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THE JUSTIFICATION OF POSITIVE LAW IN PLATO

BRENNER M. FISSELL¹

I. INTRODUCTION

Human legislation forever bears a burden of justification. An essential question underlying both political and legal philosophy is this: *Why* should one obey? Beyond the obvious—physical force—even the most cursory of glances at intellectual history shows attempts at more sophisticated rationalizations. An ancient and enduring response is that of the “natural law” tradition. Standard natural law theory claims, with greater nuance than can be used here, that the normative obligation undergirding positive law is its rationality. Humans possess reason, and through it partake dimly of the Divine or transcendent order; in social and political life, this reason is then posited as rules, and law is born. Thus, Cicero writes, “True law is right reason in agreement with nature.”² Connection to the divine order, through reason, is what justifies the existence of a human law and gives it an obligatory character. Because of this, even in a society of perfectly wise and virtuous beings, natural law theory asserts that positive laws must still exist.³ Positive laws are not regrettable constraints necessitated by an imperfect world—they inhere in the order of things, reflecting visibly the invisible structure of transcendent Reason.

Since the very first days of this tradition, though, it has had opponents. In *The Natural Law*, Heinrich Rommen notes that it is actually the Sophists who first propound a concept of “natural law” as distinguished from human positive law.⁴ The ideas first asserted by these thinkers would lay the groundwork for the debate during the rest of the Classical period, and perhaps even up to today.⁵ The crucial Sophistic development I highlight—

1. This paper was written at Corpus Christi College, Cambridge. The author thanks Malcolm Schofield and Emile Perreau-Saussine for their guidance.

2. Cicero, *De Republica* (Cambridge, MA: Loeb Classical Library, 1928), 3.22.33.

3. John Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980), 231-232.

4. Heinrich Rommen, *The Natural Law: A Study in Legal and Social History and Philosophy* (Indianapolis, IN: Liberty Fund, 1998), 6.

5. Cf. G.B. Kerferd, *The Sophistic Movement* (Cambridge: Cambridge University Press, 1981), 173. “But virtually every point in Plato’s thought has its starting point in his reflection upon problems raised by the sophists.”

and certainly the idea most disturbing to Plato—is the movement's elaboration of the *nomos-physis* "antithesis." *Physis* means nature—it is the structure of the whole of reality, unaltered and possessing certain characteristics in its own right.⁶ *Nomos*, on the other hand, means "law," but more generally, "norm."⁷ It signifies that which is posited by human beings. Thus, the "antithesis" is the proposition that conventional human norms are incompatible with what is naturally right.⁸ It is a direct rejection of the "natural law" tradition sketched out above.

This paper discusses Plato's response to the Sophistic antithesis.⁹ R.F. Stalley writes, "one way of interpreting . . . the whole of the *Laws* would be to see it as a systematic attack on the *nomos-physis* distinction."¹⁰ One could even go further, though, and say that the entire Platonic corpus functions as such a rebuttal. However, this rebuttal is not a simplistic one. Plato's response does not merely deny any distinction between the two, making them completely coterminous. Furthermore, he does not stop with the healing of the antithesis. Yes, he works for a re-unification, bridging the gap between *nomos* and *physis* and arguing that the former must be anchored in the latter. But this implies a prior labor of purification—Plato must wipe "nature's" slate clean, being tainted by the Immoralists,¹¹ and argue for a proper conception of *physis* as an eternal, transcendent, immutable, and just world order. These two movements are obvious in his work, and seem to provide an early framework for the "natural law" tradition that would so flourish in later centuries. The ideas are worth a very brief overview, so as to set the backdrop for our own discussion.

6. Kerferd, *Sophistic Movement*, 111: "Central to the meaning of the term is the static concept of 'the way things are.'"

7. Kerferd, *Sophistic Movement*, 112.

8. Cf. Richard Winton, "Herodotus, Thucydides and the sophists," in *Cambridge History of Greek and Roman Political Thought*, ed. Christopher Rowe and Malcolm Schofield (Cambridge: CUP, 2000), 98. Winton believes that the "contrast between *nomos* and *physis* . . . constitutes the single most fertile and most influential idea to emerge in fifth-century Greece." For the classic study of the antithesis, see Felix Heinemann, *Nomos und Physis* (Basel: F. Reinhardt Verlag, 1945).

9. Cf. W.K.C. Guthrie, *The Sophists* (Cambridge: Cambridge University Press, 1977), 130. The "state of the question" by the time of Plato was dominated by two divergent camps, Guthrie argues: "At one extreme the equality of all citizens under a written and published code of law, at the other the ideal of the strong man, nature's hero, who spurns the law."

10. R.F. Stalley, *An Introduction to Plato's Laws* (Oxford: Basil Blackwell, 1983), 29. Cf. Martin Ostwald, "Plato on Law and Nature," in *Interpretations of Plato*, ed. Helen F. North (Leiden: Brill, 1977), 42. Ostwald believes that the resolution of the antithesis is the "final result" of Platonic political philosophy.

11. Cf. Ostwald, "Plato on Law and Nature," 60.

Physis, as the eternal, just, transcendent, and immutable world order, functions as a “higher standard” for human action and therefore human legislation. Laws work to guide human action towards this standard, but they are also judged by it. Law, for Plato, must be anchored in nature, and the bridge between the two is reason.¹² The law is an image of a divine reason, and as such it produces divine benefits for human life. As an image, though, law can vary in its likeness to absolute reason.¹³ Because of this there can exist “bad” laws, and wherever a law flatly contradicts the dictates of justice or other elements of nature, the law, while still retaining its “legality,” has no obligatory status.¹⁴ Furthermore, while *nomos* is judged by the “higher standard” of *physis*, it also functions as a didactic instrument for the achievement of a human life lived according to that standard—this comes out most clearly in Plato’s insistence on the “preambles” of law.¹⁵ All these ideas have provided and will continue to provide a fertile starting point for the natural law tradition outlined above. But are they the only aspects of Plato’s answer to the Sophists?

This essay argues “no,” and attempts to bring out a more neglected dimension of Plato’s response. Alongside the sanguine descriptions of law’s inherent goodness and its potential for education is a darker justification. *Nomos* is necessary not solely because of its instrumental function in groping towards virtue, nor simply because of its rationality or its divine grounding. These may be the *ends* of law, and the characteristics which make it salubrious in advancing the “higher” *physis* on Earth, but they are not its primary justification—law’s ends or its essence do not alone make it a necessity for a proper human life.

Plato only finds *nomos* necessary when confronted with an *empirical* observation. There is another nature, “human” nature, which is at loggerheads with the transcendent order: “nature” proper. The *nomos-physis* relationship is actually trinitarian, then. *Physis* is the “higher standard” for human action and law, but the *physis* of a human being functions as a realistic limitation upon perfection—an impediment to the aspirations of the higher standard. *Physis* is at war with itself, and this is why *nomos* must enter. This becomes clearer when we analyze Plato’s scattered references to a pre-legal Age of Cronus, and a subsequent lapse into the legislative Age of Zeus. The shift from Cronus to Zeus results in a new state of affairs where the balance between human nature and higher nature is upset: a state

12. *Laws* 890d.

13. *Laws* 897e.

14. *Laws* 715b. But see *Minos* 315c; *Greater Hippias* 284d.

15. *Laws* 719e-720.

of harmonious *physis* is replaced by that of an internecine *physis*. All this complicates the picture painted by the “natural law” tradition, and calls into question how well Plato fits into it (at least when referring to its purest form, in which law is justified even in utopian circumstances). For him, positive law is essentially remedial.

