

Chapter 5

HELLENISTIC PHILOSOPHERS OF LAW

by Roderick T. Long¹

5.1. The Hellenistic Era: A New Political Context for Legal Thought

Between 338 and 323 B.C., the entire eastern Mediterranean region—including Greece, Egypt, and most of western Asia (the remains of the Persian Empire)—fell under Macedonian rule. Although the unity of this new empire did not survive the death of its creator, Alexander of Macedon, the various smaller empires into which it had been fragmented continued to dominate the region for centuries to come. This development signaled the end of the independent Greek *polis* (“city-state”); but since the emergent local empires now had Greek overlords, the new era also extended the influence of Greek language and culture, which now became dominant throughout the area. Alexander’s conquests thus mark the end of one age (the Classical) and the beginning of another (the Hellenistic), a turning point conventionally dated from Alexander’s death in 323 B.C. The other end of the Hellenistic era is placed by some at the Roman conquest of Greece (146 B.C.), and by others much later, at the Roman conquest of Egypt and western Asia (a gradual process, somewhat arbitrarily fixed around 31–27 B.C.).

The new political conditions of the Hellenistic era naturally had an impact on philosophy in general, and legal philosophy in particular. Unfortunately, few philosophical works from the Hellenistic era have survived intact; as with the Presocratics, Cyrenaics, and Cynics, much of the philosophy of this period is consequently known only through later sources, mostly Roman, and separating the original ideas from their later elaborations (and perhaps distortions) is often difficult—particularly in the case of philosophy of law, where Roman authors might well be particularly prone to introduce, into their discussion of Greek sources, ideas derived from Rome’s own distinctive contributions to legal thought. Roman philosophical works also tend to be aimed at a wider, less technical audience than their Greek counterparts, and so to obscure some of the more precise theoretical details of the originals. In addition, Hellenistic philosophers generally proclaim their allegiance to some particular school or tradition, and it is not always clear whether an author is expressing the orthodox consensus of his entire movement or is in a given instance speaking only for himself. Accordingly, the role of guesswork in interpreting and reconstructing Hellenistic thought is inevitably greater than in studying Xenophon, Plato, or Aristotle.

¹ All translations are by the author unless otherwise indicated.

While Hellenistic philosophy of law must be understood within the political context inaugurated by Alexander's conquests, the connection should not be exaggerated. According to a still popular interpretation, for which one influential source is Zeller (1903), Hellenistic thought is above all a response to the new shift of power from *polis* to empire, a shift that leads, on the one hand, to a de-emphasis on political participation (only the imperial dynasties could hope for a share in governance now) in favor of a private, interior life and personal happiness, and on the other hand, to a weakening of local, parochial allegiances in favor of a cosmopolitan identification with the global community. In contrast to Socrates' attachment to Athens, the Hellenistic era sees increased mobility of intellectuals, as scholars migrate to new centers of learning such as Alexandria. The boundaries of concern, formerly aligned with those of the *polis*, simultaneously contract inward to the individual and expand outward to the entire world. The accompanying sense of rootlessness and insecurity allegedly moves Hellenistic thinkers to reject abstract, technical philosophy in favor of pragmatic doctrines offering "self-help" paths to contentment and self-sufficiency. The Hellenistic era is accordingly seen in some respects as an era of intellectual decline. There is *some* truth to this interpretation, but it is more misleading than helpful, for three reasons.

First, the intellectual paths that Hellenistic philosophers followed were not merely an adaptation to social and environmental factors, but were also *theoretically* motivated; in many respects, Hellenistic theories can be seen as responding to and developing themes from within Classical philosophy.² This is not to deny that pressures external to philosophy can and do routinely reinforce pressures internal to it; but one-sidedly psychologistic, sociological explanations of philosophical developments are no improvement over one-sidedly ahistorical, decontextualized ones.

Second, the notion of a radical transition from the age of independent city-states to the age of all-engulfing empires is overstated. As Gruen (1993, 341) points out, throughout much of the Classical era itself *most* Greek cities were *already* under the hegemony of some empire or other, be it the Athenian, the Spartan, or the Persian, while on the other hand, even during the Hellenistic period most cities still had a fair degree of autonomy. Mobility of intellectuals was nothing new; even in the Classical era, philosophers who kept to their native cities had been the exception, not the rule. Moreover, far from renouncing political participation, many Hellenistic philosophers exercised considerable influence on public policy through their role as advisors to kings and princes.

² In any case, the ideals of cosmopolitanism, self-sufficiency, and withdrawal from political participation were already clearly present in the Socratic movement, if not earlier; even Democritus said that the wise are at home everywhere and have the universe as their homeland (DK 68 B 247).

Third, the suggestion that Hellenistic philosophy is less abstract and technical than Classical philosophy is simply untenable. Some of the most complex and sophisticated developments in logic, ethics, and philosophy of language belong to this era; Chrysippus, for example, is easily the match of any Classical thinker in this respect.

While it is a gross distortion to say that the social philosophy of the Classical period had nothing to say about moral relationships beyond the boundaries of the *polis*,³ it is certainly true that society *within* the polis was the primary object of concern for Classical social philosophy. Hence, the Hellenistic era did see a definite shift in emphasis from one's relationship to one's fellow citizens to one's relationship to humanity in general.

Much of Greek social philosophy turns on the differing senses of the concept of *phusis* ("nature"). This term, in Greek and in English, is ambiguous in (at least) three ways. On the one hand, nature can mean the way things tend to be if nothing is done about them; one might call this nature-as-default. On the other hand, a thing's natural state can be seen as something that has to be *achieved*. (This distinction corresponds roughly to Annas' distinction [1993, 142–58] between nature and *mere* nature.) But nature-as-achievement can, in turn, be seen in two ways: as scouring off all foreign accretions in order to get down to an original, unsullied simplicity (call this nature-as-recovery), or as developing one's innate tendencies in order to achieve one's *telos* ("end"; call this nature-as-completion).⁴ From the standpoint of nature-as-default, watering a plant is an artificial intervention that saves the plant from the decay that it would *naturally* suffer, whereas, from the standpoint of nature-as-completion, watering a plant is working *with* rather than against the plant's natural tendencies. Perhaps one reason for the disagreement between Aristotle and the sophists concerning whether or not human beings are naturally social and political is that for Aristotle "natural" signifies human beings at their highest potentiality, while for the sophists "natural" signifies the way that people would turn out if it were not for education and law. The Cynics, with their hostility to artificial conventions and abstract theorizing, may in turn be seen as endorsing a lifestyle according to nature-as-recovery; and the transition from Cynicism to Stoicism is arguably a transition from the ideal of nature-as-recovery to a more Aristotelian ideal of nature-as-completion.

³ Aristotle, for example, though often regarded as particularly parochial in this regard, endorses obligations of both friendship (*EN* 1108a9–28, 1126b19–1127a2, 1155a16–31) and justice (*EN* 1159b34–1160a8, 1161b4–8; *EE* 1242a19–28; *Pol.* 1275a7–10, 1324b22–36, 1333b26–40) to those outside one's polis; cf. R. Long 1996, 783–4.

⁴ This distinction has its analogues in ancient Chinese philosophy and early modern European philosophy as well, with Hobbes and Hsün-tzu favoring nature-as-default, Locke and Mencius favoring nature-as-completion, and Rousseau and the Taoists favoring nature-as-recovery.

