

Skepticism about Natural Right in Cicero's De Republica

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ABSTRACT

This article examines Cicero's teaching on natural right in books 1-3 of *De republica*. He presents four distinct positions there. First and second, there are the stark view insincerely advanced by Philus against natural law and the equally stark view of Laelius in favor of it. In books 1 and 3 Scipio takes a third, more subtle position: He agrees with Laelius that natural law exists; but, unlike Laelius, he does not rely on a god as the foundation of natural law, and he suggests that the greatest use of virtue is suprapolitical knowledge of what is eternal. Scipio leads us to reflect whether natural law requires a theological foundation. In the prefaces to books 1 and 3, Cicero takes a fourth approach: His claim that the greatest use of virtue is governance seems to be incompatible with Scipio's account of natural law; he may come close to openly rejecting natural law in its entirety; he appears to agree with Philus's claim that wisdom points toward increasing resources, a claim that supports the acquisition of empire. Thus Cicero causes us to ask this question: if the greatest use of virtue is governance, does the governance occur for the benefit of the governors or the governed? Cicero the skeptic intends to leave us asking questions rather than satisfied with definite answers.

KEYWORDS

Cicero, natural law, natural right, skepticism

The aim of this article is to begin an examination of Cicero's teaching on natural right. The method is a close reading of the two accounts given of natural right in *De republica* – Scipio's in book 1 and Laelius's in book 3 – and related passages in books 1 through 3. Natural law is one form of natural right, and both of those accounts are also accounts of natural law. A full examination of Cicero's teaching on natural right would require examination of the other accounts, from books 1 and 2 of *De legibus*. To do so here would produce an unwieldy article, so that task must await another occasion.

1. The Attack on Conventional Private Property

Cicero is often condemned as having been so conservative a politician that he could not see the justice in the claims of those who advocated a redistribution of wealth as necessary for the preservation of the Roman Republic. But his politics

were not always indicative of his capacity for thought. The first passage concerning natural law in *De republica* involves as radical a political statement as ever came from Cicero.

The context, however, must be kept in mind. The speaker is the former consul and military hero Scipio Aemilianus, who initially dismisses discussion of the ostensibly theoretical subject of an alleged second sun; the subject has been broached by Scipio's nephew Quintus Tubero, a Stoic, during a holiday visit to Scipio's estate outside Rome (*De republica* 1.15). Indeed at first Scipio uses Tubero's introduction of the topic to express a preference for Socrates's concern with human affairs, as opposed to Panaetius's dogmatism on matters of natural science. Soon, however, Scipio is lauding the practical, even military, benefit of a knowledge of astronomical phenomena (*De republica* 1.23-25). What causes the change? One development is the arrival of Gaius Laelius, a famous lawyer inclined toward Stoicism (*De republica* 1.19-20). Mindful of Rome's political turmoil, Laelius's initial reaction to mention of the second sun is to favor examination of political matters instead. How can it be proper to discuss theoretical matters when political matters are insecure? Scipio makes a twofold reply: theoretical knowledge can have practical benefit; and – a more fundamental point – practical wisdom requires theoretical wisdom.

Furthermore, what should someone who has examined these kingdoms of the gods consider splendid in human affairs? Or what is long lasting to someone who knows what is eternal? [...] The man who is not inclined to consider or call "goods" our fields, buildings, cattle, and enormous amounts of silver and gold, because the enjoyment of those things

seems trifling to him, their use short, their mastery uncertain, and often even the worst men seem to possess an enormous amount of them – how fortunate he must be considered. He alone may truly claim all things as his own by right not of the Quirites¹ but of the wise, not by a civil obligation but by the common law of nature, which forbids that anything belong to anyone except to him who knows how to handle and use it. Such a man thinks that our positions of command and consulships are necessary things, not things to be desired – that they should be endured for the sake of performing a service, not desired for the sake of rewards or glory. Such a man, finally, can declare about himself, as Cato writes that my grandfather Africanus used to say, that he was never doing more than when he

¹ *Quirites* was originally the name for the inhabitants of the Sabine town Cures. After the Sabines and the Romans had formed one city, and the Sabines had received full citizenship in 268 BC, the Romans used the term *Quirites* to refer to themselves in their civil capacity, while they used *Romani* to refer to their political and military capacity. Cicero here uses the legal term for civil ownership (*ius Quiritium*) as opposed to mere possession.

was doing nothing, that he was never less alone than when he was alone (*De republica* 1.26-27)².

On this account of natural law, wisdom or knowledge supplies the only legitimate title to private property. Cicero's choice to employ two verbs – “handle and use” (*tractare et uti*) – suggests that more than technical know-how is needed; otherwise “handle” alone would have sufficed. The broader verb “use” directs our attention to the purpose for which a thing is employed. Purposes are not always obvious, however. Can we be sure that we know the purpose of a thing if we have not reflected on the purpose(s) of human life as a whole? Thus Scipio prefaces his statement of the law of nature by taking as his model the person who has examined the “kingdoms of the gods” and who knows “what is eternal”. It is that person who will not misuse the word “goods” (*bona*), which so clearly has moral import even when it refers to forms of property or wealth; nor will he misuse the “goods” themselves.

“The right of the wise” is the converse of “the common law of nature”. That law appears to favor the wise by granting them exclusive claim to things, but the unwise may benefit when things are used well. Of course we would also need to supply the premise that using things well means using them for the common good. The considerations that Scipio supplies, however, make us doubt whether the natural law favors the wise at all. The wise must make sacrifices in order to reach, or at least maintain, their exalted position: they assume political authority as an undesirable necessity, without seeking reward or glory; their preference is to be “doing nothing”, which means to be pursuing wisdom. We are not told whether that wisdom concerns public affairs at all, but from the prior mention of “what is eternal”, as well as the example of Archimedes, we might be excused for thinking that the highest rank should go to suprapolitical wisdom.