II. HUMAN *PHYSIS*

Kerferd notes that while *physis* can mean the whole of reality, it also means the set of characteristics a particular thing possesses in its own right.¹⁶ This etymological distinction captures nicely the conceptual duality we must bring out. Usually, when Plato speaks of nature he is referring to “higher” nature. Different elements of his thought—perfectly virtuous gods, a cosmology ordered by “soul,” an absolute system of ethics demanding human virtue, and an inescapable and entirely just final judgment—all intertwine to form the structure of *physis*. Here, *physis* is the unchanging nature of reality, and as such forms the normative landscape for human life. *Physis* is aspirational, as it beckons towards the good, but it also provides the boundaries within which something can be considered “good”—it is a delineator. In combining these two aspects, we can say it provides a higher standard for human conduct than does earthly, human opinion.

While Plato uses *physis* mostly in the all-encompassing sense, he also uses it to speak about human “nature,” and in these instances it is neither aspirational nor does it delineate; it is not the higher standard one thinks of when discussing “nature” more generally. It is here where we must turn our attention.

To begin, it must be understood that there is a difference, for Plato, between “human nature” and the “nature of a human.” The former indicates a specific part within the latter, which is itself a larger whole containing something beyond the human. In justifying to Phaedrus his fascination with humans, Socrates hypothesizes, “Am I a beast more complicated and savage than Typhon, or am I a tamer, simpler animal with a share in a divine and gentle nature?”¹⁷ We ultimately learn that both are true—the “nature of a human” contains “human nature,” but also has something supra-human: a small “divine” element within, called the “little spark of immortality.”¹⁸

16. Kerferd, *Sophistic Movement*, 111.

17. *Phaedrus* 230a. Cf. Ostwald, “Plato on Law and Nature,” 54.

18. *Laws* 714a.

Thus, in *Critias*, the Atlantians are said to prosper “as long as enough of their divine nature survived.”¹⁹

“Human nature,” though, is tied up with the body, and this is deleterious. In *Timaeus*, the creation of humanity by lesser gods is so described: “They imitated him: having taken the immortal origin of the soul, they proceeded next to encase it within a round mortal body [the head], and...within the body they built another kind of soul as well, the mortal kind, which contains within it those dreadful but necessary disturbances.”²⁰ The body contains an inferior type of “soul”—human “nature”—which drags down the divine nature or the true soul. “Our King saw . . . that one of them—the good element in soul—is naturally beneficial, while the bad element [body] naturally does harm.”²¹ Much of the *Phaedo* highlights this theme, with Socrates reflecting upon his impending death. We must “escape the contamination of the body’s folly,”²² reasoning “in...search of reality” with our souls alone.²³ Similarly, in *Phaedrus* humans are said to be “buried in this thing we . . . call a body, locked in it like an oyster in its shell.”²⁴ The god Pluto, in *Cratylus*, knows “that when people are free of their bodies he can bind them with the desire for virtue, but that while they feel the agitation and madness of the body not even the famous shackles of his father Cronus could keep them with him.”²⁵

Because “human nature” is inextricably bound up with body, it is an impediment to human perfection. “It is the body and the care of it, to which we are enslaved, which compel us to acquire wealth,” argues Socrates.²⁶ The effects of “body” are the desires, as we hear in *Timaeus*, and this is what Plato means when he says “human nature.” “Human nature involves, above all, pleasures, pains, and desires, and no mortal animal can help being hung up dangling in the air . . . in total dependence on these powerful influences,” states the Athenian in *Laws*.²⁷ This is why a primary qualification of the

19. *Critias* 120e.

20. *Timaeus* 69c.

21. *Laws* 904a.

22. *Phaedo* 67a; Cf. *Phaedo* 65d-e; Cf. *Timaeus* 44b.

23. *Phaedo* 65c.

24. *Phaedrus* 250c.

25. *Cratylus* 404a. Cf. Andre Laks, “The *Laws*,” in Rowe and Schofield, *Cambridge History of Greek and Roman Political Thought*, 267: “For the *Laws* itself aims at articulating a certain tension, one which mirrors the radical and irreducible polarity between the human and the divine.”

26. *Phaedo* 65cd.

27. *Laws* 732e.

good legislator is that he understands the proper hierarchy of body and soul—he must de-value the human.²⁸

What are the chief desires? Most importantly, *pleonexia*, the selfishness from which other vices stem. Arguing against the feasibility of an absolute ruler, the Athenian says, “His human nature will always drive him to look to his own advantage and the lining of his own pocket. An irrational avoidance of pain and pursuit of pleasure will dominate his character.”²⁹ Consider this passage as well: “It is truer to say that the cause of each and every crime we commit is precisely this excessive love of ourselves.”³⁰ From *pleonexia* comes avarice,³¹ domination,³² and excessive pride.³³

The two disparate and warring components of the “nature of a human” imply that the human must make a choice.³⁴ While the demiurge has mixed both elements in us, we can change their proportions: “he left it to the individual’s acts of will to determine the *direction* of these changes.”³⁵ In the myth of Er at the end of *Republic*, the souls’ choice regarding their next lives on Earth—itsself intended as an allegory for every soul’s choice while alive—is clearly their decision alone. It seems Plato is at pains to emphasize free will over determinism here. Before they choose, the Speaker of Lachesis tells them, “Virtue knows no master; each will possess it to a greater or less degree, depending on whether he values or disdains it. The responsibility lies with the one who makes the choice; the god has none.”³⁶ This is the choice: follow the human within the human, or follow the divine within the human. If one lives for ambition, pleasure, power, and reputation, then “so far as it is at all possible for a man to become thoroughly mortal, he cannot help but fully succeed in this.” However, the flip-side is also attainable, and if one follows virtue and wisdom, “then there is no way that his thoughts can fail to be immortal and divine . . . [a]nd to the extent that human nature can partake of immortality, he can in no way fail to achieve this.”³⁷

28. *Laws* 697, 727-9.

29. *Laws* 875b-c.

30. *Laws* 731e.

31. Cf. *Laws* 870; *Laws* 831d.

32. Cf. *Laws* 687c.

33. Cf. *Laws* 731e-732a.

34. Cf. Christopher Bobonich, “Persuasion, Compulsion, and Freedom in Plato’s ‘Laws,’” in *Plato*, ed. Gail Fine (Oxford: Oxford University Press, 2000), 884; Glenn Morrow, *Plato’s Cretan City* (Princeton: Princeton Univ. Press, 1960), p. 562; R.F. Stalley, “Plato’s Doctrine of Freedom,” *Proceedings of the Aristotelian Society* 98 (1998): 150.

35. *Laws* 904.

36. *Republic* 617e.

37. *Timaeus* 90b-c.

Indeed, it is within our capacity to suppress as far as we can the “human” element, and aspire towards the divine. This is the great goal of Platonic philosophy, and the highest hope for human life. “The philosopher,” argues Socrates in *Republic*, “by consorting with what is ordered and divine . . . himself becomes as divine and ordered as a human being can.”³⁸ This is also stated in *Theaetetus*: “a man becomes like God when he becomes just and pious, with understanding . . . [and] the thing most like [God] is the man who has become as just as it lies in human nature to be. And it is here that we see whether a man is truly able.”³⁹ This is the “ability” that is really valuable and praiseworthy—not the cunning of the tyrant. The “rational part” of the soul must come to rule over the “appetitive part, which is the largest part,” and ensure that it avoids the “pleasure of the body.”⁴⁰ Human nature—the body—must be stifled.

