

ABSTRACT

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AN ESSAY ON CONVENTIONALISM

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Conventionalism asserts that there are a variety of notions of justice, but no true one. The fundamental laws of any given society are said to be grounded, not on external considerations of natural right, but human agreements which change from society to society and age to age. Justice is viewed as arbitrary and the best regime a fiction. Political society is an artificial, not natural, means to achieve man's true end—individual pleasure. Thus the crucial problem raised by conventionalism is whether political society exists by convention or nature. This dissertation examines the central claim of conventionalism, namely, whether human beings gather together into political society by convention or nature. The former argument is given to the Roman Epicurean Lucretius; the latter, the Roman Academic Cicero.

NATURE AND ARTIFICE: AN ESSAY ON CONVENTIONALISM

by

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Foreword

“There is no justice at all if it is not by nature and the justice set up on a basis of utility is uprooted by that same utility.”

Cicero, *De Legibus* 1.42

Dedication

For Charles L. Babcock

Acknowledgements

It is only fitting in a dissertation on duty to acknowledge those who, whether out of habit or choice, not only fulfilled their duty as teachers, colleagues, and parents, but even as friends and loved ones. Truly, these men and women are the very best of individuals—those who go about their business and lives, not simply out of a sense of utility, but because virtue is worth pursuing for its own sake. Never fashionable, never fair-weather, always thoughtful, always constant, I am honored to have worked with and known these men and women.

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Abbreviations

<i>Ac.</i>	<i>Academica</i>
<i>Ad Att.</i>	<i>Epistulae ad Atticum</i>
<i>Ad. Q. Fr.</i>	<i>Epistulae ad Quintum Fratrem</i>
<i>Div.</i>	<i>De Divinatione</i>
<i>DRN</i>	<i>De Rerum Natura</i>
<i>Fat.</i>	<i>De Fato</i>
<i>Fin.</i>	<i>De Finibus</i>
<i>Lac.</i>	<i>Lactantius, Divinarum Institutionum</i>
<i>Leg.</i>	<i>De Legibus</i>
<i>Mac.</i>	<i>Macrobius, Saturnalia</i>
<i>ND</i>	<i>De Natura Deorum</i>
<i>Off.</i>	<i>De Officiis</i>
<i>Or.</i>	<i>De Oratore</i>
<i>Rep.</i>	<i>De Re Publica</i>
<i>Tusc.</i>	<i>Tusculanae Disputationes</i>

Introduction

I

Conventionalism asserts that there are a variety of notions of justice, but no true one. The fundamental laws of any given society are said to be grounded, not on external considerations of natural right, but human agreements which change from society to society and age to age. Justice is viewed as arbitrary and the best regime a fiction. Political society is an artificial, not natural, means to achieve man's true end—individual pleasure. Thus the crucial problem raised by conventionalism is whether political society exists by convention or nature. This dissertation examines the central claim of conventionalism, namely, whether human beings gather together into political society by convention or nature. I have attempted to seek a *probable* answer by comparing the arguments advanced on behalf of convention and nature by two of their most thoughtful proponents, the Roman Epicurean Lucretius, and the Roman Academic Cicero, respectively. Lucretius has been chosen because his *De Rerum Natura* is the most complete and thoughtful account of classical Epicureanism which in turn proved to be the most successful variant of conventionalism. In addition, Lucretius provides the most extant classical Epicurean exposition on political society.¹ Cicero has been chosen because he is the most thoughtful opponent of Epicureanism; for unlike Plato or Aristotle who lived before Epicurus, Cicero lived

¹ D. P. Fowler, "Lucretius and Politics," *Philosophia Togata: Essays on Philosophy and Roman Society* (Oxford, 1989), p. 129; Arnaldo Momigliano, "Epicureans in Revolt," *Journal of Roman Studies*, 31 (1941), pp. 149-57.

significantly later and considered the threat posed by Epicureanism to be the philosophical crisis of his day.² Further, Cicero and Lucretius were contemporaries. Cicero read Lucretius' *De Rerum Natura*,³ may have edited it,⁴ and, it has been argued, composed his *De Natura Deorum* in reply.⁵

This dissertation is divided into an introduction, three central chapters, and a conclusion. Chapter one analyzes the argument on behalf of convention which depends on all human need being reduced to the corporeal pleasure of individuals living in solitude. Lucretius embraced this view, but not unqualifiedly. Throughout Lucretius' *De Rerum Natura*, a tension may be observed between such corporeal reductionism and a grudging admission that there might be needs, still more important, exclusive to men living in political society. Lucretius' discussion of religion and the nature of political man suggest two such needs, first, the alleviation of a fundamental fear that the eternal is not lovable, nor the lovable eternal, and, second, the belief in providential gods who reward virtue and punish vice in deterring unjust conduct. The reader of Lucretius' *De Rerum Natura* is left with the persistent

² Cicero's relationship to Plato and Aristotle is discussed in the conclusion of the dissertation.

³ Cf. *Ad Quintum Fratrem* 2.9, hereafter cited as *Ad Q. Fr.*

⁴ Almost nothing is known about Lucretius. The assertion that Cicero edited his *De Rerum Natura* was made by St. Jerome in his *Chronicle* under the year 94 B.C. St. Jerome's statement provides our only biographical knowledge: "Titus Lucretius the poet is born. After being driven mad when he drank a love potion, he wrote a number of books in between periods of insanity. Cicero later edited them. He killed himself by his own hand during his 44th year of life." Cf. Lucretius, *On the Nature of Things*, trans. Walter Englert (Newburyport, 2003), pp. xi-xii.

⁵ Cf. Joseph B. Mayor, "On the Design and Execution of the Dialogue," *Cicero, De Natura Deorum Libri Tres, Vol. III* (Cambridge, 2010), pp. x-xiii. Originally published between 1880-85.

suspicion that man is most pleased when he is secure, not simply in bodily well-being, but in the comfort of providence and justice. Chapter two analyzes those needs of man which have nothing to do with his body, and so turns from Lucretius to Cicero. Cicero, too, had highlighted the political importance of providence in his *De Natura Deorum*. He argued that if the activities touching upon religious obligation owed by man for divine supervision are mere façade and pretence, they can contain no true devotion; if they contain no true devotion, then all sense of piety is destroyed. If this were to occur, political society, he maintained, would be thrown into great confusion and the preeminent virtue of justice would disappear. This suggests a link between piety and healthy political society. Chapter three introduces the reason for this link, found in Cicero's *De Legibus*. Cicero's *De Legibus* argues that human beings require law. It demonstrates not only why human beings require law, but how law naturally originates and why it is naturally obeyed. It demonstrates that political society, far from being conventional, is quite natural. Obedience to law, however, especially fundamental law, requires piety. A healthy political society is one in which its citizens show dutiful respect to the source of the higher law in which justice originates. If a citizenry loses its piety, it risks becoming corrupt. Justice constituted solely on the basis of utility is undermined by that same utility. Thus Cicero concludes that while better law may make for better citizens, piety is required if the law is to be obeyed. Lucretius' analysis is therefore twofold unconvincing, first, in considering law and thus political society mere convention, and, second, in equating piety to a physical malady like so much indigestion.

Before turning to a more precise discussion of conventionalism, I consider first the most prevalent contemporary variant of conventionalism, historicism. While historicism is not the focus of this dissertation, it is the form of conventionalism most familiar to modern readers. Therefore I begin with it, returning afterwards to conventionalism proper.

Historicism proposes that if there is any meaning to be gleamed from the diversity of opinions on the just and unjust, it lies in that very diversity. Justice and injustice are seen to be peculiar to the opinions of a particular time, place, people, or individual. There is no knowledge of justice or injustice simply. There is only historical knowledge. But historicism immediately becomes problematic. How can historicism itself be exempt from contingent developments in late nineteenth- and early twentieth-century Europe? How can the historian overcome his own prejudices to discern truth? How can historical knowledge claim to be true knowledge?

One of the clearest expositions of the historicist position is to be found in R. G. Collingwood's *Autobiography*.⁶ It is therefore worthwhile to carefully consider Collingwood's *Autobiography* as a guide to understanding historicism. Collingwood began by observing that you cannot find out what a thinker means by merely studying his written or spoken words; in order to discover what he meant you must also know the questions he had in mind which he was attempting to answer. Each answer given is a highly detailed and particularized proposition to an equally detailed and particularized question. Thus there is a strict correlativity between question and

⁶ R.G. Collingwood, *An Autobiography* (Oxford, 2002).

answer.⁷ Collingwood's method of question and answer emphasizes contingent particularity, not generality: "[T]his principle of correlativity between question and answer disposes of a good deal of clap-trap. People will speak of a savage as 'confronted by the eternal problem of obtaining food'. But what really confronts him is the problem, quite transitory like all things human, of spearing this fish, or digging up this root, or finding blackberries in this wood."⁸ Equipped with this method, Collingwood turns to what a given thinker intended by his answer to a proposition. When a thinker wrote in the distant past, if he was a good writer, he wrote for his contemporaries and, in particular, for those who were already asking the question to which he is offering an answer. Since the thinker assumed the question common knowledge, it is no surprise he seldom explains what the question is he is attempting to answer. Later on, after he has become a "classic" and his contemporaries are long dead, the question is forgotten, especially if the answer given at the time was believed to be the right answer. Thus the original question can only be reconstructed historically.⁹ But, someone might object, let us allow for different answers to philosophical questions; can we not concede that they are different attempts to answer permanent questions? No; this is a vulgar error, replies Collingwood, consequent on a kind of historical myopia which mistakes superficial similarities for eternal problems.¹⁰ Consider Plato's *Republic* and Hobbes' *Leviathan*. Do they represent

⁷ Ibid., pp. 31-2.

⁸ Ibid., pp. 33-3.

⁹ Ibid., p. 39.

¹⁰ Ibid., pp. 60-1.

two different theories of the same thing, namely, “what is a state?” No; because Plato’s “state” is the Greek *polis*, and Hobbes’ state the absolutist state of the seventeenth century.¹¹ Both the question as well as the answer given to “what is a state” changed over time:

[T]he history of political theory is not the history of different answers given to one and the same question, but the history of a problem more or less constantly changing, whose solution was changing with it. The ‘form of the polis’ is not, as Plato seems to have thought, the one and only ideal of human society possible to intelligent men. It is not something eternally laid up in heaven and envisaged, as the goal of their efforts by all good statesmen of whatever age and country. It was the ideal of human society as that ideal was conceived by the Greeks at Plato’s own time. By the time of Hobbes, people changed their minds not only about what was possible in the way of social organization, but about what was desirable. Their ideals were different. And consequently the political philosophers whose business it was to give a reasoned statement of those ideals had a different task before them; one which, if it were to be rightly discharged, must be discharged differently.¹²

We will remember Collingwood’s remark above that writers always write for their contemporaries. Now we are told that even philosophers, whose business it is to transcend the merely conventional, are essentially nothing more than articulate mouthpieces working out answers to the questions of their time and people. Both

¹¹ Ibid., p. 61-2.

¹² Ibid., pp. 62-3. Cf. also R. G. Collingwood, *The Idea of History* (Oxford, 1993), p. 229: “The *Republic* of Plato is an account, not of the unchanging ideal of political life, but of the Greek ideal as Plato received it and re-interpreted it. The *Ethics* of Aristotle describes not an eternal morality but the morality of the Greek gentleman. Hobbes’ *Leviathan* expounds the political ideas of seventeenth-century absolutism in their English form. Kant’s ethical theories express the moral convictions of German pietism; his *Critique of Pure Reason* analyses the conceptions and principles of Newtonian science, in their relation to the philosophical problem of the day. . . . They are expounding the positions reached by the human mind in its historical development down to their own time.”

Plato and Hobbes, says Collingwood, asked different questions and supplied different answers. He does not consider the possibility that Plato's *Republic* and Hobbes' *Leviathan* actually addressed the same problem, specifically, the problem of the best *commonwealth* or *political society*. In order to understand why Collingwood would advocate this position, we must turn to his conception of metaphysics.

Collingwood understands by "metaphysics" an attempt to discover what a given people at a given time believed about the world's general nature. Such beliefs expose the presuppositions of their physics, that is, their inquiries into the workings of the whole. The bedrock of a given people's presuppositions about the whole is called by Collingwood their "absolute presuppositions"—presuppositions from which there can be no escape. When taken with the corresponding absolute presuppositions of other peoples at other times, the historian may follow the historical process by which one set of presuppositions gradually turns into another. It is for this reason that Collingwood and thus historicism can maintain the impossibility of permanent philosophical questions. Philosophers work out answers to questions predetermined by their people's absolute presuppositions; as the historical process rolls along and the absolute presuppositions change, so too do the questions and therefore the answers. There are no permanent problems.¹³ It is also for this reason that, for Collingwood, all philosophical questions resolve themselves into historical questions. If there were a permanent problem P, we could ask what a given thinker thought about P and evaluate the merits of his answer. But problem P, says Collingwood, is

¹³ Collingwood, *An Autobiography*, pp. 65-7. Cf. also R. G. Collingwood, *The Idea of Nature* (Oxford, 1945), pp. 1-3.

never a permanent problem, but in reality one of a number of transitory problems P1, P2, P3, whose individual peculiarities are blurred by the historical nearsightedness of the person who lumps them together under the one name P.¹⁴ “For me, then, there were not two separate sets of questions to be asked, one historical and one philosophical, about a given passage in a given philosophical author. There was one set only, the historical.”¹⁵ Collingwood was never able to offer a satisfactory answer as to whether this conclusion itself was a permanent answer or a merely historical one. If the former, he would have had to concede the possibility of transcending history; if the latter, the impossibility of all knowledge, including historical knowledge. There is no middle ground.