Let us compare this passage to the beginning of book 1, the preface to the dialogue, where Cicero speaks in his own voice. First I issue a warning: we should not assume that Cicero in his own voice trumps Scipio. The preface is, after all, part of the work as a whole. Cicero tells us there that the “greatest use” of virtue is “the governance of the city” and that rulers of cities should be ranked in wisdom ahead of “those who have no part at all in public business” (*De republica* 1.2-3). The second of those two claims can be squared with Scipio's awarding of the palm to the person with knowledge of the eternal, or suprapolitical wisdom, but only if the way to suprapolitical wisdom proceeds through examination of political questions. That proviso sounds like the Socratic method, and Cicero's

² All translations from Cicero are my own. My translation of *De republica* and *De legibus*, with introduction, notes, and indexes, has been published in Agora Editions, Ithaca, Cornell University Press, 2014. The Latin text of *De republica* and *De legibus* is J.G.F. Powell (ed. by), *M. Tulli Ciceronis “De re publica”, “De legibus”, “Cato Maior de senectute”, “Laelius de amicitia”*, Oxford Classical Texts, Oxford, Clarendon Press, 2006.

repeated praise of Socrates and Plato in his works should make us take it seriously. For present purposes, however, the complication is the first of the two claims from the preface, that virtue is put to its greatest use in governance; it cannot be easily squared with the context of Scipio's account of natural law. Is it not a fair inference from that account that the greatest use of virtue is to gain wisdom about what is eternal? Alternatively, since Scipio does not use the word "virtue" in that account, is virtue to be understood as moral virtue alone, and is it unnecessary for theoretical wisdom? If the alternative possibility is false, there is a contradiction between Cicero and Scipio. There is also a difference in emphasis between the two men, if not another contradiction, when Cicero asserts that our country does not give us leisure for our convenience, but rather claims most of our minds and talents for itself (*De republica* 1.8): the passage on natural law might have left us hoping that the necessity of assuming political responsibility would be rare. Moreover, in the preface Cicero tells us that we cannot wait until necessity arises to begin to think about politics; we must prepare ourselves for the responsibility (*De republica* 1.10-11) – even if, like Cicero, we are the sort of person who can make good use of leisure (*De republica* 1.7). If we are "vigilant and diligent," the effort required for public service is only "a trifling impediment" (*De republica* 1.4). On the other hand, the passage on natural law is silent on the matter of preparation but treats the effort as a sacrifice. From the tensions noted above, it follows that if Cicero's claims in the preface are justified, and if we exclude the alternative mentioned in the previous paragraph, there is no natural law – at least of the sort mentioned by Scipio – and that the many readers who have believed that Cicero and Scipio speak with one candid voice cannot be correct.

The context of Scipio's statement about natural law needs further consideration – not merely what immediately precedes it, which I have noted, but also what immediately follows it. Here we first observe that to support his thesis that the wise man never does more than when he "does nothing", Scipio contrasts the Syracusan tyrant Dionysus I with the Greek mathematician Archimedes. Did not the globe-making Archimedes do "more" than the freedom-stealing Dionysus, Scipio asks (*De republica* 1.28)? This argument, however, is an obvious straw man that plays on the reader's inclination toward Archimedes because of the moral difference between the two men – so obvious that it seems designed to make us side with Cicero's preface and against Scipio.

The argument is, however, strengthened by Scipio's admittedly attractive picture of the philosopher's private delight at conversing with long-dead thinkers through their writings. When Scipio continues by describing rich people as those who lack nothing that nature requires, he leaves open the question of what nature does require. Probably the answer is supposed to be "very little", because what follows is a Stoic interpretation of happiness (as freedom from mental disturbance, which is possible only as a result of virtuous living) and fortune (as self-sufficiency

that immunizes oneself from bad luck). But the evidence concerning Stoicism is insufficient to verify Leo Strauss's assertion that Scipio "indicates the original and unmitigated Stoic natural law teaching, which is incompatible with the claims of civil society"³. Of course Cicero claims to be an Academic and hence a skeptic, not a Stoic; he criticizes the Stoic views elsewhere, as a character in one of his own dialogues (*De finibus bonorum et malorum*, Book 4). In yet another work (*De oratore* 3.65) he entertains criticism of Scipio's strict definition of "human being" as including only those who are "refined in the special arts of humanity".

Another feature of the context following Scipio's statement of natural law is Laelius's remark (truncated because of a lacuna),

I, for one, do not dare to reply to these things, Scipio (*De republica* 1.30).

Scipio has won the Stoic sympathizer's silence, apparently by grounding his principle of natural law in eternity⁴. Perhaps that has been his intention all along.

Thus it is highly unlikely that Scipio's statement of natural law represents Cicero's most careful reflections⁵. Why "highly unlikely" instead of "impossible," given my earlier thesis concerning a contradiction between Cicero and Scipio? We have not covered enough ground to establish that Cicero's preface represents his most careful reflections.

Despite Cicero's political reputation as a friend of the wealthy, a principle that would assign things on the basis of wisdom or knowledge must tempt him. It would reward a combination of practical know-how and reflection on ultimate purposes. His reputation for vanity leads me to mention that it would not always reward him personally. Moreover, the principle would lead to good results – things would be well used – provided that its implementation were mainly free of problems.

But how could its implementation avoid insuperable obstacles? Who would assign things to their rightful owners? How could a procedure be established that would not cause widespread disturbances? Even if a harmonious procedure were established, the wisdom required to make the decisions would make the deciders

³ L. Strauss, *Natural Right and History*, Chicago, University of Chicago Press, 1953: 155. We cannot be sure that the principle of natural law as stated by Scipio was a Stoic principle. According to Cicero (*De finibus bonorum et malorum* 3.67), Stoics did not oppose a conventional view of private property. But what Cicero says there may have been what Strauss called the Stoics' "exoteric" teaching (Strauss, *Natural Right and History*, cit.: 155). For more on the Stoic view of property see L. Edelstein, *The Meaning of Stoicism*, Cambridge, Harvard University Press, 1966: 79.