What emerges, especially in *Laws*, is that the problems of “human nature” are enduring, and that they most definitely have implications for politics.⁴¹ The Athenian tells of the Age of Cronus, when the gods ruled over men: “Cronus was of course aware that human nature, as we’ve explained, is never able to take complete control of all human affairs without being filled with arrogance and injustice.”⁴² Cronus himself—an elder god and symbol of *physis*—believed human nature could *never* be capable of holding such power. This is later followed up by the assertion that “where the ruler of a state is not a god but a mortal, people have no respite from toil and misfortune.”⁴³ These are rather firm statements about the infirmities of “human nature.” The Athenian argues elsewhere that “the mortal soul simply does not exist, my friends, which by dint of its natural qualities will ever make a success of supreme authority among men while it is still young and responsible to no one.”⁴⁴ Again, the “natural qualities” of the human cannot be liberated from limitations—they must be “responsible” to something higher. Throughout the actual codifications that take place, there are also sporadic references to a pessimistic anthropology. Speaking of the law against temple robbers, the Athenian explains himself “still with an

38. *Republic* 500c.

39. *Theaetetus* 176a-c.

40. *Republic* 442a.

41. Cf. Ostwald, “Plato on Law and Nature,” 50. Ostwald sees this hinted at in *Republic* as well, in that “philosophic natures” can be corrupted. See *Republic* 473d, 485b. But see Laks, “*Laws*,” 274. He writes, “the *Laws* gives full attention to the concatenation of ‘human’ factors which the *Republic* had deliberately neglected.”

42. *Laws* 713c.

43. *Laws* 713e.

44. *Laws* 691c.

eye on the general weakness of human nature.”⁴⁵ He tells, in another passage, that murder is a result of the “innate depravity of men.”⁴⁶ While all these statements paint a fairly grim picture, the fixedness and finality of evil is never so clearly stated as in *Theaetetus*: “But it is not possible, Theodorus, that evil should be destroyed—for there must always be something opposed to the good . . . [and] it must inevitably haunt human life, and prowl about this earth.”⁴⁷ There seems to be an enduring relation between “human” life and evil, and politically, the logical response is to forbid men from holding sovereignty.

Plato certainly doesn’t mean to say that men can never become better, though, or that politics is doomed. Alongside some of these unchanging anthropological explanations for crime, we also get hints of a sociological cause as well. While the Athenian believes that the “passion for wealth” is the primary reason cities won’t gather for military exercises and proper festivals, he also blames the influence of faulty constitutions.⁴⁸ Similarly, the source of murder may be the “innate depravity of men,” but “misdirected education” is also imputed.⁴⁹ Above all, if Plato holds out no hope for improvement, he would not write the *Laws*! There is most definitely room for the correct institutions to mitigate, as best they can, the problems of “human nature.” “Man is a ‘tame’ animal,” the Athenian argues, “and of course if he enjoys a good education and happens to have the right natural disposition, he’s apt to be a most heavenly and gentle creature; but his upbringing has only to be inadequate or misguided and he’ll become the wildest animal on the face of the earth.”⁵⁰ However, malleability has limits—this statement about man’s *potentiality* in no way negates those categorical prohibitions against absolute rule mentioned above, themselves grounded upon observations about human nature. But here, the Athenian’s main purpose is not to disillusion or discourage. In the context of a moderate *polis*, these statements are included more to remind the legislator of the “material” that he is working with,⁵¹ as well as to check his own hubris:

We’re assuming we have a state which will be run along excellent lines and achieve every condition favorable to the practice of virtue. The mere

45. *Laws* 854a.

46. *Laws* 870a.

47. *Theaetetus* 176a-b.

48. *Laws* 832c.

49. *Laws* 870.

50. *Laws* 766a.

51. Cf. Gerard Naddaf, “The Atlantis Myth: An Introduction to Plato’s Later Philosophy of History,” *Phoenix* 48 (1994): 189-209.

idea that a state of this kind could give birth to a man affected by the worst forms of wickedness . . . is in a way a disgrace. It means we have to lay down laws against these people . . . on the assumption that they will certainly [appear]. However, unlike the ancient legislators, we are not framing laws for heroes and sons of gods . . . [but] are human beings, legislating in the world today for the children of humankind.⁵²

The human *physis* provides a sober check on the expectations of what we can achieve. *Physis* serves as a higher standard, yes, but when we look to “human nature”—itself an unchanging component of the larger *physis*—we encounter what could be called a realistic limitation upon political or human hope.

This somewhat pessimistic anthropology doesn’t seem too far at odds with that of the immoralists. Callicles, Thrasymachus, and Plato all generally agree that most people act out of *pleonexia*—their understanding of the effects of “human” nature is the same. The difference is this: the immoralists ignore completely Plato’s “divine” element, and of course disagree about higher *physis*. For the immoralists, the selfishness endemic to “human nature” is a fitting microcosm of the larger *physis*, whereas for Plato “human” nature is at war with that *physis* (and with the divine element in the soul).⁵³

Human *physis* has an important political implication—humans cannot rule themselves. If humans are unsuited for political sovereignty, though, what are the alternatives? In recognizing the disease, we have already found its cure. Plato argues that that which is sovereign must be *inhuman*—this is where *nomos* comes in.⁵⁴ Plato discerns that *nomos* is itself *rationalized* by the “realistic limitation” of specifically “human” nature.

III. HUMAN *PHYSIS* AS THE PRIMARY RATIONALIZATION OF *NOMOS*:

We turn first to the *Statesman*. For much of the dialogue, the benefits of unhindered rule by an expert ruler are extolled, as contrasted with the rule of law. The Eleatic Stranger asserts that all rulers must rule on “the basis of expertise”⁵⁵: “. . . of constitutions too the one that is correct in comparison

52. *Laws* 853b-c.

53. Cf. Ian Mueller, “Phusis Anthropou,” in *Physis and Nomos: Power, Justice and the Agonistical Ideal of Life in High Classicism : Proceedings of the Symposium Philosophiae Antiquae Quatrum Atheniense*, ed. Apostolos Pierris (Patras: Institute for Philosophical Research, 2007), 218. The notion that human nature is inherently self-seeking is “central to Callicleanism.” Thus, the immoralists account for human *physis* as well.

54. “Sovereignty” is more accurate than “rule,” in that the latter is more procedural, and can still be subservient to human governors. Cf. Stalley, *Laws*, 81.

55. *Statesman* 293b.

with the rest, and alone a constitution, is the one in which the rulers would be found truly possessing expert knowledge, and not merely seeming to do so, whether they rule according to laws or without laws.”⁵⁶ The presence or lack of *nomos* is entirely irrelevant—it is expertise that grounds the authority of the statesman, and such a rule is greatly preferable to that of laws.⁵⁷

By the end of the *Statesman*, though, we are left a bit puzzled. A theoretical attack on law *qua* law is advanced, but then an observation about the actual “state of affairs” is shown to imply that unchanging law is what we ought to employ. It is at 297e that the Stranger begins to change his tune, and the discussion turns to why we might in fact want rule of law. “This is very correct and fine as a second choice,” he says, “when one changes the principle we discussed just now, which is our first choice.”⁵⁸ A shift occurs: before he had said “there is no principle of correctness according to which any of these must be taken into any account at all,”⁵⁹ referring to lawfulness and other criteria, but now rule of law is “very correct and fine as a second choice.”⁶⁰ Why would he simply “change” his first “principle” now? What is it that impels us to discuss “second best” options, giving up the pursuit of the unqualifiedly best?

There are hints in *Statesman* that this reality is human *physis*. We learn that, due to the very nature of expertise, there will always be a paucity of experts.⁶¹ Statesmanship, even more so, as we are told that experts in this field will be extremely few and far between: “we must look for correct rule in relation to some one person, or two, or altogether few—when it is correct.”⁶² This is expected to be a near-miraculous event that occurs only once in a while. Not *impossible*, but very unlikely. Most of us will live in an interregnum period, in something like a time of waiting and stasis. In these periods, of which the present is included, the second best option is rule by law.⁶³ “But as things are, when—as we say—a king does not come to be in cities as a king-bee is born in a hive, one individual immediately superior in body and mind,” the Stranger concludes, “it is necessary—so it seems—for people to come together and write things down, chasing after the traces of

56. *Statesman* 293c-d.