The emerging cosmopolitanism, particularly in its Cynic-Stoic version, tended not to take a specific institutional form. For example, the cosmopolis of the early Hellenistic philosophers was not yet identified, as it would be later, with any specific earthly community, such as the Roman Empire or the Christian Church. Certainly, it was not intended as ideological support for the Macedonian imperialism; few⁵ would have agreed with Plutarch's later claim (at *Alex. Fort.* VI. 329a–c) that Alexander had achieved in action the cosmopolis that philosophers like Zeno had only theorized about. Likewise, the Cynic-Stoic conception of natural law had not yet been brought into connection with actual earthly codes of law (though Xenophon had pointed a way toward the possibility of doing so), and the connection between one's role as a *kosmopolitês* ("citizen of the cosmos") and the specific role in which one finds oneself in the everyday world was not yet clarified. It fell to the practical-minded Romans to work this transformation of Hellenistic philosophy, making Hellenistic views more useful while at the same time depriving them of much of their edge and radicalism.

5.2. Academics

Plato's Academy—so called because of its location in the grove of Hekademus—resembled not only a modern research university, devoted to knowledge for knowledge's sake, but also a public policy institute or "think tank" with the practical aim of influencing legislation and constitutional reform (Klosko 1986, 188). Such an ambition was by no means quixotic; the philosophical schools of Athens boasted princes and statesmen among their graduates, and philosophers were often called upon to play an advisory role in drawing up legal codes. Moreover, the founding of new colonies was a fairly frequent phenomenon in the Greek world, so even the prospect of designing a new political system from scratch was by no means as unrealistic as is often supposed. Unfortunately, after Plato's time little is known of the legal theories of the early Academics; in Diogenes Laertius' catalogue of works by Speusippus and Xenocrates, who were the first leaders of the school, we see such tantalizing titles as *On Legislation*, *On Justice*, *On the Citizen*, *On the Republic*, *On Equity*, and *On the Power of Law* (D.L. IV.2.12), but their contents are unknown.

We do, however, possess four Socratic dialogues from the early Academy that deal with issues of law: *Minos*, *On Justice*, *Sisyphus*, and *Demodocus*. These works have come down to us as part of the Platonic corpus, but (with the possible exception of the *Minos*) they are not the work of Plato.⁶

⁵ Among the possible exceptions are Onesicritus, a decidedly heterodox Cynic (see Moles 1995, 144–9), and whoever wrote *To Alexander On Kingship* (see below, Section 5.3).

⁶ The *Minos* has the best claim of the four to be regarded as authentic. One argument against its authenticity is an alleged Stoic influence. The doctrines that only just laws are

The *Minos* concerns a conversation between Socrates and an unnamed comrade concerning the definition of law, and is clearly related in some way to Xenophon's treatment of the subject (see Chapter 2, Section 2.3, of this volume).⁷ Like Pericles and Hippias in the *Memorabilia*, the comrade is torn between a positivist and a moralized conception of law. The comrade (313b–c) initially defines *nomos*, law, as what is *nomizomenon* (“customarily accepted”); here, the linguistic link between *nomos* as law and *nomos* as custom is being exploited in the service of positivism. But Socrates objects that, just as sight is not what is seen but that *by* which things are seen, so *nomos* must be not what is *nomizomenon* but that *by* which things are *nomizomena*. The comrade's next move is to define law as the judgment of the state; but he, like Pericles, is sensitive to the link between justice and law. Since judgments of the state are sometimes unjust, he is driven to redefine law as the *correct* judgment of the state. In Socrates' words (*Minos* 315a): “[L]aw wishes to be the discovery of what is.”⁸ But how, in that case, can there be different laws in different places? Socrates' answer is that all these laws agree in one sense and not in another: They all agree in legislating *justice*, but they disagree about *which* things are just; so they *aim* at agreement even when they fall short of it. It is insofar as they agree, presumably, that they are genuine laws, not insofar as they disagree.

And how can laws change over time? Socrates answers, obscurely, that “being moved like gamepieces they remain the same” (*Minos* 316c). The meaning of this claim is unclear, but is reminiscent of the Xenophontic analogue about war and peace, and is perhaps making a similar point about principles remaining the same when their applications change. Someone might say, “Before I could move my pawn ahead, but now I can't! The rules must have changed!” However, not the rules, but the circumstances—there is another piece on that square now—have changed. Similarly, all laws, to the ex-

genuine laws (*Minos* 314d–e, 317c) and that only wise kings are genuine kings (317a–318b) are certainly accepted by the Stoics; but this is a weak argument, since both of these doctrines are likewise found in Plato and Xenophon. For these views on law, see Xenophon, *Mem.* I.2.41–6; Plato, *Hp. Ma.* 284b–285b, *Laws* IV.715b. For these views on kings, see Xenophon, *Mem.* III.9.10–11, IV.6.12; Plato, *Rep.* I.347d, *Euthd.* 292a–c. Moralized definitions of genuine judges (Plato, *Ap.* 39e–40a), work (Xenophon, *Mem.* I.2.56–7), power (Plato, *Gorg.* 466b–470b), friendship (Plato [?], *Alc.* I.126c–127d, *Clit.* 409d–e), beauty (Xenophon, *Mem.* III.8.5–10, *Smp.* V.3–4; Plato, *Gorg.* 474d–475b), and wealth and profit (Xenophon, *Oec.* I.5–13, *Mem.* IV.2.37–9, *Smp.* IV.34–45; Plato [?], *Hipparch.* 230a–231e, *Erx.* 399e–400e) are also found in Plato and Xenophon. Socratic dialogues contain Stoic-looking theses because that is where the Stoics found them in the first place.

⁷ If it is not by Plato, then it is probably a response to Xenophon. On the other hand, if it is by Plato then Xenophon might be responding to it, or both authors might be responding to some other thinker—Socrates himself, perhaps.

⁸ This might seem counterintuitive, but Hayek 1973 argues that the conception of law as something *discovered* rather than *made* is both older and more defensible than the positivist account; cf. also Leoni 1991.

tent that they are laws, embody the same principle; but the applications may differ either through a change in the circumstances or through the ignorance and incompetence of those applying the laws.

True law, the *Minos* argues, is an expression of the art of kingship, which is the knowledge of which laws to pass. Here, the criterion is objectivist rather than subjectivist: Kingship is the art of promoting the welfare of the human soul. Minos, legendary ruler of Crete, accordingly has the best claim to be a true king: first, because his laws are unchanging, which is (some) evidence that they are based on knowledge, since laws based on knowledge do not change (but what about the game pieces?), and second, because he learned them from Zeus (which is presumably evidence that his laws are beneficial). But Minos has a bad reputation in Athens because his version of wisdom comes into conflict with the sort of wisdom claimed by the poets. But until we can discover what, in fact, is best for human souls, we will not fully grasp the essence of kingship. Here the dialogue ends.

The other three dialogues are slighter works. *On Justice* consists mainly of arguments paraphrased from various Platonic dialogues; in its one original contribution (Pseudo- Plato, *On Justice* 373c–e), Socrates claims that when judges determine what is just and what is unjust, they employ *speech* in the same way that weighers and measurers employ scales and measuring sticks to determine what is heavy or light, long or short. Socrates raises (but does not answer) the following question: What sort of thing must justice be, in order for it to be true that speech is the tool for resolving disputes about it?