⁴ I thank J. Jackson Barlow for leading me toward this point.

⁵ As to whether Scipio's statement of natural law represents Scipio's own view (or instead he speaks esoterically), a full answer will have to await analysis of Scipio's Dream in book 6 (which is beyond the scope of this article).

themselves the proper owners. No polity has ever come close to abiding by this principle. It may make some sense in the abstract, but Cicero knows that the realm of morals is practical.

2. *The Carneadean Debate*

Not infrequently does Augustine supply the content of a lacuna in *De re publica*. A long lacuna exists almost at the end of book 2, and Augustine tells us that therein Philus asks Scipio to say more about the necessity of justice in a republic because of the common belief that injustice is indispensable for ruling a city⁶. Scipio then says that the falseness of that claim must be confirmed, and that instead it must be shown that “utmost justice” is needed to manage a republic (*De republica* 2.70). It appears that for Scipio only natural law meets that requirement.

Book 3 begins with another preface in Cicero’s own voice. Unfortunately it also begins with a long lacuna, but one important point of what is missing can probably be found in *De natura deorum* (2.151), where Cicero writes that humans became swift by taming four-footed animals to carry them on their backs. Next the preface notes the development of words, which “bound together previously disunited human beings through the most agreeable bond of conversation” and then, when writing was invented, made possible “discourses [...] with absent persons” (*De republica* 3.2 [3.3])⁷. The most interesting part of this section follows: “Number was added to this, not only something necessary for life but also the one unchangeable, eternal thing”. That statement marks as definite a rejection of the theory of forms found in Plato’s *Republic* as Aristotle makes in the *Nicomachean Ethics*. Taken literally, it implies a denial of an unchanging, eternal law of nature as well. Given the abbreviated context of this isolated section, however, it would be imprudent to attach too much significance to one sentence.

The relative merits of the philosopher and the politician are once again a focus of Cicero’s analysis, as he praises the “guide [*rector*] of republics” who kept citizens within legal constraints by using opinions, institutions, and training as channels for fear and shame (*De republica* 3.3[5.6])⁸. By contrast, the philosopher “nourished the first gifts of nature by words and arts”; those were means that were closer to that natural beginning (*De republica* 3.4 [3.7]). Cicero observes that philosophers will not yield the title of wisdom; but in contrast to the preface to book 1, here he will not dispute the point. Thus he settles for lauding the “judgment” [*consilium*] of politicians: “[I]t is in the nature of things for the far-

⁶ Augustine, *On the City of God* 2.21.

⁷ Beginning in Book 3, the section numbers used in Powell’s edition differ from those in previous editions of the Latin text. I give Powell’s number first with the traditional number in brackets.

⁸ The guide (*rector*) is a leading topic of Book 5, but Cicero mentions him earlier, in Books 1 and 2. Powell’s reordering of the text is sensible.

greatest judgment to establish a republic that can be long lasting". In the earlier preface Cicero emphasizes philosophers who spurn public life altogether; in this preface the focus is on those whose goal is political science, and he calls them "teachers of truth and virtue" (*De republica* 3.5 [3.4]). Yet study is not the only road to political science; it is also available to politicians "involved in a variety of republics". Perhaps he means to suggest that involvement in only one republic is insufficient to produce the equivalent of what philosophers learn by study. The superior approach, according to Cicero, is to combine dedication to (good) ancestral institutions with learning. "But if one way of prudence or the other must be chosen, even if the quiet plan of life spent in the best studies and arts will seem happier to him, the political way is certainly more praiseworthy and more illustrious" (*De republica* 3.5 [3.6]).

The main conclusion does not differ from the earlier preface, but there is an important difference in the treatment of philosophers: the more favorable tone here seems designed to increase our receptivity toward the controversial argument of Philus soon thereafter – our receptivity toward "even the foreign learning from Socrates" (*De republica* 3.5 [3.5]). Against his inclination Philus will give the argument for injustice, while Laelius will argue for justice (*De republica* 3.7 [3.8]). Laelius mentions Philus's proclivity for arguing on both sides of a question but adds that Philus thinks that the truth may be more easily discovered that way – a reminder to readers that the practice has a beneficial purpose. Philus then seems to say that he must copy the argument of Carneades the Academic (we cannot be sure because that statement occurs at the beginning of a fragment).

Cicero has good reason to set the scene in this way. Philosophers faced a climate of suspicion in the Roman Republic, though perhaps less in the first century BC than in the second. In 161 BC the Senate decreed that philosophers and rhetoricians should not be allowed to live in Rome⁹. That ban did not prevent Athens from sending an embassy to Rome six years later: Carneades and two other philosophers came to dispute a fine imposed on Athens by Rome. During the visit Carneades gave lectures on successive days: on the first day he argued for the existence of natural justice, on the second day against it. Cato the Elder, the Stoic politician, urged that the dispute be settled as quickly as possible so that the philosophers' corrupting influence would not be prolonged.

The text of Philus's speech opens with a lacuna that probably hides a reference to Plato and Aristotle as "heroes" exalting justice – "which is uniquely most bountiful and liberal, provided it exists, and which cherishes all persons more than itself, which is born for others rather than for itself" (*De republica* 3.8 [3.12]). Philus anthropomorphizes justice, conflating justice and the just person in

⁹ For more about Romans' attitudes toward philosophy, see M. Griffin, "Philosophy, Politics, and Politicians at Rome", in M. Griffin and J. Barnes (ed. by), *Philosophia Togata I: Essays on Philosophy and Roman Society*, Oxford, Clarendon Press, 1997: 1-37.

order to emphasize the dedication required to adhere to the traditional definition of justice. The traditional definition is a teaching for heroes, not for most people. Humans are moved to obey laws by fear of a concrete penalty, not by an idea of justice (*De republica* 3.11 [3.18]).