57. *Statesman* 294a.

58. *Statesman* 297e.

59. *Statesman* 293d.

60. *Statesman* 297e.

61. *Statesman* 300e: “No large collection of people is capable of acquiring any sort of expertise whatever.”

62. *Statesman* 292e. Cf. *Statesman* 300e.

63. *Statesman* 297e.

the truest constitution.”⁶⁴ This is the way “things are” *now*, but the possibility is not entirely written off. What we find in *Statesman* is a demographic or *statistical* argument for the rule of law—it laments the scarcity of such excellent men, but does not preclude them from ever popping up.⁶⁵ Such statistical arguments do imply something about human nature and its overwhelming failures, thus hinting at the limitations of human *physis*, but categorical *anthropological* statements are not made in this dialogue (these will come in the *Laws*). Plato is careful not to commit a fallacy of accident in *Statesman*; he allows for the possibility of the “king bee” hatching, but simply observes its rarity.⁶⁶ Others are not so nuanced: “people . . . refused to believe that there would ever come to be anyone who deserved to rule in such a way They think that a person in such a position always mutilates, kills and generally maltreats whichever of us he wishes.”⁶⁷ However, the Stranger immediately follows up this descriptive statement of popular opinion—this is not his own belief⁶⁸—with a caveat. “Although,” says the Stranger, “if there were to come to be someone of the sort we are describing, he would be prized and would govern a constitution that would alone be correct in the strict sense”⁶⁹ One is reminded of Socrates’s hope for a philosopher-king in *Republic*: “Since it is not impossible for this to happen, we are not speaking of impossibilities. That it is *difficult* for it to happen, however, we agree ourselves.”⁷⁰

Returning to the crucial moment of *Statesman* 297e, the change in “principles” is followed by a long discussion of lawless rule by ignorant people—non-statesmen acting with the power of statesman-experts.⁷¹ This thought experiment results in the Young Socrates’s revulsion at a world

64. *Statesman* 301e.

65. Gregory Vlastos, “Socratic Knowledge and Platonic ‘Pessimism’,” *The Philosophical Review* 66 (1957): 236-7. Vlastos notes, “All Plato says . . . is (to translate him still more literally), ‘No such man is arising’; the tense is the present continuous, and the statement is the extremely obvious one that this sort of thing is not happening now, which is vastly different from what is implied by the general view . . . that this could never happen. The latter is just what Plato would have to assert to renounce the doctrine of the *Republic*; and the only reasonable basis for asserting it would be that this is contrary to human nature, which is precisely what Plato does say in the *Laws*.”

66. Cf. Christopher Rowe, “The ‘Politikus’ and other dialogues,” in Rowe and Schofield, *Cambridge History of Greek and Roman Political Thought*, 236-7. Rowe notes that “the *Politikus* does not commit itself as to whether such a person could ever be found . . . [but] seems to leave it open that one might conceivably come to be in a city here or a city there.”

67. *Statesman* 301c-d.

68. Cf. Vlastos, “Socratic Knowledge,” 236.

69. *Statesman* 301d.

70. *Republic* 499d.

71. *Statesman* 298.

where legislation has annihilated expertise, and the Stranger's rebuttal is revealing. He forces Young Socrates to imagine a situation in which political leaders could "take no notice of what is written down" (earlier, his ideal!), but with a very specific, *human* intention: ". . . in order either to profit in some way or to do some personal favor."⁷² This would be an "evil still greater."⁷³ Just as the apogee of human potentiality—the prospect of a true expert employing *nous*—justifies the attack on law *qua* law, so now does humanity's nadir (*pleonexia*) rationalize this attack's withdrawal to the background of the discussion: "Well, at the time when we were looking for the correct constitution, this cut was not useful . . . but since we now set that correct constitution to one side, and have put down the rest as necessary, in the case of these, certainly, the criterion of contrary to and abiding by laws cuts each of them in two."⁷⁴ There are seven regimes, the lawless or lawful rule of the one, the few, or the many, and the rule by pure knowledge. The lower six are all "images"⁷⁵ of the seventh, and *lawfulness* is now what qualifies any one as a "good imitation of that true constitution" (emphasis added).⁷⁶ Earlier, before the change in "principles," law was the polar opposite of the expert, but now it gropes towards that ideal as a "good" imitation. The seventh constitution is set aside: "For of all of them, *that* one we must separate out from the other constitutions, like a god from men."⁷⁷ While this could simply be a comparison intended to show relative quality, it might be something more—the rule of the expert is divine, but the other six are human constitutions. While not *explicitly* imputing human *physis* as the rationale for the rule of law (instead the Stranger opts for more "demographic" arguments, as we saw earlier), there are many hints that this is the main culprit. Human nature is probably the reality that forces the Stranger out of his theoretical certitude.

By the time we reach *Laws*, the argument reaches its clearest expression. The realistic limitation of human *physis* is directly and unambiguously stated to be the rationale for law's sovereignty. After discussing the Golden Age of Cronus, the Athenian tells the "moral" of the story: "where the ruler of a state is not a god but a mortal, people have no respite from toil and misfortune." The upshot is that we ought to grope towards what little divinity we have left within, and "these edicts of reason" should be called

72. *Statesman* 300a.

73. *Ibid.*

74. *Statesman* 302e.

75. *Statesman* 300c.

76. *Statesman* 300e.

77. *Statesman* 303b.

“law.”⁷⁸ The human leads us astray; the divine image of law is our best bet. Later, this is stated even more explicitly. “It is vital that men should lay down laws for themselves and live in obedience to them,” argues the Athenian, “otherwise they will be indistinguishable from wild animals of the utmost savagery.”⁷⁹ “Human nature”—that constitutive part of the “nature of a human”—is animalistic, and requires subordination.

Given the universality of such a limiting factor, the possibility of an expert, supra-legal statesman is rejected. “No man has sufficient natural gifts *both* to discern what benefits men in their social relationships *and* to be constantly ready and able to put his knowledge to the best practical use,” states the Athenian.⁸⁰ *All* men will fail in either knowledge or in will; this is not just a careless generalization, but is a deep reflection upon human *physis*.⁸¹ Regarding the former—knowledge—the Athenian describes the “difficulty” in understanding “that the proper object of true political skill is not the interest of private individuals but the common good.”⁸² Most don’t grasp that, in working for others, they help themselves. Plato does not say explicitly why, but an inference here is certainly warranted. He probably blames *pleonexia*—the dominating aspect of human *physis*, and the very bane of common life. However, “even if a man did get an adequate theoretical grasp of the truth of all this,” there is *still* a problem that remains.⁸³ The Athenian is worried that such a person would gain “a position of absolute control over a state, with no one to call him to account.”⁸⁴ He fears the realization of the Eleatic Stranger’s fantasy; let’s hope that no expert is ever allowed to have free reign! The reason is this:

In these circumstances he would never have the courage of his convictions; he would never devote his life to promoting the welfare of the community as his first concern, making his private interests take second place to the public good. His human nature will always drive him to look to his own advantage and the lining of his own pocket. An irrational avoidance of pain and pursuit of pleasure will dominate his character . . .

78. *Laws* 713e-714a. Cf. Laks, “*Laws*,” 275. Laks believes that in this dialogue law is ‘second-best,’ “insofar as human beings are second-best in comparison with gods.”