It is very revealing that there is no discussion to be found in Collingwood’s *Autobiography*, *The Idea of History*, or *The Idea of Nature* of conventionalism.¹⁶ Conventionalism similarly recognized the diversity of opinions on the just and unjust; however, unlike historicism, it did not conclude with the contradiction of the relativity of all opinion except historical opinion. Conventionalism recognized nature as a standard above mere human opinion. What was right was said to be what was right by nature, specifically, to seek one’s own individual pleasure. Again, a more precise discussion of conventionalism will be given in the sequel. Here it is helpful to

¹⁴ Collingwood, *An Autobiography*, pp. 68-9.

¹⁵ Ibid., p. 72.

¹⁶ The only hint of whether Collingwood was even aware of the argument from convention is a few references made on the Greek distinction between *episteme* and *doxa*, knowledge and opinion, and *phusis* and *techne*, nature and artifice. Cf. Collingwood, *The Idea of History*, pp. 20, 28.

consider that when turning to classical thought, Collingwood's method of question and answer and his doctrine of absolute presuppositions render him oblivious to this important precursor to historicism, found at the center of all classical political philosophy. In its place Collingwood substitutes a good deal of discussion on "the Greek mind." The Greek mind, states Collingwood, was dominated by two characteristics: humanism and substantialism. Regarding the former, Collingwood maintains that the ancients believed every man capable of reason and therefore able to control his own fate. "Now the idea that every agent is wholly and directly responsible for everything that he does is a naïve idea which takes no account of certain important regions in moral experience," namely, "there is no getting away from the fact that men's characters are formed by their actions and experiences."¹⁷ In other words: man is molded by his mores, among other contingent circumstances. However, what Collingwood failed to consider is that the ancients were only too aware of this fact and addressed it especially in their discussions of civic education. This will be made very clear in the third chapter of this dissertation. Regarding the second attribute yoked to "the Greek mind," substantialism, the "chief defect" of classical thought, Collingwood understands, "a theory of knowledge according to which only what is unchanging is knowable."¹⁸ If all philosophical questions have resolved themselves into historical questions, and if historical knowledge is knowledge only of an ever-changing historical process, it goes without saying that any attempt at knowledge of permanent human characteristics and problems is a

¹⁷ Collingwood, *The Idea of History*, p. 41.

¹⁸ Ibid., p. 42.

fruitless endeavor. But, again, Collingwood failed to consider that for many classical thinkers, philosophy was first and foremost an attempt to replace conventional opinions of the whole with *probable* knowledge of the whole, an approach trumpeted especially by the successors of Plato, the Academic skeptics. And these classical thinkers would have begged the question, if all knowledge derives from absolute presuppositions, how can historical knowledge itself be exempt from being an absolute presupposition?

It is interesting to observe that in his *Autobiography*, Collingwood is unwilling to apply historicist principles to what classical political philosophy considered a permanent problem in civic education, namely, the concern of the individual for his own well-being at the expense of the common good. In his chapter, “The Decay of Realism,” Collingwood laments that the methods and principles of the “realists,” the predecessors of contemporary Anglo-American analytic philosophy, had a destructive affect on the civic education of the young men and women attending Oxford and Cambridge in the early twentieth-century. He accuses the “realists” of destroying political theory, “by denying the conception of the common good, the fundamental idea of all social life, and insisting that all ‘goods’ were private.”¹⁹

The pupils, whether or not they expected a philosophy that should give them...ideals to live for and principles to live by, did not get it; and were told no philosopher (except a bogus philosopher) would even try to give it. The inference which any pupil could draw for himself was that for guidance in the problems of life, since one must not seek it from thinkers or from thinking, from ideals or from principles, one must look to people who were not thinkers (but fools), to processes that were not thinking (but passions), to aims that

¹⁹ Collingwood, *An Autobiography*, p. 49.

were not ideals (but caprices), and to rules that were not principles (but rules of expediency). If the realists had wanted to train up a generation of Englishmen and Englishwomen expressly as the potential dupes of every adventurer in morals and politics, commerce and religion, who should appeal to their emotions and promise them private gains which he neither could procure them nor even meant to procure them, no better way of doing it could have been discovered.²⁰

What Collingwood in a fit of moral indignation hit upon is a permanent problem posed to civic educators. If people are brought up to look only to their own self-interest, being told there is nothing else, they will pursue it at the expense of what they perceive to be a non-existent common good. But as Collingwood himself points out, the common good is necessary for political life. As will be demonstrated, this argument on behalf of individual utility is precisely the challenge posed by conventionalism. But Collingwood and historicism can offer no standard to evaluate it outside of “history” as a guide because “nature” is seen to be nothing more than a series of absolute presuppositions. What possible basis is there for “thinking,” “ideals,” or “principles” when all thinking is, in the final analysis, entirely time-bound and thus also all ideals and principles? Does not historicism effectively render them passions, caprices, and expediencies? In sum, historicism is a modern variant of conventionalism in that it shares the conventionalist insight on the plurality of opinion on the just and unjust; it differs in that while conventionalism can offer nature as a standard, historicism can offer only the history of opinion.

²⁰ Ibid., pp. 48-9.

II

Conventionalism, to repeat, asserts that there are a variety of notions of justice, but no true one. The fundamental laws of any given society are said to be grounded, not on external considerations of natural right, but human agreements which change from society to society and age to age. Justice is viewed as arbitrary and the best regime a fiction. Political society is an artificial, not natural, means to achieve man's true end—individual pleasure. Thus the crucial problem raised by conventionalism is whether political society exists by nature or convention.

This problem was most clearly recognized in classical political philosophy. In the third book of Cicero's *De Re Publica*, the argument on behalf of conventionalism is given to a young Academic skeptic, Lucius Furius Philus. The argument is described as "the defense of wickedness" or the unjust argument.²¹ Philus argues that, first, justice is conventional rather than natural, and, second, those who practice justice are fools. If justice were natural rather than conventional it would be manifestly known to all men, at all times, everywhere, in the same way, just as hot and cold, bitter and sweet. But in point of fact notions of justice change.²² Who does not see, insists Philus, that in Egypt, the oldest and most uncorrupted of races, a bull is considered a god and animals of all sorts have likewise been so consecrated? Or how in Greece the gods have been sanctified as human statues in temples? Or how

²¹ Cicero, *On the Commonwealth and On the Laws*, edited by James E. G. Zetzel (Cambridge, 1999), 3.8. Hereafter cited as *Rep.* after the Latin title, *De Re Publica*.

²² *Rep.* 3.13.

the Taurians, Gauls, and Carthaginians have thought it quite pious to sacrifice human beings to the immortal gods? Do not we ourselves, supposedly the most just of peoples, prohibit the tribes on the other side of the Alps from growing olives and vines, so that our own olive groves and vineyards may be more valuable? In so doing, we certainly act prudently, but hardly justly. The former is wise but wicked, the latter fair but foolish.²³

If I wished to list the types of law, institutions, customs, and behaviors not only in the varieties among the races of the world but in one city, even in this one,²⁴ I would show that they were changed a thousand times, so that our friend Manilius here, the interpreter of the law, would recognize one set of laws now concerning legacies and inheritances of women, but when he was a young man used to recognize something quite different before the passage of the Voconian Law.²⁵ And that law itself, which was passed in the interest of men's utility, is highly injurious to women.²⁶

Justice, argues Philus, is peculiar from society to society, and even in the same society from age to age. It is the product of human society. Moreover, justice is not desired for its own sake, but always in the interest or utility of some one or few. There is no common good. Laws are observed because of punishments, not justice.²⁷

²³ *Rep.* 3.14-16.

²⁴ I.e., Rome.

²⁵ The Voconian Law passed in 169 BC prohibited wealthy men from naming women as heirs. Women could, however, be left a certain percentage of the estate. Cf. Zetzel, *On the Commonwealth and On the Laws*, p. 65 n.15.

²⁶ *Rep.* 3.17.

²⁷ *Rep.* 3.18. Cf. 3.20.

And yet, someone might object, it is all well and good to declare justice the interest or utility of a certain few, long after civil society has been established, but for what reason did men first gather together? Why for the very same reason, replies Philus. Weakness caused individuals living in solitude to seek their own self-preservation in the first communities; weakness makes political society useful; weakness is the mother of justice.²⁸

Philus' second argument is a direct consequence of his first. He reasons that because justice is conventional rather than natural, it is wise to cause injury to others under the guise of justice. It is wise to seem just, but practice injustice. All successful imperial powers have acted in this manner. Wisdom counsels us to increase our resources, enlarge our wealth, extend our boundaries, rule over as many peoples as possible, in short, "to enjoy pleasures, to be powerful, to rule, to be a lord."²⁹ Justice instructs us to spare everyone, look after the interests of the human race, render to each his own, and respect the possessions of another. Who does not see which to choose? "What will be the result if you obey wisdom? Wealth, power, resources, offices, commands, rule whether by individuals or nations."³⁰ Who does not see that Rome, growing from a tiny nation to master of the entire world, acted out of wisdom rather than justice? If we should really desire to be just, we would have to return the property which we took from others, and go back to living in huts,

²⁸ *Rep.* 3.23.

²⁹ *Rep.* 3.24.

³⁰ *Ibid.*

languishing in want and wretchedness. What nation would do this?³¹ And even if we should act justly, in so weakening our own power, we risk enslavement by another nation, acting out of the very same wisdom we abandoned. What nation would risk this? No nation may reasonably be expected to follow a course which leads to their impoverishment or enslavement.³² The individual or nation must appear just, but practice injustice. All the benefits stemming from the appearance of justice will be had while all the misfortunes from too strictly practicing it will be avoided. To appear just but practice injustice—that is human nature. Man always acts out of considerations of utility.

The alternative to conventionalism may also be found in Cicero's *De Re Publica*. There his character Scipio states that a commonwealth is, "the concern of a people," but that a people is not simply any group of men assembled in any way, but those who share a sense of justice and the common good. Without these there can be no such union. Nor does the commonwealth come about because of human weakness, but owing to a social human nature. Man by nature shuns solitude and seeks society. "The first cause of [man's] assembly is not so much weakness as a kind of natural herding together of men: this species is not prone to wandering alone but it is so created that not even in an abundance of everything <do men wish to live a solitary existence>."³³ Thus, says Scipio, the commonwealth is not conventional, but

³¹ Cf. Lactantius, *Divinarum Institutionum* 5.16.4.

³² *Rep.* 3.27-8. Cf. James E. Holton, "Marcus Tullius Cicero," *History of Political Philosophy*, edited by Leo Strauss and Joseph Cropsey (Chicago, 1987), p. 169.

³³ *Rep.* 1.39. The last part of the sentence is lost along with one leaf in the manuscript. Cf. *De Finibus* 2.59 as well as Lac., *Inst.* 6.10.18 where Lactantius

natural. This dissertation as a whole attempts to demonstrate that the argument of Scipio, in which political society is said to exist by nature, is much more reasonable than that of Philus, in which it is said to exist only by convention.

III

It remains in this introduction to demonstrate, first, why conventionalism warrants the attention of the reader, next, how prior scholars have generally read the authors in question, and, finally, offer a few comments on text editions. To take up the first question, if justice is truly arbitrary and the best regime truly a fiction, then it is then quite reasonable to constitute a society which aims at man's true end, pleasure, while securing it by means of his true bearing, passion. The consequences of this argument would be most fully realized and developed in the seventeenth century by Thomas Hobbes whose *Leviathan* proved a blueprint for much of modernity. Hobbes would reduce the entire human condition to matter in motion, specifically, the motions of appetite and aversion.³⁴ The only absolute motion, the motion according to nature, was said to be the aversion to self-annihilation, death.³⁵ All other considerations were conventional:

summarizes this section of *De Republica*: "Others have thought these ideas as insane as they in fact are and have said that it was not being mauled by wild animals that brought men together, but human nature itself, and that they herded together because the nature of humans shuns solitude and seeks community and society."

³⁴ Thomas Hobbes, *Leviathan*, edited by Richard Tuck (Oxford, 2010), chap. 6.

³⁵ Hobbes, *Leviathan* chap. 14.

But whatsoever is the object of any mans Appetite or Desire; that is it, which he for his part calleth *Good*: And the object of his Hate, and Aversion, *Evill*; And of his Contempt, *Vile* and *Inconsiderable*. For these words of *Good*, *Evill*, and *Contemptible*, are ever used with relation to the person that useth them: There being nothing simply and absolute so; nor any common Rule of *Good* and *Evill*, to be taken from the nature of the objects themselves, but from the Person of the man (where there is no *Common-wealth*;) or, (in a *Common-wealth*;) from the Person that representeth it; or from an Arbitrator or Judge, whom men disagreeing shall by consent set up, and make his sentence the Rule thereof.³⁶

Men, said Hobbes, like Philus before him, gather together out of weakness.