In addition, according to Philus, the traditional definition had to fail because it mislocated justice in nature, instead of in politics: “[I]f it were [natural], like hot and cold and bitter and sweet, just and unjust things would be the same for all persons” (*De republica* 3.8 [3.13]). He proceeds to cite the varying practices considered to be just among nations, including human sacrifice (*De republica* 3.9 [3.14-15]). Then he targets patriots who may harbor a prejudice for Roman justice by illustrating that what is deemed just within that one city has also varied over time (*De republica* 3.10 [3.17]). The inference he would have us draw is that “virtue does not accept inconsistency, nor does nature allow variation” (*De republica* 3.11 [3.18]).

The latter half of that inference may be interpreted in two ways. First, as Philus explicitly says, it may be taken to mean that the presence of a variety of practices considered just among people(s) disproves the existence of natural justice. That argument is extremely weak: it does not follow from a disagreement involving two, three, or many people that each party is incorrect; one party may well be correct. Strauss observes that “knowledge of the indefinitely large variety of notions of right and wrong is so far from being incompatible with the idea of natural right that it is the essential condition for the emergence of that idea: realization of the variety of notions of right is *the* incentive for the quest for natural right”¹⁰.

The second possible meaning of the claim that nature does not allow variation is that natural justice, if it exists, must be the same everywhere. The second meaning serves as an assumption underlying the first meaning, but to reject the first meaning as unreasonable does not deny the second meaning. Philus and Laelius agree concerning the second meaning, so I will consider it later.

Cicero seems to have planned the poverty of Philus’s first argument to relax the minds of readers looking for a quick verdict in favor of justice in the dispute with injustice. But he does not intend to let Philus quit so easily on his more careful readers, as is indicated by Philus’s inability to repress his desire to argue on both sides of the question. Perhaps because Philus recognizes the weakness of the argument from the variety of practices, he raises another possibility, a sort of concession:

Or do they say truthfully that there is variation in the laws, but that by nature good men follow the justice that exists, not what is thought to exist? It is

¹⁰ Strauss, *Natural Right and History*, 10 (emphasis in original).

for a good and just man to grant to each man what is worthy of him [*De republica*].

The phrase “the justice that exists” refers to what is just by nature, as distinguished from what is just by convention (“what is thought to exist”). But if what “they” say is correct, Philus continues, we must confront the opinion of two wise men, Pythagoras and Empedocles, who proclaimed that “there is one condition of justice for all animate beings” (*De republica* 3.11 [3.19]). Beasts and humans, then, would have equal entitlements. But is this inference also not clearly false? How could it not occur to Philus that natural justice might be dictated by reason and apply only to all rational beings? His speech has already cleverly excluded that possibility. Earlier he has mentioned the fact that Rome has prohibited Transalpine nations from planting olive trees; that prohibition, he says, is generally reputed to be prudent or wise, but not just or fair (*De republica* 3.9 [3.16]). Reason points toward one’s advantage; it is (usually) opposed to justice. This will turn out to be the fundamental point of disagreement between Philus and Laelius.

The “concession” that natural justice exists turns out, according to Philus, to lead to a ridiculous conclusion. In the lacuna that follows Philus’s hypothetical extension of justice to beasts, he apparently completes his argument that considerations of advantage, not justice, should govern the conduct of individual people, and he then applies the principle to governments. Justice makes such stringent demands, he says, that no empire can be just, because all empires are built on stolen property¹¹. Only the Arcadians and the Athenians, who claimed to be autochthonous, would be entitled to possession of their land (*De republica* 3.12 [3.25]). An almost complete redistribution of property would be necessary if nations respected the principle of “to each its due.” As with the extension of justice to beasts, Philus does not here refute the argument for natural justice; he merely shows what it entails.

At this point Philus considers another counterargument to the general thesis for injustice. In fact he praises the Epicureans for their devotion to advantage, or the good life, as they see it: a life without disturbance, which injustice precludes because

[s]ome uneasiness always clings to the minds of the wicked: judicial decisions and physical punishments always revolve before their eyes” (*De republica* 3.12 [3.26]).

Epicureans scorn injustice not because of the demands of a natural justice, but because it interferes with the good life, which is natural. But apparently

¹¹ Lactantius, *Divine Institutes* 5.16.4.

Philus does not agree that a sense of guilt would erase all enjoyment from a life of injustice, for he raises the possibility of combining the benefits of injustice with the reputation for justice in one man and contrasts with him an excellent man who constantly suffers tortures (*De republica* 3.13 [3.27]). This is the example raised by Glaucon in book 2 of Plato's *Republic*, but here Philus takes it a step further by again analogizing from the soul to the city:

[N]o city is so foolish that it does not prefer unjustly commanding to serving justly (*De republica* 3.14 [3.28])¹².

Again he opposes goodness to wisdom in a seller's deciding whether to disclose defects in his house (*De republica* 3.15 [3.29]); he opposes justice to wisdom in a drowning man's deciding whether to dislodge someone from a plank (*De republica* 3.16 [3.30]).

But if cities, like individuals, prefer injustice to justice, what accounts for the presence of

justice? Philus's explanation distinguishes between the simple forms of cities and the mixed form advocated by Scipio in books 1 and 2. None of the simple forms can promote justice: a tyrant, a faction, and a licentious populace all pursue their advantage to the utmost by means of their will. Justice is found only in the mixed republic:

[W]hen one fears another, both one man to another and one order [of men] to another, then because no one is sure of himself, a compact, so to speak, is made between the people and the powerful. From this emerges what Scipio praised, the combined kind of city. And surely not nature or will but weakness is the mother of justice (*De republica* 3.17 [3.23]).