The *Demodocus* and *Sisyphus* also address the question of how deliberation and debate in assemblies and lawcourts could be a rational way of settling issues. The worry is that if nobody knows what to do, public discussion is pointless, while if somebody does know what to do, public discussion is superfluous. These arguments could be read either as a critique of democracy or as a *reductio ad absurdum* of strongly individualist approaches to epistemology—and so, indirectly, as a vindication of the necessity of legal institutions of public deliberation (cf. Aristotle, *Pol.* III.11.1281a42–b10; R. Long 2000, 27–9, 101–3, 112–4).

In the third century, the Academy came under the leadership of Arcesilaus (ca. 318–242 B.C.), who moved the Academy in a skeptical direction, interpreting Plato's dialogues as purely aporetic. For the Skeptical Academy, no philosophical questions can be decisively settled, so it is imperative to suspend judgment. It is unclear how far the Skeptical Academics were influenced by the earlier skeptical movement of Pyrrho (ca. 360–270 B.C.), who also advocated suspension of judgment as a way of gaining psychic tranquility.⁹ Both

⁹ Sedley 1983 argues for, and Decleva Caizzi 1996 against, an influence of Pyrrho on Arcesilaus. The stories that have been handed down about Pyrrho (no doubt exaggerated) suggest Cynic withdrawal and indifference, while the Academics in their social attitudes sound more like Aristippus.

schools of Sceptics practice arguing on both sides of every question, in order to move the mind to a suspension of judgment.

Some Pyrrhonists define law in purely positivist terms,¹⁰ as a written contract among citizens, backed by punishment (Sextus Empiricus, *PH* I.146), maintaining that because of the cultural relativity of laws and customs we cannot say what is right or wrong in itself or by its nature, but only how it appears to us (Sextus, *PH* I.148–63, *M* XI.140; cf. D.L. IX.11.83–4, 101). Hence, nothing is more just than unjust; *nomos* (here meaning “custom”) and *ethos* (“habit”) govern all human action (D.L. IX.11.61).

The first member of the Sceptical Academy known to have contributed to legal philosophy is Carneades (ca. 213–129 B.C.), who gave two famous speeches in Rome, one in favor of justice and the other against it. It is the speech against justice that excited the most interest, and although it does not survive, numerous reports and paraphrases do. Carneades’ speech appears to combine both Pyrrhonist and sophistic arguments. Like the Pyrrhonists, he argues that if justice were a matter of nature rather than convention, all countries and all eras would have the same laws (Cicero, *Rep.* III.818). Like the sophists, he argues that justice clashes with self-interest (Cicero, *Rep.* III.24; Lactantius, *Inst.* V.16–VI.9). Drawing on Glaucon’s challenge in Plato (*Rep.* II), he maintains that justice is a mutual nonaggression pact regarded as a poor second-best situation in comparison to the enticing, but excessively risky, alternative of trying to commit injustice with impunity (Cicero, *Rep.* III.23). Thus the vaunted “mixed constitution,” recognizing as it does the need to avoid giving any one group too much power, is an open confession that mutual distrust is natural, and so justice is unnatural (Cicero, *Rep.* III.23). Hence, political justice (i.e., acting justly when injustice is punished by law) is mere prudence, not justice, while so-called natural justice (i.e., acting justly when injustice is not punished by law) is folly (Lactantius, *Inst.* V.16).

The anti-Sceptical backlash against the Sceptical Academy was led by Antiochus of Ascalon (ca. 130–ca. 68 B.C.), who attempted to revive the interpretation of Plato as a “dogmatist” (i.e., someone committed to definite doctrines rather than simply suspending judgment), and produced a version of Platonism that borrowed heavily from Stoic and Peripatetic doctrine as well. Cicero (*Leg.* I.23) records an argument that is likely to be of Antiochean provenance:

- (1) Reason is shared in common by all rational beings.
 - (2) For those to whom reason is the same, right reason is also the same.
 - (3) Therefore, right reason is shared in common by all rational beings.
- (1, 2)

¹⁰ Though if pressed they would presumably suspend judgment on whether positivism itself is correct.

- (4) Law = right reason.
- (5) Therefore, law is shared in common by all rational beings. (3, 4)
- (6) Those who share law in common are fellow citizens.
- (7) Therefore, all rational beings are fellow citizens. (5, 6)

This vision of the cosmopolis is essentially Stoic (it recurs in Marcus Aurelius *Med.* IV.4), but as Dillon (1977, 80) argues, “it is very likely that the discussion of the Natural Law in Cicero *On the Laws* I is basically Antiochean” because it “contains the characteristic mark of Antiochus’ presence, a survey of the doctrines of the old Academy and of Zeno’s agreement with it.” The argument also fits in well with Antiochus’ doctrine that friendship should be extended to the entire human race (Cicero, *Fin.* V.65; Augustine, *CD* XIX.3).

The Academic thinker most important for legal philosophy is Marcus Tullius Cicero (106–43 B.C.). However, in his writings on ethical, social, and political matters, he generally adopts a Stoic position, maintaining that, as an Academic Skeptic rather than a Pyrrhonist, he can accept Stoic doctrines as plausible opinions rather than as knowledge (*Off.* II.7–8). In any case, Cicero, while technically falling into the Hellenistic period (at least under the broader of its two definitions), clearly belongs in the context of Roman thought, and so will be considered in Chapter 6 of this volume.

5.3. Peripatetics

Like its ancestor the Academy, Aristotle’s school—the Peripatos (after the *peripatos* or colonnade where the school met) or Lyceum (after the public grove of Apollo Lykeios where the *peripatos* was located)—was *inter alia* a public policy institute that aimed, not without success, at swaying the counsels of state. In addition to Aristotle’s own contributions as tutor to Alexander and (allegedly) legislator for Stageira, Theophrastus (ca. 370–286 B.C.), Aristotle’s chosen successor as president of the school, was able to exert considerable influence on legislation during the period when Athens was governed by his student Demetrius of Phaleron. Nor did the demand for Peripatetics as political advisors cease with his fall from power; Demetrius, Strato, and Lycon were all invited to foreign courts to serve as political advisors (D.L. V.58, 67–8, 78; Lynch 1972, 151). Concerning Strato’s and Lycon’s contributions to legal thought, however, we know little; our information about Peripatetic philosophy of law after Aristotle focuses on three figures: Theophrastus, Dicaearchus, and Demetrius.

Among Theophrastus’ works on law (which survive only in *fragmenta* and *testimonia*) are the *Laws* (Theophrastus seems to have made collections of laws in the same way that Aristotle made collections of constitutions) and *On Critical Opportunities* (the latter title excellently capturing Theophrastus’ focus on the particular situation). Theophrastus criticizes attempts to make laws

universally applicable by anticipating every contingency; laws should be framed for situations that occur for the most part, not for those that occur rarely (Justinian, *Dig.* I.3.3, 6, as quoted in Fortenbaugh et al. 1992, 629–30; cf. Fortenbaugh 1993). Accordingly, he advises that one should violate the law, and ordinary moral rules as well, when special circumstances call for it, weighing values carefully against one another, since just as a lot of bronze can outweigh a small amount of gold, so considerations that are usually less important can sometimes outweigh those that are usually more important (Gellius, *Noctes Atticae* I.3, as quoted in Fortenbaugh et al. 1992, 534). This leniency toward exceptions is consistent with Theophrastus' own particularist turn of mind (cf. Sharples 1998, 270).