The original position of man was one of solitude, continual fear, and insecurity; man sought political society to escape such wretched circumstances. Since the original position was one of continual war in which everyone could defend themselves by any means necessary, there is no natural justice. In the war of all against all, nothing can be unjust. Justice and injustice arise only after the establishment of a particular commonwealth. Where there is no common power, there is no law; where there is no law, there is no justice. In short, justice and injustice cannot be reduced to properties of matter which are the same for all men, everywhere, at all times; rather, they are the conventions of men living in artificial society, not natural solitude.³⁷ What is to be

³⁶ Hobbes, *Leviathan* chap. 6.

³⁷ Hobbes, *Leviathan* chap. 13: "To this warre of every man against every man, this also is consequent; that nothing can be Unjust. The notions of Right and Wrong, Justice and Injustice have there no place. Where there is no common Power, there is no Law: where no Law, no Injustice. Force, and Fraud, are in warre the two Cardinal vertues. Justice, and Injustice are none of the Faculties neither of the Body, nor Mind. If they were, they might be in a man that were alone in the world, as well as his Senses, and Passions. They are Qualities, that relate to men in Society, not in Solitude."

done? Is it not reasonable to constitute a civil society founded on man's desire for security and hope for commodious living, that is, pleasure, and police it by means of that very desire for security and commodious living, namely, passion?³⁸ Utility must be made to counteract utility—or as Madison said: “Ambition must be made to counteract ambition.”³⁹ To be sure, the pleasures which individuals engage in must be of the most trivial sort, material well-being and harmless attachments, and their pursuits must not be allowed to weaken the commonwealth by seeking a good higher than that of the peaceable society.⁴⁰ But is this not reasonable in the face of the alternative?⁴¹ One need only mention in passing that John Locke would sweeten Hobbes' modern political hedonism by emphasizing the hedonism portion more than the political in declaring commodious living to be as essential to man as dear life.⁴²

³⁸ Cf. Hobbes, *Leviathan* chap. 13: “The Passions that encline men to Peace, are Feare of Death; Desire of such things as are necessary to commodious living; and a Hope by their Industry to obtain them. And Reason suggesteth convenient Articles of Peace, upon which men may be drawn to agreement.”

³⁹ James Madison, *Federalist Paper 51*, *American State Papers* (Chicago, 1993).

⁴⁰ Cf. esp. Hobbes, *Leviathan* chaps. 22 and 29.

⁴¹ Cf. Hobbes, *Leviathan* chap. 13: “Whatsoever therefore is consequent to a time of Warre, where every man is Enemy to every man; the same is consequent to the time, wherein men live without other security, than what their own strength, and their own invention shall furnish them withall. In such condition, there is no place for Industry; because the fruit thereof is uncertain: and consequently no Culture of the Earth; no Navigation, nor use of the commodities that may be imported by Sea; no commodious Building; no Instruments of moving, and removing such things as require much force; no Knowledge of the face of the Earth; no account of Time; no Arts; no Letters; no Society; and which is worst of all, continuall feare, and danger of violent death; And the life of man, solitary, poore, nasty, brutish, and short.”

⁴² Cf. John Locke, *The Second Treatise of Government*, *Two Treatises of Government*, edited by Peter Laslett (Cambridge, 2008), esp. chap. 5.

Would not the most pressing questions thereafter concern how to fairly distribute the spoils in this scramble for individual pleasure? Would not the name for such a distribution *mutantis mutandis* be called “justice”? Would not the new reorientation of political society become utility?

IV

It would be to put the cart before the horse to discuss how prior scholars have read Lucretius and Cicero without having first introduced Lucretius and Cicero; however, it is helpful to address here certain common misconceptions held by scholars about both authors which directly relate to and distinguish this dissertation. A common misunderstanding made with respect to Lucretius is what sort of audience he intended to reach with his lengthy poem. It is held because of a second and ultimately more important misunderstanding, how to interpret Lucretius’ teaching of religion.

The various misconceptions of what sort of audience Lucretius wrote for all share one common trait: they portray Lucretius in a democratic light. Examples include but are not limited to presenting Lucretius as a sage engaging in an enlightening exchange between autonomous equals, a position taken by Lydia Lenaghan and C. Joachim Classen;⁴³ an Enlightenment liberator of mankind from

⁴³ Cf. Lydia Lenaghan, “Lucretius 1.921-50,” *Transactions and Proceedings of the American Philological Association*, 98 (1967), p. 27 and C. Joachim Classen, “Poetry and Rhetoric in Lucretius,” *Transactions and Proceedings of the American Philological Association*, 99 (1968), pp. 77-118.

superstition, advanced by Herbert M. Howe;⁴⁴ an Enlightenment rationalist wishing to test religious opinion in a marketplace of ideas, asserted by Lawrence A. Springer;⁴⁵ or a proto-Carl Sagan redirecting man's religious piety towards the raw, "workings of atoms, void, and swerve," contended by Kirk Summers.⁴⁶ Against these arguments that Lucretius intended to reach a broad audience are a second group scholars who likewise all share one common trait: they present Lucretius as writing for a comparatively few. This thesis can either be directly asserted, owing to a suspicion that Lucretius' teaching on religion cannot be embraced by many, as was first argued by Leo Strauss and afterwards by those following in his footsteps, such as James H. Nichols and John Colman;⁴⁷ or it can be indirectly observed in how Lucretius rhetorically organized his poem, presenting his unpleasant teachings only impartially or gradually over time in order to assuage the impact on commonly held religious sentiments, as noted by Edward M. Bradley and D. P. Fowler.⁴⁸

⁴⁴ Herbert M. Howe, "The Religio of Lucretius," *The Classical Journal*, 53 (1957), pp. 329-32.

⁴⁵ Lawrence A. Springer, "The Role of Religio, Solvo and Ratio in Lucretius," *The Classical World*, 71 (1971), pp. 55-61.

⁴⁶ Kirk Summers, "Lucretius and the Epicurean Tradition of Piety," *Classical Philology*, 90 (1995), p. 57.

⁴⁷ Leo Strauss, "Notes on Lucretius," *Liberalism, Ancient and Modern* (Chicago, 1968), pp. 83-5; James Nichols, *Epicurean Political Philosophy: The De rerum natura of Lucretius*, (London, 1976), pp. 44, 159-60; John Colman, "Lucretius on Religion," *Perspectives on Political Science*, 38 (2009), p. 229.

⁴⁸ Cf. Edward M. Bradley, "Lucretius and the Irrational," *The Classical Journal*, 67 (1972), p. 319; Fowler, "Lucretius and Politics," p. 148. Cf. also Colman, "Lucretius on Religion," p. 229; Nichols, *Epicurean Political Philosophy*, pp. 32-41; Leo Strauss, *Natural Right and History*, (Chicago, 1953), p. 113, n. 45; "Notes on Lucretius," pp. 83-5.

Lucretius states at the beginning of his poem that he wishes to rid men of religious fear. The Latin word for religion is *religio*. Much of the scholarship on Lucretius to date has not approached him as a political philosopher and so did not approach *religio* in *De Rerum Natura* as a political concept. Two good examples of the traditional understanding of *religio* may be found in Howe and Springer. Howe attempts to locate Lucretius' emphasis on religion in his personality and historical situation.⁴⁹ He turns to other authors, not always contemporary, in order to determine how *religio* was used generally and thus by Lucretius particularly. This historical method allows him to make a distinction, on the one hand, between *religio*, or an orderly scheme of beliefs and practices, either codified in the *ius divinum* or by the application of rational explanation, and, on the other, *superstitio*, or irrational fear of the unknown. Having made this distinction, Howe concludes that Lucretius does not attack codified or rational religion, only irrational superstition. Lucretius thus assumes the air of a rational deist wishing to rid men of irrational superstition. The most immediate problem with this claim is that Lucretius himself never once uses the word *superstitio*, a problem which Howe unsuccessfully attempts to dispel.⁵⁰ By contrast, Springer endeavors to shed light on Lucretius' fourteen usages of the word *religio* by interpreting them in light of his use of the words *solvo* and *ratio*, release and reason, respectively. However, this philological method results in Springer

⁴⁹ Cf. Howe, "Religio of Lucretius," p. 329: "This obsession [with religion], which marks Lucretius off from his Epicurean forerunners, Greek or Roman, is not inherent in his philosophy; it must derive from the personality of the poet or from his surroundings."

⁵⁰ Ibid., pp. 329-30.

anachronistically turning Lucretius into someone resembling John Stuart Mills.⁵¹ Of the two, the greater error is Howe's because of the greater problems involved in trying to locate a thinker's teachings solely within his historicity. How Lucretius understood religion and how that understanding in turn determined his intended audience, his political teaching, and, ultimately, the tension within his poem and thus within conventionalism, is the subject of the first chapter.⁵²

While Lucretius has found a relatively sympathetic and interested modern audience,⁵³ Cicero has found neither. The reason is largely a nineteenth-century one and may be summed up in a quote from Joseph B. Mayor from his influential three-volume edition of *De Natura Deorum* (1880-85):

Cicero is a man of extraordinary ability cultivated to the highest pitch by an excellent education, with the widest tastes and sympathies, and a mind open, as that of few Romans has been, to all impressions of beauty and sublimity. But, considered as a philosopher, he has the misfortune to be at the same time a lawyer, an orator and a man of the world: in his philosophical treatises we are too often conscious of the author holding a brief, appealing to the populace, writing against time and amidst countless distractions, far removed from the whole-hearted concentration of a Plato or a Lucretius.⁵⁴

⁵¹ Cf. Springer, "The Role of Religio," p. 61: "I suggest that *religio* in Lucretius does not pertain solely to religion in the narrow sense but rather in the broader sense to any ideology that constrains man in his quest for truth. All Lucretius is pleading for is that man have an open mind, unhampered by any religious, social, or political ideology. Lucretius is saying something that may have been too advanced for his day, that any idea that cannot stand the test of reason, no matter how time-honored, must be discarded."

⁵² Other scholarship not mentioned here on Lucretius and these themes is addressed over the course of chapter one.

⁵³ Cf. most recently e.g., Stephen Greenblatt, *The Swerve: How the World Became Modern* (New York, 2011).

⁵⁴ Mayor, "On the Design and Execution of the Dialogue," p. xiv.

This misconception conceives of Cicero as a humane man, but a mediocre philosopher; his works are interesting for what they may tell us about contemporary Roman values, but in themselves are derivative and eclectic; the most important method for understanding them is source-criticism (*Quellenforschung*),⁵⁵ but on their own do not merit much attention as original philosophical works. In short, Cicero was a statesman first, an amateur philosopher second. This misconception has continued to hold sway to the present day, despite strong evidence to the contrary.⁵⁶ Walter Nicgorski made great advances against the claim that Cicero was a compiler and not a thinker by pointing to the fact that this nineteenth century prejudice is supported by a *single* ambiguous reference in a letter written by Cicero;⁵⁷ countless other references in which Cicero took seriously his engagement with philosophy disprove it.⁵⁸ He further pointed out that to employ the ideas of others by no means makes one's own work derivative.⁵⁹ Since Nicgorski's article, others have followed suit in arguing against the *Quellenforschung* approach to understanding Cicero:

⁵⁵ Cf. e.g., Ibid., "Sources of Book I," Vol. 1, pp. xlii-liv; "Sources of Book II," Vol. 2, pp. xvi-xxiii; "On the Sources of Book III," Vol. 3, pp. lx-lxx.

⁵⁶ Cf. e.g. Malcolm Schofield, "Cicero For and Against Divination," *Journal of Roman Studies*, 76 (1986), pp. 47-65.

⁵⁷ *Ad Atticus* 12.52.3, hereafter cited as *Ad Att.*

⁵⁸ Walter Nicgorski, "Cicero and the Rebirth of Political Philosophy," *Political Science Reviewer*, 8 (1978), p. 73.

⁵⁹ Ibid., p. 75: "If Cicero sorted through and chose among the teachings of the philosophical schools, what standards or principles of choice has he employed? If Cicero developed the thought of his acknowledged greatest teachers, Plato and Aristotle, what were the additions and subtractions and the principles governing

It is, of course, legitimate to ask what Cicero's sources were. But the old approach was characterized, broadly speaking, not just by an extreme confidence in what today should count as very speculative methods, but also by the belief in the superiority of virtually all Greek over Roman authors. Scholars often simply assumed, even if there was no evidence to suggest it, that Cicero slavishly copied Greek sources, and the reconstruction of those sources was often their main goal.⁶⁰

Variations on the theme of Cicero as amateur philosopher include but are not limited to seeing Cicero as one whose greatness resides, not in originality, but in giving to the Latin tongue a philosophical vocabulary, and to the Roman people some breadth of perspective, as argued by Elizabeth Rawson,⁶¹ or as a thoughtful man who, despite Academic overtures of skepticism, ultimately sided with eclectic Stoicism, as advanced by John Glucker and Leonardo Taran,⁶² or as one who, despite acknowledging evidence to the contrary, simply chose à la Pascal to embrace faith in

them? Similarly, if Cicero bends Stoicism back in the direction of Plato, what governed this degree of the curvature? If Cicero fused Greek and Roman things, what has determined the nature of the synthesis?"

⁶⁰ James M. May and Jacob Wisse, *Cicero: On the Ideal Orator* (New York, 2001), p. 38.

⁶¹ Elizabeth Rawson, *Cicero: A Portrait* (Plymouth, 1975), p. 3, 209.