79. *Laws* 874e-875a.

80. *Ibid.*

81. This has been frequently noted as the introduction of a theory of *akrasia* hitherto unseen in the Platonic corpus. Cf. Stalley, *Laws*, 9, 52; Cf. Christopher Bobonich, *Plato’s Utopia Recast* (Oxford: Oxford University Press, 2002), 92, 218-19.

82. *Laws* 875a-b.

83. *Ibid.*

84. *Ibid.*

Blindness, self-imposed, will ultimately lead the man's whole being, and the entire state, into a morass of evil.⁸⁵

Again, we ought not take lightly the use of "never" or "always" in this passage—they suggest that human weakness is both universal and perennial. Here we find human *physis* explicitly bound up with *pleonexia*, and the political implication is a prohibition on human sovereignty.⁸⁶ The ruler's errors have direct consequences for politics: he will drag the state down with him, and the certain danger of this provides an unequivocal rationale for *nomos*.⁸⁷

Before making this conclusion, though, Plato makes one final "shot in the dark": "But if ever by the grace of God some natural genius were born, and had the chance to assume such power, he would have no need of laws to control him."⁸⁸ However, the Athenian is quick to qualify this, saying, "But as it is, such a character is nowhere to be found, except a hint of it here and there. That is why we need to choose the second alternative, law and regulation, which embody general principals, but cannot provide for every individual case."⁸⁹ As we've seen, there are definitively pessimistic anthropological statements in *Laws*,⁹⁰ and these can be reconciled with the "natural Genius" only by taking into account an important qualifier: he is born "by the grace of God." Such a statement calls for divine intervention in *physis*, and as such does not negate the prohibitions mentioned above.⁹¹

Interestingly, in *Laws* we find that political expertise is no longer the sole "principle of correctness," nor is it even the most important amongst many. A new system of merit is envisioned, with the primary and essential qualification for political leadership now being faithfulness to the existing laws:

85. *Laws* 875b-c.

86. Cf. Laks, "*Laws*," 276. Plato's endeavor here is to come to terms "with what is 'properly' human even at the cost of a certain compromise"; Cf. Vlastos, "Socratic Knowledge," 234. Vlastos posits that this shift may be due to Plato's failures in the practical politics of Syracuse. See also Ostwald, "Plato on Law and Nature," 51. We believe one ought to be quite cautious in simply accepting a "biographical" explanation, though. Even in *Seventh Letter*, the supposed documentation of this experience, we find that Plato *begins* his philosophy and writes *Republic* from the standpoint of pessimism. See *Seventh Letter* 326a-b.

87. Cf. Morrow, *Plato's Cretan City*, 544: "sovereignty . . . is a responsibility and a burden that human nature is too weak to bear."

88. *Laws* 875c.

89. *Laws* 875d.

90. *Laws* 875b, cf. *Laws* 631c, 874e-875a.

91. Cf. Morrow, *Plato's Cretan City*, 545. Morrow goes so far as to say that "he is to be found, if at all, only in the proverbial age of Kronos."

We insist that the highest office in the service of the gods must be allocated to the man who is best at obeying the established laws and wins *that* sort of victory in the state Such people are usually referred to as “rulers,” and if I have called them “servants of the laws” it’s not because I want to mint a new expression but because I believe that the success or failure of a state hinges on this point more than anything else.⁹²

Excellence is now associated primarily with law-abidingness, not virtue or wisdom, and this is the most important determinant of political outcomes. All this is fully in line with the emphasis on the importance of self-control—a major theme of the *Laws*.⁹³ We can demonstrate virtue not just in what we *do*, but in what we *refrain* from doing.⁹⁴ Of course, this extolment of law-abidingness presupposes said laws are in turn aimed at virtue and wisdom, and the rest of the dialogue makes this goal explicit. At the very end of the dialogue Clinias sums up the discussion, saying, “we said that every detail of our legislation ought to have a single end in view, and the proper name to call it was, I think we agreed, ‘virtue.’”⁹⁵

The *pleonexia* of human *physis* militates against human political sovereignty, but there is an additional limitation: perceptibility. As we have already seen, writing is not the “real thing,” as it were. In *Phaedrus* the written word is called a “dream-image.”⁹⁶ In *Seventh Letter*, Plato states that in the hierarchy of knowing, one step down below the object itself, is “knowledge, reason, and right opinion (which are in our minds, not in words or bodily shapes).”⁹⁷ Law, as a composition of words, is not reason itself, but an image—third in the chain of knowing,⁹⁸ and thus inferior. In these dialogues the image-like quality of law seems like a hindrance, but in *Laws* the value of an “image” is redeemed. “We mustn’t assume,” the Athenian

92. *Laws* 715c-d.

93. Cf. Ernest Barker, *Greek Political Theory*, 5th Edition (London: Methuen, 1960), 343. Barker calls self-control both the “principle” and “mainspring” of the *Laws*.

94. Cf. Stalley, *Laws*, 85: “But the sovereignty of law is not simply a political slogan. It is the counterpart of the other main theme developed in these early books, the theme of *sophrosune*.”

95. *Laws* 963a. The Athenian seems to contradict himself in positing various “ends” for law, but at 693b-c assures that they all boil down to the same thing. However, this is not to say that legislation is narrowly concerned with any single good—it is the entire spectrum of goods, both bodily and divine, that must be taken into account. The “end” is really the maintenance of a proper hierarchy, as we see in 631c. See V. Bradley Lewis, “‘Reason Striving to Become Law’: Nature and Law in Plato’s *Laws*,” *American Journal of Jurisprudence* 54 (2009): 68.

96. *Phaedrus* 277.

97. *Seventh Letter* 342c. This is why, in *Laws*, it is said that all of the “divine benefits” of law “in turn look towards reason, which is supreme.” See *Laws* 631c-631e.

98. *Seventh Letter* 342b.

notes, “that mortal eyes will ever be able to look upon reason and get to know it adequately: let’s not produce darkness at noon, so to speak, by looking at the sun direct. We can save our sight by looking at an *image* of the object we’re asking about.”⁹⁹ This is said in the context of Book X, but the statement fits nicely with the larger theme of human *physis* and law. The image-like quality of law is precisely what makes it appropriate for “mortal eyes.” The similarity between this passage and the Allegory of the Cave (both employ the metaphor of human eyesight confronted with the bright Sun) is striking. In *Republic*, though, the discussion surrounded the philosopher—here in *Laws* the Athenian is speaking of *all* mortal eyes. We ought not to expect, given human *physis*, that all (or even most) people can aspire to ascend from the Cave to the “knowable realm,” and look directly at the “form of the good.”¹⁰⁰ As stated in *Sophist*, “the philosopher always uses reasoning to stay near the form, *being*. He isn’t at all easy to see because that area is so bright and the eyes of most people’s souls can’t bear to look at what’s divine.”¹⁰¹ Law, then, as an image of divine reason, is like the gymnastic trainer’s rules: best ““for the majority of people, for the majority of cases.””¹⁰² This is why, in *Statesman*, while all but the best cities are somewhat derided as “insubstantial images, on the largest scale,” the law-abiding city is at least a “good imitation of that true constitution.”¹⁰³

The realistic limitations of human *physis*—limiting our capacity to perceive true reason and to righteously employ power—demand that we opt for the sovereignty of law over the sovereignty of man. Some questions still remain, though, most especially surrounding that second limitation. We have heard convincing arguments as to why, because of their nature, humans ought not to have absolute power, and this is always followed up with a replacement—law. However, is this logical movement really so obvious? What is it about law that makes it such a good option?

