scholarly task is one of reconstructing Aristotle's view on the relation between natural law and positive law.¹²⁰ On this reading, Aristotle intends by natural justice to include all the timeless and changeless moral principles that have universal validity and authority in human societies everywhere and at

¹¹⁹ See, for instance, Tony Burns' book *Aristotle and Natural Law* (London: Continuum International Publishing Group, 2011).

¹²⁰ *Ibid.*, 42.

all times. In this context, Burns argues, one must understand Aristotle's claim that what is naturally just "has the same force everywhere and does not depend on people's thinking."¹²¹

However, Aristotle later adds that what is natural is nevertheless changeable, despite the fact that "some things are so by nature, and others are not."¹²² Just prior to this statement, Aristotle seems to reject the common view that what is just is always changing whereas what is natural is "unchangeable and has the same force everywhere, as fire burns both here and in Persia."¹²³ But he goes on to say that while the gods would also reject this claim, "among us, though there is such a thing as what is natural, everything is nevertheless changeable; but still some things are so by nature, and others are not."¹²⁴ Aristotle's point is that some things exist or occur "by nature" even though they *appear* to us to be changeable and that among these things are the principles of natural justice. His emphasis, then, is on the mistaken impressions people have about matters of justice and law, specifically, that they are entirely a matter of local conditions and thus entirely a matter of convention, and in *this* sense those principles are changeable. However, Burns reads Aristotle as saying that the principles of natural justice are changeable only insofar as they have differing expressions or applications once they have been incorporated and codified in the form of positive law by every society.¹²⁵ In other words, the changeability of natural justice comes in the codification process and, apparently, has nothing to do with human perception, despite Aristotle's

¹²¹ *NE* V.7.1134b.

¹²² *Ibid.*

¹²³ *Ibid.*, V.1134b.

¹²⁴ *Ibid.*

¹²⁵ Burns, 48.

remarks to the contrary. Indeed, Burns' point is not one that Aristotle himself makes or implies, but rather reflects complications that emerge in later developments of moral and legal theory, most notably by the Stoics who struggled with the problem of codification of natural law.¹²⁶ Aristotle may have anticipated that problem, of course, but there is at least as much evidence for the interpretation that he anticipated a separate development centered on the claim that there exists what would later be called a "*jus gentium*" alongside various forms of "*jus civile*." On this reading, there is insufficient grounds for asserting a natural law reading of Aristotle for the fact that a "law of nations" does not itself guarantee that there is a *lex naturalis*. At best, Burns shows that a basic framework for natural law theory might possibly be mapped onto *NE* V.7, and thus Aristotle's position is ultimately consistent with that of natural law.

Even then I have my doubts. The Greek term we are translating as "natural justice" could not be rendered as "natural law" without introducing fundamental problems in our understanding of Aristotle. As I argued in the previous chapter (2.1), *physis* takes on a wide range of meanings in Plato and Aristotle. Hence one cannot assume the term always conveys ideas of transcendence and hierarchy, particularly in a legal context in which *nomos* is the central concept. As I will show later in this chapter, to attribute to Aristotle the view of *physis* as the source of certain commands or laws we may or may not obey is to fundamentally misunderstand his beliefs about the practical value of the knowledge of nature. Moreover, he does not offer a hierarchical framework of law, one in which positive laws are just or unjust depending on their conformity to some higher or

¹²⁶ Cicero's *On Laws*, especially Book II, is a particularly clear instance of an effort to address this problem. See also Eric Brown's essay, "The Emergence of Natural Law and the Cosmopolis" in *The Cambridge Companion to Ancient Greek Political Thought*, Steven Salkever, ed. (Cambridge: Cambridge University Press, 2009), 355-56.

transcendent law. Part of the reason for this claim is that Aristotle nowhere advances the notion of obligation - essential to NLT¹²⁷ - in his ethical and political thought; instead, he emphasizes the centrality of the human good which is attainable only by active participation in the political community.¹²⁸ If these arguments are correct, then Leo Strauss' interpretation of Aristotle is preferable to that of Burns: what Aristotle calls natural justice (Strauss prefers to render the term as "natural right") is simply the set of principles or rights that must be adopted and enforced in any society that hopes to last and it is in this particular sense that the authority of such laws, e.g. the outlawing of murder and theft, is natural and universally recognized.¹²⁹ On this view, Aristotle simply finds it strange to say that human societies *decided* that murder and theft should be outlawed. The discovery or realization of such principles need not be tantamount to the discovery of natural law, but may only be a discovery of what an ideal rational agent or an ideally rational community would do if it hopes to thrive.

The fundamental distinction Aristotle draws in V.7, therefore, is not between natural law and positive law, but between laws with natural authority and are generally recognized in human societies (*phusikon*) and laws whose authority is entirely conventional and depend only on local preference (*nomikon*). For the latter, Aristotle offers as an example the decision on whether the ransom for a prisoner will be one mina, or whether a goat should be sacrificed rather than two sheep. The main point, as I understand him, is that *nomikon* contains no natural or objective basis for determining its

¹²⁷ I argue for the connection between NLT and the notion of obligation in the final chapter (4.4-4.5).

¹²⁸ See C.C.W Taylor, "Politics" in *The Cambridge Companion to Aristotle*, Jonathan Barnes, ed. (Cambridge: Cambridge University Press, 1995), 234. As I shall argue (3.3), however, only the "secondary" form of *eudaimonia*, that which is in accordance with moral virtue, requires active social involvement.

¹²⁹ Strauss, 140.

legislative *content*, and thus there is no relevant difference between sacrificing one goat and sacrificing two sheep (or, say, between driving on the right side of the road and driving on the left). This point does not imply that such laws are unnecessary and dispensable. Aristotle finds no inconsistency in asserting that *nomikon* is both conventional and necessary for society to thrive. Aristotle's primary intention in distinguishing *phusikon* and *nomikon*, therefore, is to explain the necessary legal conditions under which a society might flourish. While the natural law theorist would answer the same challenge using the distinction between natural law and positive law, Aristotle need not rely upon the same distinction. It follows, then, that Burns' reading of *phusikon* and *nomikon* as natural law and positive law respectively requires additional evidence from Aristotle - evidence that, as far as I can tell, is lacking in the text.

In *Rhetoric* I.13 - perhaps the most oft-cited passage by scholars who consider Aristotle a natural law theorist - Aristotle distinguishes between "universal law" and "particular law." The latter includes laws established by each culture in reference to itself and could be either written or unwritten. The former refers to what Aristotle calls "the law of nature."¹³⁰ To illustrate this distinction, he cites Antigone's decision to bury her brother Polynices: "when she says that the burial of Polynices was a just act in spite of the prohibition, she means that it was just by nature," that is, in accordance with some eternal and universal precept common to all societies.¹³¹ Aristotle adds a similar observation from Empedocles: "when he bids us kill no living creature, [Empedocles] says that doing this is not just for some people while unjust for others," but rather is "an

¹³⁰ Aristotle, *Rhetoric*, W. Rhys Roberts, trans., in *Basic Works of Aristotle*, Richard McKeon, ed. (New York: Random House, 2001), I.13.1373b.

¹³¹ *Ibid.*

all-embracing law, through the realms of the sky," stretching unbroken over the entire earth.¹³²

There is insufficient evidence, however, that Aristotle intends to erect a basic paradigm of moral and legal thought that he must defend against alternative views. First, on the assumption that the primary purpose of the *Rhetoric* is to provide an account of the art of persuasion that would be most useful for a would-be lawyer or statesman, it would be surprising if Aristotle were to articulate and defend a new or controversial position in political theory in this context. Second, just prior to establishing the distinction between universal and particular law, Aristotle makes clear that his purpose is to classify the commonly recognized types of law (and their applicability to differing classes of people). Thus, his intention does not appear to go beyond reporting varieties of law and their applications that are generally admitted and thus useful for forensic rhetoric.¹³³ This explains why, after introducing the basic distinction between universal and particular law and providing examples, Aristotle says nothing to defend the validity of the distinction. Moreover, in his account of universal law (or the law of nature), he states that everyone recognizes that there is "a natural justice and injustice that is binding on all men, even on those who have no association or covenant with each other."¹³⁴ Immediately following this claim, he provides examples from Sophocles, Empedocles, and Alcidamas to illustrate this particular understanding of universal law. Therefore, if we are to regard Aristotle as a natural law theorist based on this passage, then we are forced to accept the problematic claim that the position of natural law, at least from Aristotle's point of view,

¹³² Ibid.

¹³³ See Strauss, 139-40. Howard P. Kainz makes a similar observation in *Natural Law: A Reevaluation* (Peru, IL: Open Court Publishing Co., 2004), 5-6.

¹³⁴ Ibid.

is universally accepted and thus not a distinct position within moral and legal philosophy.¹³⁵

One may argue, however, that even if the two aforementioned passages do not in themselves justify a natural law reading of Aristotle, we might find the needed support by casting a broader net and taking into account his moral thought as a whole. After all, Aristotle in the *NE* understands ethics as the effort to fulfill or realize some underlying human nature with a natural function or purpose (*ergon*). Thus, ethics for Aristotle must presuppose, as Alasdair MacIntyre indicates, "some account of potentiality and act, some account of the essence of man as a rational animal and above all some account of the human *telos*."¹³⁶ Would not a teleological moral theory grounded in an account of human nature, such as the one Aristotle provides, count as some form of natural law? I attempt to answer this question in what follows.

3.2 The Two Senses of *Theōria*

In the remainder of this chapter, I argue that Aristotle's understanding of contemplative activity (*theōria*) provides the key clue for how we should respond to the foregoing question. In Aristotle's general scheme of virtue according to the two characteristic activities of the human soul, reason and action, he describes *theōria* as the most excellent and worthy activity possible for a human being because it is virtuous activity according to the "best element" of the human soul, namely, the intellect.¹³⁷ But

¹³⁵ Although perhaps a reasonable claim *prima facie*, Aristotle's aforementioned examples only complicate the matter. The "higher law" of Sophocles' *Antigone*, for instance, is not obviously an expression of natural law, and could just be a form of divine positive law.

¹³⁶ Alasdair MacIntyre, *After Virtue* (Notre Dame: University of Notre Dame Press, 1984), 52.

¹³⁷ *NE* X.71177a

Aristotle adds a key point, seemingly to ground his claim regarding the supremacy of the intellect in the human soul: unlike the moral virtue (or virtue of action) which is characteristically human activity, *theōria* is the characteristic activity of the gods. Based on this point, Aristotle concludes that a life of contemplation "is superior to one that is simply human, because someone lives thus, not in so far as he is a human being, but in so far as there is some divine element within him...If the intellect, then, is something divine compared with the human being, the life in accordance with it will also be divine compared with human life."¹³⁸ If the life of the gods is supremely excellent, which Aristotle assumes to be true, then it appears that a life that fully approximates divine activity is the most excellent and blessed form of life possible.

However, Aristotle's "argument from divinity" in defense of the thesis that more contemplation is always preferable to less (which I discuss in 3.3) raises a key interpretive problem in the *Nicomachean Ethics* regarding Aristotle's final view of happiness (*eudaimonia*).¹³⁹ Although Aristotle spends a great deal of time in the text clarifying and defending the life of comprehensive practical virtue, it is not entirely clear whether and how such a life could be compatible with one devoted mainly to *theōria*. For instance, he says in *NE* I.9-10 that "happiness requires *complete* virtue and a *complete* life," and thus the happy person "will spend all, or most, of his time engaged in action and contemplation in accordance with virtue."¹⁴⁰ This passage seems to suggest that ideal happiness requires more than what *theōria* can offer. Along similar lines,

¹³⁸Ibid, X.7.1177b.

¹³⁹ I borrow the phrase "argument from divinity" from Richard Kraut, *Aristotle on the Human Good* (Princeton: Princeton University Press, 1989), 39-67. Additionally, I employ the conventional gloss of "happiness" for *eudaimonia* here and elsewhere, though it should be understood that the translation is imperfect and potentially misleading. For this reason, I also use "human flourishing" or "human well-being."

¹⁴⁰ Emphasis added.

Aristotle says of friendship that it "is an absolute necessity in life. No one would choose to live without friends, even if he had all the other goods."¹⁴¹ These and other passages suggest what has been called the "expanded account" of *eudaimonia*: happiness in its ideal sense consists in nothing less than the full and harmonious exercise of both practical and intellectual virtue.¹⁴² However, elsewhere Aristotle asserts that "we ought not to listen to those who exhort us, because we are human, to think of human things, or because we are mortal, to think of mortal things. We ought rather to take on immortality as much as possible, and do all that we can to live in accordance with the highest element within us; for even if its bulk is small, in its power and value it far exceeds everything."¹⁴³ Rather than a life of complete practical and intellectual virtue, then, in this passage Aristotle appears to affirm a "restricted account" of *eudaimonia*: ideal happiness consists in the exclusive and maximal exercise of intellectual virtue in contemplative activity and that no other good is necessary.

I will attempt to show, first, that Aristotle accepts and defends the restricted account of *eudaimonia*, and, second, that Aristotle's defense of the restricted account is directly relevant to the question of natural law in his thought. Specifically, I argue that if Aristotle accepts the restricted account of happiness, then he cannot also accept some form of natural law. In order to show why Aristotle holds the restricted position, I give some attention to work Aristotle does in *NE* VI.1-7 which he later applies to a critical passage in X.8. In the latter passage, Aristotle states that the life of practical virtue "is

¹⁴¹ *NE* VIII.1.1155a.

¹⁴² For a defense of the expanded account, see Amélie O. Rorty's essay, "The Place of Contemplation in Aristotle's *Nicomachean Ethics*" in *Essays on Aristotle's Ethics*, Rorty, ed. (Berkeley: University of California Press, 1980), 377-94. As an additional note, I take it for granted that any proper interpretation of Aristotle's *eudaimonia* will include good fortune as part of what is necessary for happiness.

¹⁴³ *NE* X.7.1177b-1178a.

happy in a secondary way, since the activities in accordance with it are human."

Although it appears that Aristotle champions the life of *theōria* over the life of practical *arete*, advocates of the expanded account are quick and correct to point out that such an interpretation depends upon a key assumption about *theōria*, namely, that it is a very specific kind of intellectual activity with only very specific objects that do not include aspects of specifically human importance. This assumption is problematic because Aristotle does not always use *theōria* in this narrow way. In fact, he uses the term to cover a wide variety of contexts such that, as Kraut observes, "One can be said to be engaged in *theōria* whenever one closely observes or studies something - whatever that something is."¹⁴⁴ Thus, on the expanded account, Aristotle's philosopher is the expert in both scientific and moral matters because both contain objects of contemplation that he has mastered, that is, objects that are necessary, unchanging, self-contained, and noble.¹⁴⁵ Although the typical objects of contemplation involve the gods and the heavens and perhaps mathematical objects, they are not limited to "otherworldly" considerations.¹⁴⁶ Moreover, the philosopher's expertise does not concern two disconnected realms but rather is a synthesized and organic whole. Thus, on the expanded account *theōria* complements and completes practical wisdom, which implies that *theōria* is relevant to and useful for practical purposes.

However, Kraut goes on to assert that "the *theōria* Aristotle is talking about in X.7-8 is not the study of just any objects or truths. It is the activation of theoretical

¹⁴⁴ Kraut, 15-16 n.2. As Kraut observes, Aristotle says, for example, that every craft studies (*theōria*) "how something that is capable of either being or not being, and the first principle of which is in the producer and not in the product, may come into being (*NE* VI.4.1140a).

¹⁴⁵ *Ibid.*, 379.