⁶² John Glucker, "Cicero's Philosophical Affiliations," *The Question of "Eclecticism": Studies in Later Greek Philosophy*, edited by J. M. Dillon and A. A. Long (Berkeley and Los Angeles, 1988), pp. 34-69; Glucker, "Cicero's Philosophical Affiliations Again," *Liverpool Classical Monthly*, 17 (1992), pp. 134-38; Leonardo Taran, "Cicero's Attitude Towards Stoicism and Skepticism in the *De natura deorum*," *Florilegium Columbianum: Essays in Honor of Paul Oskar Kristeller* (New York, 1987), pp. 1-22.

revelation, as claimed by Joseph G. DeFilipo.⁶³ And still others simply admit to being unable to decide on Cicero's motives and philosophical affiliations, as did Arthur Stanley Pease.⁶⁴

Opposite these arguments are a second group of scholars who contend that Cicero was a proponent of the philosophic life generally and sympathized with Academic skepticism particularly, such as James E. Holtan, John Valdimir Price, and Thomas G. West.⁶⁵ They note that Cicero set for himself the principle task of introducing, not a given philosophic school, but philosophy itself into Rome. This was no easy task. Philosophy or the speculative life is regarded with suspicion and dislike by the majority of men, to say nothing of the practical Romans. Compounding this obstacle was the fact that philosophy was viewed by the Romans as being foreign, Greek. Thus Holtan comments: "The necessity for Cicero to tread lightly on Roman sensibilities and to supply a convincing justification for the existence of philosophy in Rome cannot be ignored if one hopes to appreciate the degree of circumspection with which he felt compelled to approach this task."⁶⁶ Throughout his writings Cicero aligns himself with the Academic skeptics, a school whose origins

⁶³ Joseph D. DeFilipo, "Cicero vs. Cotta in De natura deorum," *Ancient Philosophy*, 20 (2000), pp. 178-82.

⁶⁴ Arthur Stanley Pease, "The Conclusion of Cicero's De Natura Deorum," *Transactions and Proceedings of the American Philological Association*, 44 (1913), pp. 25-37.

⁶⁵ Cf. Holton, "Marcus Tullius Cicero," pp. 156-57; John Valdimir Price, "Sceptics in Cicero and Hume," *Journal of the History of Ideas*, 25 (1964), p. 97-106; Thomas G. West, "Cicero's Teaching on Natural Law," *St. John's Review*, 32 (1981), p. 78.

⁶⁶ Holton, "Marcus Tullius Cicero," p. 156.

lay in Plato. Absolute knowledge is considered unobtainable; what can be known is what is more or less probable. Such skepticism may be theoretically tenable but politically disastrous when taken to its logical extreme and applied to the customary ways of any given political society.⁶⁷ If skepticism or philosophy is fundamentally at odds with political society, the philosopher must begin with the needs of political society—begin from the perspective of the citizen.⁶⁸ And it is from this perspective that we too may better understand Cicero's use of the dialogue form, as well as his eclectic Stoicism, as argued by Mary Beard, Philip Levine, Arnaldo Momigliano, Walter Nicgorski, and Thomas Pangle.⁶⁹ Cicero's philosophical affiliations, his

⁶⁷ Ibid.: "The thought, for example, that the commonly accepted standard of what is just and unjust lacks, and must always, lack, a fully rational or defensible basis may not unduly disturb the theoretician. It may, however, if clearly impressed upon the mind of the populace, so shake popular confidence in the validity of such a standard that faithful adherence to it, or to any standard resting on such a tenuous and fundamentally arbitrary base, appears foolish. Such an understanding may lead to a widespread questioning of the truth even of those principles which are perhaps essential to the existence of the political order, e.g., that the common good should be preferred by the citizens to their private good."

⁶⁸ Ibid.: "The philosopher, if this is true, must be guided by some understanding of the needs of the city and of the practical consequences of his teachings. He must not risk the chaos that might follow a systematic and ruthless public examination of the principles underlying and guiding a particular order, even an order which strikes him as radically defective, without having given some thought to the alternatives. A defective government, a government which falls far short of the best, may be better than no government at all. The philosopher must begin, then, with an understanding of what is possible as well as what is desirable, and direct his efforts, in turn, to the improvement of the health of a given political order, rather than to its destruction."

⁶⁹ Mary Beard, "Cicero and Divination: The Formation of a Latin Discourse," *The Journal of Roman Studies*, 76 (1986), pp. 40-5; Philip Levine, "The Original Design and the Publication of the *De Natura Deorum*," *Harvard Studies in Classical Philology*, 62 (1957), pp. 7-36; Levine, "Cicero and the Literary Dialogue," *The Classical Journal*, 53 (1958), pp. 146-51; Arnaldo Momigliano, "The Theological Efforts of the Roman Upper Classes in the First Century BC," *Classical Philology*, 79 (1984), pp. 199-211; Walter Nicgorski, "Cicero's Paradoxes and His Idea of Unity,"

means of introducing philosophy into Rome, and above all his adherence to the perspective of the citizen—and what this may illustrate about the deficiencies of conventionalism—is the subject of the second and third chapters.⁷⁰

V

Interested readers wishing to directly consult the works of concern in this dissertation may want to consider a few remarks on text editions. With respect to Lucretius' *De Rerum Natura*, the best English edition available is that of Walter Englert.⁷¹ It is attentive to Lucretius' word choice and verse, contains a useful introduction, outline to the poem, and footnotes. The bibliography, however, is a bit incomplete with such authors as Leo Strauss and James Nichols noticeably absent. The standard Latin edition is still that of Cyril Bailey.⁷² However, like all editions in the Oxford Classical Texts series, it contains only the Latin text with critical annotations at the bottom of each page. Those in need of an introduction to the often difficult syntax, grammar, and stylistics of Lucretius should begin with P. Michael Brown's excellent

Political Theory, 12 (1984), pp. 559-60; Thomas L. Pangle, "Socratic Cosmopolitanism: Cicero's Critique and Transformation of the Stoic Ideal," *Canadian Journal of Political Science*, 31 (1998), pp. 235-62. Cf. also Holtan, "Marcus Tullius Cicero", pp. 156-8; West, "Cicero's Teaching on Natural Law", p. 75.

⁷⁰ Other scholarship not mentioned here on Cicero and these themes will be addressed over the course of chapters two and three.

⁷¹ Lucretius, *On the Nature of Things*, trans. Walter Englert (Newburyport, 2003).

⁷² Lucretius, *De Rerum Natura*, edited by Cyril Bailey (Oxford: 1974).

edition of the first book of *De Rerum Natura*.⁷³ For a comprehensive guide to the stylistics or historical context of the entire poem, the reader should consult William Ellery Leonard and Stanley Barney Smith's lengthy and erudite edition.⁷⁴ A helpful general introduction is provided by Leonard, and an equally useful introduction to the commentary by Smith. The former contains information on the man, the poet, and the times; the latter, the text, and Lucretius' diction and style. The running commentary throughout the six books is extensive, and the book as a whole an excellent resource. The only thing missing is sufficient attention to Lucretius as a political philosopher, but no edition of *De Rerum Natura* that I know of does this.

With respect to Cicero's *De Natura Deorum*, the best English edition is that of P. G. Walsh.⁷⁵ It is attentive to Cicero's word choice, contains a summary of the text at the front of the book, and often very helpful explanatory notes at the back. The introduction is useful, the bibliography incomplete. Many respected scholars who have written on *De Natura Deorum* or Cicero generally are absent such as Philip Levine, Arnaldo Momigliano, and, especially, Walter Nicgorski. It is understood that such a bibliography is select; however, like Englert above, Walsh's choices do not seem to cover all the perspectives. It was only in the early nineteen-nineties that, with the exception of *De Oratore*, *Brutus*, and *Orator*, the Oxford Classical Texts series began publishing the Latin texts of Cicero's philosophical works. To date they

⁷³ Lucretius, *De Rerum Natura I*, edited by P. Michael Brown (London, 1984).

⁷⁴ Lucretius, *De Rerum Natura*, edited by William Ellery Leonard and Stanley Barney Smith (Madison, 1942).

⁷⁵ Cicero, *On the Nature of the Gods*, trans. P. G. Walsh (Oxford, 1998).

have yet to release an edition of *De Natura Deorum*. Thus the most easily accessible and readily used Latin edition by English speakers is that of H. Rackham, published in the Loeb Classical Library series.⁷⁶ Those in need of help with grammar and syntax should begin with Richard McKirahin's edition of the first book of *De Natura Deorum*.⁷⁷ More recently, Andrew R. Dyck has also published a commentary with text on the first book of *De Natura Deorum* in the Cambridge Greek and Latin Classics series.⁷⁸ Its main strength lies in its very helpful notes on philosophical issues and stylistics; its introduction is much too brief and pays too much attention to the *Quellenforschung* approach to understanding Cicero and *De Natura Deorum*. Those wishing for more comprehensive help with stylistics and historical context may wish to consult A. E. Pease's monumental two-volume edition,⁷⁹ or Joseph B. Mayor's three-volume edition, recently re-released in the Cambridge Library Collection.⁸⁰ Pease's edition is still considered the standard commentary on the text. Mayor's edition suffers from the defects listed above, in particular, reading Cicero as an amateur philosopher and the *De Natura Deorum* as little more than a patchwork of Greek sources; nevertheless, it still offers extensive and useful notes on the text at the end of each volume.

⁷⁶ Cicero, *De Natura Deorum, Academica*, trans. H. Rackham (Ann Arbor, 1933).

⁷⁷ Cicero, *De Natura Deorum I*, edited by Richard McKirahan (Indianapolis, 1997).

⁷⁸ Cicero, *De Natura Deorum Book I*, edited by Andrew R. Dyck (Cambridge, 2003).

⁷⁹ Cicero, *De Natura Deorum*, 2 Vol., edited by A. E. Pease (Cambridge, 1955-58).

⁸⁰ Cicero, *De Natura Deorum Libri Tres*, 3 Vol., edited by Joseph B. Mayor and J. H. Swainson (Cambridge, 2010).

With respect to Cicero's *De Legibus*, the best English edition is that of James E. G. Zetzel.⁸¹ It, too, is largely attentive to Cicero's word choice and contains a fairly helpful introduction, synopsis, and bibliography. The standard Latin edition is the recently published Oxford Classical Texts volume containing *De Re Publica*, *De Legibus*, *Cato Maior De Senectute*, and *Laelius De Amicitia*, edited by J. G. F. Powell.⁸² Again, as with all books in the Oxford Classical Texts series, the reader is presented with only the text and critical annotations. Those wishing for help with grammar and syntax would do well to refer to Niall Rudd and Thomas Wiedemann's helpful, if difficult to find, edition of the first book of *De Legibus*.⁸³ Finally, for those wishing for more comprehensive help with matters of historical context and intertextual references, as well as wanting to consult various indexes on all manner of subjects, Andrew R. Dyck's lengthy commentary is an excellent resource.⁸⁴

⁸¹ Cicero, *On the Commonwealth and On the Laws*, trans. and edited by James E. G. Zetzel (Cambridge, 1999).

⁸² Cicero, *De Re Publica*, *De Legibus*, *Cato Maior de Senectute*, *Laelius de Amicitia*, edited by J. G. F. Powell (Oxford, 2006).

⁸³ Cicero, *De Legibus I*, edited by Niall Rudd and Thomas Wiedemann (Bristol, 1987).

⁸⁴ Andrew R. Dyck, *A Commentary on Cicero's De Legibus* (Ann Arbor, 2004).

Chapter One: The Walls of the World

I

The most developed form of classical conventionalism is Epicureanism and the greatest and most comprehensive account of Epicureanism is to be found in the Roman Lucretius' epic poem, *De Rerum Natura* or *On the Nature of Things*. Divided into six books, the first book of *De Rerum Natura* introduces subjects found throughout the entire poem, specifically, Epicurean principles of atomism and the infinity of the universe, matter, and space. Book two continues and develops this atomic theory. Book three discusses the structure and morality of the mind and soul, as well as the needless fear of death. Book four treats of various physiological and psychology issues, most notably, love. Book six concludes the poem with a discussion of atmospheric and terrestrial phenomena.⁸⁵ But it is the fifth book which is focused on here because it is in the fifth book that Lucretius discusses the concurrent origins of religion and political society.⁸⁶ In understanding what Lucretius

⁸⁵ The subdivisions within this general structure are extensive and will be discussed as appropriate over the course of the chapter. Lucretius' more subtle structural arrangement is discussed in the third section.

⁸⁶ Cf. Nichols, *Epicurean Political Philosophy*, p. 18: "The most extensive discussion of religion by Lucretius occurs in the latter part of Book V and is placed immediately after he describes the coming into being of political society proper. Religion is treated at greater length than any other single development (V, 1161-1240). The theological question is central throughout the entire poem. Lucretius does not merely attack religion; he gradually sets forth a profound analysis of the roots of religion in the human soul and how they put forth their growth as men interact (in ways that change with time) with the surrounding world."

teaches about the origin of religion and how it relates to the development of political society, we may draw nearer to the conditions Lucretius and thus Epicureanism held necessary for happiness. The fifth book as a whole attempts to disclose the origin of our world. The latter half specifically addresses the development of man.⁸⁷ It is the longest and most complete Epicurean account of the subject to be found,⁸⁸ and may be divided into three principal sections: primitive men, pre-political society, and political society.⁸⁹ As the fifth book contains Lucretius' most extensive discussion of man, I begin with it, returning afterwards to earlier books.