Here is an early version of the social contract that does not rest on natural right or rights. The cause of the contract is individuals' natural desire to protect life and possessions, but the content of justice is conventional. In being based on that desire, the contract is similar to the accounts of the social contract presented by Plato and Aristotle¹³. Philus gives what might be considered an even more realistic description than theirs, however, because the parties to his contract are "the people" and the strong, not individuals as such. In fact his picture resembles the history offered by Jean-Jacques Rousseau at the end of his *Discourse on the Origin and Foundations of Inequality among Men*.

¹² This transfer of the argument from the individual to the city is noted in J.E.G. Zetzel, "Natural Law and Poetic Justice: A Carneadean Debate in Cicero and Virgil," *Classical Philology* 91 (1996), 297-319: 304.

¹³ See Plato, *Republic* 2.358e–359b; Aristotle, *Politics* 1280a–1281a.

According to Philus the only hope for justice is that mutual fear will force the powerful to come to terms with the populace. Contrary to what Laelius will soon argue, justice is a compromise. Philus's account of the origin of justice – indeed his argument for injustice in general (at least in the extant portions) – is also less radical than the redefinition given by Thrasymachus in book 1 of Plato's *Republic*, that justice is the advantage of the stronger and not a compromise. Philus's preference for retaining the contrast between justice and advantage – and between justice and wisdom – emphasizes the near selflessness required for justice (*De republica* 3.18 [3.24]). Thus Cicero may think that Philus's argument is radical enough for a Roman audience suspicious of philosophy.

When his turn comes, Laelius, sympathetic to Stoicism, takes aim at the link between reason and self-interest:

[D]on't we notice that rule has been given to every excellent man by nature itself with the highest advantage to the lowest men? Why, therefore, does god command human being, mind command body, reason command lust, anger, and the other faulty parts of the same mind? (*De republica* 3.21 [3.36]).

Nature and reason point toward serving others. Laelius mentions three commanders: god, the human mind, and reason. The first subject of command, the human being, encompasses the second commander, the human mind; but the second subject of command, the body, does not encompass the third commander, reason, in the same way. The human being is more of a commander than the body is. We are told immediately thereafter that reason's command over lust is akin to that of a master over slaves (the superior "tires" the inferior, for the latter's own good), while the mind's command over the body is akin to that of a ruler over citizens or a parent over children (*De republica* 3.22, 23 [3.37]). Should we infer that the human being's relation to god is nobler still?

One part of Laelius's speech, isolated by lacunae before and after, concerns just war:

[U]njust wars are those that have been undertaken without cause. That is to say, no just war can be waged except for the sake of avenging oneself or driving back enemies [...] No war is held to be just unless it has been proclaimed, unless it has been declared, unless it concerns recovering property (*De republica* 3.25 [3.35]).

This passage should be contrasted with an earlier statement by Scipio, where he speaks highly of the rules for the declaration of war proclaimed by King Tullus Hostilius of Rome. Those rules did not legitimize only defensive wars but rather set as the condition for a just war that it be openly announced (*De republica* 2.31). Laelius adds the conditions of vengeance or repelling enemies. Scipio seems to

sanction at least some of Rome's non-defensive wars, whereas Laelius seems not to do so. That conclusion must be qualified, however, because of the existence of a fragment of the text preserved by Augustine, perhaps spoken by Laelius, in which the best city is allowed to undertake war in order to maintain good faith (*De republica* 3.24 [3.34])¹⁴. If that fragment conveys Laelius's view, he is no more a stickler than Scipio.

Although most of Laelius's speech is missing, we have one highlight in the main passage on natural law in the *Republic*:

True law is correct reason congruent with nature, spread among all persons, constant, everlasting. It calls to duty by ordering; it deters from mischief by forbidding. Nevertheless, it does not order or forbid upright persons in vain, nor does it move the wicked by ordering or forbidding. It is not holy to circumvent this law, nor is it permitted to modify any part of it, nor can it be entirely repealed. In fact we cannot be released from this law by either the senate or the people. No Sextus Aelius¹⁵ should be sought as expositor or interpreter. There will not be one law at Rome, another at Athens, one now, another later, but one law both everlasting and unchangeable will encompass all nations and for all time. And one god will be the common teacher and general, so to speak, of all persons. He will be the author, umpire, and provider of this law. The person who will not obey it will flee from himself, and, defying human nature, he will suffer the greatest penalties by this very fact, even if he escapes other things that are thought to be punishments (*De republica* 3.27 [3.33]).

The first sentence teaches that only natural law deserves to be called law. If a certain stipulation is not universal, unchanging, and eternal, it is not law. The phrase "correct reason" indicates a fusion of morals and intellect. That fusion operates in accordance with nature, but we are not immediately given further explanation¹⁶. The second sentence begins to clarify the relation of natural law to

¹⁴ Augustine, *On the City of God* 22.6.

¹⁵ Sextus Aelius, nicknamed Catus ("clever"), was consul in 198 BC, a pioneer of Roman jurisprudence, and author of a work on the Twelve Tables, the collection of laws compiled under the decemvirate, or rule of ten men, from 451 to 449 BC. For two reasons I disagree with J. W. Atkins's claim that Laelius's mention of Sextus Aelius is a rejection of the need for practical wisdom to apply natural law to particular circumstances. J. W. Atkins, *Cicero on Politics and the Limits of Reason: The "Republic" and "Laws,"* Cambridge, Cambridge University Press, 2013: 40- 41. First, Sextus Aelius represents *professional* practical wisdom, not practical wisdom simply. It is the former that Laelius claims to be unnecessary. Second, natural law is itself practical wisdom – a fusion of morals and intellect, as I say below.

¹⁶ The usual translation of *recta ratio* is "right reason." But *ratio* can mean "an account" of something, rational or irrational. Moreover, *recta* can mean "correct," and the *Oxford English Dictionary* has the following as the primary meaning of the adjective "correct": "[I]n accordance with an acknowledged or conventional standard, esp. of literary or artistic style, or

human beings. The Latin for “mischief” (*fraus*) can also mean “deceit,” so we might say that the primary concerns of natural law are duty (or service) and truthfulness. The third sentence is a reminder that humans retain the choice to obey natural law or not. The fourth and fifth sentences tell us that our autonomy is limited: we might not obey natural law, but we may not elude or change it. Its significance is both religious and political. The sixth sentence seems to mean that we do not need a legal expert to provide us with the content of natural law.