¹⁴⁶ *Ibid.*, 378.

wisdom, and this state of mind does not take human happiness as an object of study...When he uses *theōria* in this narrow way, he contrasts it with practical activity and practical thought."¹⁴⁷ If Kraut's reading is correct (as I believe it is), one must show that (1) while Aristotle uses *theōria* as a general and non-technical term to refer to the study of just about anything, he also develops in *NE* VI.1-7 a narrower and technical meaning for the term that sets it *in contrast to* practical reflection and activity, and (2) Aristotle applies the narrow understanding in his defense of the ideal contemplative life in X.7-8. In support of (1), I turn now to *NE* VI.1-7. I will defend (2) in the next section (3.3).

Aristotle's primary purpose in Book VI, as he states, is to identify the virtues of thought or reason in contrast to the virtues of character (which he has discussed in Books II-V).¹⁴⁸ Moreover, just as the soul consists of two parts, "one with reason and the other without," so too does the rational element consist of two parts: the calculative and the scientific. When Aristotle first describes the activity characteristic of the two sub-parts of reason, he uses *theōria* for both: "one [part] with which we contemplate those things whose first principles cannot be otherwise, and another those things whose first principles can be otherwise."¹⁴⁹ Leaving aside for now what he means by "first principles" in this context, the important point to notice is that *theōria* is involved in calculating or deliberating (Aristotle equates the two latter terms explicitly) as well as in scientific reasoning.¹⁵⁰ Here, then, we find the broad sense of *theōria*: intellectual activity that ranges over any number of topics, including practical considerations oriented toward how

¹⁴⁷ Kraut, 15-16 n.2.

¹⁴⁸ *NE* VI.1.1139a.

¹⁴⁹ *Ibid.*

¹⁵⁰ *Ibid.*

one should act. This broad sense is what Aristotle has in mind when he discusses practically wise people in *NE* VI.5: "We may grasp what practical wisdom is by considering the sort of people we describe as practically wise. It seems to be characteristic of the practically wise person to be able to deliberate nobly about what is good and beneficial for himself, not in particular respects, such as what conduces to health or strength, but about what conduces to living well as a whole."¹⁵¹ We should note that Aristotle is *using*, not mentioning, the term "deliberation," which he developed back in *NE* III.2-3 as a thesis on the meaning of rational choice (*prohairesis*). Deliberation has an essentially practical meaning such that the term cannot simply be applied to an unspecified range of possible objects. According to Aristotle, "No one deliberates about eternal things," by which he means that deliberation is *always* about things that could be otherwise and *never* about things that are permanent and unchanging, i.e., the first principles of the universe.¹⁵²

We should now see that while *theōria* (as Aristotle has used the term thus far) ranges over a wide range of objects of thought, Aristotle also insists upon a fundamental and critical distinction among those objects - a distinction between objects that are properly scientific and objects that are properly practical. The foregoing distinction implies that the objects of practical reason are limited to those in the moral agent's power to bring about.¹⁵³ In other words, an essential component to practical rationality is that it must be oriented to action in accordance with the moral virtues. Hence in Book I

¹⁵¹ Ibid.

¹⁵² III. 3. 1112a.

¹⁵³ To say that the objects of practical reason are limited, however, I do not mean to suggest that Aristotle holds a rather limited view of the power of human deliberation. I am not suggesting, in other words, that deliberation is entirely a matter of "means-end reasoning," as some scholars have argued. For a helpful treatment of this issue, see David Wiggins' essay, "Deliberation and Practical Reason" in *Essays on Aristotle's Ethics*, pp. 221-240.

Aristotle states that the purpose of his lectures on morality “is not knowledge but action.”

One should not be surprised, then, that in *NE* VI.2 Aristotle offers the following

statement on practical thought:

Such thought governs productive thought as well, in that everyone who produces aims at some goal, and the product is not the goal without qualification, but only relative to something, and instrumental to something; for the goal without qualification is what is done, because acting well is the goal, and the object of desire.

Virtuous action itself is the goal of practical rationality, and the latter is necessary for the former. Indeed, we are not in fact “acting” (in the proper sense of the term) if the action does not proceed from deliberation and choice. However, in stark contrast to practical reasoning, scientific thought “moves nothing” because its aim is not practical, that is, not oriented toward right action (*praxis*).¹⁵⁴ Aristotle states in VI.5,

No one deliberates about what cannot be otherwise, or about things he cannot do. So, if scientific knowledge involves demonstration, but there is no demonstration of anything whose first principles can be otherwise, and if one cannot deliberate about what is necessary, then *practical wisdom cannot be scientific knowledge*.¹⁵⁵

Thus, *theōria* as deliberation about how to live well (VI.5) is an activity of reason that is different *in kind* from *theōria* as the pursuit of scientific knowledge. In *Metaphysics* VI.1 for example, we find Aristotle's hierarchical arrangement of what may be called the “higher sciences” of theology, physics, and mathematics (in descending order), which closely follows Plato's own arrangement in the *Republic*. Aristotle points out that this arrangement is based on the primary purpose of theoretical inquiry: “We are seeking the

¹⁵⁴ A clarification is needed here because, for Aristotle, practical reasoning itself is not sufficient to produce action. In addition to practical reason, one needs desires for the right sorts of ends (the sorts of ends that practical reason in its ideal condition would establish as worth seeking given a particular situation or context), and those desires come from habits acquired in one's upbringing. See *NE* VI.2.

¹⁵⁵ VI. 5. 1140a-b (emphasis added). Aristotle makes a very similar comment in *NE* III.3 as well.

principles and the causes of the things that are, and obviously of them *qua* being."¹⁵⁶ In the same section, Aristotle sets the study of what is in contrast to practical thought: "Therefore, if all thought is either practical or theoretical, physics must be a theoretical science, but it will theorize about such being as admits of being moved, and about substance-as-defined for the most part only as not separable from matter."¹⁵⁷ Note here that although we might allow for the contemplation of moral ideas or other aspects of human happiness based on the *NE*, Aristotle explicitly excludes such considerations in his account of *theōria* in *Metaphysics* VI.1. This exclusion suggests two key points: First, Aristotle does not always have the broad sense of *theōria* in mind, and the aforementioned passage in the *Metaphysics* appears to be one of those passages. It is plausible, then, that in his work on *theōria* in *NE* VI Aristotle presupposes that his audience is already adequately familiar with the narrower meaning of the term and thus will not be surprised to find him making use of different senses of *theōria* here. Second, the theoretical philosopher, insofar as his expertise is limited to scientific inquiry, is *not* an expert in human and practical affairs.¹⁵⁸ In other words, ideal theoretical activity - or metaphysics in the strict sense¹⁵⁹ - excludes the truths of the lower sciences, includes ones that are specifically anthropological or biological in nature, e.g. "man is by nature a political animal."¹⁶⁰

This background allows us to appreciate the fundamental importance of

Aristotle's claim in *NE* VI.2:

¹⁵⁶ Aristotle, *Metaphysics* in *Basic Works of Aristotle*, W.D. Ross, trans., VI.1.1025b.

¹⁵⁷ *Ibid.*

¹⁵⁸ I defend this point later in this chapter.

¹⁵⁹ On Aristotle's view, metaphysics broadly construed would include all truths of nature (or scientific truths), including anthropological and biological ones. But metaphysics in its strict and ideal sense - that is, the kind of study that characterizes what the ideal philosopher would do - excludes the lower sciences.

¹⁶⁰ Aristotle, *Politics*, Stephen Everson, trans. (Cambridge: Cambridge University Press, 1996), I.1.1253a.

In the case of thought concerned with *theōria*, however, which is neither practical nor productive, what constitute its being good and bad are truth and falsity, because truth is the characteristic activity of everything concerned with thought. But in the case of what is practical and concerned with thought, its being good consists in truth in agreement with correct desire.

Clearly Aristotle does not have the broad sense of *theōria* in mind here. He is, rather, introducing the narrower technical meaning of the term. The *theōria* Aristotle develops here consists in the study of the first principles of nature (*physis*) or "what is" which defines the higher sciences. Specifically, he has in mind the study of eternal, necessary, and unchanging realities that characterized pre-Socratic philosophy and is specifically treated in *NE* VI.3 and 6. In these sections Aristotle twice refers to the *Analytics* (by which he most likely means the *Posterior Analytics*) where he argues that because scientific knowledge "is something which cannot be other than it is," it is the kind of knowledge that comes by demonstration resting upon first principles.¹⁶¹ In these references Aristotle again assumes that his audience is sufficiently acquainted with his teachings on logic and the sciences to grasp the kind of knowledge he has in mind. For this reason, Aristotle can assert without much argument that philosophers such as Thales and Anaxagoras "are [theoretically] wise, but not practically wise, when they are seen to be ignorant of what is in their own interest; and that their knowledge is extraordinary, wonderful, abstruse, godlike, but useless, because it is not human goods they are looking for."¹⁶²

¹⁶¹ Aristotle, *Posterior Analytics* in *Basic Works of Aristotle*, G.R.G. Mure, trans., I.2.71b.

¹⁶² VI. 7. 1141b.

3.3 The Argument from Divinity in *NE* X.7-8

Assuming my interpretation of Aristotle thus far is sound, I have shown only that at one point in the *NE* Aristotle distinguishes between two senses of *theōria*. In the broad sense of the term contemplation may include matters of practical reason - that is, considerations of how one should to act in any given situation. In the narrower and technical sense contemplation is defined in contrast to practical reasoning and thus includes neither deliberation nor rational choice.¹⁶³

What remains unclear is whether Aristotle identifies the distinguishing activity of the philosopher with the narrow meaning of *theōria*. Those who defend the expanded account of *eudaimonia* in Aristotle may grant the distinction between the broad and narrow senses of *theōria* as developed in Book VI and still assert that the contemplative activity proper to the philosopher - especially the ideal philosopher of *NE* X.7-8 who enjoys the most perfect happiness - need not be limited to the narrow sense.¹⁶⁴ On this reading the philosopher who is entirely devoted to metaphysical topics, even if these topics are the most excellent and noble ones (as Aristotle assumes), is *not* the ideal philosopher according to Aristotle because he lacks something essential to complete happiness, namely, a comprehensive practical life that involves, or even centers on, the contemplation of both divine and human objects. We find an example of the foregoing expanded position in Amélie O. Rorty's essay, "The Place of Contemplation in Aristotle's

¹⁶³ Aristotle develops his view of practical rationality as the combination of deliberation and rational choice in *NE* III.2-3. I have followed Roger Crisp's translation of *prohairesis* as "rational choice," though only "choice" is signified by the Greek term. Crisp's rendering, while possibly misleading, has the benefit of emphasizing the central role of the intellect in establishing the correct ends of action in Aristotle's account of practical rationality.

¹⁶⁴ Aristotle uses the key term "perfect (*teleia*) happiness" to refer to the ideal form of *eudaimonia* in contrast to the type of *eudaimonia* that is second-best (*NE* X.8). It is Aristotle's "perfect happiness" I have in mind when I speak of the happiness of the "ideal philosopher."

Nicomachean Ethics," where she argues that for Aristotle "contemplating Humanity is not only a good thing but the best and indeed the most pleasant component of the fully happy life."¹⁶⁵ Her point rests upon the claim that for Aristotle a human being is a "contemplative person," essentially a "Mind," and as such the contemplation of ourselves means the contemplation of an object that is among the finest and noblest objects that exist.¹⁶⁶ The point is important because for Aristotle the relation between the contemplator and the object of contemplation is dynamic and transformative rather than static and passive. The thinker becomes identical with the formal character of the given object of thought.¹⁶⁷ Thus, to contemplate Humanity we not only contemplate an object that is among the finest and most perfect, but we are also transformed by the formal characteristics of this object and become like it - that is, we become, as Rorty concludes, "a unified whole, a self-contained, self-justified, and fully actualized human being."¹⁶⁸

Although Rorty registers an important insight here with respect to the transformative quality of contemplative activity, she does not demonstrate how the argument is compatible with passages in which Aristotle appears to directly reject her thesis. In *NE VI. 7*, for instance, Aristotle states that

It would be absurd for someone to think that political science or practical wisdom is the best science, unless human beings are the best thing in the cosmos...It makes no difference if it is claimed that a human being is superior to all the other animals. For there are other things far more divine in nature than human beings, such as - to take the most obvious example - the things constituting the cosmos.

¹⁶⁵ Rorty, 388.

¹⁶⁶ *Ibid.*

¹⁶⁷ Aristotle states in *De Anima*, "Mind is itself thinkable in exactly the same way as its objects. For in the case of objects which involve no matter, what thinks and what is thought are identical; for speculative knowledge and its object are identical." See *De Anima* in *Basic Works of Aristotle*, J.A. Smith, trans, III.4.

¹⁶⁸ Rorty, 388.

That humanity, at least in this passage, is *not* among the finest things to think about reveals a possible confusion in Rorty's notion of "Humanity." It should be obvious that what Aristotle means by "human being" in VI. 7 cannot be the same as what Rorty means by "Humanity" because, on Rorty's account, to contemplate Humanity is to contemplate the human being insofar as the human being possesses a divine rational element. If she intends to include the contemplation of human beings as members of a *polis* with practical concerns and a definite material nature, then one has difficulty seeing how the contemplation of Humanity in that sense could be, on Aristotle's view, among the noblest things to think about. In short, Rorty appears to imply that contemplating Humanity would be in essence the same as contemplating the gods. But, again, that does not appear to be Aristotle's view. Indeed, in *NE* X.7 he cautions us against confusing the human with the divine:

But we ought not to listen to those who exhort us, because we are human, to think of human things, or because we are mortal, to think of mortal things. We ought rather to take on immortality as much as possible, and do all that we can to live in accordance with the highest element within us.

Aristotle's point is that the rational part of the human soul capable of engaging in *theōria* (in the narrow sense) is not a human element but rather a divine one. Just prior to the foregoing passage, he states, "Such a life [of *theōria*] is superior to one that is simply human, because someone lives thus, not in so far as he is a human being, but in so far as there is some divine element within him."¹⁶⁹ Thus, to consider the contemplation of *that*

¹⁶⁹ *NE* X.7.1177b. It is important to note that Aristotle never qualifies the term "divine element," as if to suggest that it is essentially human though "divine-like." Rather, his view seems to be that the divine element, at least in some basic sense, is an alien element in the human soul that human beings nevertheless can exercise, if we are so fortunate.

element as tantamount to the contemplation of Humanity involves an error in how we understand Aristotle's view of the human person.

What still must be shown from *NE X.7-8* is that the characteristic activity of Aristotle's ideal (and ideally happy) philosopher is limited to *theōria* in the narrow sense. Even if the foregoing critique of Rorty's position is correct and humanity is not among the best objects that the ideal philosopher might contemplate, it does not follow that the philosopher can do without thinking about the lower or "worldly" things if he is to live an ideally happy life. Rather than perceiving that the philosopher's happiness is somehow compromised to the extent that he contemplates the lower objects, perhaps we should read Aristotle as saying that the philosopher's happiness is compromised (or incomplete) to the extent that he *fails* to contemplate all that is worth contemplating in the heavens and on earth.