On Theophrastus' view, good men need fewer laws than bad men (Stobaeus, *Eclogues* III.37.20, as quoted in Fortenbaugh et al. 1992, 628). A useful example of why this is so is his recommendation that the law of contract be reformed to require exceptions for rage and drunkenness (Stobaeus, *Eclogues* IV.2.20, as quoted in Fortenbaugh et al. 1992, 650). Since, on his own view, what happens only occasionally should be ignored, it follows that the law should take rage and drunkenness into account only if these are usual rather than exceptional occurrences; hence, this reform must be intended for a society where rage and drunkenness are frequent occurrences, and so would not be needed in a society where more people were virtuous.

Cicero attributes to Theophrastus, Dicaearchus, and Demetrius a common commitment to the mixed constitution and division of powers (*Leg.* III.14–17). In his treatise *Tripolitikos*, Dicaearchus defended a blend of three principles: democratic, oligarchic, and monarchic (Cicero, *Att.* XIII.32; Athenaeus, *Deipn.* IV.19.141a–c; Photius, *Bibl.* 37; cf. Lintott 1997, 72). Theophrastus seems to have held some version of a cosmopolitan doctrine (Porphyry, *Abst.* II.162.6; cf. III.22, 25); similar concerns are detectable in Dicaearchus' lament that more people die by violence than by natural calamities (Cicero, *Off.* II.5.16–17), and in his nostalgic portrait of a lost golden age free from strife (Porphyry, *Abst.* IV.2.1–9).

Demetrius of Phaleron (ca. 350–280 B.C.) served as governor (some would say dictator) of Athens for ten years, as the result of negotiations between Athens and Macedon, since he was acceptable to both sides;¹¹ hence, he had maximal opportunity to put his own political theories into practice. Demetrius abolished liturgies and trierarchies (compulsory patronage) in favor of taxation, thus weakening the power of private patronage and centralizing power in the state. He reformed the lawcourts: Litigation fell sharply under Demetrius because success in the lawcourts was no longer the path to power and prestige which now depended on external forces (see Gagarin 2000, 361–

¹¹ It was under Demetrius that the metic-controlled Peripatos, the Aristotelian school, finally gained the right to own the land on which it met.

2; cf. Tacitus, *Dial.* 40-41). Demetrius also passed sumptuary laws (from which he, notoriously, exempted himself) and assigned officials called *gunai-konomoi* (“regulators of women”) to supervise public morals. His *nomophulakes* (“guardians of the law”) seem to have had the power to override the decisions of the democratic Assembly. Demetrius’ 1,000-drachma requirement for political rights can be seen as a move in an oligarchic direction, if contrasted with the absence of any property qualification under the earlier regime of Polyperchon (Gottschalk 2000, 369), or as a move in a democratic direction if contrasted with the still earlier 2,000-drachma requirement under the regime of Antipater (Tracy 2000, 338–9). In either case it harmonizes well with Aristotle’s defense of the “middle constitution.”

Issues relevant to philosophy of law are also raised in *Problemata* and *To Alexander on Kingship*, two works which, though traditionally ascribed to Aristotle, are generally thought to derive from the early Peripatos. While the *Problemata* is concerned primarily with issues of natural science, two chapters (29, 30) contain interesting attempts to rationalize common legal practice. The methodology employed is characteristically Aristotelian, starting from the assumption that existing practices are more or less right, and reasoning back to principles that would justify or explain them and solve the puzzles they raise.

The pseudo-Aristotelian letter *To Alexander on Kingship*, preserved only in Arabic, appears to embody both cosmopolitan and anticosmopolitan sentiment. In its cosmopolitan aspect, the letter calls for Alexander to unite all of humankind into a single kingdom (8) and a single city (4), free from strife and devoted to leisure and reflection (8). Less benignly, it seems to reject such notions of universal fellowship by calling for pro-Greek favoritism (6) and an ethnic cleansing of Persians (8).¹²

Stern (1968) inclines to the view that the work is a genuine letter of Aristotle’s. Against this is the letter’s endorsement (8) of the *lex talionis* (the principle of “eye for an eye”) of Rhadamanthys, which Aristotle condemns at *EN* V.5.1132b2–5; but Stern (1968, 32) argues that for Aristotle “what was no justice for the Greeks, could very well be justice for the barbarians.” Might Aristotle have favored a cosmopolis ruled by Alexander? Differing historical traditions have cast Aristotle both as a friend and as a foe of his former pupil’s imperial aims. The evidence in Aristotle’s own writings is equivocal. Aristotle generally rejects empire, both because imperialistic domination is unjust (*Pol.* VII.2.1324b23–1325a8) and because an empire is too large to be a proper political community (VII.4.1326a34–b13). Additionally, his remark that nowa-

¹² Plutarch, *Alex. Fort.* VI.329b, apparently knew of a purportedly Aristotelian letter advising Alexander to treat Greeks as friends but Persians as *animals or vegetables*. This is stronger than anything in *To Alexander on Kingship*. Was Plutarch quoting a different work, now lost? Or was he simply paraphrasing freely? And if he was paraphrasing, might he then simply be paraphrasing the defense of natural slavery in Aristotle’s *Politics* rather than a letter?

days all monarchs are tyrants (V.8.1313a4–5) hardly sounds like a ringing endorsement of the Kingdom of Macedon. Still, imperialistic domination might not be unjust when exercised over barbarians; and Aristotle's remark (*Pol.* VII.6.1327b34) that the Greeks could rule the entire human race if they were united in a single *politeia* seems more favorable to Alexander's empire. Despite Stern's inclination to view the letter as authentic, he does acknowledge "some similarity between the phrases of Dicaearchus and those of our passage" (Stern 1968, 60–1). Should Dicaearchus be the letter's author, its cosmopolitan sentiments might stem from his doctrine of a single unitary life force immanent in all of nature (Cicero, *Tusc.* I.21).

5.4. Polybius

While Polybius (ca. 200–ca. 118 B.C.) was primarily a historian and statesman, the constitutional theory adumbrated in his *Histories* is a milestone of legal philosophy. Despite some words of praise (*Histories* II.38, 42) for the democratic policies of the Achaean League (in which he had been politically active), Polybius' favored constitutional order is a blend of monarchical, aristocratic, and democratic elements. The virtue of this system is its division of powers, which provides checks and balances; these are needed because no one is to be trusted with complete independence and unchecked power—not because human nature is inherently corrupt, but because complete independence and unchecked power tend to *cause* corruption (cf. Plato *Laws* 694a–695d). Although no constitution can be rendered permanently stable, constitutions with a division of powers tend to outlast those without, because in the latter the ruling party, finding its power unrestrained, begins to abuse its position and so provokes a revolution.¹³ The Polybian regime is more flexible: In emergencies, the three powers are able to work together for the common good; in peacetime, when self-serving motivations dominate, the self-interest of each power leads it to restrain the other powers' tendencies toward self-aggrandizement (Polybius, *Histories* VI.18). Polybius identifies Sparta and Rome as examples of his favored system, and sees them as owing their success to that system. They differ primarily in two ways: The Spartan system was established (as Polybius supposes) by a rational plan instituted at a single stroke, while the Roman system evolved through a series of piecemeal adjustments to particular situations (VI.9–10; cf. Cicero, *Rep.* II.2); and Sparta's severe restrictions on commerce weaken its economic power, making it less effective than Rome at maintaining an empire (Polybius, *Histories* VI.48–50).