The single most defining characteristic in Lucretius' account of primitive men and pre-political society is man's ignorance of eternity. Primitive men knew nothing of fire or the arts, custom or law. Their ignorance of custom or law, convention, is particularly striking. The reason is that primitive men knew nothing of familial association; men and women established no lasting unions.⁹⁰ Each lived by himself for himself.⁹¹ Nor did primitive men fear the gods as they were yet to suspect an end to their visible world:

⁸⁷ Lucretius, *On the Nature of Things*, trans. Walter Englert (Newburyport, 2003), 5.925-1457. Hereafter cited as *DRN* after the Latin title, *De Rerum Natura*.

⁸⁸ Fowler, "Lucretius and Politics," p. 129; Momigliano, "Epicureans in Revolt," pp. 149-57.

⁸⁹ *DRN* 5.925-1010, 5.1011-1104 and 5.1105-1457 resp. Cf. David R. Blickman, "Lucretius, Epicurus, and Prehistory," *Harvard Studies in Classical Philology*, 92 (1989), p. 157; Nichols, *Epicurean Political Philosophy*, pp. 122-23.

⁹⁰ *DRN* 5.958-59.

⁹¹ *DRN* 5.960-65.

Nor with great wailing did they wander about in fear
through the fields in the dark of night seeking daylight and the sun,
but they waited expectantly, silent and buried deep in sleep,
until the sun with rosy torch would infuse the sky with light.
For since from their earliest childhood they were always accustomed to see
darkness and light come about at alternate times,
it was impossible that wonder should ever be able to arise,
or despair that everlasting darkness might hold the earth
and the sun's light be taken away for all time.⁹²

Venus alone, that is, the pleasure of the moment, was worshipped. Wild
beasts were feared as was death. However, death was feared not out of any concern
for eternity, only pain.⁹³ Lucretius' primitive men are very much like Nietzsche's
ahistorical animal, tethered to the moment, knowing nothing of past or future.⁹⁴
Being so ignorant, so was man happy.⁹⁵

Pre-political society, man's first society, was brought about by huts, pelts, fire
and, above all, the emergence of lasting unions between men and women, the family.
It is in the family and that collection of the first families, united by contract for
mutual aid, that we find part of the origin of convention. Now Venus, "lessened
[man's] strength, and children by their winning ways easily broke down the harsh
character of their parents."⁹⁶ This is to say: Venus, which had hitherto served the

⁹² *DRN* 5.973-81.

⁹³ *DRN* 5.982-98.

⁹⁴ Cf. Friedrich Nietzsche, "On the Utility and Liability of History for Life,"
Unfashionable Observations, trans. Richard T. Gray (Stanford, 1995), p. 87.

⁹⁵ Cf. Nichols, *Epicurean Political Philosophy*, pp. 125-26.

⁹⁶ *DRN* 5.1017-18.

pleasures of individuals living in the moment, now served a very new love, the love of one's own. Such a love has the seeds of concerns beyond those of the simple present, but the past (legitimacy) and future (inheritance). Man became invested in his own family and, by extension, the union of families which formed his pre-political society. Such a society would have been impossible if not for the other part of the origin of convention, the invention of language.⁹⁷ Language was invented not by any man or god, but came about by nature, much as other beasts give off noises to communicate feelings. Man of pre-political society still feared death in the same manner as did primitive man. He still did not question the eternity of his visible world and so did not doubt his own or his society's permanence.⁹⁸ Fear may have been a decisive motive for uniting families, but it was fear for the safety of one's own newly formed family.⁹⁹ This establishment of the family and union of several families into the first society corresponds with both Epicurus'¹⁰⁰ and Aristotle's¹⁰¹

⁹⁷ DRN 5.1028-1090. On the conventionalism of language, see Epicurus' *Letter to Herodotus* in Diogenes Laertius 10.75-76. Cf. also Strauss, "Notes on Lucretius," pp. 126-27.

⁹⁸ Leo Strauss, *Natural Right and History*, p. 112.

⁹⁹ DRN 5.1019-23. Cf. Fowler, "Lucretius and Politics," pp. 144-45.

¹⁰⁰ Epicurus, *Kyriai Doxai* 39. All citations of Epicurus are from the tenth book of Diogenes Laertius. The *Kyriai Doxai* or Principal Doctrines are forty maxims of Epicurus collected by Diogenes Laertius and found in 10.139-54. They are cited here by number. We owe to Diogenes Laertius all our extant material from Epicurus. Were it not for him including a handful of letters and the Principal Doctrines, Epicurus would have been entirely lost.

¹⁰¹ Cf. Aristotle, *Politics* 1252a24-1252b27. We have no idea whether Lucretius was aware of Aristotle's *Politics*; he never mentions Aristotle. Nor does he mention Plato.

accounts. However, of the three only Aristotle maintained that the constitution of society and, especially, the eventual founding of political society, which the polis represented, was the highest form of human community; that is, only Aristotle advocated a teleological account.¹⁰² The development of society as presented by Lucretius is not a teleological perfection of man, but an escape from nastier circumstances.¹⁰³ In this respect he is more in agreement with Hobbes.¹⁰⁴ Finally, while the human race had softened from its primitive beginnings, man was still fundamentally ignorant and thus relatively happy.¹⁰⁵ Relatively, because while there were yet to be laws and harsh punishments, and thus painful coercion, there were still the new conventional concerns of family and society, which are forms of coercion and thus somewhat painful in their own right.

Political society emerged from pre-political society with the founding of the first cities by the first kings. Initially these kings distributed flocks and fields to men based, not on equality, but superiority of beauty, strength, and, less so, intelligence. Then afterwards property was invented and gold discovered. Inheritance was passed over time from those men superior by nature to lesser men superior only by

¹⁰² Ibid., 1252b27-1253a. Cf. Blickman, "Lucretius, Epicurus, and Prehistory," pp. 169-70.

¹⁰³ Ibid., p. 145.

¹⁰⁴ Cf. Hobbes, *De Cive* 1.13; *Leviathan* chap. 13. For a discussion of Hobbes' relationship to Lucretius, cf. Nichols, *Epicurean Political Philosophy*, pp. 20-1, 140-47, 183-90.

¹⁰⁵ For the argument against this contrast, cf. Furley, David, "Lucretius the Epicurean: On the History of Man," *Lucrece*, edited by O. Gigon (Geneva, 1978), pp. 171-73, 179. However, as this chapter illustrates, Furley's counter-argument is unconvincing.

convention. Money took precedence over merit. The change resulted in the eventual destruction of kingship and an individual scramble for power. This violence was ultimately ended and magistracies and laws were established.¹⁰⁶ The establishment of political society is considered by Lucretius to be a mixed blessing: henceforth the fear of punishment for transgressing the laws taints the pleasures of life.¹⁰⁷ Just as pre-political society would have been impossible without the invention of language, so too political society, the arts, and especially religion.¹⁰⁸ Very well: what is the origin of religion and how did it make political society possible?¹⁰⁹

Lucretius gives two causes for the origin of religion. Both are actually the same cause. The first cause is that men saw the supernatural strength of the gods in their dreams; a strength that made men suppose that since the gods had none of their weaknesses, so too must they have none of their fears—especially the weakness of mortality and the fear of death.¹¹⁰ This led men to the second cause. Looking up with fearful, uncomprehending eyes at the motions of the heavens, men assumed

¹⁰⁶ On how Lucretius' account of the development of political society resembles the political history of Rome, cf. Fowler, "Lucretius and Politics," p. 144.

¹⁰⁷ *DRN* 5.1118-1151.

¹⁰⁸ Strauss, "Notes on Lucretius," pp. 127-28.

¹⁰⁹ The Latin word for religion is *religio*. As discussed in the introduction, much of the scholarship on Lucretius does not approach him as a political philosopher and so it does not approach *religio* in *De Rerum Natura* as a political concept. Two good examples of the traditional understanding of *religio* may be found in Howe, "Religio of Lucretius," pp. 329-333 and Springer, "The Role of Religio," pp. 55-61.

¹¹⁰ *DRN* 5.1169-82.

them to be the workings of these powerful gods.¹¹¹ But primitive men and those living in pre-political society, too, had looked up at the heavens and they had not been afraid. What had changed? What is the one cause that links both of these explanations?

For when we gaze up at the heavenly regions of the great universe and the ether above set with shining stars, and thoughts of the paths of the sun and the moon enter our minds, then into our hearts oppressed by other evils this care too begins to raise its awakened head, that by chance we are faced with the immense power of the gods, which rotates the bright stars with their varying motions. For lack of a rational explanation assails our uncertain mind about whether there was any first creation of the world, and likewise whether there is an end, until which the walls of the world can endure this work of restless motion, or whether, forever granted protection by the gods' will, they are able to glide through an eternal tract of time and stand in defiance of the powerful forces of immeasurable time.¹¹²

The emergence of religion, according to Lucretius, is the direct result of the dawning of a fundamental fear: that the lovable is not eternal, nor the eternal lovable. Man had become attached to his family, his society, his visible world: he loved his "own". The thought that the world, his society, or he himself might in time face complete annihilation terrified him. Prior to the emergence of political society and the development of the arts, men were oblivious to this suspicion. Being innocent they did not suspect that the visible universe might not be well-disposed to them, let

¹¹¹ *DRN* 5.1183-93.

¹¹² *DRN* 5.1204-17. Cf. 6.601-2.

alone hostile or ephemeral. When doubt crept in they grew afraid and savage towards one another.¹¹³ The now shaken “walls of the world” had to be buttressed and it was active gods which provided the support and consolation. Their supernatural guarantees replaced fickle or troubling natural ones. Man’s nature as it emerged with the cultivation of convention did not allow him to live with the fundamental fear. He took sanctuary within a salutary delusion.¹¹⁴ This is the first part of the function of religion. The other part concerns how religion made political society possible. More must and will be said on this when considering Lucretius’ conception of political man in the third section. However, the argument on behalf of the fundamental fear is only valid if there is reason to suspect that the first beginnings of the universe are blind, mindless, random things. There must be reason to suspect that there is no providence.

II

The fundamental fear that the lovable is not eternal, nor the eternal lovable can only be seriously entertained if there is no purposeful eternal order. This is a suspicion supported by a rudderless, materialistic, natural philosophy. Whether it is reasonable

¹¹³ Cf. Epicurus, *Kyriai Doxai* 13.

¹¹⁴ *DRN* 5.1217-1240. Cf. Bradley, “Lucretius and the Irrational,” pp. 321; Nichols, *Epicurean Political Philosophy*, pp. 75-6, 160-64; Strauss, *Natural Right and History*, pp. 112-13. Also consider Strauss, “Notes on Lucretius,” p. 85: “There is only one protection against the fear that the walls of the world will someday crumble: the will of the gods. Religion thus serves as a refuge from the fear of the end or the death of the world; it has its root in man’s attachment to the world.” Cf. also Colman, “Lucretius on Religion,” p. 231: “The deepening of religious belief is dependent on man having become suspicious that the walls of the world will not last forever, and that our world will, in time, come to an end, as all composite things must.”

remains to be seen. We must question Lucretius' teaching regarding the primeval first things and the creation of the world.

The first beginnings of the universe, according to Lucretius, an adherent of the natural philosophy of Epicurus,¹¹⁵ are matter and void. Matter can be touched and is able to act or be acted upon.¹¹⁶ Void is empty space within which matter is able to move.¹¹⁷ The indestructible finite component of matter is said to be the atom. Atoms include no void and are invisible to the naked eye. Only the atoms are eternal; all other possible compositions of the atoms are temporary and thus perish with time.¹¹⁸ The atoms move continuously with enormous speed and violence, clashing with one another. In the infinity of such atomic motion, various compositions emerge, including our visible world and man.¹¹⁹ But they are not purposeful. Neither our world nor man enjoys a privileged place within nature. Indeed, the universe is infinite and has no center.¹²⁰ Our world is but one of a great many worlds.¹²¹ It and man are simply one of an infinite number of coincidental combinations given

¹¹⁵ Lucretius' account of natural philosophy closely follows Epicurus' *Letter to Herodotus* (on natural philosophy) and *Letter to Pythocles* (on the heavenly bodies). Cf. Diogenes Laertius 10.34-83 and 10.83-116, resp. It is certainly possible Lucretius consulted other works of Epicurus now lost to us.

¹¹⁶ *DRN* 1.265-328.

¹¹⁷ *DRN* 1.329-417.

¹¹⁸ *DRN* 1.483-634.

¹¹⁹ *DRN* 2.80-166, 5.416-508.

¹²⁰ *DRN* 1.951-1117.

¹²¹ *DRN* 2.1023-1174.

fortuitous circumstance. Further, anything that is not strictly a property of matter or void is said to be an accident of them. Thus weight, temperature, and density are properties. Slavery and freedom, poverty and wealth, war and peace, in short, human conventions, are accidents.¹²²

Lucretius strongly cautions against attributing any divine agency to these workings of nature, especially any notion that the chance composition of our world came about for our sake or that it is eternal and will not perish.¹²³ Supposing there were gods, perfect self-sufficient beings have no needs. As *entia perfestissima* they neither create out of care nor craft out of malice, for they have no reason to act as such. What advantage, asks Lucretius, could gratitude on the part of man bring to beings immortal and happy so that they would intervene on our behalf? What would entice them, inactive before, to activity now? What would prompt them to any act of creation, let alone of man? And even if they had wished to create the universe and man, from what source was there first implanted in the gods a model for creating? Would not this source have been nature?¹²⁴

In short, Epicurean natural philosophy makes reasonable the suspicion that there is no purposeful order for eternity, no providence. There is only coincidental

¹²² DRN 1.445-82. Cf. Nichols, *Epicurean Political Philosophy*, p. 56: "These examples show accidents that most men are most passionately concerned with; they are first in importance for men, but not for the study of nature. Through these examples, Lucretius enables us to see that vast gap between the ordinary human perspective and the perspective of natural science."