I argue that if the problem is human beings’ *humanity* (human nature), Platonically defined, then Plato’s solution must logically be to find an *inhuman* replacement. In *Statesman*, the emphasis is on human life’s inter-generational (temporal) and inter-“national” (spatial) diversity.¹⁰⁴ In *Laws*,

99. *Laws* 897e.

100. *Republic* 517b.

101. *Sophist* 254a-b.

102. *Statesman* 295a.

103. *Statesman* 303c, 300e.

104. Cf. Melissa Lane, *Method and Politics in Plato’s “Statesman,”* (Cambridge: Cambridge University Press, 1998), 198. “It is the dynamic nature of human existence which makes it impossible to promulgate unchanging rules with any accuracy,” Lane writes. Cf. Paul Stern, “The Rule of Wisdom and the Rule of Law in Plato’s *Statesman*,” *American*

the focus is its enduring alliance with *pleonexia*. Combining these two principles, we come up with what can be called *pernicious dynamism*. Human beings use their flexibility, creativity, and freedom, but in the service of selfishness. The only cure for this situation, if it hopes to not be iatrogenic, is to find a system of sovereignty that is *inhuman*, i.e., inflexible and selfless. In the important passage *Laws* 875, the Athenian explains how there is a “theoretical” difficulty of understanding the need for serving the common good, but also a problem of keeping one’s “convictions” once in power.¹⁰⁵ The problem with men is that “no man has sufficient natural gifts” to know what benefits society and also be “constantly ready and able to put his knowledge to the best practical use.”¹⁰⁶ What is needed is the ossification of rules truly aimed at the common good—thus making the “theoretical” truth independent of the mutability of conviction. Law imposes salutary stasis upon the *polis*, providing a safe alternative to pernicious dynamism.¹⁰⁷

Moreover, just as the realistic limitation of human nature implies the political-constitutional need for legal and not human sovereignty, so does this limitation demand that there be a mechanism to deal with truly bad citizens. *Nomos* is needed both as a substitute for bad leaders and as a tool for subduing extremely wicked subjects. This is why, alongside his discussions of law’s instrumental function in exhorting toward virtue and the higher standard (think of the persuasive “preambles”), Plato reminds us that law involves constraint and punishment. “Some laws, it seems, are made for the benefit of honest men, to teach them the rules of association . . . [while] others are made for those who refuse to be instructed and whose naturally tough natures have not been softened enough,” the Athenian notes.¹⁰⁸ Incurable people will always pop up in the *polis*, as the malleability of human nature can only go so far. We cannot expect even the institutions of the *Laws* to eliminate such characters from arising, and thus

Political Science Review 91 (1997): 270: “while the nature of the human things resists the fixed generalizations of law, so great is this diversity and variability that it is the dictate of wisdom itself that it order human life by the imposition of law” Cf. Stanley Rosen, *Plato’s “Statesman”: The Web of Politics* (New Haven: Yale Univ. Press, 1995), 157.

105. *Laws* 875a-b.

106. *Laws* 875a.

107. Interestingly, we find such a doctrine clearly expounded in Aristotle’s *Politics*: “Therefore he who bids the law rule may be deemed to bid God and Reason alone rule, but he who bids man rule adds an element of the beast; for desire is a wild beast, and passion perverts the minds of the rulers, even when they are the best of men. The law is reason unaffected by desire.” Aristotle, *Politics*, in *The Basic Works of Aristotle*, ed. Richard McKeon, trans. Benjamin Jowett (New York: Modern Library, 2001), 1287a29-37.

108. *Laws* 880d-e.

must include constraint and punishment as well as persuasion: “It means we have to lay down laws against these people, to deter them and punish them when they appear, on the assumption that they will certainly do so . . . and we shall give no offense by our fear that one of our citizens will turn out to be, so to speak, a ‘tough egg.’”¹⁰⁹ Indeed, those who are “beyond cure” must simply be executed.¹¹⁰ Preambles speak to the divine nature, the rational,¹¹¹ while punishment speaks to the body. Because we are dualistic beings, according to Plato, law must include both.¹¹² Given the deleterious “human” nature, law’s exemplary punitive aspect steps in as a needed last resort and deterrent.

IV. FROM CRONUS TO ZEUS—HARMONIOUS *PHYSIS* TO INTERNECINE *PHYSIS*

As stated earlier, the two relationships of *nomos* and *physis* exist simultaneously: The law’s relation to human nature is to *circumscribe* it; the law’s relation to divine nature is to *be* circumscribed by it. *Physis* provides an ideal for law, but is also a rationale for law—and this rationale goes beyond rationality, with the most important justification being a human weakness that fails to live up to the higher standard. The two natures militate against each other.

Evidence of this proposition, and its concomitant implication—the essentially remedial nature of law—can be found in a contrast between Plato’s conception of the Age of Cronus with that of the Age of Zeus. In these myths we find statements about the *pre*-legislative society and its differences from the current state of affairs. By comparing them, we can see what had obviated the need for laws, and what has changed, creating the necessity of a remedial instrument. The myth is mentioned in *Gorgias*, *Statesman*, and *Laws*, each by a different Platonic interlocutor. The attention paid to the myth varies greatly between the different dialogues, as does the content. However, with respect to those elements most relevant to our inquiry, there is a remarkable consistency. A close reading of these myths buttresses our proposition, and fleshes it out with greater nuance.

109. *Laws* 853c-d.

110. *Laws* 862e.

111. See footnote 32 above.

112. Malcolm Schofield, “The Laws’ Two Projects,” in *Plato’s “Laws”: A Critical Guide*, ed. Christopher Bobonich (Cambridge: Cambridge University Press, 2010), 14. Schofield notes that the dual nature of law reflects “two projects” in the dialogue, the first being “to bring out the best in people,” and the second is “taking the citizenry . . . as the human beings they actually are.”

There is no *nomos* in the Golden Age—why? Without engaging too much with the details about the physical movements of the universe (and the resultant autochthony and reversed aging of human beings),¹¹³ let us try to see what life was like during this period (as described in *Statesman*). The Stranger says, “As for living things, divine spirits had divided them between themselves, like herdsmen, by kind and by herd, each by himself providing independently for all the needs of those he tended.”¹¹⁴ The consequence of this provision, a “human life without toil,” meant that there was no quarrelling or war.¹¹⁵ However, the image of the divine “herdsman” indicates that beyond provision, there was also direction or guidance.¹¹⁶ A shepherd certainly makes sure his sheep are fed, but he is fundamentally in *control* of the flock. “A god tended them, taking charge of them himself . . . and given his tendance, they had no political constitutions,” tells the Stranger.¹¹⁷ There is no need for human politics because organization is already effected by divine oversight. It is indeed a government, as “parts of the world-order” are divided up, but (given the *daimons*) it needs no inter-human rules, and is pre-legislative.¹¹⁸

These attributes are echoed in the *Laws* version. Humans live a “wonderfully happy life” and are “provided with everything in abundance and without effort.”¹¹⁹ All this because the “kings and rulers” were not other humans, but “beings of a superior and more divine order—spirits.”¹²⁰

113. These cosmological topics have served as *the* most important points of contention when thinking of the myth. Central to the debate is the number of “ages.” For a good review of the literature, see Gabriela Carone, “Reversing the Myth of the *Politicus*,” *Classical Quarterly* 54 (2004): 88-9. For the interpretation that lends most credence to my interpretation, see Christopher Rowe, “On Grey-Haired Babies: Plato, Hesiod, and Visions of the Past (and Future),” in *Plato and Hesiod*, ed. G.R. Boys-Stones and J.H. Haubold (Oxford: Oxford University Press, 2010), 301, 311.

114. *Statesman* 271d.

115. *Statesman* 271e.