If we accept the foregoing expanded reading of Aristotle, however, we will not be able to make sense of a key argument Aristotle offers on behalf of perfect happiness. In several places in *NE X.8* Aristotle makes the point that the gods enjoy supreme happiness and, thus, divine activity is the archetype for *eudaimonia* in its ideal form. This point is the basis for Aristotle's "argument from divinity," which we may summarize as follows: because the gods are the happiest of all living beings, and because their happiness is the direct result of *theōria*, any living being will enjoy happiness to the extent that it is able to contemplate as the gods contemplate. Aristotle states, "So the god's activity, which is superior in blessedness, will be contemplative; and therefore the human activity most

akin to this is the most conducive to happiness."¹⁷⁰ Almost immediately following this passage, he reiterates the argument: "the life of the gods is entirely blessed, and that of human beings is so to the extent that it contains something like this sort of activity...Happiness, then, extends as far as contemplation, and the more contemplation there is in one's life, the happier one is."¹⁷¹

But what sort of *theōria* does Aristotle have in mind here? That is, what sorts of objects are the focus of the kind of *theōria* that characterizes divine activity? To answer this question we must attend to the following key passage:

That complete happiness consists in some contemplative activity is also apparent from the following. We assume the gods to be supremely blessed and happy; but what sorts of actions should we attribute to them? Just actions? But will they not obviously be ridiculous if they make contracts, return deposits and so on? Courageous acts, then, enduring what is fearful and facing dangers because it is noble to do so? Or generous acts? To whom will they give? And it will be absurd if they have money or anything like it. And what would their temperate acts consist in? Is such praise not cheap, since they have no bad appetites? If we were to run through them all, anything to do with actions would appear petty and unworthy of the gods.¹⁷²

Certainly, one key point Aristotle makes is that the gods are asocial and amoral. They do not perform any of the typical actions (e.g., making contracts) or exhibit any of the specific (moral) virtues that constitute life in the *polis*. In light of this point, however, we are right to wonder how divine activity could possibly be ideal for *human* happiness, assuming that we are social and political animals. I will attend to this question shortly, but we should not miss a key point Aristotle is making here: he is not simply concerned with arguing that a life free of social and moral considerations is happiest (a point he

¹⁷⁰ *NE* X.8.1178b.

¹⁷¹ *Ibid.*

¹⁷² *Ibid.*

suggests elsewhere¹⁷³), but he also wants to emphasize the kind of contemplation that is characteristic of ideal happiness. He states at the outset of the passage that "complete happiness consists in *some* contemplative activity," by which I read him to mean some particular *type* of *theōria* as opposed to *theōria in addition to* other activities. That it cannot mean the latter should be obvious from the passage itself: Aristotle explicitly *eliminates* social and moral activity from the picture of perfect happiness. Thus, Aristotle's emphasis on the amoral and asocial life of the gods also serves to define the kind of *theōria* Aristotle has in mind, one that is free of moral and social objects, i.e. the narrow and technical sense of the term.¹⁷⁴ Aristotle regards as obvious the point that the kind of contemplative activity that the perfectly happy individual exercises is theoretical (or metaphysical) activity in its purest form. If this interpretation is correct, then a presupposition of Aristotle's which is vital for our purposes is that metaphysics is non-normative, which is to say, the study of nature does not afford the theoretical philosopher (or the gods) access to specifically moral truths and principles. I will return to this point in the next section (3.4).

Before leaving *NE* X.7-8, I should address an aforementioned problem in the argument from divinity. Even if we grant that the gods' only occupation is contemplation, and that they enjoy perfect happiness as a result of this activity, we are right to ask how this could possibly serve as an account of specifically *human* happiness. What reason do we have for thinking that we stand to gain from engaging in *theōria*, and that the more we do so the better off we are? Moreover, it is puzzling why Aristotle

¹⁷³ *NE* X.7.1177a-b.

¹⁷⁴ Indeed it would be rather odd for Aristotle to hold that moral and social activity is "petty and unworthy of the gods," and yet include moral and social objects among the things that the gods contemplate.

would make this argument when it appears to be in direct conflict with the account of *eudaimonia* he articulates in earlier books in the *NE* and elsewhere. Previously in the *NE* (in Book I), Aristotle defended what Michael J. White calls a "functionalistic conception" of human happiness: the suggestion that human well-being depends upon our ability to fulfill or realize some natural underlying human purpose or function (*ergon*, which literally means "work").¹⁷⁵ In I.7 for instance, Aristotle states that we can understand what the human good is "if we grasp the characteristic activity (*ergon*) of a human being. For just as the good - the doing well - of a flute player, a sculptor or any practitioner of a skill...is thought to lie in its characteristic activity, so the same would seem to be true of a human being, if indeed he has a characteristic activity." This account of *eudaimonia* is species-specific: the type of activity that will yield *eudaimonia* depends upon the species in question. Thus, the activity that will yield human *eudaimonia* is not the same as the activity that will yield the *eudaimonia* of some other being. But the argument from divinity quite obviously depends upon a species-independent understanding of happiness: there exists a supremely excellent activity such that *any* being capable of engaging in that activity will be happy to the extent that it engages in it. Hence, *theōria* is the best activity possible for a human being, not because it is most suitable to human nature, but because it possesses qualities, e.g. permanence and stability, that are themselves intrinsically, objectively, and supremely good.

In response to this occasional Platonizing tendency in Aristotle, which appears inconsistent with his ethical thinking taken as a whole, some scholars have simply rejected the argument from divinity as representative of Aristotle's mature moral and

¹⁷⁵ See White, 2-4.

political perspective.¹⁷⁶ In the final analysis, they maintain, the only plausible interpretation of Aristotle is that he accepts and defends the view that *theōria* must be suitable to the kind of activity that a human being of practical excellence with the necessary leisure would do, for he does this as an activity that *completes* his happy life.¹⁷⁷ Contemplative activity is indeed the finest activity possible for a human being, but, as Nussbaum notes, it "is, as it were, the biggest and brightest jewel in a crown full of valuable jewels."¹⁷⁸ Whatever we might say about this ideal life of *theōria*, it must be an inherently and unavoidably *human* endeavor, with all the practical and social implications that being human entails. In other words, the life of theoretical activity cannot be separated from the life of practical virtue: "the fully happy life for man, as Aristotle understands it in the *Nicomachean Ethics*, is a life of practical virtue crowned by theoretic activity."¹⁷⁹ Otherwise, Aristotle's eudaimonism suffers from a fatal contradiction between species-specific and species-independent conceptions of happiness. Thus, if the restricted account of *eudaimonia* that I have sought to defend is to be preserved, it appears we must provide some account that reconciles this apparent contradiction.

Providing an account of all the relevant passages or to deal with all the arguments raised on each side of the issue is beyond the scope of this chapter. But I do think we can sketch a position, one that is fair to Aristotle, which does not require us to dismiss *NE* X.7-8 from his broader moral theory on the grounds that it contradicts what he says

¹⁷⁶ See, for example, Martha Nussbaum, *The Fragility of Goodness: Luck and Ethics in Greek Tragedy and Philosophy* (Cambridge: Cambridge University Press, 1986), 373-77. See also Sarah Broadie, *Ethics with Aristotle* (Oxford: Oxford University Press, 1991), 412.

¹⁷⁷ See Broadie, 412.

¹⁷⁸ Nussbaum, 374.

¹⁷⁹ Broadie, 412.

elsewhere. First, then, one must ask whether Aristotle's defense of the functionalistic (species-specific) model of happiness in Book I of the *NE* somehow commits him to the view that certain activities are excellent and praiseworthy *only if* they are suitable to the particular *ergon* of the being in question. On this reading, Aristotle praises intellectual and moral virtue *only* because they are inherently human activities conducive to human well-being; moreover, if Aristotle also thought that these activities possess certain intrinsic noble qualities that are praiseworthy regardless of the being or creature that performs them, he is committing an obvious contradiction. There may yet be a contradiction in the juxtaposition of these theses, but it is hardly an obvious one. For it seems possible that the distinctively human activities which define human *aretai* just happen to be among the finest and noblest activities possible for any being to perform. Hence one might read Aristotle as grounding the human *aretai* in nature (*physis*) in two senses: in the qualified sense, virtue amounts to being excellent at the things that a human being does by nature; and, in the unqualified sense, virtue is the exercise of those activities that possess intrinsic excellence and worthiness.¹⁸⁰

One obvious objection to the foregoing account is that Aristotle's endorsement of the exclusive exercise of *theōria* does not align with his argument that such goods as friendship are necessary for human happiness.¹⁸¹ In other words, Aristotle clearly defends an understanding of *eudaimonia* that is a composite of various activities, *theōria*

¹⁸⁰ This point elaborates on White's observation that the "functionalistic model supplies a framework for grounding the human *aretai*, including the political *aretai*, in nature (*physis*)." See *Political Philosophy*, 18.

¹⁸¹ See Nussbaum, 375.

being only one of them.¹⁸² In *NE* VI.12, for example, he states that "*sophia* produces happiness...by being a part of virtue as a whole." Nussbaum takes this passage to mean that contemplative activity is not merely "a productive means toward *eudaimonia*, but an actual part of it; but Aristotle also makes clear that it is a part and not the whole."¹⁸³

This reading of Aristotle is problematic, however. First, one correctly questions whether, in *NE* VI.12, Aristotle means by *sophia* contemplative wisdom in particular. He frequently uses *sophia* to refer to practical rather than theoretical wisdom. Indeed, the passage in question is a case in point: in the sentences just prior to the one Nussbaum notes, Aristotle uses *sophia* to speak of both practical and theoretical wisdom, suggesting that he does not intend a technical meaning of *sophia* that would isolate contemplative wisdom in distinction to other forms of *sophia*. Second, even if we grant the Nussbaum reading, it is not obvious that Aristotle's claim should cause difficulty for him to assert later on that ideal happiness consists in the exclusive exercise of *theōria*. Aristotle's argument for ideal happiness rests upon the thesis, which he introduces in *NE* I.5 and defends in X.8, that there are in fact *two* models of *eudaimonia*, and that the ideal form realized in constant theoretical activity is hardly possible for any human being to achieve, though a very few may come close, e.g. Thales. This thesis is critical for how we interpret Aristotle's earlier claims regarding *eudaimonia*, for it may be that when he claims friendship and contemplation (among other things) are composite parts of happiness, he has only the secondary form of happiness in mind. Indeed, one has no

¹⁸² David Keyt explicitly makes this point in his essay, "Intellectualism in Aristotle" in *Essays in Ancient Greek Philosophy*, vol. 2, John P. Anton and Anthony Preus, eds. (Albany: State University of New York Press, 1983), 377.

¹⁸³ *Ibid.*

reason to suppose that *theōria* does not have a role in the happiness derived from the political life. On this reading, one simply understands Aristotle as attempting to be realistic: while a fortunate few might manage a purely philosophical life (insofar as such a life is possible for a human being to achieve), the great majority would do well to set their sights on the lesser though highly attractive form of happiness; and, if one is able to enjoy *that* form of happiness, then one will most certainly need friends along with the other goods of political life (including *theōria*).¹⁸⁴ If Aristotle's likely audience - that is, pupils, most of whom are preparing for careers in politics or law - should play any role in this interpretation, then my suggested reading appears all the more plausible.

Third, the interpretation which regards *theōria* as the best *part* of a completely happy life appears to overlook Aristotle's use of the term "complete (*teleia*) happiness." "Complete happiness" appears only three times in the *NE* and all three occur in X.7-8. With the first occurrence (1177a), Aristotle introduces a key principle for ranking greater and lesser forms of *eudaimonia*: if happiness is activity in accordance with virtue, then the best kind of happiness - or "complete happiness" - is activity in accordance with the virtue of the best element of the human soul. Aristotle uses the term a second time following several arguments on behalf of the superiority of *theōria* (in the narrow sense). He concludes by saying in 1177b, "Thus [*theōria*] will be complete happiness for a human being - if it consumes a complete span of life, because there is nothing incomplete in matters of happiness." In the sentence immediately following, Aristotle says, "[s]uch a

¹⁸⁴ This point also helps to answer why, as Broadie points out, the *NE* minus X.7-8 gives us the "overwhelming impression...that Aristotle means to define the essence of happiness in terms of morally virtuous activity informed by practical wisdom." Thus, instead of assuming, as Broadie does, that morally virtuous activity must be part of Aristotle's conception of ideal happiness, we could assert that Aristotle spends very little time on ideal happiness as the exclusive exercise of theoretical reason for the simple fact that it is not a life that is possible for very many people. See Broadie, 370.

life is superior to one that is simply human, because someone lives thus, not in so far as he is a human being, but in so far as there is some divine element within him." The reason why this additional point is important for our purposes is hard to miss: the life of complete happiness is not a complete *human* life crowned by philosophical activity, but rather a life consisting in the *exclusive* exercise of *theōria*. The final use of the term appears at the outset of his argument from divinity in which Aristotle eliminates, as we have seen, practical virtue from the picture of complete happiness. His main point, apparently, is this: just as the gods enjoy complete happiness without the exercise of practical virtue, the same must be true for human beings, who also are capable of engaging in that way of life.

3.4 The Ideal Philosopher and Natural Right

I have offered the foregoing interpretation in order to provide some account for why Aristotle never develops a position of natural law, even though he might *prima facie* have some reason to develop a moral and political theory along those lines. After all, Aristotle's primary intention in his ethical works is to provide some account of human virtue and goodness grounded in nature (*physis*) rather than convention (*nomos*). He argues that human goodness and virtue is about developing and perfecting the natural human *ergon* in both its moral and political senses. It would be difficult to deny, I think, that in some general sense these commitments are suggest a doctrine of natural law in Aristotle. Moreover, it is important but ultimately insufficient to say that, because of the *nomos-physis* distinction, Aristotle, *for that reason alone*, never spoke of "natural law"

and could not have supported some version of natural law theory. I have attempted to show in 2.1 that the *nomos-physis* contrast, though central to understanding the respective moral theories of Plato and Aristotle, is not a complete antithesis and thus need not convey the sharp contradiction that Leo Strauss suggests. Thus, I have attempted to provide a more developed account of Aristotle's ethics in order to answer the question of why he does not use the term "natural law" or advocate a natural law theory. To conclude the present chapter, I show that my reading of Aristotle adequately answers this question.

I have argued that the restricted account represents the best and fairest way to understand the place of *theōria* in Aristotle's eudaimonistic moral theory as he develops it in the *NE*.¹⁸⁵ The value of this particular focus on Aristotle is that it affords us the best opportunity, if such an opportunity exists, to demonstrate natural law in his thinking. Even if we were to take his *Politics* into explicit consideration, we would be forced to return to the question of *eudaimonia*, for Aristotle's argument for the naturalness of the *polis* (or the state) and of the political *aretai*, which is to say that both of these things do not exist merely by convention (*nomos*), derives from his account of human nature and the conditions that are required for human flourishing.¹⁸⁶ As we have seen, the happiness of the philosopher consists of the particular activity that characterizes his entire life; and, as I have argued, that activity is *theōria* in the narrow sense of the term. Thus, my

¹⁸⁵ Incorporating the *Eudemian Ethics* into the foregoing analysis, while ideal, would require a much larger undertaking that I have been prepared to offer here. The work is relevant because it appears that Aristotle blurs the distinction between theoretical and practical reason and thus may cast some doubt on my defense of the restricted account. I am only able to say in response that I do not believe Aristotle argues for a distinct account of *eudaimonia* in the *EE*. For a compelling defense of this interpretation of Aristotle, see John Cooper, *Reason and Human Good in Aristotle* (Indianapolis: Hackett Publishing Co., 1986).

¹⁸⁶ For a development of this point, see Stephen Everson's "Introduction" in Aristotle's *The Politics and The Constitution of Athens*, xxiv-xxxii.

account of Aristotle, if correct, has accomplished the following: first, Aristotle limits the expertise of the ideal philosopher to metaphysics, that is, the higher sciences according to *Metaphysics* VI.1; and, second, Aristotle defines metaphysical study (or the study of *physis*) so as to exclude anthropology and biology as well as moral and political reflection (the latter because they are not oriented to action).¹⁸⁷ If these two points are correct, then it follows that mastery of the higher sciences does not afford the philosopher with specifically moral truths and principles. In other words, metaphysical truths are not, at the same time, normative truths as well. Consequently, metaphysical truths could not be considered as commands of nature or practical requirements of reason that human beings are bound to obey.