¹²³ DRN 5.91-109, 5.156-64, 5.235-415.

¹²⁴ DRN 5.165-86. Cf. 2.167-82. Cf. also Epicurus' *Letter to Herodotus* 10.76-77, 81; *Letter to Phythocles* 10.97, 113, 115-16; *Letter to Menoeceus*, 10.123-24; *Kyriai Doxai* 1.

order for a time, temporarily predictable atomic compounds owed in the final analysis to the chance blows of mindless, meaningless, matter in motion. The title of Lucretius' poem now makes sense. The "nature of things" as the Epicureans understood it is the permanence of atoms, void, and the occurrence of chance atomic collision, nothing more. Yet as Lucretius indicated in his discussion of the development of religion, man's political nature, his own predicable order for a time, cannot tolerate this suspicion. Religion alleviates it. Religion also in turn made political society possible. How is this? We return now to the function of religion.

III

The first function of religion, according to Lucretius, as discussed in the first section, is to relieve man of the fundamental fear introduced with the development of the arts in political society. That fear is that the lovable is not eternal, nor the eternal lovable. It is feared because of man's attachment to the world, an attachment especially honed with the cultivation of societal conventions. Pleasure was redirected from those of individuals living in the moment, each by himself for himself, first, to those of one's own family and by extension, pre-political society, and then, subsequently, political society. Epicurean natural philosophy only makes the suspicion of the fundamental fear more certain. It makes a mockery of that which man came to be concerned with most.¹²⁵ Thus if one were to teach such a potentially terrible truth, there would be a

¹²⁵ *DRN* 5.1233-35: "To such an extent does some hidden force crush human affairs, and is seen to trample upon the beautiful rods and fearsome axes and make a mockery of them."

need for a medium between man's attachment to the world and Epicurean natural philosophy.¹²⁶ That medium is poetry.¹²⁷ And Lucretius is a philosopher-poet.

Lucretius is very aware that because his teaching attacks the divine assurances of man's import in a providential order, it will provoke resistance on the part of his readers.¹²⁸ He does not expect to truly persuade many readers, even a very few readers.¹²⁹ Lucretius twice outlines his rhetorical program in a famous passage which I quote at length:

Now roused by this in my lively mind
I am traversing the remote places of the Picrides, untrodden by the sole
of anyone before. It is a joy to approach pure springs

The "rods and fearsome axes" were symbols of power for Roman elected officials; that is, for Rome itself as a political society. Cf. Englert, *On the Nature of Things*, p. 159 n. 83; Nichols, *Epicurean Political Philosophy*, pp. 162-63; Alessandro Schiesaro, "Lucretius and Roman politics and history," *The Cambridge Companion to Lucretius*, edited by Stuart Gillespie and Philip Hardie (Cambridge, 2007), pp. 42-43, 52-53; Summers, "Lucretius and the Epicurean Tradition of Piety," pp. 43-44.

¹²⁶ It is helpful to consider Hobbes' own rhetorical strategy for introducing Epicurean doctrines into modernity. First, he created a bipartition between his natural materialistic philosophy and political philosophy. Cf. *De Cive*, Preface, where Hobbes states that since his political philosophy is "grounded on its owne principles sufficiently knowne by experience it would not stand in need of the former Sections." The former sections concerned corporal matter (*De Corpore*) and its relation to man (*De Homine*). Second, he reinterpreted Scripture to suit his new political hedonism. Cf. *De Cive*, book three "Of Religion" and *Leviathan*, book three "Of a Christian Commonwealth".

¹²⁷ Cf. Strauss, "Notes on Lucretius," p. 83: "The movement from the untruth to the truth is not simply a movement from unrelieved darkness and terror to pure light and joy. On the contrary, the truth appears at first to be repulsive and depressing. A special effort is needed to counteract the first appearance of the truth. This special effort is beyond the power of philosophy; it is the proper work of poetry."

¹²⁸ *DRN* 1.80-2, 1.136-39, 5.110-21.

¹²⁹ Cf. Nichols, *Epicurean Political Philosophy*, pp. 44, 159-60.

and to drink from them, and it is a joy to pick new flowers
 and to seek a preeminent crown for my head from that place
 whence the Muses had wreathed the temples of no one before;
 first because I am teaching about great things and proceeding
 to free the mind from the narrow bonds of religion,
 next because I am writing so clear a poem about so obscure
 a subject, touching everything with the charm of the Muses.
 For this too seems to be not without reason.
 But just as when physicians try to give loathsome wormwood
 to children, they first touch the rim of the cup all
 around with the sweet, golden liquid of honey,
 so that the unsuspectingly age of children may be tricked as far
 as their lips, and so that meanwhile the child might drink down
 the bitter wormwood justice and though deceived, be not deceased,
 but rather by such means be restored and become well,
 so I now, since this system seems for the most part to be
 too bitter to those who have not tried it and
 the common people shrink back from it, I wanted to explain
 our system to you in sweet-spoken Pierian song,
 and touch it, so to speak, with the sweet honey of the Muses.
 I have done so in the hope I might in this way be able to hold
 your attention in our verses, until you look into the whole
 of nature of things, with what shape it is endowed and exists.¹³⁰

Lucretius' rhetorical program introduces the philosophical child, the potential Epicurean, to the bitter draught of natural philosophy by first touching the rim of the cup with the sweet honey of poetry. The arrangement of the poem as a whole is a product of this strategy. Each tenet of the anti-teleological, anti-theological doctrine outlined above in the second section is first introduced in a pleasing way. Gradually Lucretius removes the poetic veils throughout his poem until finally by the fifth book nature is left unadorned.¹³¹ For example, when introducing the concept in the first

¹³⁰ *DRN* 1.925-50 = 4.1-25.

¹³¹ Bradley, "Lucretius and the Irrational," p. 319; Fowler, "Lucretius and Politics," p. 148; Nichols, *Epicurean Political Philosophy*, pp. 32-41; Strauss, *Natural Right and History*, p. 113, n. 45; "Notes on Lucretius," pp. 83-5.

book that nothing ever comes into being out of nothing through divine agency, and that nothing is destroyed into nothing, in explaining the latter tenet Lucretius finds himself in a position where he must discuss perishing.¹³² Such a topic carried to its final conclusion concerns the complete annihilation of both the world and human beings back into atoms. But Lucretius only reveals this at the end of his long poem. He first sweetens in the concept. Discussion of animate objects, much less human beings, is avoided and only the perishing of inanimate objects is discussed. In their place a cheerful picture of continuous rebirth is painted.¹³³ It is only in the fifth book that we learn the world is old, showing signs of decay, and must eventually utterly perish.¹³⁴

Lucretius is not addressing all men, for the many recoil in horror from his doctrines. Consider that in the above passage on Lucretius' rhetorical program, "*retroque volgus abhorret ab hac*,"¹³⁵ which Englert translates as, "and the common people shrink back from it," may perhaps be better translated as, "and the many recoil in horror from it." The noun *volgus* refers to the many or the masses. The verb *abhorret*, from which English derives the word "abhor," means to recoil back in horror or dread. This motion of recoil is further reinforced by the adverb *retro*, meaning "backwards." *Hac* refers to Lucretius' Epicurean doctrines as a whole. *De*

¹³² *DRN* 1.150.

¹³³ *DRN* 1.215-64. Cf. Nichols, *Epicurean Political Philosophy*, pp. 53-4; Strauss, "Notes on Lucretius," p. 87.

¹³⁴ *DRN* 5.91-109, 5.416-508.

¹³⁵ *DRN* 1.944-45 = 4.19-20. For the Latin text, cf. Cyril Bailey, *De Rerum Natura* (Oxford, 1976).

Rerum Natura is principally directed at the potential *few* Epicureans, those of sound mind, but perhaps still ignorant of the nature of things.¹³⁶ Yet even these must be gradually introduced to Lucretius' bitter teaching, especially the fundamental fear, by means of sweet poetry. They too might initially fear the supernatural punishment which they have been told awaits those after death who by use of their reason attempt to assail the walls of the world.¹³⁷ In short, Lucretius wrote as a philosopher-poet because poetry eases the transition from a religious to a philosophical (Epicurean) understanding of the whole. Enough has been said on the first part of the function of religion and Lucretius' rhetorical sensitivity to it. It remains for us to consider the second part, how religion also makes political society possible.

¹³⁶ The opposite views are numerous, but all share one common trait: they portray Lucretius in a more democratic light. As discussed in the introduction, examples include but are not limited to presenting Lucretius as a sage engaging in an enlightening exchange between autonomous equals, cf. Classen, "Poetry and Rhetoric in Lucretius," pp. 77-118 and Lenaghan, "Lucretius 1.921-50," p. 27; an Enlightenment liberator of mankind from superstition, cf. Howe, "Religio of Lucretius," pp. 329-32; an Enlightenment rationalist wishing to test religious opinion in a marketplace of ideas, cf. Springer, "Role of Religio," pp. 60-1; or a proto-Carl Sagan redirecting religious piety towards the raw "workings of atoms, void, and swerve," cf. Summers, "Lucretius and the Epicurean Tradition of Piety," p. 57.

¹³⁷ Cf. DRN 5.110-21: "Before I proceed to issue oracles about this thing [the creation of the world]
 with more holiness and with much more certain reasoning than
 the Pythia who speaks out from the tripod and laurel of Apollo,
 I will present many solaces to you with learned words,
 lest held in check and bridled by religion you by chance suppose
 that the earth and sun and sky, sea, stars, and moon,
 must abide in place forever, endowed with divine body,
 and therefore think it is right, just as in the case of the Giants,
 that all those should pay the penalty for their monstrous crime
 who by their use of reason assail the walls of the world
 and who wish to extinguish the brilliant sun shinning in the sky,
 shamefully branding immortal things with mortal speech."

The traditional view that Lucretius believed religion so much superstition to be overcome is supported by his assertion in the first book that religion is “more commonly” responsible for crime, such as with the sacrifice of Iphigenia by her own father Agamemnon.¹³⁸ The sacrifice of a child by a parent is certainly as against the grain of the love of one’s own as possible. And yet Agamemnon does it so that the Greeks might appease Diana and continue on to Troy—that is to say: he does it for the political good. Colman comments:

Traditional piety we may suspect leads man to consider something higher than his own personal interest, such as the political community. The sacrifice shows the need to sacrifice one’s own good for the good for the city. We are thus opened to the possibility that a political community without religious belief would be more terrible than one with strong public worship.¹³⁹

Lucretius’ fullest discussion of the relationship between traditional piety and political health is found in his presentation of the cult of the Magna Mater or Great Mother.¹⁴⁰ The Magna Mater was Cybele, a mother-goddess of Antolia (Turkey) imported to Rome in 205/4 BC. She was worshipped annually with public games during the festival of the Megalensia.¹⁴¹ Here more than in any other passage of *De Rerum Natura* have scholars noted Lucretius’ moderate, even sympathetic appraisal

¹³⁸ *DRN* 1.82-101. Cf. Euripides’ *Iphigenia at Aulis* and Aeschylus’ *Agamemnon*.

¹³⁹ Colman, “Lucretius on Religion,” p. 230. Cf. Nichols, *Epicurean Political Philosophy*, pp. 69-70.

¹⁴⁰ *DRN* 2.598-660.

¹⁴¹ Englert, *On the Nature of Things*, p. 46, n. 25.

of religion as a restraining influence.¹⁴² In the context of speaking of the composition of atoms in the second book, Lucretius eventually turns to the composition of the earth. He denies the earth's divinity by a detailed description of the ancestral view as presented in the procession of the Magna Mater. The ancient and learned Greek poets had explained the meaning of the procession in various ways of which Lucretius gives seven; four of these are especially noteworthy. The second symbol given offers encouragement to parents with respect to the education of their children. The fifth, condemnation of and warning to those who violate the Mother and are ungrateful to their parents. The sixth, filling the ungrateful minds and impious hearts of the multitude (*volgi*) with fear of the divine majesty of the goddess. And the seventh, a divine commandment to defend one's country and parents.¹⁴³ All four emphasize the importance of honoring and defending the conventions of one's political society.¹⁴⁴ Previously in the second book, per the second section above, Lucretius had rejected

¹⁴² Cf. Colman, "Lucretius on Religion," pp. 230-31; Howe, "Religio of Lucretius," p. 330; Nichols, *Epicurean Political Philosophy*, pp. 70-2; Springer, "Role of Ratio," p. 59; Strauss, "Notes on Lucretius," pp. 99-100. James Jope has similarly recognized that "Lucretius does not object that the fear inspired by the cult is unhealthy for Man (although he would agree), but that such interests are unsuited to a goddess." In other words, because no Epicurean god would concern himself with man, the anxiety caused by religious fear is entirely unwarranted. I would not dispute this, only note, first, as per the second section above, it is seriously questionable as to whether Lucretius believed in gods at all, and, second, the allegory of the cult still illustrates what inspires the majority of men to piety. Cf. James Jope, "Lucretius, Cybele, and Religion," *Phoenix*, 39/1 (1985), pp. 250-262. On the problem of the gods in Lucretius, cf. Nichols, *Epicurean Political Philosophy*, p. 61.