116. Cf. Pierre Vidal-Naquet, *The Black Hunter: Forms of Thought and Forms of Society in the Greek World*, trans. Andrew Szegedy Maszak (Baltimore, MD: Johns Hopkins University Press, 1986), 296: “In addition, the reign of Cronos, although characterized by the ‘abundance without toil’ that, since Hesiod, had been part of the tradition, possessed nevertheless political institutions and a political vocabulary.” It is not *just* leisure that makes this time a “Golden Age,” but divine *rule*. For an opposing viewpoint see Murr, “Hesiod, Plato, and the Golden Age: Hesiodic Motifs in the Myth of the *Politicus*,” in Boys-Stones and Haubold, *Plato and Hesiod*, 296-7. Murr argues that the political dimensions of the Age of Cronus cannot be found in *Statesman*, and show up only in *Laws*.

117. *Statesman*, 271e.

118. *Statesman* 271d.

119. *Laws* 714a.

120. *Laws* 713d.

The definitive quality of the time of Cronus is divine presence. For the humans, this results in material provision and active direction by the gods. The burdens of both social governance and of physical subsistence are gone—thus, Plato can say with consistency that the most notable characteristic of the Age was the “leisure available.”¹²¹

While we’ve said much about their larger situation, we have yet to address the quality of the humans themselves. Was human *physis* the same then as it is now? Each dialogue consistently points to the conclusion that humans were qualitatively the same: they had a pernicious side to their nature, and were allowed the freedom to pursue or reject it. After describing the attributes of the Golden Age, the Stranger states that the most important question is how the “nurslings of Cronus” used their leisure. What matters is whether or not they philosophized or indulged; he states that he simply doesn’t know.¹²² However, to even ask the question implies a certain fact about the Age: the nurslings *could* have chosen either. This is consistent with an earlier passage found in *Gorgias*. Socrates notes that there was always final judgment after death, even in the earlier epoch: “Now there was a law concerning human beings during Cronus’ time, one that gods even now continue to observe.” This rule was that the wicked would be sent to Tartarus.¹²³ Even in the Golden Age, then, some people acted so unjustly as to warrant eternal punishment.¹²⁴ If some human beings are “unjust and godless,”¹²⁵ even then, this suggests a defect in their nature—body—as well as the freedom to pursue that defect to their own detriment. Despite the presence of divine rulers, some men in the Age of Cronus can get it wrong. The discussion of the Golden Age in the final dialogue, *Laws*, also indicates that humans were essentially the same in that time. Indeed, the premise of all that follows—and the crux of the lesson there—is that human nature is taken as a constant. “*Bearing this in mind*,” the Athenian says (referring, of course, to the maladies of human nature), “[Cronus] appointed kings and rulers for our states; they were not men . . . but beings of a superior and more divine order—spirits” (emphasis added).¹²⁶

If human nature has not changed radically, then does this defeat our thesis? How can it be that *nomos* comes into being because of human nature

121. *Statesman* 272b.

122. *Statesman* 272c.

123. *Gorgias* 523a. We ought not be confused by the use of “law,” here. This is a *divine* law, and as it is completely unalterable by human action, is more properly considered to be an element of *physis*.

124. *Gorgias* 523b.

125. *Ibid.*

126. *Laws* 713d.

if that nature is a constant? The answers come most readily after an analysis of the Golden Age's terminus, and the attributes of the new Age of Zeus, where *nomos* is indeed present. In this, one event is the controlled variable, and all others dependants.

This "control" is the departure of the gods. Now, in the Age of Zeus, the god is no longer at the "bar of the steering-oars," Plato writes, but instead in an "observation post."¹²⁷ The lesser gods too—those spirits who tended to human beings—abscond from Earth: "So all the gods who ruled over the regions together with the greatest divinity . . . let go in their turn the parts of the cosmos that belonged to their charge."¹²⁸ The Age of Zeus is a time characterized by divine absence. The description of the god as the "observer" is significant; he does not rule, but merely watches. Divine absence of course has implications for Creation. Humans are now "deprived of the god who possessed and pastured [them]" and must "live their lives through their own resources and take care for themselves."¹²⁹ Gone are those days of leisure, and *nomos* has entered the picture.¹³⁰

Beyond simply leaving them alone, the disappearance of the gods seems to affect humans more deeply. The universe, as we learn early in the myth, is like the human being: "the thing to which we have given the name of 'heavens' and 'cosmos' certainly has a portion of many blessed things from its progenitor, but on the other hand it also has its share of *body*."¹³¹ The exodus of the gods marks the beginning of a long decline for the universe itself. "At the beginning it fulfilled [the divine craftsman's] teaching more accurately, but in the end less keenly," tells the Stranger, "[and] the cause of this was the bodily element in its mixture."¹³² The longer the universe is left alone, the more "disharmony" begins to creep in."¹³³ This continues to

127. *Statesman* 272e.

128. *Statesman* 272e-273a.

129. *Statesman* 274d-e. Cf. Lane, *Statesman*, 108. Lane calls this age one of "painstaking independence." Cf. Rosen, *Plato's "Statesman,"* 55-6. For more discussion of this debate regarding how human life was in this age, see Alice van Harten, "Creating Happiness: The Moral of the Myth of Kronos in Plato's *Laws* (*Laws* 4, 713b-714a)," in *Plato's "Laws": From Theory to Practice: Proceedings of the VI Symposium Platonicum*, ed. Samuel Scolnicov and Luc Brisson (Sankt Augustin: Academia Verlag, 2003), 131-133. We believe any attempt to prove the nurslings are unhappy or unfulfilled due to a stifling of freedom during the Golden Age is to ignore the entire tone of the *Laws*—something which Schofield calls "gerontocratically flavoured paternalism." See Malcolm Schofield, *Plato: Political Philosophy* (Oxford: OUP, 2006), 312.

130. *Laws* 714a.

131. *Statesman* 269d.

132. *Statesman* 273b.

133. *Statesman* 273c.

happen until the “end-point of everything”—we find ourselves somewhere in between, in a state of ever-increasing disorder and decline.¹³⁴ Knowing that the absence of the gods leads to the universe’s decline, it makes sense to conclude that the same will be true for human beings. In fact, the myth in some sense presents humans as children of the universe. “So while it reared living things in itself in company with the steersman,” the Stranger states, “it created only slight evils, and great goods, but in separation from him . . . the condition of its original disharmony also takes greater control of it.”¹³⁵ This means that today’s humans, now being produced by an increasingly disordered universe, contain more evils and fewer goods in their nature.

With the gods’ departure, the relative concentrations of the ingredients of human *physis* have changed. This does not contradict our earlier assertion, though. The quality of the human *physis* remains “body plus divine,” it is just that the quantity of the first ingredient has been upped. To put it simply, humans were not angels during Cronus’s time—they have just gone from “bad” to “worse.”

Now that the characteristics of both Ages have been discussed, we are able to understand why law is absent in the earlier epoch and present in the current one. The cause must be a change in human nature, a change in humanity’s setting, or both. As has been illustrated, there is no dramatic substantive change in human nature: body—now, as then—remains present in human *physis* as a cause of wickedness, and humans are free to pursue this path all the way, even to Tartarus’s fires. The only explanation for the rise of *nomos*, then, is a transformation of human *circumstances*. This must be in the departure of the deities—the shift from divine presence to divine absence.