Sextus Aelius's cognomen Catus, which means “clever,” suggests that invoking an expert would open the door to needless sophistication or even dishonesty, whereas the law should be clear to any properly taught human being. The seventh sentence restates the claims to universality, immutability, and eternity, and it makes explicit that the Greeks' moral standard is also available to Romans; Romans do not need to resign themselves to being superior in war but inferior in peace. The change of tense in this sentence from present to future probably has no other cause than the reference to eternity¹⁷. The eighth sentence supplies the apparent foundation of natural law in “one god”. It implies that the content of natural law is not so obvious that humans do not need a “teacher” to tell them what to do and a “general” to ensure that they do it. At the same time, the phrase “so to speak” indicates a hesitancy to anthropomorphize the god. The ninth sentence is the most suggestively ambiguous: the word for “author”, *inventor*, can also mean “discoverer”; in fact it literally means “one who comes upon”. If it we take it as “author”, we conclude that the god wrote natural law; if we take it as “discoverer”, we conclude that natural law exists independently of the god and perhaps predates the god. The later term “provider” does not settle the matter, while “umpire” suggests only the god's impartiality and role as ultimate decider. The question raised is the same as that in Plato's *Euthyphro*. Clearly Cicero wants us to reflect on the theological foundation of natural law. The tenth sentence declares not only the greatest punishment for disobeying

of manners or behaviour; proper.” *Oxford English Dictionary*, 2nd ed. (CD-ROM, version 4.0), s.v. “correct”. Thus the phrase *recta ratio* is “as ambiguous as its components.” For that quotation and for the general point, I am indebted to R.C. Bartlett and S.D. Collins, trans., *Aristotle's Nicomachean Ethics*, Chicago, University of Chicago Press, 2011, 28 n. 4. Bartlett and Collins write about the Greek phrase *orthos logos* (which they translate as “correct reason”), but the same is true of the Latin.

¹⁷ I disagree with Zetzel's interpretation that “from the general statement of the doctrine in the present tense, Laelius turns to a future in which this law will be universally recognized on earth. As it is now, the law has no effect on those who disobey it, because knowledge of it is obedience to it” (Zetzel, “Natural Law and Poetic Justice,” 307). First, Laelius does not equate knowledge of natural law with obedience to it: his statement that upright persons obey the law does not imply that weakness of will (i.e., knowing what is right but doing what is wrong) is impossible. Second, Laelius does not say that those who disobey natural law in his day do not suffer. He gives no reason why the natural penalty for disobedience – the loss of one's nature as a human being – would not be in effect in his day, as well as in the future.

natural law, but also the only penalty Laelius sees fit to mention: the shedding of one's nature as a human being. The loss of nature is the greatest penalty; besides it no mention of eternal punishment is necessary.

In fact eternality is only a positive possibility for Laelius: the only reward for virtue is honor (*De republica* 3.28 [3.40]), and the ultimate honor is to be found in heaven (*De republica* 3.32 [3.40]). He eschews reliance on eternal punishment when he notes that "a swiftly inflicted death" often allows wicked men to escape penalties (*De republica* 3.33 [3.34]). By contrast the penalty for cities is death, because "the city ought to have been established so as to be eternal. And so there is no natural dissolution of a republic as there is of a human being [...] When a city is eliminated, destroyed, extinguished, it is somehow similar to the perishing and fall of the entire universe (to compare small things to great)".

It does not require Laelius's high standards for someone to worry about the future of Rome; if Laelius's description is accurate, Rome fails even a minimal test. He faults Tiberius Gracchus, tribune of 133 BC, for neglecting the allies and the Latins in a proposal to redistribute land.

If that habit and licentiousness should begin to spread more widely and convert our command from right to force, so that those who up to now willingly obey us are controlled by terror [...] I am still distressed for our descendants and for the immortality of the republic, which could be perpetual if it were kept alive by our paternal institutions and customs" (*De republica* 3.34 [3.41]).

Laelius's speech thus concludes with a reminder that the failure of cities has consequences for individuals, but also with the implication that failure is not destined.

Let us return to the theology involved in this passage. Laelius's speech presents a largely Stoic account of natural law¹⁸. On one key point, however, it is questionably Stoic: Laelius distinguishes the god from natural law, whereas not all of the extant texts by Stoics or about Stoicism make such a separation¹⁹. Indeed Diogenes Laertius, whose account of Stoicism comes closest to Laelius's speech, does not make the separation when he writes that "the goal becomes 'to live

¹⁸ R.A. Horsley, "The Law of Nature in Philo and Cicero," *Harvard Theological Review* 71(January–April 1978), 35-59: 39-40. Upcoming references to writings by or about Stoics are to *The Stoics Reader: Selected Writings and Testimonia*, trans. B. Inwood and L. P. Gerson, Indianapolis, Hackett, 2008, with page numbers in parentheses. See Cleanthes, *Hymn to Zeus* (59). Cleanthes succeeded Zeno of Citium as head of the Stoic school. On Stoicism see also Cicero, *De Natura Deorum* 2.79.

¹⁹ See Horsley, cit.: 42: "...Stoic doctrine had identified God with law as well as with reason". To support his case Horsley cites the passages from Diogenes Laertius that I mention in the next note. But he does not mention Cleanthes's *Hymn to Zeus*, which does distinguish god from law: "ever almighty / Zeus, leader of nature, guiding everything with law" (58).

consistently with nature', i.e., according to one's own nature and that of the universe, doing nothing which is forbidden by the common law, which is right reason, penetrating all things, being the same as Zeus, who is the leader of the administration of things"²⁰. Why does Cicero have Laelius separate god from law? Could there be a better reason than to elucidate the issue raised by the ambiguity of the Latin *inventor*? That is not to say that ambiguity is *Laelius's* intent. He seems fully convinced by the account he has just given. Scipio, however, appears less so: although he is thrilled by Laelius's speech, his praise takes the form of what one legal advocate, not one philosopher, would say to another (*De republica* 3.34 [3.42])²¹.