¹⁴³ *DRN* 2.604-5, 2.614-17, 2.618-23, 2.640-44 resp.

¹⁴⁴ Sharples, R.W., "Cybele and Loyalty to Parents," *Liverpool Classical Monthly*, 10 (1985), pp. 133-34; Summers, "Lucretius and the Epicurean Tradition of Piety," pp. 52-53.

the teleological-theological account of nature as an error.¹⁴⁵ He repeats that view here, but a new perspective on religion is introduced. The passage on the Magna Mater illustrates how the majority of men conduct themselves given the belief in supernatural gods who punish a lack of patriotism and filial piety. The procession symbolizes what is necessary for the health of political society. It connects the patriotism and allegiance man feels for his political society to a cosmological and religious teaching from where the ancestral or conventional good is said to originate.

¹⁴⁶ The addressee of *De Rerum Natura* is himself such a patriotic man; one wonders what would happen if his concern for the common good were removed by Lucretius' Epicurean doctrines.¹⁴⁷ Was not Roman piety, as Polybius observed, responsible for "the foundation of Roman greatness?"¹⁴⁸ At any rate, while admittedly salutary and necessary for political life, in concluding his description of the procession, Lucretius remarks: "Although this is set forth and related well and excellently, nevertheless it is far removed from true reasoning."¹⁴⁹

Religion is thus portrayed by Lucretius, first, as a response by man to feel at home in an indifferent or ephemeral world, and, second, as grudgingly necessary for

¹⁴⁵ *DRN* 2.165-82.

¹⁴⁶ *DRN* 2.644-60. Cf. Colman, "Lucretius on Religion," p. 230-31; Strauss, "Notes on Lucretius," p. 100.

¹⁴⁷ *DRN* 1.41-3. The addressee is one "Memmius", probably Gaius Memmius, the patron of the Roman poet Catullus. Cf. Nichols, *Epicurean Political Philosophy*, pp. 41-5; Strauss, "Notes on Lucretius," p. 100.

¹⁴⁸ Polybius 6.56.

¹⁴⁹ *DRN* 2.644-45.

the health of his political society. The function of religion is thus not only the alleviation of the fundamental fear, but also a means to uphold the conventions of political society. It is therefore not unwarranted to conclude that man, as Lucretius describes him, is something of a religious-political animal. Yet if Lucretius is aware of this theological-political problem, why did he side against it? What did he advocate in its place?

IV

Epicureanism equates the good with the pleasant and the bad with the painful. However, unlike Aristotelian conceptions of pleasure, Epicureanism does not maintain a hierarchy of the pleasant. To understand the classical Epicurean theory of pleasure and thus happiness, we must turn from Lucretius, who speaks of it but little,¹⁵⁰ to his master, Epicurus. Epicurus had taught that pleasure was constitutive pleasure (*hedone katastematike*).¹⁵¹ When Epicurus was later accused of giving pleasure two meanings, pleasure in motion or positive pleasure, and pleasure at rest or constitutive pleasure, the accusation was founded on a misunderstanding. Epicurus saw positive pleasure as not essentially differing from constitutive pleasure, for the former was the beginning of the latter. He held that both are two aspects of the same reality, that of an equilibrium adjusting:

¹⁵⁰ Cf. e.g., *DRN* 2.14-61.

¹⁵¹ Brochard, Victor, "The Theory of Pleasure According to Epicurus," translated and edited by Eve Grave, *Interpretation*, 37 (2009), p. 61.

As to the pleasure that is added to the equilibrium and is produced by it....We see, in effect, that according to the most explicit texts pleasure is a limit (*peras*) that cannot be exceeded. No doubt a pleasure accompanies the motion of the organism when it works to reestablish the equilibrium that has been momentarily destroyed: that is pleasure in motion. Further, since this pleasure involves a disappearance of the equilibrium, it is by that very fact accompanied by pain. When the pain ceases, that is to say when the equilibrium is reestablished, pleasure is naturally produced. It is what it can be; it entails neither augmentation nor diminution....It is enough to make pain disappear for pleasure to appear: not because this suppression, something entirely negative, is by itself pleasure; but because, at the moment when it takes place, by virtue of the natural action of the organs, by a law of nature, the corporeal equilibrium is reestablished, and the living being experiences satisfaction.¹⁵²

Two important consequences follow from Epicurus' theory of pleasure. First, Epicurus firmly yoked pleasure to *corporeal* equilibrium. For Epicurus, there is no other kind of pleasure.¹⁵³ Second, all objects of pleasure are valuable, not in themselves, but only insofar as they serve to produce physical well-being or health.¹⁵⁴ But, to take up the first point, does not Epicurus speak of the pleasures of the soul? Indeed, but not if one means by "pleasures of the soul" those radically different from those of the body. All pleasures are without exception pleasures of the body; those pleasures called spiritual are only varieties of the one unique pleasure called

¹⁵² Ibid., p. 62.

¹⁵³ Ibid., p. 65-6; Walter Nicgorski, "Cicero, Citizenship, and the Epicurean Temptation," *Cultivating Citizens: Soulcraft and Citizenship in Contemporary America*, edited by Dwight D. Allman and Michael D. Beaty (Lanham, 2002), pp. 12-13.

¹⁵⁴ Brochard, "The Theory of Pleasure According to Epicurus," pp. 66-8.

corporeal.¹⁵⁵ Being so, to take up the second point, one can say Epicurus maintained no hierarchy of pleasure. In reducing all pleasure to a single pleasure, the corporeal, Epicurus erased any distinction between the objects that induce man's choice.¹⁵⁶

Why choose intellectual pleasures if in the final analysis they are not worth more than the pleasures of taste or those of Venus? Why choose sobriety or temperance? As Victor Brochard commented, "If Epicurus allows all the varieties, he recommends none of them."¹⁵⁷

What then of philosophy and the philosopher? How can it be that the wise man is more inclined towards happiness? What is happiness to an Epicurean? Happiness is only worthy of the name if it lasts, not for an instant, but a lifetime.¹⁵⁸ If corporeal pleasure is the sole good, one has but to find the means to ensure that it lasts indefinitely. Enter the so-called "pleasures of the soul." The wise man may better guarantee pleasure and ward off pain if he knows how to moderate himself and accept the limits of pleasure. Such a use of reason in no way changes the nature of

¹⁵⁵ Cf. Nicgorski, "Cicero, Citizenship, and the Epicurean Temptation," p. 13: "Mental pleasures are pleasures insofar as they are anticipations or assurances of bodily pleasures. Those more ethereal pleasures must be able to 'cash out' in this form, or the very foundation of Epicureanism is upset. The beginning and the end of the pleasure principle, Epicurus is said to have taught, is in the bodily or sense experience of pleasure."

¹⁵⁶ Cf. Brochard, "The Theory of Pleasure According to Epicurus," p. 66: "That is what Epicurus really means when he reduces all the kinds of pleasure to the belly, and when he declares that if one sets aside the pleasures of taste, of smell, or of Venus, he does not know how one could conceive of pleasure."

¹⁵⁷ Ibid., p. 68.

¹⁵⁸ Aristotle, *Nicomachean Ethics* 1106a16.

pleasure; it simply ensures its continuation.¹⁵⁹ Wisdom therefore consists of choosing those things—including opinions—most favorable to corporeal pleasure and rejecting all those prone to sadness or fear and thus pain. So it is that Epicureanism and thus Lucretius relentlessly assaulted the fear of death and the fear of the gods which, they say, falsely disturb the soul and create needless pain.¹⁶⁰ So it is that in Lucretius' account of the development of man, the relatively non-coercive but secure pre-political society was the most pleasant society and thus the society most in accordance with nature.¹⁶¹ And so it is that the philosopher philosophizes, for in so doing, he ensures his continual pleasure. By distancing himself from political society and contemplating the continuation and limits of his pleasure, he alone may be said to be truly happy.¹⁶² Yet as has been discussed in the third section, philosophy is repulsive to the majority of men because philosophy requires freedom from attachment to "our world." Thus the majority of men living in political society cannot partake in the remedial pleasure of philosophy. Nor can mankind return to pre-political society. Instead they must trudge on, coerced by painful political society and religion, living an unnatural life. Further, unlike Hobbes and modern Epicureanism, Lucretius and classical Epicureanism entertain no hopes of alleviating man's lot by attempting to conquer an indifferent or hostile nature. Philosophy or

¹⁵⁹ Brochard, "The Theory of Pleasure According to Epicurus," p. 70.

¹⁶⁰ Ibid., p. 73.

¹⁶¹ Cf. Nichols, *Epicurean Political Philosophy*, pp. 130-31.

¹⁶² Ibid., pp. 147-48.

knowledge is not pursued for the sake of power, but the ability to live truthfully, moderately, in conformity with man's natural limitations.¹⁶³

Here we must part ways with Lucretius. His rejection of the theological-political problem seems to ignore his own most important findings regarding religion and the nature of political man. Is it indeed the case that false opinions necessarily disturb the soul? Lucretius' own discussion of the first part of the function of religion strongly suggests that political man is far happier relieved of the fundamental fear, should such a suspicion be reasonable. Is it indeed the case that one should pursue his individual bodily pleasure at the expense of his participation in political society? Lucretius' own discussion of the second part of the function of religion carries considerable weight in revealing how the majority of men behave given a belief in providential gods who reward virtue and punish vice, should political society require such means to uphold its conventions. With respect to this latter concern, it is very revealing that Lucretius never once explicitly raises the question as to whether the fear of divine punishment actually *deters* crime. Lucretius implicitly lays the blame for much of man's avarice, ambition, and crime to a fear of death. In order to avoid being despised, poor, and insecure, all reminders of man's precarious position, says Lucretius, brother will slay brother, child will betray parent, and citizen will rebel against his fatherland in order to improve his situation.¹⁶⁴ But Lucretius' reasoning is

¹⁶³ Ibid., pp. 173-74, 183-90. Compare with Hobbes, *Leviathan* chp. 46: "By Philosophy is understood the Knowledge acquired by Reasoning, from the Manner of the Generation of any thing, to the Properties; or from the Properties, to some possible Way of Generation of the same; to the end to be able to produce, as far as matter, and humane force permit, such Effects, as human life requireth."

¹⁶⁴ *DRN* 3.59-93.

unconvincing. It is very questionable as to whether the fear of death causing such crimes is the specifically religious fear of death, the fear of divine punishment after death. Such fear may very well deter men from crime, as Lucretius own example of the cult of the Magna Mater illustrates.¹⁶⁵

¹⁶⁵ Cf. Nichols, *Epicurean Political Philosophy*, pp. 77-8.

Chapter Two: Ciceronian Foresight

I

Lucretius had suspected that the fundamental fear weighed heavily on man; Cicero was more certain of it. Lucretius had tentatively recognized its political implications; Cicero began with them. Lucretius had reluctantly incorporated the needs of the citizen into his work on natural philosophy; Cicero's philosophical works start from the perspective of the citizen and surface only indirectly to natural philosophy. Thus to better understand those needs of man which have nothing to do with his body, it is helpful to turn from Lucretius to his Roman contemporary, Cicero.¹⁶⁶ Cicero's most comprehensive account of the relationship between providence and political society is found in his *De Natura Deorum* or *On the Nature of the Gods*, and, with respect to Epicureanism, book one. Divided into three books, the first book of *De Natura Deorum* offers a preface by Cicero as the author, a brief account of the settling of the dialogue, the Epicurean case for the gods, and, finally, a critique of the Epicurean

¹⁶⁶ Mayor went so far as to argue that Cicero's *De Natura Deorum* was a response by Cicero to Lucretius' *De Rerum Natura*, the latter written ten years earlier, certainly read and possibly edited by Cicero himself. Cf. Mayor, "On the Design and Execution of the Dialogue," pp. x-xiii.

account.¹⁶⁷ The second book is entirely devoted to the Stoic case for the gods; the third, a little more than two-thirds extant, a critique of the Stoic account.¹⁶⁸

Unlike Lucretius' *De Rerum Natura*, Cicero's *De Natura Deorum* is a dialogue. Although Cicero wrote dialogues in the manner of Aristotle in which the speeches of the other interlocutors were introduced in such a way that the principal part rested with the author himself,¹⁶⁹ a role Cicero was only too happy to assume in other dialogues,¹⁷⁰ here Cicero chose for himself the role of mute Academic. He speaks only three times, twice in the proem and once at the conclusion to deliver his famous verdict in favor of Stoicism,¹⁷¹ a verdict which contrasts sharply with his own explicit wish to conceal his opinions,¹⁷² his professed allegiance to the Academy,¹⁷³

¹⁶⁷ Cicero, *The Nature of the Gods*, trans. P.G. Walsh (Oxford, 1998), 1.1-14, 1.15-17, 1.18-56, 1.57-124, resp. Hereafter cited as *ND* after the Latin title, *De Natura Deorum*.