Further, to develop the foregoing point, let us consider more carefully Aristotle's ideal philosopher and whether his particular theoretical expertise is of any value to the proper and virtuous governance of himself and his *polis*. In *NE* VI.7 Aristotle argues that the most excellent form of wisdom (*sophia*) is scientific or theoretical wisdom; and, consequently, people regard Anaxagoras and Thales as wise even though they are not "practically wise." Part of Aristotle's point is to defend theoretical *sophia* as a legitimate form of wisdom and thus that Thales and other natural philosophers are correctly considered to be wise. But Aristotle also argues that the theoretical *sophia* of Thales taken in isolation disqualifies him from possessing any insight or expertise in moral matters. Aristotle makes the point quite emphatically, in fact: "their knowledge is extraordinary, wonderful, abstruse, godlike, but useless, because it is not human goods

¹⁸⁷ I use metaphysics here in the strict sense, according to my treatment of the term in 3.2.

they are looking for."¹⁸⁸ If theoretical *sophia* occupies no part in practical *sophia* - a point Aristotle makes explicit in *NE* VI.8 - the ideal philosopher who possesses only theoretical *sophia* cannot by definition possess practical *sophia*. As a result, his particular wisdom would be of no use to his city - indeed, it would be of no use to himself insofar as it concerns the practical demands of life in the *polis*.

Sarah Broadie has rejected the foregoing analysis on grounds that we would be attributing to Aristotle the obviously unattractive position that separates all moral and practical concerns from theoretical inquiry. She asserts that "[o]nce that ethical connection is broken and theoretic activity is allowed out entirely on its own recognizance, what entitles it to more consideration than any eccentric hobby?"¹⁸⁹ Broadie's position is sensible, especially if we are to take seriously the apparent model of philosophic activity presented in Plato's writings. Socrates' primary commitment, it would seem, is to reject the notion of philosophy as a purely ethereal practice and to defend its vital relevance for the daily concerns of human beings living in a sociopolitical context. Philosophy would do Euthyphro some good, for instance, if only to protect him from forming (and acting upon) rash opinions about such things as piety.

In response, I have already offered reasons why it may be problematic to assume that Plato was committed to the practical or social value of philosophic activity (see 2.3). In addition, Broadie's description of *theōria*, narrowly understood, as one eccentric hobby among others is surely questionable given how often Aristotle emphasizes the superiority of contemplative activity. Granted, Broadie's point may be that *theōria* is a fine thing for

¹⁸⁸ *NE* VI.7.1141b.

¹⁸⁹ Broadie, 395.

the gods to do, but human beings in the full flesh and blood sense of the term have other things to worry about. Thus, insofar as the regular demands of ordinary human life supplies the context for thinking about the value of *theōria*, the life of contemplation to the exclusion of everything else cannot be admirable - for us or for Aristotle. But this way of reading Aristotle is unacceptable if the foregoing arguments I have offered are sound. According to the interpretation of Aristotle I have been defending, the value of *theōria* is unqualified, that is, it remains the best activity possible for human beings regardless of the particular political context within which one lives. As we have seen, Aristotle's position seems to be that any being capable of contemplative activity will enjoy optimal happiness to the extent that the being can engage in that activity. The fact that such a person would be useless to his city, at least insofar as his theoretic *sophia* is concerned, seems not to bother Aristotle. Philosophers need not "explain themselves" – that is, justify their existence as philosophers – to their respective lawmakers, as though the value of activity depends upon its potential benefit to the city. For Aristotle, the *polis* provides the necessary context for human beings fully to realize the latent potentialities of human nature, potentialities that include the exercise of theoretical philosophy. Thus, it is unsurprising that Aristotle does not express qualms regarding citizens who have been fortunate (and virtuous) enough to engage actively in *theōria* and, as a result, do relatively little to benefit their respective *polis*.¹⁹⁰

One should ask, however, whether it is possible for a less-than-ideal philosopher, one who practices a lower form of *theōria* (or *theōria* in the broad sense), to afford us

¹⁹⁰ As a conjectural point, I suspect that part of the purpose of Aristotle's defense of the philosophical life is to ensure that his pupils, many of whom will be lawmakers, possess a proper appreciation for *theōria*.

knowledge of those natural moral principles that human beings should accept?¹⁹¹ If so, might that provide some basis for natural law in Aristotle? The question is fair. As we have seen, Aristotle does not include human beings among the finest things that the ideal philosopher would contemplate.¹⁹² If there are any natural moral principles based on the human *physis*, then, the ideal philosopher would apprehend none of them because he never studies human nature. But a lesser philosopher who does study the human *physis* would presumably grasp the functionalistic conception of ethics that Aristotle defends in Book I of the *NE*. Such a philosopher would understand the importance of a developed "normative anthropology," that is, an account of human nature that simultaneously explains how human beings should to live.¹⁹³ Would such a philosopher be best equipped to present and defend a conception of natural law?

Such an attempt is problematic, however, because nothing in Aristotle's conception of *theōria* in the broad sense (which would include the study of human nature and the *polis*) commits him to a natural law position in particular. For Aristotle (and Plato before him), contemplation in the broad sense involves the study of the best form or state of a thing, whatever that thing might be. Thus, the doctor contemplates the human body, which is to say that the doctor studies the best form of the human body, i.e. the state in which the body is healthiest. The statesman contemplates human nature and the *polis* (the discipline Aristotle calls "political science" in *NE* I.1) and considers under what conditions the *polis* is in its best and healthiest state. But the concern of the

¹⁹¹ The question of whether "should" means the imperative in this context is critical to the question of NLT in Aristotle. As I will argue, Aristotle's affirmation of natural right entails that "should" does not imply moral obligation.

¹⁹² *NE* VI.7.1141a.

¹⁹³ See White, 3-4.

statesman here is that of natural right rather than natural law. His primary aim, in other words, is to discern what must be recognized by any political society if that society is going to thrive. In commenting on Aristotle, Leo Strauss makes the correct observation: "natural right [which Aristotle holds] is that right which must be recognized by any political society if it is to last and which for this reason is everywhere in force. Natural right thus understood delineates the minimum conditions of political life, so much so that sound positive right occupies a higher rank than natural right."¹⁹⁴

One might reasonably object, however, that if Aristotle does accept and defend the position of natural right, then it is difficult to see how truths of nature (broadly construed) are non-normative, as I have previously argued. Would not Aristotle's account of the parts of the soul (*NE* I.13), for instance, simultaneously contain anthropological and normative truths because, as Aristotle argues, a proper account of human nature is the necessary foundation for how we understand human happiness? According to this objection, it appears that for a scientific truth to count as normative it need only have normative or practical implications. The truth, for instance, that the planets move asynchronously with the stars may not have any immediate or obvious practical relevance, at least not in the same way as the truth that man is a rational animal does. Apparently, while the former truth would be scientific only, the latter would be both scientific and normative.

¹⁹⁴ Strauss, 140. Some scholars such as David Braybrooke have sought to minimize, if not eliminate, the distinction between natural law and natural right. In Braybrooke's case, this has meant redefining natural law according to the basic perspective of natural right: there are universally applicable moral rules or principles (he is vague on what exactly "rules" conveys), people and societies will thrive only if these rules prevail, and, finally, human beings are naturally inclined to heed these rules. His argument, however, leads to the unattractive result of regarding as natural law theorists many philosophers who never claimed to be natural law theorists, e.g. Hume. See Braybrooke, *Natural Law Modernized* (Toronto: University of Toronto Press, 2003), 3.

The foregoing reading of Aristotle is certainly plausible, even attractive, if for no other reason than that it helps to account for Aristotle's emphasis on the place of science in moral inquiry. Indeed, it would be difficult to understand Aristotle's moral theory apart from such a commitment on his part. On the other hand, I have pointed out (3.2) that Aristotle also develops a narrower understanding of what counts as normative truth, one in which a normative truth – that is, a truth of practical wisdom – has virtuous action as its proper end (*telos*).¹⁹⁵ When the individual of practical wisdom gives thought to how to live well, Aristotle uses the term deliberation rather than contemplation.¹⁹⁶ He writes, "[p]ractical wisdom [in contrast to theoretical wisdom] is concerned with human affairs, namely, with what we can deliberate about."¹⁹⁷ What does Aristotle mean? I cannot provide a complete account of deliberation here, of course, but the task is easier if one keeps in mind that Aristotle has already treated deliberation as a technical term in *NE* III.3. In that section, Aristotle argues that "[n]o one deliberates about eternal things...Rather, we deliberate about what is in our power, that is, what we can do." That is, deliberation consists in the process of practical reasoning which aims at a conclusion that is essentially practical, e.g. "I should do x," or "It would be best for me to do y." Although the practically wise person makes use of scientific truths, e.g. "Man is a rational animal," such statements in themselves cannot justify a practical conclusion apart from a practical principle or statement that is part of the premises. Thus, the statement, "Man is a rational animal," is (strictly speaking) non-normative on Aristotle's view because it is not practically oriented in its content in the same way as the statement, "You should

¹⁹⁵ *NE* VI.5.

¹⁹⁶ *Ibid.*

¹⁹⁷ *NE* VI.7.

study philosophy if you wish to be happy." While the former represents a key piece of information for the practically wise person to employ in forming a practical plan of action, it is not in itself a normative truth because it says nothing about how one should to act.

If, however, we take normative truth in the aforementioned broad sense - that is, for a scientific truth to be normative, it need only have practical implications or be useful in practical argumentation in some way - then we could not, on that basis alone, justify a natural law reading of Aristotle as opposed to a natural right one.¹⁹⁸ If we grant (as it is reasonable to do) that the premise, "Man is a rational animal," implies that one ought to be rational, the precise meaning of "ought" in this context is vague and does not necessarily imply moral obligation.¹⁹⁹ Indeed, on Strauss' view the term could not imply some sort of command or obligation as notions connected with law because Aristotle never suggests as much.²⁰⁰ Rather, I suggest that we understand the term conditionally in the following way: one ought to be rational *if* one wishes to be happy. That Aristotle already grants the antecedent, namely that everyone desires *eudaimonia*, does not, of course, undermine this interpretation of Aristotle's imperative. Indeed, if we accept the conditional reading, then Aristotle's assertion that all desire *eudaimonia* provides the basis for his argument on behalf of a particular conception of human flourishing.

¹⁹⁸ This position does not commit Aristotle to a view of scientific reasoning that has value *only* in an instrumental sense, as the Epicureans will argue (see 4.2). Aristotle could still maintain, as I believe he does, the view that anthropology is *both* an inherently and an instrumentally worthwhile activity.

¹⁹⁹ Part of this point is a response to the charge that I incorporate a Humean reading of Aristotle, one in which he asserts a rigid distinction between fact and value claims (or between claims of theoretical science and those of ethics). For Aristotle, "is implies ought" but only in a conditional sense. I seek to develop this point in the remainder of this paragraph.

²⁰⁰ Aristotle does not have a term for moral obligation that he develops in his ethical writings.

Otherwise, there would be no obvious point in establishing that all desire *eudaimonia* and that the purpose of the *NE* is to investigate *eudaimonia* in its ideal form.

Understood in the conditional sense, then, the normative implications of scientific truths would only specify the conditions under which the optimal state of something could be achieved. The objection that this analysis attributes to Aristotle an overly weak notion of the moral imperative, one that is hypothetical rather than categorical, fails for lack of evidence. While it is tempting to read Aristotle's statement that it is a sacred duty to prefer the truth to one's friends in a Kantian light, it is not clear that he intends by this statement or similar ones a theoretical conception of imperative or obligation in the strong sense. Aristotle makes the statement in passing, and at no point in his ethical writings does he develop a theoretical concept of moral obligation.

As a final point, the foregoing attempt to base a natural law reading of Aristotle upon the study of the human *physis* presupposes a fundamental division between human beings and the *cosmos*. Included in the presupposition is the claim that nothing among the eternal truths of *physis* affords human beings with insight as to how to live. Consequently, if human beings are to acquire such an understanding, then human beings must study themselves. Leaving aside the problems that follow from regarding such a view as a theory of natural law, it is important to note that at the center of the development of Stoic natural law is the rejection of any fundamental bifurcation of man and nature. As we shall see in the next chapter, the Stoics argued that a knowledge of nature provides us with a knowledge of ourselves - a principle contained in the critical concept of *homologia*.

CHAPTER 4

NATURE AS NORMATIVE: STOICISM AND THE BIRTH OF NATURAL LAW

4.1 General Background

The explicit and widespread use of the term "natural law" (*lex naturalis*) to articulate and defend a distinct position in moral and legal theory occurs for the first time in the first century B.C. with the Stoics, particularly the Roman Stoics, and most clearly in the writings of Cicero. As the previous chapters have shown, the term appears in Greek philosophical literature only occasionally and never as a technical term that represents a generally coherent and recognized set of philosophical commitments. Until the Stoics, NLT *per se* had yet to exist. This chapter provides an account of this development in ancient moral theory. The foregoing chapters have defended an essentially negative thesis: Plato's and Aristotle's moral theories are not versions of natural law because neither philosopher developed a normative conception of nature, that is, a conception of nature as the source of moral obligations understood in terms of laws that human beings are obligated to obey. If my interpretation of Plato and Aristotle is correct, then I will need to show that Stoic NLT was not simply an extension or byproduct of the received eudaimonist tradition, as Lloyd Weinreb has argued (1.2), but a significant reconstruction of it, one that required a fundamental rethinking of the tradition and, in particular, its understanding of nature in moral theory. In the present chapter I argue that the development of Stoic NLT rested upon their formulation of a "theological conception" of nature, a conception that is best understood as a response to the Epicurean

challenge to traditional eudaimonism.²⁰¹ On this view, natural law is not simply a moral and legal theory grounded in human nature, but one that is grounded in what we might call "cosmic nature."

From the perspective of ancient theorists, the suggestion that the Stoics inherited and preserved without significant revisions a single, unified, and generally coherent Platonic-Aristotelian philosophical tradition is suspect. The "Old Academy" thesis of Antiochus of Ascalon is perhaps the most well known and most important example of such a claim.²⁰² He argued that Plato's Academy in its essence is not defined by endless inconclusive debate but by the advancement of certain ideas and positions by Plato's successors, including Aristotle and the Stoics. Julia Annas summarizes Antiochus' view as follows: "All [the Platonists, Aristotelians, and Stoics] are really doing, he claims, is to introduce new technical terms; the basic underlying ideas are the same...On all important matters, Antiochus claims, [they] stand together. They stand united against the Epicureans, who disagree with all of them on most major points."²⁰³ But Antiochus' claim existed on one extreme of ancient debate. On the opposite extreme, the Pyrrhoneans rejected even a single Platonic school of thought and asserted instead that the original Academy held no dogmatic positions (either Platonic or Aristotelian) and thus every philosophical claim was open for discussion. Moreover, the early Stoics under

²⁰¹ Although the term "theology" is standard in current scholarship, it might invite skepticism because of the Stoic denial of a transcendent deity, one that is distinct from the natural order. The term is still useful, however, if only because it conveys the Stoic belief that Divine Reason, though identified with nature, is at the same time the highest or purest aspect of it and that which governs the cosmos. The question of whether the Stoics maintain a consistent and viable theology is beyond my purposes here.

²⁰² See Cicero, *Academica* in *The Hellenistic Philosophers* (hereafter *THP*), Vol. 1, trans. A.A. Long and D.N. Sedley (Cambridge: Cambridge University Press, 1987), 68A-B. Also see Cicero's *On Moral Ends*, trans. Julia Annas (Cambridge: Cambridge University Press, 2001), V.8-74.

