

subtopic

Cicero

CICERO and the NATURAL LAW

Walter Nicgorski, University of Notre Dame

Marcus Tullius Cicero (106–43 B.C.), prominent Roman statesman and consul, preeminent orator, lawyer, and master of Latin prose, and significant moral and political philosopher, left a substantial written legacy. Within that legacy he gives extensive attention to the natural and thus universal basis of justice and right. In fact, it might fairly be said that his treatment of the natural foundation of right is his most important contribution to moral and political thought: it stands historically at a critical juncture where this idea assumes clearly the language of natural law and comes to exercise a direct and formative influence on leading thinkers from the first centuries of Christianity through the Renaissance.

Cicero's impact, both direct and indirect, on important post-Renaissance thinkers such as [Locke](#), Hume, and [Montesquieu](#) was substantial, and through such writers, and often directly, his thought and very phrases reached to America's founding generations. Thomas Jefferson explicitly names Cicero as one of a handful of major figures who contributed to a tradition "of public right" that informed [his draft](#) of the Declaration of Independence and shaped American understandings of "the common sense" basis for the right of revolution.^[1] Cicero's [On Duties](#), highly regarded and influential throughout much of Western history, was regularly present in the libraries of early America. [John Adams](#) and [James Wilson](#) were notable in the founding period for recalling Cicero and his teaching on "the principles of nature and eternal reason." Wilson had contributed in important ways to the success of the Constitutional Convention of 1787 and the subsequent ratification of the [Constitution](#). His important lectures on law in 1790–91, which saw President Washington, Vice President Adams, and Secretary of State Jefferson in attendance at times, gave prominent attention to Cicero on natural law.^[2]

Cicero looked back to the great Greek thinkers as one deeply conscious of his debt to them and yet aware of distinctive Roman ways and the general Roman resistance to any dependence on the Greeks. As a very public man in his actions as well as his writings he had to walk a careful line between his wanting to share his convictions of the primacy of the thinking of Socrates, [Plato](#), and [Aristotle](#) and the requisite manifestations of his genuine Roman patriotism. He considered Plato as the first among all philosophers, Aristotle second. It seems that he directly engaged a number of Aristotle's texts, but he also knew Aristotelian thinking through the representatives in his day of the Peripatetic school of philosophy which Aristotle had founded. Centuries later Dante would look back on Cicero as Rome's "best Aristotelian."^[3]

Cicero, however, affiliated himself quite explicitly, not with the Peripatetics, nor with the Stoics as is sometimes thought. Rather, he considered himself a Socratic and thus belonging, in his day, to the school of Academic skepticism. In Socrates Cicero found the beginnings of an approach to philosophy that attracted him and that he famously captured in his observation that "Socrates was the first to call philosophy down from heaven and set her in cities and even to bring her into households and compel her to inquire about human life and customs as well as matters good and evil."^[4] This practical orientation of Socrates must have helped draw Cicero to him, and Socrates' limited skepticism fostered the stance Cicero took against the dogmatic assurance about all things, from wholesale materialism to cosmological order, which he found in the dominant schools of Epicureanism and Stoicism of his own time. The practical orientation entailed a priority for moral and political philosophy and all but assured that the questions about the natural foundation for the good and the just would be central and critical. At the same time, a skeptical approach for Cicero did not mean an abdication of moral judgment but rather a thorough and often adversarial testing of the arguments on important moral and political questions with the intent of affirming, acting upon, and sometimes even rhetorically embellishing what

“seemed” most likely true. In such a way he was apparently led to his teaching about nature’s way and natural law.

Those views on nature’s way and natural law are expressed and explicated in the texts of Cicero appearing in the [Documents’ section of this website](#). The passages excerpted there represent the most direct and noted statements of Cicero on the character and basis of natural law. They are drawn from his [On the Republic](#) (54–51 B.C.), [On the Laws](#) (51 B.C. ff.), and [On Duties](#) (44 B.C.). In the brief commentary that follows here, an effort is made to bring out a coherent statement of Cicero’s teaching by offering assistance in contextualizing and interpreting these texts. Proceeding chronologically, this essay moves from Cicero’s most assertive and seemingly cryptic statement about natural law, through his speculations on how that foundational law fits in a larger cosmological and divine order, to his observations on both how nature’s standard is grounded in the very inclinations and capacities of humans and the prudential challenges of applying that standard to concrete moral dilemmas and decisions.