But we should not assume that Scipio is completely unconvinced that Laelius's speech has intrinsic merit. That assumption would lead to the conclusion that Scipio is insincere when, after that speech, he redefines the term "republic"; and evidence for that conclusion is lacking. In book 1 Scipio defines a *res publica* as a *res populi* (*De republica* 1.39). "A people, however", he says,

is not every assemblage of human beings herded together in whatever way, but an assemblage of a multitude united in agreement about right and in the sharing of advantage.

A people, then, is defined by two characteristics: "agreement about right" (*consensus iuris*) and "the sharing of advantage" (*communio utilitatis*). The first characteristic seems to demand only that a group of individuals have a unified view of right or justice and of advantage, whether or not those views are praiseworthy. In book 3, however, the quality of those views begins to be relevant to the definition: Scipio says that, in the case of tyranny, one man oppresses the entire people and there is "neither the single bond of right nor the agreement and fellowship of an assemblage, which is a people" (*De republica* 3.35 [3.43]). There is no republic because there is no (organized) people. The tyrant's perverse view of what is right eclipses the people's correct view, thus destroying the people as an entity²². Laelius readily agrees after Scipio continues,

²⁰ Diogenes Laertius 7.88 (114). See also Diogenes Laertius 7.134 (51). Diogenes Laertius (probably early third century AD), biographer of philosophers, was probably not a Stoic himself; but his account of Stoicism is considered reliable. See *Oxford Classical Dictionary*, 4th ed., s.v. "Diogenes Laertius".

²¹ See T.L. Pangle and P.J. Ahrens Dorf, *Justice among Nations: On the Moral Basis of Power and Peace*, Lawrence, University Press of Kansas, 1999: 55-56.

²² I do not know whether I am making the same point as Malcolm Schofield, who explains that "corruption in government leads to the corruption of society itself" (M. Schofield, "Cicero's Definition of *Res Publica*", in J.G.F. Powell (ed. by), *Cicero the Philosopher: Twelve Papers*, Oxford, Clarendon Press, 1995, 63-83: 75.

Therefore, where there is a tyrant, there is not a defective republic (as I said yesterday); but, as reason now compels, it must be said that there is no republic at all.

Laelius also consents to the extension of this line of reasoning to faction and to corrupt government by the people; those regimes are not republics either, and the people

is as much a tyrant as if it were one man (*De republica* 3.35 [3.45]).

Laelius's account of natural law has left Scipio in better position to make his claim: the standard of natural law allows the two men to distinguish between reasonable and unreasonable views of justice – including those held by the people as a whole – and therefore between true and false republics. In the simple forms of government that are good, the ruling force consults the people's true justice and welfare²³. Malcolm Schofield convincingly argues that in this passage “the affairs and interests of the people may be conceived metaphorically as its property”, and that the people is denied liberty if it is denied control of its property²⁴. It is no exaggeration for Schofield to maintain that Scipio's new, honorific definition of “republic” serves as a “criterion of legitimacy” for regimes²⁵.

The end of the extant portion of book 3 features a discussion between Scipio and Spurius Mummius, a Stoic orator (*Brutus* 94). Since we lack the context, the main purpose it serves for us is to illustrate diversity among Stoics: Mummius expresses a preference for aristocratic government –where “a number of truly respectable men gain possession of affairs” – with monarchy in second place; he considers government by the people defective (*De republica* 3.36 [3.46]). Scipio reveals that this preference is actually a bias:

I recognize your habitual disinclination to the people's reasoning, Spurius [...] [I]t can be tolerated more gently than you usually tolerate it (*De republica* 3.36 [3.47]).

Provided that wisdom governs the city, Scipio asks, what difference does it make how many rulers there are? Mummius is closer to Scipio's impractical claim of the natural right of the wise to property than he is to Scipio's practical recommendation that the people should have some control over their own affairs. Scipio must remind Mummius of the republic of Rhodes, in which the citizens could adequately fulfill both plebeian and senatorial capacities (*De republica* 3.36

²³ See Schofield, cit.: 74.

²⁴ See Schofield, cit.: 75.

²⁵ See Schofield, cit.: 64 (emphasis removed from original); see also 76.

[3.48]). Scipio's greater attention to practicality keeps him from antidemocratic prejudice; his opposition to simple democracy is based on greater knowledge of history.

3. *Sorting Out Cicero, Scipio, Laelius, and Philus*

As we have seen, Philus and Laelius agree that if natural justice exists, it must be the same everywhere. As we have also seen, Philus's subsequent arguments deny the existence of natural justice. It would be helpful to be able to examine the strength of Laelius's speech as a reply to Philus's. Unfortunately it is impossible to make much headway here because most of Laelius's speech has been lost. We can make some progress, however. To begin with Laelius's claim for the altruistic nature of reason, if we assume that the god is as Laelius describes in his account of natural law, then the rule of the god is good for the human being, the rule of the mind is good for the body, and the rule of reason is good for lust, because the human being, the body, and lust would not last long otherwise (that claim does not depend on assuming the justice of natural slavery, as Laelius does). But none of those examples directly addresses interpersonal relations.

A clear difference of opinion between the two men exists regarding the law of war, which concerns interpersonal relations on a grand scale. According to Philus,

Wisdom orders [us] to increase resources, to enlarge riches, to extend boundaries – for why was the praise carved on the memorials of the highest generals, “He advanced the boundaries of the empire”, unless he had added something from another's [territory]? – to command as many persons as possible, to enjoy pleasures, to be powerful, to reign, to dominate. But justice instructs [us] to spare everyone, to take care of the human race, to render to each his own, not to touch sacred things, public things, another's things [...] Is it by justice or wisdom that our people [...] by whose command the world is now controlled, [became the greatest] of all from the smallest? (*De republica* 3.18 [3.24]).