²⁰³ Julia Annas, "Introduction" in *On Moral Ends* (Cambridge: Cambridge University Press, 2001), xiv. In subsequent references to *On Moral Ends*, I use the original Latin Title, *De Finibus* (*DF*), though the translation is that of Annas.

the leadership and influence of Zeno of Citium and especially of Chrysippus advanced novel theses that were neither Platonic nor Aristotelian: they were metaphysical materialists, for example, and thus rejected the notion of "Forms." They also developed a new system of logic that departed from traditional (largely Aristotelian) principles. In the area of moral theory, the Stoics identified themselves as Platonic and perceived the Aristotelians as philosophic rivals.²⁰⁴ They defended the Platonic thesis (rejected by Aristotle) that virtue is necessary and sufficient for *eudaimonia*. This latter thesis implies that conventional goods are unnecessary for happiness and may not be called "goods" at all in the proper sense of the term. Indeed, some scholars have considered this thesis and its rejection by Aristotle to represent the central debate upon which all of ancient moral theory turns.²⁰⁵

Moreover, the Stoics maintained certain controversial positions *within* the Platonic moral tradition - a tradition full of robust substantive philosophic disagreement. The Stoics Epictetus and especially Zeno defend the Socratic claim that only the soul is worth caring for, that the body and other externals, which fortune might alter one way or another, are of no proper concern for the true philosopher.²⁰⁶ Indeed Zeno's departure from the Academy resulted in part from unresolved disagreement with Polemo, his teacher and head of the Academy, concerning this claim.²⁰⁷ Moreover, the Stoics

²⁰⁴ Throughout the Hellenistic period, however, Aristotle's moral philosophy (and hence the Aristotelian or "Peripatetic" school) was defined almost entirely by his claim that happiness requires the possession of conventional goods. Very little attention was given to his argument from divinity and key aspects of his theory of practical reason - topics that have received a great deal of attention from modern scholars.

²⁰⁵ See Martha Nussbaum's discussion of fortune versus self-sufficiency in *The Fragility of Goodness*, 1-6. See also Julia Annas, "Introduction," xx.

²⁰⁶ See Malcolm Schofield, "Stoic Ethics," *The Cambridge Companion to the Stoics*, Brad Inwood, ed. (Cambridge: Cambridge University Press, 2003), 234.

²⁰⁷ I should add that Zeno's unorthodox metaphysics (from the Platonic point of view) also played a key part in his break from the Academy.

defended the "intellectualist" thesis of Socrates found in the *Meno*: virtue is knowledge, and thus ethics amounts to the task of replacing false beliefs with true ones that are properly justified. Accompanying this position is the assertion that one always does what one believes to be right or good. Of course, not all ancient Platonists held this view, perhaps not even Plato himself. We should not be surprised, therefore, that the Stoics sometimes identified themselves as "Socratics."²⁰⁸ But if "Socratic ethics" is to be understood as unsystematic and skeptical, then the Stoics represent a clear departure from such a perspective. The Stoics advocate a distinct *system* of moral thought that can be expressed propositionally, defended syllogistically, and taught to others - a claim that stands in direct opposition to Socrates' final assessment in the *Meno*.

The foregoing point is important because perhaps the central debate within the Academy, as I suggested previously, concerned the extent to which one is justified in believing that Plato provided a system of doctrines he meant to defend in his dialogues. This question became acute in 265 B.C. when Arcesilaus, the new head of the Academy, insisted that for too long the Academy had been seeking to develop metaphysical systems, ones that were only partially Platonic, and as a result they had forgotten the primary task of dialogue rather than positing positive doctrines. The primary target of Arcesilaus' critique were the Stoics, well known by this point for emphasizing systematic thought. But after many years of attempting to refute the Stoics, the Academic Skeptics, as they were known, apparently adopted an essentially Stoic framework of beliefs as the primary means by which to locate their own arguments against the Aristotelians and

²⁰⁸ See Philodemus, *De Stoicis* (Oxford: Oxford University Press, 1996), XIII.3.

Epicureans on a range of issues.²⁰⁹ This development provoked the aforementioned departures of Antiochus and Aenesidemus from the Skeptical Academy during the first century B.C.

The purpose of the foregoing historical summary is this: Cicero's *De Finibus* (*DF*) and *De Republica* (*DR*), the works in which we are able to piece together a coherent account of NLT for the first time, were written against a background of development and discord both within and without the Academy, a background that Cicero takes seriously in his analysis of Epicurean, Aristotelian, and Stoic moral theories.²¹⁰ Indeed, in *DF* Plato and Aristotle are conspicuously absent and Cicero provides at least a partial reason:

What of it, if I do not perform the task of a translator, but preserve the views of those whom I consider sound while contributing my own judgment and order of composition?...For my part, I consider that this work gives a more or less comprehensive discussion of the question of the highest goods and evils. In it I have investigated not only the views with which I agree, but those of each of the philosophical schools individually.²¹¹

Cicero does not intend the work to simply summarize the teachings of Plato and Aristotle (it is not a "translation," as he puts it), but rather to present and critique the primary ethical theories in their most current form, taking into account the philosophical developments that have occurred in the few centuries since Plato and Aristotle. One of the things that careful attention to these developments should make clear is that the attempt to combine Stoic and Aristotelian ethics, to take Antiochus' project as an

²⁰⁹ Cicero is a rather clear example of this, for as an Academic Skeptic he takes seriously the rational investigation of claims by way of Socratic *elenchos*; and, at the same time, his evaluation of claims often betrays Stoic assumptions, evident in both *De Finibus* and *De Republica*.

²¹⁰ Not only does Cicero offer the first articulate account of NLT, his *DF* is probably the most philosophically relevant source for understanding the context in which NLT first developed.

²¹¹ *DF* I.6, 12.

example, results in an interpretation that neglects central arguments made on both sides on such crucial issues as whether virtue is sufficient for happiness.²¹² One can maintain Antiochus' interpretation, Cicero argues, only as long as one is willing to abandon the systematic investigation of all claims by reason and argument (the Socratic *elenchos* that Cicero, as an Academic Skeptic, took very seriously) and prefer persuasive rhetoric instead.²¹³

Among the most important and most obvious of the aforementioned developments reflected in Cicero's work, especially *DF*, is the prominent place of metaphysics in moral theory. The debate over conventional goods remained central, at least between the Stoics and the Aristotelians, but it is obvious that by Cicero's time differing conceptions of *physis* in the rival schools had also become a major theme of moral debate. In summarizing his preliminary objections to Epicurus' moral theory, for example, Cicero begins with a detailed attack on Epicurus' physics (specifically its atomist thesis) and then proceeds to a critique of his work in logic.²¹⁴ That Cicero takes for granted the central place of metaphysics in moral theory is not entirely surprising. A dominant assumption in Hellenistic moral debate - one that began, as I will discuss shortly, with the Epicurean challenge to the eudaimonist tradition - is that getting theoretical matters right is essential to cultivating moral virtue. It is this same assumption which underlies, for instance, the Epicurean argument that a proper understanding of physics is central to why one should

²¹² See *DF* V.77-86.

²¹³ I should note that Antiochus' position, at least as it is represented in Books IV and V of *DF*, is less an interpretive thesis and more a philosophic one. That is, his main focus is to develop a theory that emphasizes the philosophical similarities and downplays the differences between Stoic and Aristotelian ethics. Thus, Cicero may not intend to be as dismissive of his former teacher as I seem to suggest. My point still stands, however: insofar as Antiochus' Old Academy position can be understood as an historical interpretation of Stoic, Platonic, and Aristotelian views, it is fraught with problems.

²¹⁴ *DF* I.17-22.

not fear death.²¹⁵ For this reason *DF* moves almost seamlessly and unapologetically between epistemological, metaphysical, and ethical topics, often within the same passage.

As a further example, Zeno's break from the Academy resulted only in part from his rejection of Platonic metaphysics. What may have been more important was his endorsement of a tightly integrated philosophical *system* of physics, ethics, and logic. As Aetius summarized in his Preface,

The Stoics said that wisdom is scientific knowledge of the divine and the human, and that philosophy is the practice of expertise in utility. Virtue singly and at its highest is utility, and virtues, at their most generic, are triple - the physical one, the ethical one, and the logical one. For this reason philosophy also has three parts - physics, ethics, and logic.²¹⁶

This tripartite curriculum aimed at "singular virtue" was elsewhere likened to an egg: "logic is the outside, ethics what comes next, and physics the innermost parts."²¹⁷ While the Stoics may have borrowed the tripartite division of subjects from the post-Platonic Academy of Xenocrates, it is almost certain that they were among the first to conceive of philosophy systematically and the philosopher as the individual characterized by integrated learning.²¹⁸

But the early Stoic writings make clear that the development of their philosophical curriculum occurred, not independently, but in polar opposition to the systematic thinking of the Epicureans. While the Stoics would be the most adamant and outspoken advocates of philosophy as a system of integrated knowledge, the philosophers of "the Garden" were the first to perceive in the notion of systematic philosophy a direct

²¹⁵ Ibid, I.63.

²¹⁶ *THP*, 26A.

²¹⁷ *THP*, 26B.

²¹⁸ See Long and Sedley, 1-2, n. 160.

challenge to the Platonic and Aristotelian tradition of treating ethics, physics, and logic largely as separate disciplines. I look at this claim more closely in the following section.

4.2 Science and Pleasure: The Epicurean Challenge

The Epicureans seem to have been the first to advance a theory of human happiness in which scientific reasoning not only provides the foundation for a proper conception of *practical* rationality but is the defining characteristic of the practically wise individual.²¹⁹ As we have seen, this position is absent in Plato and Aristotle. Neither conceived of the natural philosopher as an individual of practical wisdom *because of* his scientific (or theoretical) insight. I have argued against taking Plato's idea of philosopher-kings too seriously, that is, as a genuine thesis of political philosophy that Plato meant to defend. There is no basis in Plato's writings for the claim that the knowledge of the enlightened philosopher includes or entails a knowledge of how to effectively manage his own practical affairs and that of others given the ever-changing realities of political life. Aristotle is even more explicit: the knowledge of the ideal philosopher is "godlike but useless" for moral and political matters because it concerns eternal realities and pays no attention to human goods.²²⁰ It is not a knowledge of the cosmos, or even of human nature, that makes one good, but rather a proper upbringing in the virtues.²²¹ Both assume that theoretic activity, the contemplation of the highest

²¹⁹ Although "scientific reasoning," as I will use the term, is roughly synonymous with metaphysics, I intend to convey by it the empirical approach to theoretical philosophy that characterized both Epicureanism and Stoicism.

²²⁰ *NE* VI.7.1141b. That Aristotle makes this contrast between eternal realities and human goods is perhaps surprising because the latter, insofar as Aristotle identifies them collectively with the human *telos*, would seem to be part of eternal reality. But Aristotle's main point is that human goods or human nature are not among the highest objects of contemplation (see 3.2).

²²¹ See *NE* II.1.

realities, is itself a process of becoming like God (or the gods), and both assume that the divine life is entirely free of social and practical concerns (which is part of its perfection).²²² For the Epicureans, however, human tranquility and well-being consists in the life of practical wisdom and virtue that is informed (and even defined) by scientific enlightenment. As I will attempt to show, this new "unified conception," we may call it, entails a blurring of the distinction between theoretical and practical reason and is the root of the Epicurean challenge to the eudaimonism of Plato and Aristotle.²²³

The Epicurean emphasis on the practical value of natural philosophy was part and parcel of their defense of their chief ethical claim: intrinsic goodness (in contrast to instrumental goodness) is restricted to pleasure alone, which is to say that pleasure is the only good that is inherently worth seeking.²²⁴ This claim of course entails a rejection of traditional eudaimonism (in both its Platonic and Aristotelian forms) that identifies goodness with virtue and, thus, human happiness with virtuous activity. But Epicurus' claim may not be as radical as it appears *prima facie*. Both Plato and Aristotle held pleasure to be an important, even essential, constituent of happiness. Moreover, in several places Epicurus' himself insists that the hedonism he advocates *requires* virtue: "Therefore prudence is even more precious than philosophy, and it is the natural source of all the remaining virtues: it teaches the impossibility of living pleasurably without living prudently, honorably, and justly...For the virtues are naturally linked with living

²²² Plato explicitly states this in the *Theaetetus*, and Aristotle accepts the claim, or at least some form of it, in *NE* X.7-8.

²²³ One may object that while Aristotle held this distinction, Plato did not. But that point does not entail that Plato believed, as the Epicureans later did, that theoretical reason just is practical reason, or at least is a fundamental component of it. As I argue in Chapter 2, Plato simply did not give attention to what Aristotle would call *practical* thought or wisdom defined in contrast to theoretical wisdom. If human nature lacks a social function, as Plato's anthropology seems to suggest, then he does not appear to have a philosophical reason for developing an account of practical rationality.

²²⁴ *THP*, 21C-E.

pleasurably, and living pleasurably is inseparable from them."²²⁵ Making the same essential point, perhaps with the foregoing passage in mind, Cicero's Torquatus states that "Epicurus, the man whom you accuse of being excessively devoted to pleasure, in fact proclaims that one cannot live pleasantly unless one lives wisely, honorably, and justly; and that one cannot live wisely, honorably, and justly without living pleasantly."²²⁶

The foregoing point is important for two reasons. First, one cannot reject Epicurean hedonism simply on the grounds that it advocates a life of pleasure *at the expense of virtue* in both the theoretical and moral senses. This would represent a weaker form of hedonism that Epicurus identifies primarily with Aristippus and the Cyrenaic school and could perhaps be linked to Callicles' position in the *Gorgias*.²²⁷ The second and more important point is that Epicurus' defense of the virtues makes clear the key distinction between his position and the traditional eudaimonism of Plato and Aristotle: while Plato and Aristotle regarded virtuous activity as good in the intrinsic (non-instrumental) sense, the Epicurean position is that virtuous activity is good only insofar as it is conducive to living pleasurably (and hence good only in the instrumental sense). Neither moral nor theoretical virtue are identified with happiness, but are necessary means to it. Torquatus is explicit on this point: "not even temperance itself is to be sought for its own sake, but rather because it brings our hearts peace and soothes and softens them with a kind of harmony...We seek these virtues because they enable us to

²²⁵ Ibid, 21B.

²²⁶ *DF* I.57.

²²⁷ See Long and Sedley, *THP*, 21.

live without trouble or fear, and to free our mind and body as much as possible from distress."²²⁸

Torquatus' assessment contains an important suggestion regarding the value of natural philosophy in particular. The main cause of human misery is philosophic (or scientific) ignorance, that is, an ignorance about the true nature of the world. This ignorance means that in the place of correct beliefs about such things as gods and souls, human beings maintain false beliefs that cause the unnatural fear of death in addition to other miseries. It is not on the basis of knowledge, but unfounded belief or opinion that we think gods and the afterlife exist and thus live in the fear of those things. Hence, "[Epicurus] deemed physics to be of the very highest importance...By knowing the nature of all things we are freed from superstition and liberated from the fear of death."²²⁹ The Epicurean position, then, may be best understood in light of Socrates' position that the good life largely rests upon our ability to acquire a certain kind of knowledge about what is good and what is bad and other related matters. The Epicureans agree with the Socrates of the *Meno* that we cannot content ourselves with opinions, even if they happen to be true ones, but must seek a surer foundation in knowledge if we are to live well.²³⁰ But unlike Socrates (and Aristotle later on), who apparently rejects the value of scientific knowledge for moral considerations, the Epicureans assert that it is only from a correct knowledge of nature that we can make correct moral judgments.²³¹ Indeed, the study of

²²⁸ *DF*, I.47, 49.

²²⁹ *Ibid*, I.62.

²³⁰ Michael Frede makes and develops this point about the Epicureans in his essay, "Stoic Epistemology" in *The Cambridge History of Hellenistic Philosophy*, eds. Keimpe Algra, Jonathan Barnes, Jaap Mansfeld, and Malcolm Schofield (Cambridge: Cambridge University Press, 2005), 295.

²³¹ In the *Phaedrus* (230d) Socrates states that trees have nothing to teach him and that he can learn only from fellow citizens. Aristotle agrees with Socrates' conclusion, though for different reasons. It is not

nature indicates beyond all doubt, the Epicureans argue, that our natural end and highest good is pleasure.