Cicero’s *Republic* represents his conscious effort to pay tribute to Plato’s great classic by that name and yet to differentiate his approach to the critical questions about the best constitution or regime and the nature and basis of justice. Cicero’s dialogue is set more than twenty years before his own birth and involves prominent leaders of that time including the younger Scipio Africanus and his life-long friend Laelius. Scipio seems to speak for Cicero, but perhaps not exclusively so. In the first passage in the Documents ([Republic 1.26-27](#)) and at a point even before the conversation settles on its practical focus about the best constitution, Cicero presents Scipio speaking of the perspective that comes from elevating one’s thoughts and contemplating the whole cosmos in which man finds himself. So at least some of these public men on holiday are drawn to deep speculations about the eternal aspect of all things, and this laudable tendency, though always needing discipline and control, is exemplified again in the memorable Dream of Scipio with which the *Republic* ends. Here, however, so early in *On the Republic* and anticipating *On the Laws*, Cicero’s Scipio indicates that such deep thinking helps one see a “common law of nature” that provides a higher standard than the civil law, a law of nature that gives both privileges or rights, and responsibilities or duties to the truly wise.

Not too much later in the dialogue the idea that there is a law of nature beyond the will of the stronger, of the dominant class, or of public opinion comes under attack. Cicero assigns this Academic task to a character named Philus. It is for him and all present an unwelcome but necessary task of testing and thus making the best argument that can be made against the seeming assumption that there is a justice grounded in the nature of things. The second passage in the Documents ([Republic 3.18-19](#)) provides an indication of the kind of argument Philus makes, which emphasizes both the variation in laws from nation to nation and time to time, and that even well-known philosophers seem to differ from common practice in interpreting a standard of justice like giving every person their due. Philus represents a set of arguments heard yet today against the idea of a natural justice and natural law, namely, that variations in “just” civil laws and customs and differing opinions even among leading thinkers constitute an indication that there exists no natural, common understanding of the right and the just.

It is the “wise” Laelius^[5] to whom Cicero chiefly assigns the response to Philus, but most of it is lost to us or highly fragmented due to the condition of the manuscript. The heart of the response and the most frequently quoted passage of Cicero on natural law is the third passage in the Documents ([Republic 3.33](#)).^[6] It can appear to be raw assertion over against the kind of arguments Philus has made. However, what is notable in this eloquent statement is how powerfully its implications tell against the arguments of Philus. The concepts “true law” and “right reason” indicate that not every law is indeed a law, and not every reason, even if pronounced by a “philosopher,” would be a sound reason. Given what is said about “upright men” contrasted with “wicked men,” it is clear that one must be disposed in a certain way to heed the true law, and yet in cases of individual “wicked men” and even where customs and civil laws are generally at variance from right reason, seeds of this true law remain in all, never to be entirely obliterated.

Passages from [On the Laws](#) in the Documents clarify what is said in Cicero's *Republic* as well as develop what is implicit or lost in that partial text. This is a dialogue, written almost coterminously with the *Republic*, in which Cicero sets himself as chief character in conversation with his brother Quintus and his dearest friend, Atticus Pomponius. Without contempt for the ordinary knowledge of civil law, Cicero is laying out early in this work and as a primary objective an understanding of human nature and its place in the overall order of reality as "the source [in which] . . . laws and right can be found" (1.16). Fundamental law that is to be directive of human beings comes from a choosing or selection of the "highest reason implanted in nature" (1.18-19); the human mind grasps that fundamental law and derives from it the rules of right and wrong. Thus the effective natural law for humans is "the mind and reason of the prudent man" (1.19). In reaching into nature and learning from her, the wise person shares in a divine force or the very mind of god. Here is an important instance where Cicero shows himself apparently sharing a Stoic understanding of the divine dimension of the law of nature pervading the whole universe.^[1]

A statement Cicero makes in *On the Laws* points to the enrichment of his thinking on natural law in [On Duties](#), the final philosophical work in his richly productive life. "Not only right and wrong are distinguished by nature," writes Cicero, "but also in general all honorable and disgraceful things. For nature makes common understandings for us and starts forming them in our minds so that honorable things are based on virtue, disgraceful things on vices" (1.44). In Book One of *On Duties* there is an explanation of the basic human inclinations that give rise, with reason's guidance, to the foundational (later to be called "cardinal") virtues of wisdom, justice, courage/magnanimity and temperance/moderation. Finding these virtues is the way to finding nature's way for humans, to finding the law of nature and thereby what is right.

A complete reading of *On Duties* shows Cicero saving, as it were, the idea of utility by showing that there is a true utility that is in accord with right; there is, for example, a rightful attention to resources, property, and reputation. Never, when fully understood, are the right and the useful at variance, though they may indeed often seem so. In this work, Cicero is shown applying the right rooted in nature to issues that range from determining one's specific vocation in life to decisions about just war. Since humans are by nature communal and political beings, he is emphatic in stressing that a natural justice means that one must never do harm and must always serve the common good. Cicero in this text and throughout his writings shows his awareness of the complexity entailed in understanding what true "harm" and the true "common good" are.