¹³ In Polybius' particular version of the cycle of constitutions, monarchy matures into kingship, degenerates into tyranny, and is replaced by aristocracy, which degenerates into oligarchy and is replaced by democracy, which degenerates into ochlocracy and is replaced once more by monarchy (*Histories* VI.4–9).

To what extent Polybius is relying on earlier thinkers is unclear. His version of the mixed constitution does not fit what we know of the earliest Stoics (there would be no need for a balance of powers in Zeno's community of sages) nor the Epicureans (who never seem terribly interested in questions of constitutional structure),¹⁴ but is more likely to reflect Academic or Peripatetic influence, particularly since Polybius' cycle of constitutions, though not identical with those proposed by Plato or Aristotle, evinces a similarity of approach. Moreover, as Hahm (1995, 16) points out, Polybius' particular version of the constitutional cycle works in terms of the tension between "two elements in the human psyche: (1) a uniquely human, rational element and (2) an element that operates independently of human reason and that human beings share with other animals." This certainly sounds more Academic or Peripatetic than Stoic or Epicurean. Polybius also seems concerned to defend history against Aristotle's charge that history cannot be philosophical because it deals with the particular rather than the universal (*Histories* III.1), which suggests some familiarity with Aristotelian literary theory. Further, as Hahm (1995, 42–5) again points out, Polybius' laws of history take conditional form—the antecedent is not necessary, though once the antecedent is in place, the consequent follows; this suggests familiarity with the Academic doctrine of "legal fate" (Alcinous, *Did.* 26.179.1–20, Pseudo-Plutarch, *Fat.* 569e–570b; Tacitus, *Ann.* VI.22; Calcidius, *Tim.* 150, 179; Nemesius, *Nat. Hom.* 38). Since Dicaearchus in particular is known to have advocated a *trinal* division of powers based on monarchic, oligarchic, and democratic elements (unlike Aristotle's binary division between oligarchic and democratic elements), and since this is the central feature of Polybius' model as well, it seems possible that Dicaearchus influenced him in this respect. Polybius' enthusiasm for the Roman Empire as a kind of universal political order (*Histories* I.1–2, VI.50) may echo Dicaearchus as well.

5.5. Epicureans

In the Classical era, legal thinkers had been divided over whether to regard justice as a conventional agreement, that motivates obedience through sanctions, or as an inward psychic state valuable for its own sake. Epicurus (342–271 B.C.) and his school can be seen as attempting to incorporate aspects of each view into a single account (cf. Mitsis 1988, 59–97; Annas 1993, 293–302): Justice is defined as a contract, yet the wise person behaves justly without being motivated by fear of punishment.

For Epicurus, pleasure is the supreme good; hence, all the virtues have merely instrumental rather than intrinsic value (cf. Diogenes of Oenoanda,

¹⁴ Though Polybius' account of the origin of civilization may owe something to Epicurean speculation.

New Frag. 26.1–3), and justice is no exception. Justice is nothing in its own right, he tells us, but is simply a contract made for mutual benefit, an agreement not to harm or be harmed (Epicurus, *KD* 31, 33); hence, nothing counts as just or unjust conduct among those who are either unable or unwilling to make such contracts (*KD* 32). Justice in general outline is the same universally, but its specific details vary with time and place because the same things are not always useful (*KD* 36–7), and when a law ceases to be useful for social interaction, it ceases to be just (*KD* 37–8).¹⁵

But what reason do we have to abide by the legal contract? Here our sources seem to differ. According to Epicurus' own words in the *Kuriai Doxai* (*Key Doctrines*), the badness of injustice depends not on anything intrinsic to injustice, but solely on the fear of punishment (*KD* 34). Yet this seems to be contradicted by the testimony of Epicurus' student Hermarchus (ca. 325–ca. 250 B.C.), whose treatise *Against Empedocles*, though lost, is liberally excerpted in Porphyry. In his presentation of the Epicurean account of the origin and justification of law, Hermarchus tells us that wise people obey the law not from fear of punishment but because they recognize its utility; it is only the unwise who need to be motivated by legal punishments. Hence, if all people were wise, no laws would be needed (Porphyry, *Abst.* I.7–12). Our two chief sources of information concerning Epicurean legal thought are the *Kuriai Doxai*, on the one hand, and Hermarchus, on the other. What are we to make of this apparent disagreement between them?

It might seem obvious that as evidence for Epicurus' intentions, the exact language used by Epicurus himself must trump Porphyry's quotations from one of Epicurus' students. But things are not quite so obvious. We possess more material from Epicurus in his own words than from any other early Hellenistic thinker, thanks to Diogenes Laertius' happy decision to transcribe four Epicurean works verbatim in the last book of his *Lives* (D.L. X.35–117, 122–35, 139–54)—the *Kuriai Doxai* is one of these. However, the works that Diogenes preserves for us are abbreviated summaries of a popularizing sort (X.35–6); it is clear from the surviving fragments of Epicurus' *On Nature* that Epicurean theory in its full technical detail was more complex and sophisticated than the summaries suggest. Hence, in reading the *Kuriai Doxai* we must keep in mind that we are probably dealing with a simplified version of a more nuanced theory. Ideally, then, we should try to find an interpretation that makes *KD* 34 come out as being *approximately* right. If the ordinary person's only motivation for obeying the law is fear of punishment, what might the Epicurean sage's motivation be?¹⁶ Something more than punishment, if we

¹⁵ There is no suggestion, however, that it ceases to be a *law*.

¹⁶ Epicurus holds that virtue is the one *sine qua non* of pleasure; we can be happy without food, but not without virtue; see D.L. X.138. This is presumably because we can adapt to the absence of food, but not to the absence of virtue, since virtue is what enables us to adapt our

are to trust Hermarchus, but not something completely unconnected with punishment, lest we do too much violence to *KD* 34.

Epicurus rejects the Cyrenaic version of hedonism, but he had surely considered the views of his hedonistic predecessors seriously, and this may provide a clue concerning his view on obedience and the law. Recall the apparent conflict (Chapter 2, Section 2.4, of this volume) between the elder Aristippus, who said that the wise man would continue to behave rightly if all laws were abolished (D.L. II.8.68), and the younger Aristippus, who said that the wise man behaves rightly “on account of the penalties imposed and on account of reputation” (D.L. II.8.91–3). These views seem contradictory, but may not be. The younger Aristippus gives us *two* reasons to obey the laws: punishment and *doxai* (“reputation”). In the situation contemplated by the elder Aristippus, the abolition of all laws might remove punishment as a concern, but perhaps not reputation.