I should further develop the foregoing point, for the Epicurean "argument from the cradle"²³² not only helps to clarify their position on pleasure as the highest good,²³³ but it also represents a key development in their debate with the Stoics. Cicero's Torquatus provides the clearest summary of the argument available:

Every animal as soon as it is born seeks pleasure and rejoices in it, while shunning pain as the highest evil and avoiding it as much as possible. This is behavior that has not yet been corrupted, when nature's judgment is pure and whole. Hence he [Epicurus] denies that there is any need for justification or debate as to why pleasure should be sought, and pain shunned. He thinks that this truth is perceived by the senses, as fire is perceived to be hot, snow white, and honey sweet. In none of these examples is there any call for proof by sophisticated reasoning; it is enough simply to point them out. He maintains that there is a difference between reasoned argumentative proof and mere noticing or pointing out; the former is for the discovery of abstruse and complex truths, the latter for judging what is clear and straightforward. Now since nothing remains if a person is stripped of sense-perception, nature herself must judge what is in accordance with, or against, nature.²³⁴

The key point to notice is that the argument rests on a presupposed empirical theory of knowledge that, as Michael Frede points out, Epicurus advanced against a background of doubt regarding our ability "to break out of the realm of mere belief in order to arrive at true knowledge."²³⁵ Frede overlooks another key part of this background, namely, the

knowledge of the cosmos, or even of human nature, that makes us good, but rather a proper upbringing in the virtues. See *NE* II.1.

²³² The name of the argument is taken from Antiochus, who described the Epicurean approach as "visiting the cradle." See *DF* I.30 n.33.

²³³ I have in mind the distinction the Epicureans draw between "kinetic" and "static" pleasure, the latter representing the superior form that is conveyed in Epicurus' thesis, "The removal of all pain is the limit and magnitude of pleasures." See Epicurus, *Key doctrines* in *THP*, 21.

²³⁴ *DF* I.30.

²³⁵ Frede, 295. Frede certainly has the *Meno* in mind here but, perhaps problematically, he does not include Aristotle. But the important point is that, from the point of view of the Epicureans and especially the Stoics, the Academy in particular had failed to answer Socrates' challenge. Whether or not Aristotle was successful in such an effort appears to be unnoticed by either school.

skepticism of certain fourth-century followers of the atomist philosopher Democritus who doubted the validity of sense perception in particular.²³⁶ The Epicurean response (which I can only briefly develop in what follows) was to develop an epistemology generally rooted in the assumption that nature conveys itself clearly and unmistakably to the human knower, at least in certain contexts.

At the center of Epicurus' empirical theory was the notion of "impressions"²³⁷ and the claim that all impressions are true, that is, their content accurately and directly conveys reality to the knower.²³⁸ The truth of this claim depends upon the premise that all impressions are arational events, involving no interpretation by the human mind and thus are received directly or non-inferentially. Epicurus explains the premise thusly:

The peculiar function of sensation is to apprehend only that which is present to it and moves it, such as color...Hence for this reason all impressions are true. Opinions, on the other hand, are not all true but admit of some difference. Some of them are true, some false, since they are judgments which we make on the basis of our impressions, and we judge some things correctly, but some incorrectly.²³⁹

The basic idea seems to be that the human mind in this context is an entirely passive recipient of certain bite-sized pictures of reality, which can then be rendered by the human mind in the form of true propositions that are the foundation of all knowledge. The validity of impressions cannot be questioned or refuted, but rather are the standards by which all judgments are evaluated as being either true or false. Thus, only judgments

²³⁶ See Long and Sedley, *THP*, 83.

²³⁷ The term "impression" is broader than that of "sensation." The former includes the distinction between sensory and non-sensory impressions. Sensory impressions (sensations) are caused by the external world, whereas non-sensory impressions result from such things as imagining and dreaming.

²³⁸ The Greek term for "true" can also mean "real." Thus, Epicurus' central claim could be rendered, "All impressions are real."

²³⁹ Epicurus, *THP*, 16E. See also Diogenes Laertius' summary in *THP*, 16B.

that accord with our impressions, or are based on such judgments, can count as knowledge (*epistēmē*) rather than mere belief or opinion (*doxa*).²⁴⁰

To return to the argument from the cradle, Epicurus' main reason for holding that pleasure is the highest good is that young children and animals, because they have no beliefs - or, more properly, judgments - and thus could not act upon false beliefs, demonstrate irrefutable evidence for what our natural good is. (We should be careful not to say "natural end" (*telos*), for part of the argument here rejects the notion of some future, final, and optimal state of activity that has not yet been realized in the infant child or animal.) It would be misleading to interpret Epicurus as saying the child *knows* that pleasure is the highest good and acts upon that judgment because knowledge consists in judgments in accordance with given impressions and the given child has not made any judgments. Rather, the point is that any moral theory that derives its central claims from impressions does not need to provide further justification for those claims. Thus, just as the child who seeks pleasure and avoids pain (an empirical fact that we are to presuppose as valid and incontrovertible) does not need further justification for his actions, neither does anyone who judges that pleasure is good and pain is evil need further justification for his judgment.²⁴¹

Thus, by way of an epistemology of empirical impressions the Epicureans assert the place and, in a certain sense, *authority* of nature in the realm of moral philosophy. Nature is not authoritative in the sense of making commands or laws that human beings

²⁴⁰ "Accord with" is admittedly vague, and one would hope for a clearer account from Epicurus. As Cicero points out, however, the Epicureans do not offer such an account. See *DF* I.22.

²⁴¹ As Cicero points out, the argument fails because Epicurus cannot establish that the child actually desires "static pleasure," the "pleasure of feeling no pain," which is the highest good according to Epicurean hedonism. See *DF* II.31-32.

are obligated to obey — the strong sense of "ought" that underlies NLT — but rather it is authoritative in the realm of moral argument such that any premise directly or indirectly derived from an impression is valid on that basis alone. Torquatus has this point in mind when he speaks of the authority of "nature's judgments."²⁴² The apparent personification of nature is metaphorical: the Epicureans never attempt to apply their atomistic cosmology in the construction of a theory of obligation rooted in certain judgments or laws of nature.²⁴³ Moreover, one of the primary practical benefits of atomism, the Epicureans often insist, is the enjoyment of liberation from fear of a higher or transcendent authority, one that appears to be implied in the notion of natural law.²⁴⁴ The point, rather, is that impressions are the first (in the sense of primary or foundational) judgments, as it were, because they come directly from nature and hence there could be no more basic or authoritative judgments by which we can evaluate other claims.

While not a theory of natural law, Epicurean moral theory does represent a definite turn toward nature, particularly in the area of moral epistemology - a turn that, in my view, was essential for the subsequent birth of natural law in Stoic thought. The Epicurean challenge to the received eudaimonist tradition, as I have argued, did not simply concern their rejection of teleology or their instrumental conception of virtue, but was rooted in the claim that the theoretical investigation of nature is not only part of moral reasoning but is the very foundation of it. This is what I have called the unified conception of practical reason. Torquatus summarizes the position as follows:

²⁴² *DF* I.30.

²⁴³ Indeed, as Long and Sedley observe, the Epicureans fail even to account for pleasure and pain strictly in terms of the movements of atoms. See *THP*, 122.

²⁴⁴ The notion of law (*nomos*) was invariably connected with the notion of some prior authority who is the author of the given law or custom. Law or custom is something made or produced - it is a matter of artifice - and thus requires something that intends its existence and is capable of bringing it into existence.

So if the philosophy I have been describing is clearer and more brilliant than the sun; if it is all drawn from the fount of nature; if my whole speech gains credibility by being based on the uncorrupted and untainted testimony of the senses; if inarticulate children and even dumb beasts can, under the guidance and direction of nature, almost find the words to declare that there is nothing favorable but pleasure, and nothing unfavorable but pain - their judgment about such matters being neither perverted nor corrupted; if all this is so, then what a debt of thanks we owe to the man who, as it were, heard nature's own voice and comprehended it with such power and depth that he has managed to lead all those of sound mind along the path to a life of peace, calm, tranquility and happiness.²⁴⁵

That Epicurus heard "nature's own voice" suggests that he held an essential claim of natural law, namely, that descriptive (or metaphysical) truths just are normative ones, and vice versa. But to read Epicurean thought this way would be a mistake. As we have seen, science affords the philosopher with truths - specifically, judgments in accordance with impressions - that are of *instrumental* value to practical reasoning but are not themselves normative truths or principles. The enlightened philosopher uses his scientific knowledge in order to form sensible practical judgments that enable the enjoyment of a tranquil life; and because of his knowledge, the philosopher does not hold any false beliefs that would undermine his ability to make sound practical judgments. In the remainder of this chapter, I attempt to conclude my main argument in this dissertation by arguing that the Stoic response to the Epicurean challenge centered on the collapse between metaphysical and normative truths - a collapse that was, I believe, essential to the formation of Stoic NLT.

4.3 *Katalēpsis* and the Stoic Metaphysics of Knowing

The Stoics not only continued but greatly strengthened the Epicurean theme that the natural philosopher is the practically wise individual. As R.J. Hankinson observes,

²⁴⁵ *DF* I.71.

"Stoic Sages never make mistakes. Secure in their understanding of the providential structure of the world...Sages order their lives in accordance with it, assimilating their will to the will of Zeus, living in accordance with nature, and so achieving the smooth flow of life, the *eurhoia biou* so devoutly to be wished for."²⁴⁶ The ideal of the Stoic Sage, as Hankinson puts it, may not be attainable. Indeed, it seems at least some Stoics were doubtful whether anyone had ever achieved such an ideal.²⁴⁷ Nevertheless, at the center of Stoic moral theory is a robust confidence in the possibility of infallible and more or less comprehensive scientific knowledge that simultaneously conveys "what is" (*huparchon*) and what ought to be.

As with the Epicureans, the Stoics developed an epistemology that centered on the notion of impression (*phantasia*) and, more specifically, the idea that nature provides us with certain infallible impressions that accurately convey reality to the knower. The Stoics, too, were under skeptical pressure, especially from the Academic Skeptics, to show how our beliefs about the world represent knowledge rather than mere opinions. However, while the Stoics maintained the reliability of impressions in general - that is, impressions received under normal circumstances - they reject Epicurus' thesis that all impressions are true. Epicurus based this claim on the distinction between impressions and judgments: while the latter could be either true or false, the former can only be true. Impressions never fail in reporting atomic images of the object that causes the impression. For the Stoics, however, some impressions can be false, e.g. that a pole bends when submerged in water. As Carneades summarizes, "because [impressions] do

²⁴⁶ R.J. Hankinson, "Stoic Epistemology" in *The Cambridge Companion to the Stoics*, ed. Brad Inwood (Cambridge: Cambridge University Press, 2003), 59.

²⁴⁷ For example, in *Against the professors*, Sextus Empiricus states that "to this day no one fitting their account of the wise man has turned up." See *THP*, 54D.

not always reveal what is truly there, but often deceive us and is at variance with the things which transmitted it, like incompetent messengers, a necessary consequence is that we cannot allow every impression to be a criterion of truth, but just, if any, the true impression."²⁴⁸ But, of course, this does not answer how can one tell the difference between a true and a false impression. The answer, first offered by Zeno, comes in the notion of "cognitive impressions" (*phantasia katalēptikē*).

According to the Stoics, cognition (*katalēpsis*) represents a third state besides those of mere belief (*doxa*) and knowledge (*epistēmē*). In this state, one holds a belief that is not mere opinion but neither is it knowledge. Frede illustrates the basic idea of cognition in this way:

When I clearly see that the book in front of me is green, it is not a matter of mere opinion if I think that the book is green. Nor yet, however, is it a matter of knowledge. For to know that the book is green is supposed to be a matter of being in a state such that there is no argument which could persuade one that it is not the case that the book is green. But the mere fact that one clearly sees that the book is green does not suffice to rule out the possibility that one can be argued into not believing that the book is green.²⁴⁹

Cognition, then, involves assenting to certain impressions that we have good reason for believing to be true, which is to say that we take the impression to accurately convey some object that is the cause of the impression, and we have no obvious reason for believing otherwise (and hence it cannot be mere opinion); and, at the same time, we do not have sufficient reason for holding the belief against all arguments to the contrary (and hence it cannot count as knowledge on the Stoic view). We should be careful here. The Stoics hold that cognition is assent to a true impression, and thus it is not possible for the knower, when he cognizes something, to be deceived (even though he might be talked out

²⁴⁸ Ibid, 461.

²⁴⁹ Frede, 297.

of his belief). The reason for this has to do with the term *katalēpsis* itself, literally translated as "grasp." Hence, a cognitive impression is an impression that makes itself available to be grasped by the human mind. When the mind cognizes, that is, when it assents to a cognitive impression, it is in touch with real things and grasps them as such.

The foregoing point is worth emphasizing: by grasping cognitive impressions, the Stoics do not mean grasping images or pictures that represent certain objects. Rather, impressions reveal, as does light, what is truly there. Aetius writes, "The word 'impression' (*phantasia*) is derived from 'light' (*phōs*); just as light reveals itself and whatever else it includes in its range, so impression reveals itself and its cause. The cause of an impression is an impressor: e.g., something white or cold or everything capable of activating the soul."²⁵⁰ The analogy of light is also helpful for explaining that not all cognitive impressions are equally clear and distinct: "just as light can vary in its illuminating effects," Long and Sedley observe, "so sense-impressions can vary in the clarity and distinctness with which they represent their objective causes."²⁵¹ This raises a key issue in Stoic epistemology, namely, the extent to which clarity and distinctness can be relied upon as a standard for determining the strength of one's assent to an impression - an issue that is beyond my interest in this chapter.

For the present purpose, it is enough to emphasize the following key point: a cognitive impression is an event in which the rational human mind naturally grasps some part of the rational natural order, a natural order that reveals itself to the knower as a clear and distinct impression that could only arise from "what is" (*huparchon*).²⁵² Thus, the

²⁵⁰ *THP*, 39B.

²⁵¹ Long and Sedley, 239.

²⁵² See Diogenes Laertius, *THP*, 40C.

Stoics were in the habit of referring to cognitive impressions as "nature's gift" for discerning true beliefs from false ones: "For nature has given the sensory faculty and the impression which arises thereby as our light, as it were, for the recognition of truth."²⁵³ The Stoics take for granted that under normal conditions human beings, as rational creatures, are not only able to make correct judgments that form the basis of knowledge, but are also naturally inclined, even determined, to assent to such impressions. The Stoic notion of "common conceptions" and "preconceptions" takes this point one step further. Apparently it was Chrysippus who advanced the position that nature reveals itself, not only by cognitive impressions, but also by certain common conceptions and preconceptions which serve as standards for validating beliefs about things that simple cognitive impressions do not reveal. It is unclear what Chrysippus means to include under common conceptions and preconceptions, but evidence suggests belief in God and providence and certain universal truths.²⁵⁴ These beliefs do not exist as innate ideas, however, because sense-perception remains the fountain of all our impressions.²⁵⁵ Rather, "it is by reason," Diogenes Laertius says, "that we get cognition of conclusions reached through demonstration, such as the gods' existence and their providence."²⁵⁶

Notwithstanding certain problems with common conceptions and preconceptions (and there are some problems),²⁵⁷ the thesis further illustrates the critical point to notice about Stoic epistemology: what underlies this particular theory of knowledge is a confidence in the fundamental sensibility of the world, that it is rationally ordered and

²⁵³ Sextus Empiricus, *THP*, 39G.

²⁵⁴ See Diogenes Laertius, *THP*, 40C, P.

²⁵⁵ Cicero goes so far as to identify the mind with sense-perception. See *THP*, 40N.

²⁵⁶ *Ibid*, 40P.

