subtopic

Plato

PLATONIC PHILOSOPHY *and* NATURAL LAW
V. Bradley Lewis, The Catholic University of America

Plato (427–347 B.C.) is usually numbered among the most important thinkers in the natural law tradition. The idea of nature as a fundamental and organic principle of things and its relationship to specifically human affairs was already the subject of vigorous discussion by the Pre-Socratic philosophers, and his friend and mentor Socrates's (469–399 B.C.) engagement with them is preserved in many of Plato's works. From a systematic perspective those works present challenges to the student of natural law, for, first, what we have from Plato are thirty-five dialogues written as recollections of conversations, or like plays, but no straightforward treatises. The fact that Plato does not speak in his own name complicates any dogmatic reading of his thought.[1] Second, the Greek equivalent to the phrase "natural law" (*nomos tēs phuseōs*) is very rare in his works. Indeed, it occurs as such in only one place: in the *Gorgias*. The dominant tendency of the time was to see "nature" (*phusis*) and "law" (*nomos*) as quite distinct and even opposed notions representing what was permanent and non-human on the one hand, and what was a product of human agreement on the other. It is precisely this opposition that Plato puts in question. His dialogues contain extensive discussions of the "natural" (*phusei*) and what is "according to nature" (*kata phusin*) and how we should think about these things in relation to political and legal institutions and to the conduct of life generally. What emerges from Plato is the idea of nature as normative for human affairs as the rule of reason.

One can see this broadly in Plato's most celebrated work, the *Republic*, which considers the possibility of a perfectly rational political order. There, Socrates and a group of his friends discuss the character of justice on the basis of the questionable assumption that the justice of a single human person and justice within a city are alike. The parts of the city are analogized to the parts of the soul and the good and natural order of the former is based on that of the latter, with reason using spiritedness (*thumos*) to control the desires. The political analogue of this is a city in which the most rational people, the philosopher-guardians, use the class of auxiliaries or soldiers to control the many who are ruled by their passions. Such an arrangement requires a number of strange and unlikely preconditions including the abolition of private property and the family among the ruling class. While the interpretation of the *Republic* has always been controversial, an increasing number of scholars take it more as treating moral or metaphysical themes, perhaps related to the nature of the philosophical life itself, than as a serious political proposal. It may be mainly intended to expose the limits of perfection in politics.[2] The rest of this essay discusses some aspects of the *Gorgias*, the *Minos*, and the *Laws*—three other more directly political dialogues that address the question of natural right, excerpts of which are included in the Primary Source Documents section of this website.

In the *Gorgias*, a dialogue in which Socrates discusses the nature of rhetoric, a character named Kallikles, a teacher of rhetoric who is obviously influenced by some Pre-Socratic ideas about nature along with some commonplace notions about power politics, responds to Socrates's expressed view that only just people are really happy. Kallikles argues that justice is entirely conventional, that is, the product of human agreement: justice is the view of the many in society who are weak and they agree on it as a means of controlling the few strong and clever people.[3] By nature, Kallikles holds, the strong seek their own advantage, just as is true among the animals: "I think these men do these things," Kallikles concludes, "according to the nature of the just, and yes, by Zeus, according to the law of nature" (*kata nomon tēs phuseōs*).[4] This is a radically individualist and skeptical conception of natural law as the outcome of an essentially hedonistic and amoral account of human nature.

Socrates counters this conception of natural law by raising objections that expose incoherences in

Kallikles's hedonism and goes on to suggest an alternative view of what is "natural" or "naturally just" (he himself does not use the phrase "natural law"). The naturally just or right is an order (*taxis*) of human goods in which the goods of the soul come first, those of the body second, and external goods (such as wealth) third. The goods of the soul are the virtues and only with them can the rest of the order be established and effective. This order is natural because it is according to reason and it is integral to the thing, in this case human beings.[5] It is known, Socrates argues, through a rational account (*logos*) of the nature of the thing and this sort of knowledge is associated with genuine arts. So rhetoric, which aims merely to manipulate an audience through gratification, is unrelated to the real goods of the soul. The art that has the good of the soul as its aim, Socrates says, is the political art, which is, in the first instance, legislative.[6] It is dramatically important in the *Gorgias* that Kallikles remains unconvinced, suggesting the limits of rational argument in the face of wrong habituation and thereby illustrating the importance of good laws in the formation of character.