Cicero has made a monumental contribution to the tradition of natural law and natural rights in the West. While revering and learning from his great Greek predecessors in the tradition of moral and political philosophy as well as from the schools of philosophy in his own time, he brings forward in a more explicit way the language of natural law, thus developing the notion of "following nature" or of what is "right according to nature." He points quite unambiguously to a divine source for this law and anticipates later developments of the notion of conscience by stressing that all humankind have a sense of the right within them, seeds needing nourishing and guidance to flourish as mature reason. This maturing entails reason being brought to work upon the gift of our inclinations and thus to formulate the virtues and the very law of nature. This law then is to be the standard shaping the commonalities in the laws of nations and against which one can judge the rightness of any specific civil laws and the edicts and rulings of magistrates.

Endnotes

[1]. Thomas Jefferson, "Letter to Henry Lee," 8 May 1825, in *The Political Thought of American Statesmen*, eds. Morton Frisch and Richard Stevens (Itasca, Ill.: F. E. Peacock Publishers, 1973), 12.

[2]. Meyer Reinhold, ed., *The Classic Pages* (University Park, Pa.: American Philological Association and the Pennsylvania State University, 1975), 54. Carl J. Richard, *The Founders and the Classics* (Cambridge, Mass.: Harvard University Press, 1994), esp. 232, 175ff.

[3]. This is Dante's judgement according to A. E. Douglas and Paul Renucci. A. E. Douglas, "Cicero The Philosopher," in *Cicero*, ed. T. A. Dorey (London: Routledge and Kegan Paul, 1965), 162. Paul Renucci, *Dante Disciple et Juge du Monde Gréco-Latin* (Clermont-Ferrand: G. De Bussac, 1954), 331.

[4]. *Tusculan Disputations*, 5.10–11 (author's translation). A similar observation is found in Cicero's *Brutus*, 31. A fuller exploration and detailed documentation concerning Cicero's relationship to the major Greek philosophers including Socrates is found in the author's essay, "Cicero's Socrates: Assessment of 'the Socratic Turn,'" in *Law and Philosophy: The Practice of Theory*, eds. J. Murley, R. Stone and W. Braithwaite (Athens, Ohio: Ohio University Press, 1991).

[5] Cicero, seemingly in his own voice, praises Laelius as a model of decency and wise (*sapiens*) in the *Tusculan Disputations* 5.54–56.

[6] In fact, we have this passage solely on the authority of Lactantius, a fourth century Christian who held Cicero in such high regard that he became known as the Christian Cicero. There is, however, a scholarly consensus that Lactantius has supplied with this passage an actual missing portion of Book III of *On the Republic*.

[7] With reliance in part on Cicero's texts Malcolm Schofield has attended to the role of a "metaphysical theory of providence," meaning the universe is created and provided for humankind, in the early Stoic tradition. *The Stoic Idea of the City* (Cambridge: Cambridge University Press, 1991), 65, 103 and *passim*.

Author's Note on Cicero's Language: Cicero uses various terms and phrases to refer to the law of nature or natural law: *vera lex*, *suprema lex*, *communis lex naturae*, *jus naturale*, *naturae jus*, *naturae lex*, *naturalis lex*, *universum jus* and *sempiterna lex*. He does not appear to intend a distinction in meaning between his usages of *lex* and those of *jus*. Gerard Watson has sensibly observed that the ordinary understanding of law does not capture Cicero's understanding of natural law. He writes, "Lex, then, is not *lex* in any restricted law sense in the *lex naturae* contexts of Cicero. The whole phrase is often better translated rationality or morality." "The Natural Law and Stoicism," in *Problems in Stoicism*, ed. A. A. Long (London: The Athlone Press, 1971), 234. Leo Strauss in explicating classic natural right has noted the possible breadth and flexibility associated with the term "natural law," writing that it can be used to refer to "the rules circumscribing the general character of the good life." *Natural Right and History* (Chicago: University of Chicago Press, 1953), 127. While seeing Cicero as a transmitter of the Stoic natural law teaching, Strauss was especially interested in understanding Cicero himself more in the Greek tradition of natural right than in accord with any rigid Stoic or later Western conception of natural law. Strauss, perhaps, strained at times to distance Cicero from the natural law idea: see my discussion of this aspect of his work in "Cicero and the Rebirth of Political Philosophy," *Cicero's Practical Philosophy*, ed. Walter Nicgorski (Notre Dame, Indiana: University of Notre Dame Press, 2012), 270-72.

Published 2011 by the Witherspoon Institute

Source URL: <http://www.nlnrac.org/classical/cicero>