²⁵⁷ *Ibid*.

fully accessible to the human mind. It is a confidence in the possibility of a genuine knowledge of nature for *all* rational creatures, and it is a confidence that is rooted, I believe, in a new conception of nature, and, along with it, a new conception of human nature. Plato and Aristotle reject this confidence outright. Only the fortunate few, those who are endowed with "gold souls," as Plato puts it, those who are free, wealthy, and are not natural slaves, have the potential to acquire the enlightenment that comes by sustained *theōria*.²⁵⁸ The skeptics rejected the suggestion that *anyone* could achieve such knowledge - or at least that anyone had achieved it in the past. The Epicureans were the first to advance a theory of knowledge that sought to address the challenges of the skeptics, but they make no point one way or another on the possibility of widespread scientific knowledge. The main reason for this is clear: the Stoics, unlike the Epicureans (as well as Plato and Aristotle), presuppose that nature and human beings are so constituted as to make knowledge of the former an entirely natural thing for the latter to achieve.²⁵⁹ The point is stronger, in fact: nature has providentially endowed human beings not only with the necessary mental equipment for making accurate judgments, an activity that is a constituent part of the life of "following nature," but also with the natural inclination to assent to the kinds of impressions, specifically cognitive impressions, that accurately convey reality to the knower.²⁶⁰ The foregoing analysis of Stoic epistemology

²⁵⁸ In the *Republic* (415a), Plato distinguishes between gold, silver, and bronze souls in order to make the point that only some are endowed with the ability to philosophize and thus become philosopher-kings. Aristotle develops the notion of natural slaves in *The Politics* (I.6).

²⁵⁹ Aristotle does state in the opening line of the *Metaphysics* that "[a]ll men by nature desire to know." Although the knowledge he has in mind certainly includes scientific knowledge, Aristotle's claim does not imply anything about nature itself and its relation to the human mind.

²⁶⁰ This point is made by Long and Sedley, though I make an important revision to remove the apparent instrumentalizing of scientific knowledge that is suggested in their statement. They write that nature endows human beings with the means for making "accurate discriminations which are necessary to living

was necessary to make this point clear. It should be unsurprising, then, that on a Stoic set of assumptions the suggestion that nature also supplies the human mind with certain preconceptions and common notions that makes possible the knowledge of realities that are not directly conveyed by means of sense-perception is an entirely plausible thesis. We might summarize the main point thusly: to a person who finds Stoic epistemology doubtful and unconvincing, the Stoic philosopher would respond by pointing out that such a person in all likelihood maintains a false or misguided conception of the natural order and, indeed, of himself.

4.4 *Homologia*, *Oikeiōsis*, and Natural Law

The foregoing point is meant to suggest the central Stoic notion of *homologia* - usually rendered as "living in conformity with nature," though its importance in Stoic moral theory is far more complicated than this phrase suggests. As we have seen, a strong case could be made that the Epicureans also understood human happiness to be a matter of following nature. But with the term *homologia*, the Stoics obviously do not have the Epicurean model in mind. Michael J. White summarizes *homologia* in the following way: "*Homologia* is an identification of oneself with the divine reason that pervades and orders the cosmos; it is a matter of 'using one's reason for the purposes for which it is designed, that is, for reaching truth about the world. Knowledge of this truth includes knowledge of "what particular things in it are valuable for oneself. That is what

in accordance with nature." On my interpretation, this represents an Epicurean rather than Stoic understanding of metaphysics. See Long and Sedley, 250.

'preserves' one's new, rational 'constitution.'"²⁶¹ In this summary it is striking and of fundamental importance that *homologia* involves both self-identification (a matter of properly understanding one's own nature) as well as proper activity (using reason to achieve what we have been calling scientific knowledge, or "knowledge about the world"). *Homologia*, in other words, contains both descriptive and prescriptive senses. It is a term that captures not only a basic truth about human nature, but also a basic normative truth about how human beings ought to live.

Homologia in its descriptive sense, that is, an understanding or "identification" of oneself with nature understood as Divine Reason, connotes the notion of belonging, as in one thing belonging to another.²⁶² Self-identification is a rendering of the term *oikeiōsis*, which literally translates as "appropriation" because of the connotations of property ownership that the Greek root *oik-* contains. In this sense of the term, Annas' translation of *oikeiōsis* as "familiarization" makes sense. "The idea is that of finding something congenial and regarding it as one's own."²⁶³ We must be careful, however, because the sense in which human beings are appropriated to Divine Reason is neither an arbitrary action nor a forced one.²⁶⁴ Rather, part of what the term is meant to convey is the need for a transformation of our ordinary conception of ourselves into an enlightened self-understanding that identifies oneself with the divine rational order and redefines our entire view of the appropriate human end (*telos*). The difference between this view and the Platonic and Aristotelian one is obvious and important: while Plato and Aristotle both

²⁶¹ White, *Political Philosophy*, 65-66. Included is a quote from Troels Engberg-Pedersen's book, *Paul and the Stoics* (Louisville, KY: Westminster John Knox Press, 2000), 53.

²⁶² I treat the Stoic concept of Divine Reason later in this chapter.

²⁶³ *DF* III.16 n.7.

²⁶⁴ See Long and Sedley, 351.

affirm the ultimate ideal of human beings transcending human nature and *becoming* divine, which only a few can achieve, the Stoics emphasize the full realization of what we already are as members of the divine natural order.²⁶⁵

But as Cicero makes clear in *DF* III.16, *oikeiōsis* for the Stoics does not simply mean a theoretical apprehension of our true human nature (something that does not come until later in life, when our conceptions of ourselves and of nature have matured), but the term also conveys certain natural inclinations toward the human *telos* that are present from birth and evolve as one grows into adulthood. These inclinations are both compelling motivations to act in certain ways and discrete stages of self-awareness. As with the Epicureans, the Stoics look to develop an argument from the cradle which Cicero presents in the following way:

Every animal, as soon as it is born (this is where one should start), is concerned with itself, and takes care to preserve itself. It favors its constitution and whatever preserves its constitution, whereas it recoils from its destruction and whatever appears to promote its destruction. In support of this thesis, the Stoics point out that babies seek what is good for them and avoid the opposite before they ever feel pleasure or pain. This would not happen unless they valued their own constitution and feared destruction. But neither could it happen that they would seek anything at all unless they had self-awareness and thereby self-love. So one must realize that it is self-love which provides the primary motivation.²⁶⁶

The first inclination of human nature is not pleasure, as the Epicureans had supposed, but rather "self-love." Cicero has already provided a devastating critique of the Epicurean argument on behalf of static pleasure - roughly, the notion of pleasure as the complete absence of pain, which is the highest and most natural good for a human being to seek.²⁶⁷

In *DF* II.31-32, he points out that it is hardly evident that "the bawling infant" seeks static

²⁶⁵ Annas makes the same point in her "Introduction," xxii a xxv.

²⁶⁶ *DF* III.16

²⁶⁷ See *DF* I.37 for a discussion of static pleasure versus kinetic pleasure.

rather than kinetic pleasure.²⁶⁸ He adds to this a key point: static pleasure "is not the sort of thing that can arouse appetitive desire. The static condition of freedom from pain produces no motive force to impel the mind to act."²⁶⁹ Cicero's assumption is that only a positive desire can motivate an action; and, for Cicero, these desires come in the form of natural inclinations that are teleological by nature. Hence we find in the Stoic argument from the cradle an account of "self-love," or a natural desire to preserve oneself, as the first natural inclination contained in *oikeiōsis*.

On the Stoic view, self-love is not selfishness or some like vice, but rather is the natural desire "to preserve one's constitution." But this also needs clarification because the notion conveys something more than a mere natural instinct to survive. Self-love is rooted in the Stoic assumption that one naturally seeks one's own good (and conversely one naturally avoids that which is destructive to one's own good) and that self-love is only the first inclination among others that will together form the natural impulses aimed at an optimal human life. Thus, self-love is a basic and compelling teleological inclination, one that involves a very rudimentary sense of self, some beginning idea of what we are that will mature with the addition of other natural inclinations that are aimed at higher ends than that of the first inclination of self-preservation which we share with the animals and all other living things. Cicero explains the point as follows:

²⁶⁸ Kinetic pleasure results from the satisfaction of the appetites. But as Cicero will point out, the enjoyment of static pleasure seems to depend, at least at times, on satisfying those very appetitive desires that constitute kinetic pleasure, e.g. the absence of hunger results from the eating of food. This is one of Cicero's stock examples that he uses to expose "the nest of fallacies" contained in the Epicurean position. His main point is that the distinction between static and kinetic pleasure has mere rhetorical value, and as such it cannot withstand serious philosophical examination (and, as Cicero seems to suggest, was never meant to because its aim was only to persuade). This is evidence, for example, in the obvious fact that the opposite of pain is not pleasure but rather non-pain. See *DF* II.28-32.

²⁶⁹ *Ibid.*

A human being's earliest concern is for what is in accordance with nature. But as soon as one has gained some understanding, or rather 'conception' (what the Stoics call *ennoia*), and sees an order and as it were concordance in the things which one ought to do, one then values that concordance much more highly than those first objects of affection. Hence through learning and reason one concludes that this is the place to find the supreme human good, that good which is to be praised and sought on its own account. This good lies in what the Stoics call *homologia*.²⁷⁰

There is, then, at least in the ideal case, a dynamic interrelation between the natural development of a human person in the form of inclinations and an ever enriching conception of ourselves and our primary end. We gradually understand ourselves as creatures that are united with the entire realm of living things, and thus share basic principles in common with all members of that realm; and, at the same time, as creatures that are uniquely endowed by nature with the faculty of reason and thus have as our highest aim a life "in accordance with reason" (*homologia*) which, as Diogenes Laertius summarizes, "comes to be natural for [all rational beings]."²⁷¹ Hence the Stoic conception of *oikeiōsis* as natural inclinations, as Cicero summarizes, is that which constitutes "nature's very own voice."²⁷²

The similarity of the Stoic view with Aristotle's analysis of the vegetative, appetitive, and rational elements of the human soul is hard to miss.²⁷³ Aristotle also understands these elements in terms of natural inclinations toward certain ends that represent the human good. Unique to the Stoic understanding, however, is their emphasis on the superintending or providential role of nature in their conception of inclinations.

²⁷⁰ *DF* III.21.

²⁷¹ Diogenes Laertius, *THP* 57A.

²⁷² Cicero, *DF* III.

²⁷³ See *NE* I.13.

Diogenes Laertius adds the following to his summary of the Stoic argument from the cradle:

Therefore Zeno in his book *On the nature of man* was the first to say that living in agreement with nature is the end, which is living in accordance with virtue. For *nature leads us toward virtue*...Further, living in accordance with virtue is equivalent to living in accordance with experience of what happens by nature, as Chrysippus says in *On ends* book I: for our own natures are parts of the nature of the whole. Therefore, living in agreement with nature comes to be the end, which is in accordance with the nature of oneself and that of the whole, engaging in no activity wont to be forbidden by the universal law, which is right reason pervading everything and identical to Zeus, who is this director of the administration of existing things.²⁷⁴

Implicit in this analysis - an analysis that is critical for the development of NLT, as I will discuss shortly - and absent from Aristotle's anthropology is a "theological conception" of nature, that is, nature as God or Divine Reason who is intentionally and comprehensively involved in the governance of the cosmos, a cosmos that somehow is identified with Divine Reason and simultaneously is governed by it. Divine Reason is not simply the First Mover or the Prime Cause, but is intimately, universally, and perpetually ordering the whole of reality - a suggestion summarized by the Stoic term providence, rooted in the Greek term *pronoia*. Textual evidence for this position is ubiquitous. Cicero writes, for instance, that "it is by the providence of God [or the gods] that the world and all its parts were first compounded and have been governed for all time."²⁷⁵ Elsewhere he reports Chrysippus as saying that

divine power resides in reason and in the mind and intellect of universal nature. He says that god is the world itself, and the universal pervasiveness of its mind; also that he is the world's own commanding-faculty, since he is located in intellect and reason; that he is the common nature of things, universal and all-embracing; also the force of fate and the necessity of future events. In addition he is fire; and the aether of which I spoke earlier; also things in a natural state of flux and

²⁷⁴ Diogenes Laertius, *THP* 63C (emphasis added).

²⁷⁵ Cicero, *THP* 54J.

mobility, like water, earth, air, sun, moon, and stars; and the all-embracing whole; and even those men who have attained immortality.²⁷⁶

That such a conception is incompatible with Aristotle I take to be obvious: Aristotle's gods are perfect contemplators of eternal things, are entirely inattentive to the world of growth and decay, and thus could hardly be *identified* with the very things that constitute that ever-changing world.²⁷⁷

Divine providence, as Diogenes noted above, is central in explaining the path to virtue for human beings in particular. Whereas Aristotle places much greater emphasis on proper parenting in the formation of good habits in the young - a point that the Stoics do not neglect - the Stoics place priority on the role of Divine Reason in equipping human beings and governing them with a view to virtuous activity. Divine Reason has acted in such a way as to enable and encourage virtue in human life, and it is in connection with this point that the Stoics rely upon the concept of law in order to account for the teleological governance of nature, not only in human life but in all things. It is by law that Divine Reason governs over all things, equipping everything to act in certain ways that accord with their specific nature; and, thus, the knowledge of the nature of things is precisely a knowledge of that law, which we can at this point refer to as "natural law." It is by providence working through law that all things act according to their natures, and that they do so invariably.

Diogenes' analysis adds a critical point: part of what the notion of law is supposed to convey, particularly in reference to human beings, is that we are bound and obligated

²⁷⁶ Ibid, 54B.

²⁷⁷ As I will discuss in the Conclusion (4.4), we need not suppose that NLT requires a particular conception of the divine that is indistinct from the natural order, as the Stoics hold. Christian NLT, for example, accepts the notion of providence but rejects the identification of God with the natural order.

to actions in conformity with the natural law, "engaging in no activity wont to be forbidden by the universal law."²⁷⁸ What this implies is that the Stoics employ law, not merely to *describe* the unvarying natural activity of things which is known by the natural philosopher, but also as a *prescriptive* term connoting moral obligation. Part of Diogenes' point, in other words, is that we are not only naturally inclined to act in accordance with nature or reason, we ought to act in such a way, with "ought" understood in the strong (non-conditional) sense. It is obvious that part of the purpose of accounting for their moral theory in terms of law is to make the point that there exists an order of obligation, which is itself a system of law that has been authored by a divine lawgiver, that must serve as the authoritative basis for all other forms of legitimate law, primarily positive law.²⁷⁹

But if this interpretation is correct, then scientific truths are at once descriptive and prescriptive, and natural law as it is first used here by the Stoics must therefore represent the complete collapse of the distinction between descriptive and normative claims. One obvious criticism of my interpretation, however, is that Diogenes' account seems to imply that human beings are capable of not acting in accordance with natural law, and thus it is not clear how such a law could be *descriptive*. In other words, each time a person acts contrary to the natural law, then the particular natural law that would apply in that case fails as a descriptive account not only of that person but of human beings universally. This objection, however, only reveals a central problem that ancient and especially medieval natural law theorists sought to address. It would be superfluous

²⁷⁸ Ibid, 63C. By "universal law" Diogenes clearly means natural law and does not have in mind such notions as "eternal law" that we find in later developments of NLT, especially in St. Thomas Aquinas.

²⁷⁹ Russell Hittinger makes a similar observation in *The First Grace*, xv.

(and far too ambitious) for me to offer an account or even a summary of those attempts here. It is an objection raised, not against my interpretation of NLT, but rather against the theory itself. As for whether the Stoics themselves deny that natural laws are descriptive, there is no basis in their writings for such an interpretation, nor is there in the writings of later theorists (including Aquinas). In the foregoing passage, for example, Diogenes stresses that "living in accordance with virtue is equivalent to living in accordance with experience of what happens by nature." It does not appear that practical aberrations of the natural law do anything, on Diogenes' view, to change the fact that human beings are what they are, and that we are able to recognize those latent tendencies in human nature that constitute a descriptive account of it.