In the *Gorgias* Socrates says relatively little about legislation beyond simply associating it with the care of the soul and the art of politics. A very brief dialogue, *Minos*, has as its explicit subject the question: "what is law?" While the *Minos* has often been considered spurious, it was listed by all the ancient authorities as a genuine Platonic work and its content agrees with other Platonic dialogues. In it, Socrates discusses the nature of law with an anonymous "companion." After canvassing some inadequate definitions, Socrates suggests that law "wishes to be the discovery of what is."[7] The companion makes the obvious point that different peoples use different laws and even change their own. Socrates suggests that this question is best considered on analogy with the moves players make in a board game, perhaps meaning that variations in law occur within a larger context of uniformity that comes from reason's engagement with the permanent structures of the world. He also concedes the obvious point that even though law "wishes" to be the discovery of what is, lawgivers can be mistaken. Indeed, the very formulation provokes the thought that law's ambition in this respect could never be completely fulfilled. Nevertheless it also implies a fundamental connection between law and "what is" that leads to perhaps the first formulation of something like the thesis, later expressed by St. Augustine, that an unjust law is no law at all: laws are writings about the administration of cities by those who know about such things and "that which is not right we will no longer say is legal."[8] In the last part of the dialogue Socrates takes Minos, the legendary Kretan king who was said to have authored (with the assistance of Zeus) the oldest and therefore best legal code, as a model lawgiver and implies that laws have as their purpose the good of the soul. With this definition, Plato points to the Socratic position linking politics and legislation in the *Gorgias*.[9]

It is only in the *Laws*, a dialogue in which Socrates is absent, replaced by a nameless "Athenian stranger," that we get a detailed illustration of the practice of lawgiving and the content of laws that aim to improve the human soul according to natural right.[10] The *Laws* is Plato's largest and most directly political work; its dramatic frame is a pilgrimage by three elderly men, the Athenian, a Kretan named Kleinias, and a Spartan named Megillos, from Minos's city, Knossos, to the cave and temple of Zeus at Mt. Ida, where Minos himself is said to have received instruction on lawgiving from the god. The Athenian proposes a discussion of "the political regime and laws" and his two companions readily agree.[11] The dialogue can be divided into three parts. The first part, consisting of the first three books, is a theoretical introduction to legislation and discusses the ends of the city, education, and the regime (*politeia*) or form of government. At the end of the third book Kleinias reveals that he is part of a Kretan commission charged with drawing up a law code for a new colony, Magnesia, and the two others agree to assist the Kretan in considering the laws for this colony, making the subsequent discussion more concrete. Books four through seven present the main features and institutions of the city: its geographical and other particularities, its form of government, and its educational system. The third part of the dialogue considers what one might call challenges or sources of resistance to the new city presented by the three parts of the soul that Socrates had identified in the *Republic*: The eighth book considers the desires, especially the erotic desires; The ninth book considers spiritedness (*thumos*) as both cause and response to crime; and The tenth book considers the challenge and promise of intelligence. This tenth book contains the lengthiest natural theology of the classical period as a response to the danger atheism poses to the city. This theme is continued in the twelfth book, which proposes a regular meeting of the city's chief officials with those accused of atheism, but also on its

own, to discuss philosophical questions and possible reforms.

It is in the first book of the *Laws* that the general tone is set and that a view of what is according to nature is introduced as a guiding principle of the discussion. As in the *Gorgias*, it is articulated in response to a contrary thesis, in this case one voiced by Kleinias. When asked about the purpose of a number of Kretan institutions and practices, Kleinias replies that they were instituted to achieve victory in war, which was the ancient Kretan lawgiver Minos's aim in all his work, and this because he saw that "what most humans call peace . . . [is] only a name; in fact, for everyone there always exists by nature (*kata phusin*) an undeclared war among all cities."[12] Victory is thus the supreme good and this links Kleinias's view with that of Kallikles in the *Republic*. Kleinias goes beyond Kallikles in holding that enmity exists not just between cities, but between households within a city, between individual persons, and even between parts of individual persons, thus reducing the problem to a kind of psychic dis-integration. But here too, the good is victory of a "better" over a "worse" part. Against this the Athenian presses Kleinias on just what it could mean to talk about being superior or inferior to oneself. Leaving aside this question, he suggests that in the case of a city it means the better men ruling over the worse. This question should be answered not according to mere words, but according to "whatever in them constitutes correctness or faultiness according to nature (*phusei*)."[13] Thus the Athenian and Kleinias are arguing about what is according to nature.

The Athenian's clearest statement of what is according to nature is given as an alternative explanation of the ends of a divine lawgiver. Kleinias's answer to the Athenian's question about Minos's purpose should have been that the ends of the legislator are goods of two kinds, divine and human. The human goods are said to be health, beauty, strength, and wealth in that order. The human goods look to and are dependent on the divine goods: prudence, moderation, justice, and courage. The divine goods are naturally (*phusei*) prior to the human goods and make them possible and the legislator should look to this natural order in framing actual laws. The order is again emphasized at the end of the passage: "the citizens should be told that the other orders [i.e., laws] are given to them with a view to these goods, of which the human look to the divine and the divine look to the leader, intelligence (*nous*)."[14] Laws, then, should be guided by an order that is natural because it is rational, an order of goods: the human goods are goods related to the body (health, beauty, strength) and external goods (wealth); the divine goods are virtues, goods of the soul and are led by prudence. The end of the passage places them all under "the leader, intelligence."