Why would the Epicurean sage care about his reputation? He would care not in order to win acclaim or renown, of course, but perhaps in order to facilitate relationships of reciprocity. After all, the motivation for making the contract in the first place is not fear of punishment by government officials (since such institutions do not exist prior to the contract), but fear of retaliation by one’s neighbors. If I want others to cooperate with me rather than aggress against me, I must convince them that I am a reliable cooperation partner; for if they cannot trust me to behave peacefully, then violence against me will be their only recourse (*Abst.* I.12). Thus it is in my interest to build a reputation as someone who can be trusted to do his part in cooperative interactions; abiding by norms of reciprocity is “useful for mutual association” (*KD* 38; cf. Axelrod 1985). Damaging my own reputation for trustworthiness, and thus increasing the incentive of others to act violently toward me, is what Xenophon would call the *natural* penalty of injustice (Chapter 2, Section 2.3, of this volume).¹⁷ But this natural penalty does not fall upon the wrongdoer at once; the results are gradual and irregular. Hence, the sage will find the natural penalty to be a sufficient deterrent to injustice, but ordinary people tend to be too short-sighted and so need something that is quicker, more certain, and harder to forget or ignore: *legal* penalties.

This is evidently the difference between the motivations of the two groups in Hermarchus. And so *KD* 34 does not turn out to be *exactly* right, since it treats legal penalties as the only reason to avoid injustice.¹⁸ But the fear of be-

desires in the first place. Cf. Plato’s doctrine in the *Euthydemus* that virtue is the one tool that cannot be misused because it is the standard of correct use. But this simply pushes us back to a further question: Why is justice a virtue?

¹⁷ Perhaps this is why Epicurus calls justice based on this consideration *natural* justice; see *KD* 31.

¹⁸ *KD* 34’s reference to “punishers who are put in charge of such things” (*huper tôn toioutôn ephestêkotas kolastas*) clearly points to an established institution of punishment rather than mere private retaliation.

ing harmed by other people is close enough to the fear of punishment that *KD* 34 can be treated as an over-hasty summary rather than as a decisive repudiation of Hermarchus.¹⁹

The following dilemma, however, might then be raised for Epicurus: Does the Epicurean mutual nonaggression pact require the sage to renounce or restrain certain desires he has to inflict harm on others? If the answer is yes, then the picture looks too much like Glaucon or Carneades: The sage would ideally like to commit injustice against others but is fearful of the consequences and so settles for justice as the second best. On the other hand, if the answer is no, because the sage lacks the incentive to do harm, then it seems as though the sage is going to have a hard time getting others to enter into a contract with him, since the motive for making such contracts is to avoid being harmed by the other party, and no one is in danger of being harmed by the sage.

Does the sage have motives for harming others? Let us first distinguish between motives for *initiatory* harm and motives for *defensive* harm. Clearly, the sage has motives for engaging in defensive harm, and acts on those motives: The Epicurean community as described by Hermarchus employs violence against both those who break the contract (as when lawbreakers are punished) and those outside the contract (as when dangerous animals are killed).²⁰ Hence, it would be a mistake to regard the Epicurean sage as a patsy who cooperates no matter how often the other side defects. The contract does not require the sage to renounce his motives for defensive harm; in fact, it assumes their retention.

On the other hand, the sage has no motives for engaging in initiatory harm, since the desire to harm arises from hatred, envy, or low regard (*kataphronêsis*), and the sage is subject to none of these (D.L. X.117).²¹ The Epicurean sage shuns the political life and chooses to “live unknown” in simplicity and freedom from disturbance, mastering all unnatural and unnecessary desires. Hence, the justice contract does not require the sage to sacrifice anything he values; its purpose is not to prevent the sage from *committing* harm, but to prevent him from *suffering* it (Stobaeus, *Eclogues* IV.142).

¹⁹ Lucretius (ca. 99–ca. 55 B.C.), the chief Roman expositor of Epicureanism, lends support to this interpretation; see *RN* V.959–1028, where the institution of punishment is clearly intended to be an *additional* incentive, over and above the fear of private retaliation.

²⁰ Epicurus holds that there are no obligations of justice among “whichever animals” (*bosa tôn zôion*) are unable to make contracts (*KD* 32; cf. 39). If the Epicurean requirements for contract are indeed looser and more informal than in traditional social contract theory, it becomes conceivable that some nonhuman animals might meet the entrance requirements for the moral community. Did Epicurus intend this? Some sources (Epicurus, *Nat.* 34.25.22–34; Lucretius, *RN* V.855–77) suggest yes; others (Hermarchus, as quoted in Porphyry, *Abst.* I.12.5–6) suggest no.

²¹ Underestimating the extent of retaliatory harm that one’s victims might be able to inflict in return would perhaps fall under “low regard.”

As Epicurean values spread, then, the need for legal penalties should correspondingly decrease. The Epicurean cosmopolis, unlike its Cynic-Stoic counterpart,²² is a dream for the future, not a reality for the present; the Epicurean propagandist Diogenes of Oenoanda (*New Frag.* 21.1. 4–14, 2.10–14) looks *forward* to a golden age where justice and friendship will replace laws (cf. Hermarchus) and city walls, and human beings will live “the life of the gods.”²³ This is clearly a world in which everybody has become an Epicurean sage, and reliably chooses the benefits of cooperation. But the vision may have implications for the present as well: Diogenes of Oenoanda calls the whole world his homeland (*New Frag.* 25.2.3–11), while Epicurus speaks of friendship dancing around the world (*Sent. Vat.* 52), and is said to have numbered his own friendships by whole cities (D.L. X.9; Cicero, *Fin.* I.65).²⁴

To the Roman poet Lucretius (ca. 99–ca. 55 B.C.), Epicurus was “a god indeed, who first discovered the rational system of life that is now called Wisdom, and who by his art moved life from such turbulence and such darkness into such serenity and such light” (*RN* V.9–12). His epic poem *On the Nature of Things* undertakes the daunting task of setting out Epicurus’ “rational system of life” in hexameter verse.

Lucretius’ brief discussion of law seems to follow Epicurus’ contractarian account—particularly in the two-level version related by Hermarchus (Porphyry, *Abst.* I.7–12), where fear of strife motivates the wise to abide by an informal contract, but the unwise need the additional incentive of formal punishment. (Given the scantiness of our sources on Epicurus, the extent of Lucretius’ originality is difficult to judge.) In a conjectural history of the beginning of human society, Lucretius tells us that our primitive ancestors, lacking awareness of the mutual benefits of the rule of law, grabbed from one another whatever their strength could win them. However, sexual love eventually gave rise to stable families, which led in turn to a gentling of the human spirit. Now each family, “eager to avoid harming and being harmed,” was accordingly motivated to enter a mutual nonaggression pact with its neighbors (*RN* V.959–1028).²⁵ But as the growth of civilization brought inequalities of status, ambition and conflict arose—until, weary of strife, people were willing to ac-

²² But like that in Pseudo-Aristotle, *To Alexander on Kingship* 8.

²³ The wording suggests Stoic influence. Centuries earlier, we find Cicero—with his Stoic hat on—writing that if human beings ever realize their universal kinship with one another, then they will live “the life of the gods” (*Leg.* I.33, fragment, as quoted in Lactantius, *Inst.* V.8); and Stoics commonly describe the Cosmopolis as a common habitation of men and gods.

²⁴ Why doesn’t caring about our friends’ welfare impair our self-sufficiency (as per Theodorus the Cyrenaic) by making our happiness vulnerable to the bad luck of our friends? Apparently because Epicurus thinks that we can take as much pleasure in our friends’ past or future happiness as in their present happiness (*KD* 19–20, 40, 66; Cicero, *Tusc.* V.95; D.L. X.137; Lucretius, *RN* III.1087–94; Plutarch, *Contr. Ep. Beat.* 1105e).