4.5 Conclusion: The Core Claims of NLT

In his book *Natural Law Modernized*, David Braybrooke attempts to distill the essence of NLT into three "core claims": "first, there is a set of universally applicable moral rules, with principled allowances for variations in circumstances; second, (another empirical thesis), people will thrive and their societies will thrive only if these rules prevail; and third (a further empirical thesis), human beings by and large are inclined to heed these rules."²⁸⁰ I believe a careful analysis of the original formation of NLT, as I have attempted to provide (if only very briefly) in this dissertation, shows Braybrooke's summarization to be inadequate.²⁸¹ By implication, the position of NNL, which also

²⁸⁰ Braybrooke, 3.

²⁸¹ Braybrooke assumes that these three claims form the foundation of NLT, and that other claims, e.g. that there is some divine lawgiver who is the author of the natural law, are non-foundational and thus non-essential (see pp. 9 and 36). Understanding the core claims of NLT this way allows Braybrooke to argue that later modern theorists such as Hobbes and Rousseau, because they accept the core claims, are natural

rejects the essential place of metaphysics in NLT, is also inadequate. In this final section, I will make a similar attempt to suggest a set of core claims of NLT based on the foregoing account. As with Braybrooke, I understand these claims to provide the necessary and sufficient conditions for NLT, and thus they must be taken together. A rejection of any one of these claims entails a rejection of NLT.

The core claims that I will suggest can be taken from a key passage in Cicero that scholars often regard as the classic statement of NLT:²⁸²

[L]aw in the proper sense is right reason in harmony with nature. It is spread through the whole human community, unchanging and eternal, calling people to their duty by its commands and deterring them from wrong-doing by its prohibitions. When it addresses a good man, its commands and prohibitions are never in vain; but those same commands and prohibitions have no effect on the wicked. This law cannot be countermanded, nor can it be in any way amended, nor can it be totally rescinded. We cannot be exempted from this law by any decree of the Senate or the people; nor do we need anyone else to expound or explain it. There will not be one such law in Rome and another in Athens, one now and another in the future, but all peoples at all times will be embraced by a single and eternal and unchangeable law; and there will be, as it were, one lord and master of us all - the god who is the author, proposer, and interpreter of that law. Whoever refuses to obey it will be turning back on himself. Because he has denied his nature as a human being he will face the gravest penalties for this alone, even if he succeeds in avoiding all the other things that are regarded as punishments.²⁸³

The primary purpose of this dissertation has been to provide some account of the critical context for understanding this passage, in particular the basic claims that form the essence of NLT. First, there is an order of obligation, understood as a system or body of law, that exists prior to and is distinct from all human (positive) law. Second, the content

law theorists in the same tradition as that of Aquinas, and that any differences between these theorists, however important, are non-essential.

²⁸² See, for example, Peter James Stanlis' book *Edmund Burke and the Natural Law* (Whitefish, MT: Literary Licensing LLC, 2011), 7.

²⁸³ Cicero, *The Republic*, trans. Niall Rudd (Oxford: Oxford University Press, 1998), III.33. In subsequent references I will use the original Latin title, *De Republica (DR)*.

of this law is supplied by truths of nature, that is, metaphysical or scientific truths, that are expressed in statements that are simultaneously descriptive and normative and are generally knowable to human beings. And, third, there is a divine author of this law, one that is capable of providential governance of the cosmos by way of such laws that are both knowable to human beings and binding upon human actions and laws.

By "order of obligation," as I state in the first claim, I am suggesting an understanding of the moral "ought" in the strong imperative (non-conditional) sense. While the natural law does provide the conditions for human flourishing, and hence NLT is a eudaimonistic moral theory, the reason for obedience to its requirements is not strictly limited to the desire of moral agents to achieve their own well-being. In other words, there is no basis for reading Cicero as accepting the following claim: One ought to obey the natural law if and only if one desires to live well or desires the same for others. Rather, Cicero emphasizes the binding and obligatory sense of the natural law by relying upon standard jurisprudential terminology (i.e. law, command, and prohibition) that imply moral obligation in a way that does not depend upon the satisfaction of certain prior conditions, including the condition that one already desires to fulfill such obligations. The fact that Stoic NLT emphasizes the natural inclination of human beings to heed the natural law (*oikeiōsis*) does not entail that the obligation is in any way removed or diminished in the case that one does not desire to meet the obligation. Indeed the Stoics were quite aware that many people simply reject the requirements of the natural law, and apparently embrace a life that any good Stoic would regard as living *contrary* to nature. Such persons are not simply unhappy but, as Cicero says, "wicked."

This last point is worth further investigation because it follows upon a key point that Cicero makes just prior to his use of the term wicked: "[The natural law] is spread through the whole human community, unchanging and eternal, calling people to their duty by its commands and deterring them from wrong doing by its prohibitions. When it addresses a good man, its commands and prohibitions are never in vain; but those same commands and prohibitions have no effect on the wicked." The significance of the passage turns in large part on the phrase "calling people" because it sheds light on what Cicero means by the natural law being "spread through the whole human community." By "calling people," I believe Cicero has in mind the notion of *oikeiōsis*, and thus the passage should be read thusly: The natural law is spread through the whole human community...*by way of the natural inclinations of human nature* that predispose people to obey its commands.²⁸⁴ This reading is correct, I argue, because the following sentence is now sensible: a person is "good" because he acts in conformity with *oikeiōsis*, whereas for the "wicked" person these very same inclinations are never realized in his life in the form of virtuous activity, which is to say that he never acts upon them. If this interpretation is correct, then *oikeiōsis* seems to contain what nature (Divine Reason) intends for human life - the imprint of its plan for human life in its ideal course, and hence the expression of the divine will, as it were. Any action contrary to *oikeiōsis*, then, is an action contrary to the rational divine will and is thus properly called wicked.

The idea of law as a type of plan or pattern is made explicit in Augustine and especially in Aquinas. The latter writes,

²⁸⁴ By "predispose," I suggest the notion of being naturally equipped for and inclined to some activity without also making the stronger assertion that the activity must occur or will occur automatically.

Just as in every craftsman there pre-exists a rational pattern (ratio) of the things which are to be made by his art, so too in every governor there must pre-exist a rational pattern of the order of the things which are to be done by those subject to his government. And just as the rational pattern of the things to be made by an art is called the art, or the exemplar of the products of that art, so too the rational pattern existing in him who governs the acts of his subjects bears the character of law...Now God is the Creator of all things by His wisdom, and He stands in the same relation to them as a craftsman does to the products of his art. But He is also the governor of all the acts and motions that are to be found in each single creature. Hence just as the rational pattern of the Divine wisdom has the character of art or exemplar or idea in relation to all the things which are created by it, so also the rational pattern of the Divine wisdom bears the character of law in relation to all the things which are moved by it to their proper end. Accordingly, the eternal law is nothing but the rational pattern of the Divine wisdom considered as directing all actions and motions.²⁸⁵

Thomas' argument and its compatibility with the Stoic conception of natural law is clear: the natural teleological tendencies of human nature towards some end are not self-moving and thus require a first mover who is both the author and the director of human activity towards that same end; and this first mover is God or Divine Reason. The point obviously suggests the second and third core claims. For Thomas' position to be correct, then the natural tendencies or inclinations of human nature must be at once descriptive and normative, that is, they are facts about human beings, but they are not just facts but are, at the same time, concrete manifestations of law and what that law enjoins us to do. But this account of human nature obviously presupposes a divine being as the cause of such inclinations. Hence the ends to which human beings are inclined are divinely established ends and cannot be understood properly apart from that presupposition. As Thomas states, "it is clear that all things participate to some degree in the eternal law: that is, in so far as they derive from its being imprinted upon them their inclination to the

²⁸⁵ Thomas Aquinas, *Summa theologiae*, trans. R.W. Dyson (Cambridge: Cambridge University Press, 2002), I.II.93.

activities proper to them."²⁸⁶ He then adds a critical point about "rational creatures": "the rational creature is subject to Divine providence in a more excellent way...it participates in the eternal reason, by virtue of which it has a natural inclination to the activity and end proper to it; and such participation of the rational creature in the eternal law is called the natural law."²⁸⁷

The important point to notice from St. Thomas, then, concerns the necessity of the concept of divine providence for understanding natural inclinations within the framework of NLT. Specifically, one cannot properly understand the place of natural inclinations in NLT, and the moral obligations that concern the fulfillment or realization of those natural inclinations, apart from a prior Divine Governor who, by way of providence, "imprints" upon human nature those very same inclinations. One might discern these inclinations by way of strict empirical observation, leaving aside all metaphysical notions or presuppositions, but one cannot on that basis alone assert either their teleological character or their binding or obligatory force on human action.²⁸⁸ St. Thomas is not advancing a novel thesis in NLT, but rather fully accepts and further develops Cicero's statement that "there will be, as it were, one lord as master of us all - the god who is the author, proposer, and interpreter of that [eternal and unchangeable] law." Natural law could not be understood as a theory of obligation apart from a theological conception of

²⁸⁶ Ibid, I.II.91.

²⁸⁷ Ibid.

²⁸⁸ That this point is true is, as H.L.A. Hart has observed, all but universally acknowledged among modern scholars. See *The Concept of Law*, 2nd ed. (Oxford: Oxford University Press, 1994), 191-94.

nature, that is, nature in all of its operations is the direct result of the providential workings of a divine being.²⁸⁹

As Augustine and Thomas evidence, the theological presupposition of NLT does not commit the theory to a tight conception of the divine, one that is identified with the natural order as in Stoic theology. Rather, the central concept is that of comprehensive providence (*pronoia*), the divine being governing over, in, and through the entire cosmos, from the greatest part of it to the least, to achieve a certain end or set of ends established by the divine being itself. In Thomas' account of law in I.II.91, for example, he states that "*on the supposition* that the world is ruled by Divine providence...it is clear that the whole community of the universe is governed by Divine reason. And so the rational pattern of the government of things which is in God as Ruler of the universe, itself has the character of law."²⁹⁰ It is noteworthy that Thomas' terminology is plainly Stoic, though he by no means endorses all aspects of Stoic theology. But the critical aspect of it that he *can* accept and assimilate into a fully developed Christian theology is that of providence - a notion that is absent, of course, in Plato and Aristotle. Among the early Stoics, Chrysippus is foremost in asserting the centrality of the doctrine of divine providence in his philosophical defense of Stoicism.²⁹¹ We can explain our tendency toward community, toward the benefitting of as many people as possible, and all other

²⁸⁹ One reasonable objection to my claim that providence is essential to Stoic NLT is that Plato also held to a providential theology centered on the Demiurge of the *Timaeus*. A separate work is needed to treat this objection adequately. Briefly, I believe that the Stoic conception of Divine Reason is fundamentally different from that of Plato's Demiurge regarding the concept of providence. Neither is the Demiurge identified with the natural order, nor is it conceived of as perpetually involved in the governance of the cosmos. Rather, the Demiurge is the grand craftsman who endowed the created world with its teleological order.

²⁹⁰ Emphasis added.

²⁹¹ See *THP* 550-U. Other Stoics, e.g. Cleanthes, sought to defend Stoic teachings on more religious grounds. See his *Hymn to Zeus* in *THP* 54I.

tendencies toward being full members of the *cosmopolis* by no other means than that of divine providence.²⁹²

Thus, the third core claim of NLT represents a general acceptance of G.E.M. Anscombe's intuition that the notion of "ought" in the strong imperative sense rests on the notion of law, and the notion of law rests upon the more fundamental notion of a divine lawgiver. The suggestion that "law presupposes lawgiver" has, of course, been understood in a variety of ways and need not presuppose some form of voluntarism. If the suggestion is to be rejected in principle, however, then it follows, according to my interpretation of NLT, that the notion of moral obligation must be jettisoned as well. Braybrooke's analysis of NLT is a case in point. In his argument that the "core [natural law] theory does not invoke the will of God to establish the content of the moral rules," Braybrooke neglects the critical importance of obligation in his account of NLT, suggested in part by his preference for the term "rules" to the term "laws." The closest he comes to directly addressing the question of obligation is in his assertion that Hobbes and Rousseau (whom he considers natural law theorists) both show how we might dispense with God and rest the imperative force of natural law on the authority of the state - the Sovereign for Hobbes, the General Will for Rousseau. But this would entail that the imperative force of natural law rests upon positive law alone, an obviously problematic result because it implies that the natural law is not binding on anyone unless (or until) required by one's civil authority. I am not aware of any pre-modern (classical) natural law theorist, including the Stoics, Augustine, and Aquinas, who would accept this claim. Cicero makes the compelling point here: "This law cannot be countermanded, nor can it

²⁹² This is taken from Cicero's account which was heavily influenced by Chrysippus. See *DF* III.62-68.

be in any way amended, nor can it be totally rescinded. We cannot be exempted from this law by any decree of the Senate or the people; nor do we need anyone else to expound or explain it." Cicero's point, at least in part, is that the authority of the natural law does not in any way depend upon civil action. This is because a human being, by virtue of his rational faculty, is first and foremost a citizen of the *cosmopolis*, a grand community constituted by law and governed by Divine Reason. Thus, the natural law is not *potential* law awaiting enactment by the state. The natural law is *real* law, perpetually in effect and perpetually binding, and is such because of the perpetual governance of Divine Reason, without whom there can be no natural law and thus no moral obligation as such.

If my account of NLT according to the three core claims is correct, then it should be clear why NNL is also inadequate insofar as it attempts consistency with the classical conception. As with Braybrooke, though perhaps for different reasons, NNL attempts to free the theory from any firm metaphysical commitments (as discussed in Chapter 1). The effort is understandable. By the start of the twentieth-century, if not earlier, the almost universal consensus among philosophers was (and continues to be) that metaphysics represents a most unpromising field of study and, thus, any moral theory that stands a chance of general acceptance must separate itself from the tangle of questions of nature. Insofar as NNL theory can be understood as the attempt to salvage and renovate the older conception of natural law in order to meet modern objections, the interpretation is accurate and fair. However, leading NNL theorists, beginning with Germain Grisez, have made a stronger claim, namely, that their conception of NLT is *in essence* that of the classical conception.

According to the interpretation of NLT that I have presented and defended, this central assertion of NNL is incorrect. The birth of natural law, as we have seen, came by way of a complete collapse between descriptive and normative claims. Of course, the functionalistic conceptions of human flourishing provided by Plato and especially Aristotle implied that there was never a complete separation of "is" and "ought" claims. However, while Aristotle has no qualms with inferring value claims from fact claims, he does not assert, as Stoic NLT will later on, that fact claims *just are* value claims. For Plato and Aristotle, the study of nature does not yield normative truth. Aristotle explicitly asserts that we do not study the heavens in order to become better people. The demotion of scientific inquiry to an instrumental virtue by the Epicureans, however, brought the study of nature more to the fore of moral theory. The natural philosopher, rather than the practically inept individual of Plato and Aristotle, becomes the exemplar of practical wisdom in Epicureanism. But the atomistic conception of the cosmos does not offer the Epicurean philosopher specifically moral knowledge, but rather scientific insight that is relevant for making practical decisions (e.g. if I understand that gods and an afterlife do not exist, then I will not live in fear or anticipation of such things).

In Stoic thought, rather, we find a conception of nature, one I have called "theological," that makes possible the use of "natural law" as a term that represents a coherent moral theory. Prior to the Stoic development of the theological conception of nature, centered on the providential governance of Divine Reason, the juxtaposition of *nomos* and *physis* usually represented a contradiction in terms. If the original development of NLT rested upon the claim that an understanding of the natural law is precisely an understanding of the truths of the natural order, as the Stoics insisted (and

Augustine and Aquinas with them), then a defense of NLT in our own time will mean, at least in large part, a defense of the value and the possibility of knowledge of the nature of things.

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