Because of their departure, the setting of human existence has shifted from one of harmonious *physis* to one of internecine *physis*. Yes, human *physis* was essentially the same during the Age of Cronus and there was freedom to go astray, but yet there was divine guidance working against this. We could say that at that time—with the incarnations of “higher *physis*” immanently present—the gods put their “thumbs on the scale” in favor of their own nature. Against them, the influences of the human *physis* were feeble and rarely had effect. In *Cratylus*, Socrates says, “Cronus’ name signifies . . . the purity and clarity of his intellect or understanding.”¹³⁶ In such a state of affairs, where pure, perfect, divine *nous* is immediately

134. *Statesman* 273e. In our reading, this is almost an eschatological statement, and does not imply (as some believe) that the cycle then continues again. Cf. Carone, “Reversing,” 91.

135. *Statesman* 273c-d.

136. *Cratylus* 396b.

present, *nomos* does not and need not exist. There was a harmonious order to the whole setting. With their departure, as we have seen, there is more of the pernicious ingredient of “body” mixed in human nature, and the salutary external guidance provided by the spirits is removed. The effects are doubly bad: the human *physis* is, for the first time, given totally free range, and at the same time it is more concentrated than before. Now, higher nature and human nature fight against each other, locked perpetually in an internecine struggle (Of course, the battleground of this struggle is still the individual human. To say that *physis* is at war with itself is not to say that “higher” nature can ever “lose” against human nature—not in the transcendent sense).¹³⁷ Enter *nomos*.

It is a change in human circumstances—written on a grand scale as a transformation in the “power dynamic” between the two natures—that creates the need for remedial *nomos*. As the Athenian laments in *Laws*, “where the ruler of a state is not a god but a mortal, people have no respite from toil and misfortune.”¹³⁸ The solution is clearly stated: we must now follow the “little spark of immortality” within us, and these “edicts of reason” are properly called “law.”¹³⁹ The laws are the closest we can come to this divine rule; they are an image of the Age of Cronus. The alternative, a ruling class of men driven mad with *pleonexia*, “rides roughshod over the laws.”¹⁴⁰ Law mollifies the problems aggravated by the absence of the gods, its rational element didactically improving human nature as much as this is possible, and its coercive and punitive element constraining the rudderless freedom created by their departure. The alteration of the power dynamic between the two natures necessitates a new *instrument* by which human *physis* is to be overcome. Direct rule by deities is replaced by an inferior yet necessary image of that rule—*nomos*.

137. The “rules of the game” have not been abolished, leaving us in a nihilistic chaos. The gods may have left, but they are not annihilated. Cf. Lane, *Statesman*, 108-9. Lane writes, “[autonomy] does not mean that they are entirely cut loose from any moorings in the structure of the cosmos.” This seems to be missed by Carone, in that she worries about how a “godless” Age of Zeus in *Statesman* can be reconciled with the other dialogues in which the gods care greatly about human affairs. See Carone, “Reversing,” 91. Carone’s analysis does not take into account the importance of the “observation” that the God now does.

138. *Laws* 713e.

139. *Laws* 714a.

140. *Laws* 714a.

V. CONCLUSION

While he spends much effort addressing the importance of “higher” nature, Plato does not neglect its other, equally relevant dimension: “human” nature. He traces this to the body, and sees it as the source of individual and political problems. Human *physis*, in political leadership, uses its creativity and flexibility to advance *pleonexia* in a pernicious dynamism. Thus, it is at war with the higher standard. The mediator is *nomos*, which, as image of Reason, establishes salutary stasis in politics—ensuring that selfish factionalism amongst leaders is prevented in perpetuity. Human *physis* on the part of the governed, though, also requires *nomos* to constrain and to punish, as the body heeds not the persuasion of the preambles. Thus, while the content of *nomos* is constrained by and aims towards the *physis* that is the “higher standard,” it is necessitated and rationalized only by the realistic limitation of the weak human *physis* placed in a setting where, without any help, it is doomed to fail. Plato’s mythic descriptions of the decline from Age of Cronus to Age of Zeus further flesh out this theory, painting a picture of harmonious *physis* replaced by internecine *physis*—human beings orphaned by their erstwhile guardians, their “human” nature at war with the very structure of the universe. They turn to law.

What does all this mean for jurisprudence? It means that Plato cannot agree with one of the basic tenets of traditional natural law theory. The “purest” form of this theory (as we have called it) asserts that positive, human law is justified in every theoretical landscape. This is why Finnis, in addressing what he calls the “co-ordination problem,” answers the following question in the affirmative: “In a community free from . . . vices, would authority be needed or justified?” No group can take common action, *even if we assume they are all virtuous*, unless there is either “unanimity, or authority.”¹⁴¹ In fact, Finnis argues that the greater the intelligence, virtue, and ability of the group’s members, the more the group will be in need of authority!¹⁴² He doesn’t appear to allow for the possibility that authority can exist without implementing what he calls law. Positive laws are, as he calls them, “authoritative stipulations,” and, he writes, “we . . . call these stipulations ‘laws,’ and their obligation ‘legal,’ so far as they touch and bind any mere subject . . . [and] so far as they touch a person who also rules.”¹⁴³ Positive law, as the necessary emanation of political authority,

141. Finnis, *Natural Law and Natural Rights*, 231-232.

142. *Ibid.*, 231.

143. *Ibid.*, 254.

is *always* justified in natural law theory, even when the infirmities of human nature are removed from the equation. The “natural law” alone is never enough, and will always *require* positive law to be fulfilled. As Rommen argues, natural law is but a “skeleton law” containing the broad outlines of “a few universal norms,” and must be fleshed out and particularized by human positive law.¹⁴⁴ Beyond this, the natural law needs the immediate threat of physical coercion that positive law carries with it, and requires a prudential application to the circumstances of the community.¹⁴⁵

As we have seen, Plato cannot accept this. Throughout his discussion of *nomos* in our current age, he consistently argues that it is only the problem of human *physis* that makes that institution *necessary*. Positive law, on its own, is not inherently warranted because of its rationality, its divine connection, or its didactic potential. These characteristics all further the goals or ends of law, advancing the “higher” or “natural” law on earth, but alone they cannot justify it, as Plato believes *nomos* is only one possible instrument for this goal’s achievement. He explicitly envisions theoretical situations in which positive law would be superfluous when striving towards the above-mentioned ends (e.g., the Golden Age)—what’s more, he yearns for them (e.g., the *Statesman*)! Would that we could live under a God or a God-like man. This would be best. Positive law, as he says so succinctly, is but a “second choice.”¹⁴⁶ Beyond this, even in our troublesome Age of Zeus it is nevertheless admitted that reason can exist without law, as the “human” philosopher can discern the contours of *physis* no matter how corrupt the laws of his city. Socrates certainly did so.¹⁴⁷

While natural lawyers have long sought to anchor their tradition in Plato, they cannot neglect this other dimension of his jurisprudence, in which he rejects a fundamental proposition of their theory, giving human positive law only qualified praise. Law is a remedial fallback—one *reluctantly* chosen in the face of an internecine *physis* (human nature at odds with higher nature), and is not an institution that is *a priori* necessary or good absent these unfortunate metaphysical and anthropological circumstances.¹⁴⁸

144. Rommen, *Natural Law*, 222.

145. Rommen, *Natural Law*, 224–226.

146. *Statesman* 297e.

147. *Apology* 39b. “SOCRATES: I leave you now, condemned to death by you, but [my accusers] are condemned by Truth. . . .”

148. However, while law may be a remedial institution, political authority is not necessarily so. The Golden Age, while pre-legislative, still had the rule of the spirits. In *Federalist* 51, Madison writes, “If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary.” James Madison, “Federalist No. 51,” in *The Federalist Papers*, ed. George Carey (Indianapolis: Liberty Fund, 2001), 273. We can imagine Plato agreeing with the latter

proposition, but revising the former: "If all men were angels, *law*, at least, would not be necessary." This might bridge some of the gap with Finnis, in that Plato still sees a need for "authoritative stipulations," just not in the form of positive law.