²⁵ By contrast with contemporary “hypothetical contract” theories, the Lucretian contract represents an actual (if tacit) accord that we have reason to *bring about*.

cept a system of “strict laws and rights” backed up by punishments (1105–61). For Lucretius, formal law is the price humanity pays for its own folly.

5.6. Stoics

The most influential of the various Hellenistic schools was the Stoa (named after the *stoa poikilê*, or “painted colonnade,” where the school met), whose founder, Zeno of Citium (ca. 334–ca. 262 B.C.), was a student of Crates the Cynic. The Stoic emphasis on self-mastery and indifference to everything but virtue indicates Stoicism’s debt to Cynicism. Since the writings of the early Stoics are lost, it is unclear how much of the Stoa’s distinctive doctrines derive from Zeno and how much from the “second founder” of Stoicism, Chrysippus (280–208 B.C.). What is clear, however, is that the early Hellenistic Stoa—the Stoa of Zeno, Cleanthes, and Chrysippus—was much closer to the antinomianism of its Cynic origins than was the more respectable later Hellenistic Stoa that grew up in the shadow of Rome—the Stoa of Diogenes of Babylon, Antipater of Tarsus, Panaetius, Poseidonius, Hecaton, and their successors. The two works that caused the later Stoics the most embarrassment are also the starting point for Stoic legal thought: Zeno’s *Republic* and Chrysippus’ *On the Republic* (the latter being a commentary on the former).²⁶

We are told that in the city advocated by Zeno, only the virtuous are friends or fellow citizens; equality of men and women is established through unisex clothing²⁷ and the abolition of marriage in favor of open sexual relations based on mutual consent; and temples, lawcourts, gymnasia, and currency are banned (D.L. VII.1.33). Many of these proposals simply take to their logical extreme the Spartan institutions praised by Xenophon (*Lac.* I.3–4, VI.1–3, VII.3–6). Chrysippus apparently endorsed most of Zeno’s program (D.L. VII.1.131), adding a defense of the legitimacy, under the right circumstances, of masturbation, incest, and cannibalism (DL VII.1.121, 188; Plutarch, *Stoic. Rep.* 1044b–1045a; Sextus Empiricus, *PH* III.247–8).

The two clearest influences on the Zeno-Chrysippus *Republic* are the works of the same name by Plato and Diogenes. But is the Stoic republic an independent city-state like Plato’s, a utopian blueprint for a community of sages? (Diogenes Laertius’ description [D.L. VII.1.33] of Zeno as banning lawcourts, etc., in the *cities*, plural, might suggest that the envisioned community does not embrace the entire earth.) Or is it a still more utopian blueprint for a worldwide Stoic empire? (Plutarch tells us [*Alex. Fort.* VI.329a–c] that Zeno advo-

²⁶ Some of the later Stoics found Zeno’s *Republic* so embarrassing that they attempted its suppression; cf. D.L. V.1.34; Clement, *Strom.* V.9.58.2.

²⁷ Presumably following the precedent of the Cynic Hipparchia (D.L. VI.7.96–7), though Plato’s female students wore men’s clothing as well (D.L. III.46; Philodemus, *Acad. Ind., Herc.* 1021).

cated *replacing* local communities with the cosmopolis.) Or is it a description of how the wise should conduct themselves here and now, in the existing universal community, the Cynic cosmopolis? (Thus Zeno began his *Republic* [Philodemus *Stoic.* 18] with the statement that it was relevant to his own place and time.) But the three interpretations need not be inconsistent. Zeno is describing how the wise will interact; the account will apply equally to a small community of sages living together, or to the entire community of sages scattered throughout the earth, or to a world in which everyone has achieved sagehood.²⁸ If the sages build their own city, be it a local or a global one, they will not construct any temples or gymnasia; if the sages live among people who do construct such things, they will simply not *treat* any existing structures as temples or gymnasia. Temples are places where conduct that is ordinarily permitted is forbidden (as sacrilege); gymnasia are places where conduct that is ordinarily forbidden (public nudity) is permitted. Zeno is rejecting such artificial divisions; just as the Cynics rejected the idea of different rules of conduct in private and in public, so Zeno is rejecting the ideas of different rules of conduct in different locations.²⁹ Zeno's rule that there is no part of the body that must always be covered (D.L. VII.1.33) converts the whole world into a gymnasium.

Yet if the rules of the ideal community hold for sages in the here and now, what are we to make of the claim, ascribed to Zeno and Chrysippus (D.L. VII.1.121; Seneca, *Otio* III.2), that the sage will, when circumstances call for it, take part in ordinary civic institutions such as politics and marriage? Perhaps there is a difference between the way a sage interacts with other sages and the way he interacts with ordinary people.³⁰ The Stoic reverence for both Socrates and Diogenes perhaps required some way of reconciling the marriage and (admittedly limited) political participation of the one with the antinomianism of the other.³¹ (As part of the de-Cynicizing of Stoicism, later

²⁸ Schofield 1991 argues that the Zenonian republic was an individual community; Erskine 1990 and Vander Waerdt 1994 defend a cosmopolitan interpretation. One of Schofield's arguments (1991, 26) is that we cannot imagine "what it would mean to rule that women are to be held in common" unless Zeno is describing "a community whose members are known to one another and live in more or less close proximity to one another." But Zeno's "community of women" means that sexual liaisons are to be open and based solely on mutual consent; to internationalize this is simply to deny that such freedom of choice stops at national borders. Helen and Paris were practitioners of "community of women" in its internationalized form.

²⁹ Plutarch (*Stoic. Rep.* 1034b) attributes to Zeno a somewhat different reason for the prohibition on temples, namely, that nothing made by human hands can be sacred. The ban on currency might have a similar motivation.

³⁰ For example, if community of women holds between sage and sage but not between sage and fool, the sage might commit adultery with Crates' wife Hipparchia, but not with Menelaus' wife Helen.

³¹ Seneca offers a different interpretation (*Otio* III.2–3, VIII.1–4). By Zeno's and Chrysippus' rule, a sage will participate in politics unless something prevents him. But, says Seneca, if the state is too corrupt to obey the sage's advice, that will be enough to prevent him. Every state, however, is too corrupt to obey the sage's advice, as the fate of Socrates in Athens

Stoics would defend marriage and political activity as expressions of the natural tendencies of social animals.)

Who are the citizens of the Stoic cosmopolis? Some sources tell us that only the wise are its citizens (D.L. VII.1.33; Philodemus, *Herc.* 1428.7–8; Plutarch, *Lyc.* 31); others extend its citizenship to all rational beings (Cicero, *Off.* I.50–51, *Leg.* I.61; Plutarch, *Alex. Fort.* VI.329a–c). A possible solution is offered by Dio Chrysostom (*Or.* XXXVI.23): Human beings (i.e., unwise ones, actual ones) get counted as citizens of the cosmopolis along with gods in the same way that, in human cities, children get counted as citizens along with adults, because they have a natural potentiality for the functions of citizenship even if they cannot yet exercise that potentiality. Schofield (1991, 78) argues convincingly that Dio’s position is likely to have been the orthodox Stoic one. The cosmopolis, then, is both a community of everyone potentially and a community of the wise actually (cf. Obbink 1999).