By contrast Laelius gives only these (somewhat overlapping) reasons as legitimating war: good faith, safety, vengeance, repulsion of enemies, and recovery of property (*De republica* 3.24, 25 [3.34, 35]). Moreover, any such war must be declared. There is a constitutionalism in Laelius's argument that is lacking in Philus's. Laelius concludes that

our people has already gained possession of the entire earth by defending its allies (*De republica* 3.26 [3.35]).

Whose explanation for Rome's empire (at least up to 129 BC, the dramatic date of the dialogue) is more accurate? Obviously that is a question to which an entire book could be devoted. To mention only one such book, William V. Harris's *War and Imperialism in Republican Rome, 327-70 B.C.*, the reader could well come away from it with the thought that there is evidence on both sides. For example, the Roman senate seems not to have wanted to annex territory, but magistrates often used war to expand Rome's influence²⁶. Harris also reports the work of many scholars who considered Roman ambitions to have been more defensive than he does. Perhaps we may best answer the question – at least for present purposes – by turning to Cicero himself. In *De officiis*, his last philosophical work, an open letter to his son and other young, politically active Romans, he maintains that Rome fought a defensive war against the Celtiberi, but wars “for empire [*imperium*]” against the Latins, the Sabines, the Samnites (all three within Italy), the Carthaginians, and King Pyrrhus of Epirus (*De Officiis* 1.38). Later, however, the message differs:

[A]s long as the empire of the Roman people was maintained through acts of beneficence, not injustices, wars were waged either in behalf of allies or for empire [...] and our magistrates and generals were eager to acquire the greatest praise from this one thing: they had defended the provinces and the allies with fairness and fidelity. Thus that could more truly be named a protectorate of the world than an empire (*De Officiis* 2.26-27).

Cicero does not say that imperial wars had the same ultimate cause as defensive wars. Nonetheless, in book 2 Rome appears to have been more a defensive than an imperial power. Here Cicero comes closer to supporting Laelius's view because he is attempting to demonstrate the ineffectiveness of a foreign policy based on fear, also a claim made by Laelius, whereas in book 1 he recognizes wars for empire in order to make the point that they must be fought within limits. The least that can be said is that Cicero recognizes that Rome fought a number of its major wars for empire. Apparently both Philus's and Laelius's assertions are partial truths, with perhaps more to be said for the former.

On a related matter, it is worth briefly noting a resemblance between Philus's thesis that wisdom points toward an increase in riches, resources, and boundaries, and Cicero's earlier claim in his own voice that he is

very greatly drawn to increasing the resources of the human race, and [...] eager to render human life safer and more prosperous by our judgments and labors (*De republica* 1.3; cf. *De Officiis* 2.85).

²⁶ See W.V. Harris, *War and Imperialism in Republican Rome, 327-70 B.C.*, Oxford, Clarendon Press, 1985: 105-30.

As we have seen, Laelius's statement of natural law, by leaving open the question whether god or law is primary, leaves us asking whether the god's will is responsible for establishing correct reason, or whether the nature of things is a standard that the god must respect. Cicero has arranged for Philus to dismiss both possibilities:

And surely not nature or will but weakness is the mother of justice (*De republica* 3.17 [3.23]).

Those of us who are not so sure about Philus's social contract are left wanting to know more about this god (and Cicero will write more in *De natura deorum*).

Among those who may be curious about that god is Scipio. Earlier Scipio says that "the leading men of republics" may have established stories about a king of the gods in order to benefit political life, the utility of the stories shown by their being universally acknowledged; or the stories may be simply false, in which case we should trust learned men who, "by tracing out the nature of all things", think that a single mind rules the universe (*De republica* 1.56). Scipio does not countenance a third possibility: the divine rule of the universe may be true²⁷. Scipio's account of natural law differs from Laelius's in not being based on a theology: his reference to "kingdoms of the gods" is vague, his mention of "what is eternal" even more so. As I have suggested, Scipio seems sincere in his honorific redefinition of "republic"; he seems to be convinced that justice is based in nature. Scipio's stand on justice is more complex than Laelius's, however. After all, part of Scipio's narrative of Roman history is that

the nature of republics itself often overcomes reason (*De republica* 2.57).

Injustice may be necessary for self-preservation or the preservation of one's city.

By the end of book 3, we have four distinct positions. First there are the stark view insincerely advanced by Philus and the equally stark view of Laelius. Scipio occupies a more nuanced position: he agrees with Laelius that natural law exists, but his account is more limited, as is his praise of Laelius's account; in particular Scipio does not rely on a god as the foundation of natural law; he seems to suggest that the greatest use of virtue is suprapolitical knowledge of what is eternal. Scipio causes us to reflect on whether natural law requires a theological

²⁷ J.E.G. Zetzel (ed. by), *De re publica: Selections*, by Cicero, Cambridge, Cambridge University Press, 1995: 144.

foundation. Cicero, in the prefaces to books 1 and 3, has staked out equally interesting ground.

His claim that the greatest use of virtue is governance seems to be incompatible with Scipio's account of natural law, but not with Laelius's. With his mention of number as "the one unchangeable, eternal thing", Cicero may come close to openly rejecting natural law in its entirety. He appears to agree with Philus that wisdom points toward increasing resources – both in his own life and in the Romans' acquisition of their empire. Thus Cicero causes us to ask these questions: if the greatest use of virtue is governance, for whose benefit does governance occur – that of the governors or that of the governed? And how may we know? It appears that, by the end of book 3, the arguments have not proved to Cicero that natural right or natural law exists, but neither have they given him—or us—reason to cease looking for a standard above convention.