What is "natural," then, is the rule of reason. Moreover, the human goods depend on the divine goods and ultimately on intelligence. This idea is amplified later in the *Laws*. The Athenian returns to the question of what it means to be superior to oneself later in the first book, illustrating his point with an image of the soul as a kind of puppet that responds to the pull of different kinds of cords. One cord is made of gold and accordingly soft. This is the "golden and sacred pull of calculation (*logismos*), which is called the common law of the city." The others are iron and therefore hard; they represent the law's coercive authority.[15] It is reason, therefore, that comes first and orders the city with the assistance of physical force. Similarly, in a discussion of education that opens the second book, the Athenian distinguishes education (*paideia*) from virtue (*aretē*), which is itself the end, or aim, of education. The former comes from the correct training of one's pleasures and pains before one is able to reason, "and then, when the souls do become capable of reasoning, these passions can in consonance with reason affirm that they have been correctly habituated in the appropriate habits. This consonance in its entirety is virtue."[16] The Athenian's precept, that one's passions must be ordered before reason can retrospectively affirm that order, could shed light on Kallikles's continued resistance to Socrates's arguments in the *Gorgias*.

The natural order of goods is affirmed in a number of other places in the *Laws*.[17] It is also exemplified in the dialogue's specific proposals, most notably an innovation in lawgiving that requires laws to include persuasive "preambles" that do not merely threaten potential lawmakers, but offer reasons for the law itself and the regular nightly meeting of officials mentioned above, which serves to institutionalize something like philosophical inquiry in the city.[18] But the most extraordinary feature of the *Laws* may be its tenth book, which contains a lengthy constructive natural theology that grounds the city's appeal to

what is according to nature. The theology is a response to those who hold that the gods either do not exist or, if they do, they do not care about human affairs, or if they care, that they can be bribed by prayers and sacrifices. The bulk of the discussion is devoted to a refutation of the first thesis, which is associated once again with the views of Pre-Socratic thinkers who tended towards a radically reductionist and materialist account of nature. On their view both the gods and justice are human inventions, a view that is more sophisticated than that of Kleinias, but that was perhaps familiar to Kallikles. The arguments of the Athenian vindicate the existence of the gods through a kind of argument from motion that is, in fact, an argument for the priority and superior dignity of the soul over matter. This serves to explain the existence of divine souls, but also the order of goods in the human soul that is central to his understanding of natural right, which informs the laws of the Magnesian (ideal) city.

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[1] Leo Strauss, *The City and Man* (Charlottesville: The University Press of Virginia, 1964), 50-62, is a classic discussion of the challenges presented by the dialogue form of Plato's works.

[2] For a survey of some of the most important disputed questions on this, see Donald R. Morrison, "The Utopian Character of Plato's Ideal City," in *The Cambridge Companion to Plato's "Republic,"* ed. G.R.F. Ferrari (Cambridge: Cambridge University Press, 2007), 232-55. Julia Annas argues for a primarily moral as distinct from political view of the *Republic* in *Platonic Ethics Old and New* (Ithaca, NY: Cornell University Press, 1999), 72-95. Karl Popper famously took the proposals of the *Republic* in earnest and accordingly condemned them as proto-totalitarian in *The Open Society and Its Enemies*, vol. 1, *The Spell of Plato*, 5th ed. (Princeton: Princeton University Press, 1966). The view that the *Republic* is about the limits of politics is closely associated with Strauss: see *The City and Man*, 138.

[3] One finds this view, for example, in some fragments of Socrates's contemporary, Antiphon the Sophist. See Jonathan Barnes, *The Presocratic Philosophers* (New York: Routledge, 1982), 508-16.

[4] *Gorgias* 483e. Cf. 464b-465d, 502c-503a, 504d, 521d.

[5] *Gorgias* 506d-507a.

[6] *Gorgias* 463d, 464b, 521d.

[7] *Minos* 315a, 317d. I have discussed this dialogue in detail in "Plato's *Minos*: The Political and Philosophical Context of the Problem of Natural Right," *Review of Metaphysics* 60 (2006): 17-53.

[8] *Minos* 317c. Augustine's formulation is found in his dialogue, *On Free Choice of the Will*, book 1, section 5.

[9] *Minos* 321b-d. Cf. above, note 6, and *Laws* 650b.

[10] For more detail about the following account see my "'Reason Striving to Become Law': Nature and Law in Plato's *Laws*," *American Journal of Jurisprudence* 54 (2009): 67-91.

[11] *Laws* 625a.

[12] *Laws* 626a.

[13] *Laws* 627d.

[14]*Laws* 631c-d.

[15] *Laws* 644e-645b.

[16] *Laws* 653b; cf. 689a.

[17] For detailed statements see 726a-730a and 896c-897b; for more casual references see 697b-c, 717c, 743e-744a, 870a-b, 892a-c, 959a-b, 961b, 966e-967b; cf. 691c-d, 697a-c, 837b-c, 913b. The order is explicitly said to be "according to nature" (*kata phusin*) or "natural"(*phusei*) at 631d, 689b, 716a, 728d, 875d, and 896c. In other passages what is according to nature is explicitly connected to reason (*logos*): 642a, 689b, 690c, 720b, 728d, 733a, 875d, 943a, 966d.

[18] The preambles are introduced at 718b-723b and the nightly meeting at 960b-969d.

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