What are the normative implications of the cosmopolis? According to Cicero (*Leg.* I.61–2), once we recognize our true status as citizens of the cosmos, we will naturally be led to despise ordinary concerns (which sounds Zenonian enough) and to start making orations, enacting legislation, praising the virtuous, protecting the weak, punishing the wicked, and ruling nations—all of which sounds rather more Roman than Zenonian. Knowing where the contributions of Zeno and Chrysippus end and Roman influence begins is accordingly difficult. But we can be reasonably confident that the early Stoics regard the cosmopolis as governed by a moral law that supersedes positive law. Zeno describes the human race as sharing citizenship in common, nurtured by a common law (*Alex. Fort.* VI.329a–c), and Chrysippus identifies law as the supreme ruler, the criterion of justice and injustice, and the standard of correct conduct for political animals (Marcian, *Institutes* I.2.25, as quoted in *SVF* III.314). The only true law—that is, the only rule that has normative authority—is right reason (Cicero, *Leg.* I.23; Marcus Aurelius, *Med.* IV.4). The justice it defines is natural, not conventional (D.L. VII.1.128; Cicero, *Leg.* I.28, 44). It is the same for all times and places, and statutes which deviate from it are not genuine laws but instead have no better status than the dictates of a criminal gang (Cicero, *Leg.* I.17–19, 42, II.8–14; *Rep.* III.33; cf. Augustine, *CD* IV.4). Anyone who does violate the natural law will be punished, even if he escapes all worldly punishments, because the worst penalty of all is to be in violation of one’s nature as a rational being (Cicero, *Off.* II.36; Lactantius, *Inst.* VI.8 [cf. V.11]; Epictetus, *Diss.* IV.1.118–22).³²

(and, by implication, Seneca under Nero) shows; so the Zeno-Chrysippus rule in effect rules out political participation entirely. If someone advises “Sail, but not on any sea where storms are likely to occur,” that, Seneca concludes, amounts to the advice “Do not sail.”

³² It is interesting to see how the basic Antiphonian idea of natural penalties is developed in a consequentialist direction by Xenophon and Epicurus, and in a nonconsequentialist direction by Plato and the Stoics.

For later natural law thinkers like Aquinas and Locke, obedience to the law of nature involves obedience to certain *rules* that right reason discovers to be appropriate for human beings. This is arguably true for the later Stoics as well—as evidenced by the casuistical debates recorded in Cicero’s *On Duties*, and the lists of appropriate Stoic actions in Diogenes Laertius (VII.1.107–9). But is it likewise true of the early Stoics? Vander Waerdt (1994c) argues that the early Stoics have a dispositional rather than a rule-following conception of natural law; the law the sage follows is his own judgment, but his judgment is based on an insight into the requirements of the particular situation, rather than on the application of an abstract rule. By the time of Seneca (*Ep.* 94–5) the official Stoic doctrine was that the wise man will grasp and apply precepts (*praecepta*), but Seneca’s discussion shows that the question had once been a matter for debate.³³ Most of the regulations in Zeno’s *Republic* might be seen less as rules than as the waiving of rules: One need not treat any one place as special (temples, gymnasia), one need not cover any particular body part, one need not abstain from sexual intercourse with another’s spouse—though the prohibition on currency is less easy to fit into this pattern.³⁴

Subsequent generations saw a transition from the Cynic-leaning Stoicism of Zeno and Chrysippus era to the more Aristotelian Stoicism of Panaetius and his contemporaries. This transition involved two major changes: a shift from an ideal of nature-as-recovery to an ideal of nature-as-completion, and a greater willingness to take our socially assigned roles as well as our natural ones into account in defining that completion. The result was a fuller engagement with the social and legal institutions of the day, and, accordingly, a greater need to sort out the good from the bad in such institutions, rather than simply rejecting them *in toto* in the manner of the Cynics; Diogenes of Babylon, in particular, marks such a turning point. This helps to explain the later Stoa’s casuistical turn, and thus the development of a more rule-oriented version of natural law.

What Zeno and Chrysippus had accomplished was to take a way of life—the stern independence of the Cynic—and turn it into a logical system so powerful and rigorous that it quickly placed other schools on the defensive. The Stoics soon came to set the philosophical agenda and terms of debate for the Hellenistic era, so that even those who argued against Stoic doctrine had to use Stoic concepts and terminology. Dazzling dialectical skill in pursuing the implications of an argument to the end, however paradoxical, was the way to win Greek minds. But it was not the way to win Roman minds; the next

³³ Seneca’s example of an antirule Stoic, however, is Ariston, who is generally so unorthodox that he is dangerous to generalize from. On the whole question of rules versus insight in Stoicism, see Kidd 1979; Inwood 1986; Annas 1993, 96–108; and Striker 1996b.

³⁴ But it is, of course, a literal application of the Cynic injunction to “deface the currency” of convention.

stage in the development of ancient philosophy would need a new approach—and it got one. With Diogenes of Babylon, the Stoa begins to turn its face to the West. It is Diogenes who begins the process of bringing the Stoa into engagement with the social and legal institutions that frame and permeate our quotidian practical experience. Significantly, it is also Diogenes who joins the delegation (155 B.C.) that brings Greek philosophy to the Roman world.

The Stoa conquered Greece by learning logic. To conquer Rome, it would learn law.

Further Reading

The writings of the Hellenistic philosophers survive mostly in fragmentary form. An excellent source by Long and Sedley 1987 provides texts and translations of quotations and testimony with valuable interpretive material. Two recent volumes stand out as the indispensable starting point for further study of the philosophy of law in the Hellenistic and Roman periods. The best synoptic account of Hellenistic philosophy is Algra et al. 2000, with separately authored chapters placing the thinkers discussed in this chapter in a wider philosophical context. Rowe and Schofield 2000 contains an extensive section on Hellenistic philosophers, including discussions of Cynicism, Epicureanism, Stoicism, and particular thinkers. An illuminating general study of Hellenistic moral and social thought is Annas 1993. Laks and Schofield 1995 is a helpful collection of essays on Hellenistic social and political philosophy emphasizing themes of justice and generosity. Vander Waerdt 1994 includes articles on the Stoic and Skeptic reception of Socrates. Sorabji 1993, though primarily concerned with the moral status of animals, offers fascinating information and reflections on all aspects of Hellenistic moral and social thought.

The standard collection of *fragmenta* and *testimonia* for Theophrastus (it does not include the works which survive complete) is Fortenbaugh et al. 1992. The collection of essays by van Ophuijsen and van Raalte 1998 is a good introduction to Theophrastus. For other early Peripatetics, text, translation, and commentary for Demetrius of Phalerum is provided in Fortenbaugh and Schütrumpf 2000, and for Dicaearchus of Messana in Fortenbaugh and Schütrumpf 2001. Stern 1968 is a careful study of the “cosmopolitan” passages in the letter *To Alexander on Kingship* attributed to Aristotle.

The best source of Epicurus’ writings and *testimonia* in translation is by Inwood and Gerson 1994. Mitsis 1988 is the definitive study of Epicurus’ ethical and social thought. Schofield 1991 is a carefully detailed and persuasive study of the evidence for the political theory of Zeno and the early Stoa. Setting the same evidence in a broader historical and political context, Erskine (1990) defends a more democratic and egalitarian interpretation of the early Stoics. Ierodiakonou 1999 includes useful articles on Stoic social theory. An important discussion of late Stoic casuistry is Annas 1989.