¹⁶⁸ Further subdivisions within this structure will be discussed over the course of the chapter.

¹⁶⁹ Cf. *Ad Att.* 13.19. Also cf. Levine, "The Original Design and the Publication of the *De Natura Deorum*," p. 17; Levine, "Cicero and the Literary Dialogue," p. 149; Nicgorski, "Cicero and the Rebirth of Political Philosophy," p. 70. Cicero's relationship to Aristotle will be discussed further in the conclusion.

¹⁷⁰ For example, *De Legibus*, *De Finibus Bonorum et Malorum*, *De Divinatione*, most probably "M" for Marcus Tullius in *Tusculanae Disputationes* and in its own manner, *De Officiis*. Hereafter cited as *Leg.*, *Fin.*, *Div.*, *Tusc.* and *Off.* resp.

¹⁷¹ *ND* 1.16, 17 and 3.95 resp.

¹⁷² *ND* 1.10, 13-14. Cf. *Tusc.* 5.11.

¹⁷³ *ND* 1.6, 11-12, 17. Cf. *Div.* 1.3-7. Throughout his writings, Cicero aligns himself with the Academic Skeptics, a school whose origins lay in Plato. Absolute knowledge was considered by them to be unobtainable; what can be known is what is more or less probable. Cf. Holton, "Marcus Tullius Cicero," pp. 156-57; Walsh, *The Nature of the Gods*, pp. xxxv-vii.

as well as the arguments advanced by his principal speaker and fellow-Academic, Cotta.¹⁷⁴

Apart from the character “Cicero” in the dialogue proper, Cicero the author delivers a Preface to the reader.¹⁷⁵ In it he identifies the crux of the discussion to follow in terms strikingly similar to those of Lucretius:

There is particularly wide disagreement [among the philosophers] on the most important element in the case: are the gods inactive and idle, absenting themselves totally from the supervision and government of the universe, or is the opposite true, that they created and established all things from the beginning, and that they continue to control the world and keep it in motion eternally?¹⁷⁶

The crucial issue concerning the gods is providence. The reason for providence’s importance, according to Cicero, is similar to that given by Lucretius. If the activities touching upon religious obligation owed by man for divine supervision are mere façade and pretence, they can contain no true devotion; if they contain no true devotion, then all sense of the holy and of religious obligation is destroyed. “Once those disappear, our lives become fraught with disturbance and great chaos. It

¹⁷⁴ Cicero does not take a stand in the beginning of the dialogue in favor of the probability of the gods’ existence. Cf. Andrew R. Dyck, *De Natura Deorum* (Cambridge, 2003), p. 58 n. 2 and P.G. Walsh, *The Nature of the Gods*, p. 147 n. 2, in reading “fere” for the corrupt “sese” in the MSS at 1.2. The sentence should read: “Most philosophers have stated that the gods exist, the most likely view to which *almost all of us* are led by nature’s guidance.”

¹⁷⁵ ND 1.1-14. On the importance of distinguishing between Cicero the author and “Cicero” the character of a dialogue, cf. Beard, “Cicero and Divination,” pp. 35-6.

¹⁷⁶ ND 1.3. Cf. DRN 5.1204-17 and 6.601-7.

is conceivable that, if reverence for the gods is removed, trust and the social bond between men and the uniquely pre-eminent virtue of justice will disappear.”¹⁷⁷

II

The conversation on the nature of the gods abstracts from nearly all normal considerations of dramatic details. Contrasted with many other Ciceronian dialogues with clearly defined backgrounds and touches of local color,¹⁷⁸ *De Natura Deorum* with its mere skeleton of a dramatic introduction, lack of local color, and spontaneous conversation is unique.¹⁷⁹ It seems to have been necessary to remove such a controversial discussion as much as possible from political life. This is not to say that political life in the most important respects is forgotten.

The scene opens with a younger Cicero¹⁸⁰ entering his friend and fellow-Academic Gaius Aurelius Cotta’s¹⁸¹ house, Cotta having invited Cicero. The

¹⁷⁷ ND 1.3-4.

¹⁷⁸ Examples of such other dialogues include *De Oratore*, *Rep.*, *Leg.* and the three dialogues comprising *Fin.* *De Oratore* hereafter cited as *Or.*

¹⁷⁹ Levine, “The Original Design and the Publication of the *De Natura Deorum*,” pp. 10-12.

¹⁸⁰ At the dramatic date of the dialogue, 76 BC, Cicero is thirty years old. He appears at Cotta’s house as an auditor. He had been in Greece and Rhodes between 79-77 and would soon leave Rome again as quaestor in Sicily in 75. Cf. Walsh, *The Nature of the Gods*, p. 149 n.15.

¹⁸¹ Gaius Aurelius Cotta at the time of the dialogue is designated pontifex. He had gained the priesthood in 82 BC and would become consul in 75. After his consulship he was appointed governor of Cisalpine Gaul where he would win but not live to

occasion is the Latin festival.¹⁸² Cicero finds Cotta seated in an alcove, engaged in debate on the nature of the gods with the Epicurean Gaius Velleius¹⁸³ and Stoic Quintus Lucilius Balbus.¹⁸⁴ Cotta, seeing Cicero approach and knowing of his interest in philosophy, asks him to join them. Cotta requests Velleius to recapitulate his initial remarks on Epicurus' views of the gods. Velleius agrees, but notes with a grin that Cicero's arrival reinforces Cotta's school rather than his own or Balbus'. This combined with Cotta's remark on Cicero's philosophical interests, as well as Cicero's own in the Preface,¹⁸⁵ mark Cicero as one who, already at the age of thirty, had acquired a reputation for philosophical proclivities, especially Academic ones. But just as in the Preface, the younger Cicero attempts to distance himself a bit from his school by declaring his impartiality.¹⁸⁶

celebrate a triumph. Cf. Levine, "The Original Design and the Publication of the *De Natura Deorum*," p. 8; Walsh, *The Nature of the Gods*, pp. xxxviii-xxxix.

¹⁸² The Latin Festival (*Feriae Latinae*) was a movable feast arranged by the consuls between April and July. Cf. Walsh, *The Nature of the Gods*, p. 149 n. 15.

¹⁸³ Gaius Velleius is said by Cicero to be a senator and the leading Roman Epicurean of his day. Nothing more is known; however, the odd contrast between Velleius' activity in political life and his school's distance from it is notable. Cf. *ND* 1.15; Levine, "The Original Design and the Publication of the *De Natura Deorum*," p. 8; Walsh, *The Nature of the Gods*, p. xxxviii.

¹⁸⁴ Quintus Lucilius Balbus is said by Cicero to be a Stoic of preeminence; a Roman, but one whose studies in Stoicism equaled the Greeks. *Ibid.*

¹⁸⁵ *ND* 1.6-7, 11-12.

¹⁸⁶ *ND* 1.17.

Velleius opens his account of Epicurus' views on the gods with an attack on the doctrine of providence from the standpoint of Epicurean natural philosophy. His criticisms are highly reminiscent of Lucretius':

What you are going to hear are no airy-fairy, fanciful opinions, like the craftsman-god in Plato's *Timaeus* who constructs the world,¹⁸⁷ or the prophetic old lady whom the Stoics call Pronoia, and whom in Latin we can term Providentia. I am not going to speak of the universe itself as a round, blazing, revolving deity endowed with mind and feelings. These are the prodigies and wonders of philosophers who prefer dreaming to reasoning. I ask you, what sort of mental vision enabled your teacher Plato to envisage the construction of so massive a work, the assembling and building of the universe by the god in the way which he describes? What was his technique of building? What were his tools and levers and scaffolding? Who were his helpers in so vast an enterprise? . . .

Do you maintain that Plato had the slightest acquaintance with natural philosophy, when he believes that anything which had a beginning can last for ever? What compound is there which does not break up? What thing has some sort of beginning but has no end? Now if your Stoic Pronoia, Lucilius, is identical with this, my question remains the same as before. . .¹⁸⁸

Like Lucretius, Velleius asks how the universe, which was created and therefore had a beginning, can be eternal and therefore have no end? Is Plato's claim that the creation is made eternal by the will of the creator reasonable?¹⁸⁹ Further, why would such a god, inactive before, suddenly become active and wish to create? For a boundless measure of time before the creation, the universe did not exist; what motive could have induced a god to fashion the heavens, our world, or man? To assume a

¹⁸⁷ Cf. Plato, *Timaeus* 89d-92e. Cicero himself translated this dialogue into Latin.

¹⁸⁸ *ND* 1.18-20. Cf. *DRN* 1.483-634, 5.235-415.

¹⁸⁹ Cf. Plato, *Timaeus* 32c.

motive for creation one must assume the god or gods anything but perfect. Did he take pleasure in the varied adornment which we behold in the heavens and on earth? What pleasure can a god take in such things? If he did derive pleasure from them, how could he have forgone them for so long? And even supposing the god was prompted to an act of creation, says Velleius, can anyone seriously claim that this provision was made for the benefit of human beings? If it was for man, was it merely for the wise? If so, such an edifice was created for but a very few. Was it for the many? If so, it was for the benefit of fools. Such a world created brings to them so many inconveniences that while the wise in their wisdom may at least alleviate their suffering, fools in their foolishness can neither avoid imminent hardships nor endure them when they are present.¹⁹⁰

What does such a creator-god even look like? Shall we say he is the world or the universe itself? For those who imagine that the world possesses life and wisdom, says Velleius, they have utterly failed to see into what shape an intelligent mind can be installed. Why believe a god endowed with immortality and blessedness spherical in shape merely because Plato assumed no shape more beautiful than the sphere? Why not the cylinder, cube, cone, or pyramid? And what a hellish life Plato assigned to his god—spun round at speeds the like of which cannot be conceived! Is mental stability or happiness even possible in such a state? If god is the universe, what can be said for the massive traits of earth which cannot be populated or cultivated, some scorched by the sun, others in the hard grip of snow? If the universe is god and such

¹⁹⁰ *ND* 1.21-23. Cf. *DRN* 2.167-82, 5.156-86.

desolate lands are part of the universe, we must assume that some of god's limbs are ablaze, others frozen stiff!¹⁹¹

Concluding his attack on the doctrine of providence and following a lengthy critique of past understandings of the nature of the gods,¹⁹² Velleius turns to Epicurus' own teaching, but first is compelled to praise him in very much the manner Lucretius had in the proem to book five: "If anyone were to contemplate the thoughtless and random nature of all these claims, he would be bound to revere Epicurus, and to consign him to the company of those very gods who are the focus of our enquiry."¹⁹³

Velleius does not question the existence of the gods. The gods exist, he says, because we have an innate awareness of them; all people, everywhere, have some conception of the gods. Something which all people agree on must be true.¹⁹⁴ Thus Velleius accepts the argument *ex consensu gentium*. This innate awareness causes us to believe the gods blessed and immortal. "What is blessed and immortal neither is troubled itself, nor causes trouble to its neighbor; thus it is gripped by neither anger nor partiality, for all such attitudes are a mark of weakness."¹⁹⁵ Since reverence is rightly accorded to what is supreme, men owe devotion to the gods, namely, in freeing themselves from superstition. Contemplation of the divine nature excises all

¹⁹¹ ND 1.24.

¹⁹² ND 1.25-43.

¹⁹³ ND 1.43. Cf. DRN 5.1-54.

¹⁹⁴ ND 1.44. Cf. DRN 5.1161-68.

¹⁹⁵ ND 1.45. Cf. *Kyriai Doxai* 1; DRN 5.156-86, 6.58-78.

fear of the gods for, after all, they cannot be roused to anger or partiality.¹⁹⁶ The gods can have no other than human shape; for not only do they take no other form in our waking or sleeping hours, but what other form is as beautiful as the human and thus befitting the blessed and immortal nature of the gods?¹⁹⁷ But being immortal, they cannot be said to be corporeal because then they would have a beginning and thus an end. Therefore the gods are quasi-corporeal and have quasi-blood.¹⁹⁸ Unlike providential gods, Epicurus' gods are wholly inactive, taking pleasure only in their own wisdom and virtue, utterly self-sufficient. Unlike providential gods, which seem plagued with the labor of governing, Epicurean gods, "define the life of blessedness as residing in the possession of untroubled minds and relaxing from all duties."¹⁹⁹ In short, the happiness of Epicurean gods, much like Epicureans themselves, consists of distancing themselves from the duties of government and contemplating their own individual pleasure.

Velleius advocates such anti-teleological, anti-theological views for precisely the same reasons as Lucretius: Epicurean natural philosophy teaches that there are innumerable worlds, ours being but one;²⁰⁰ the universe is infinite, our world and man

¹⁹⁶ *ND* 1.45.

¹⁹⁷ *ND* 1.46-8. Cf. *DRN* 5.1169-83.

¹⁹⁸ *ND* 1.49. Cf. *DRN* 5.146-55. Note that unlike Velleius, Lucretius never explicitly discusses the nature of the gods; rather, he promises to do so but never returns to the topic. However, consider *DRN* 1.1014-16.

¹⁹⁹ *ND* 1.53. Cf. *DRN* 6.58-78.

²⁰⁰ *Ibid.* Cf. *DRN* 2.1023-1174.

being at the center of nothing;²⁰¹ all compounds arise from the blind collisions of the blind atoms' flights, man and all that concerns man being merely a chance combination and therefore an accident.²⁰² Velleius concludes: "Epicurus has delivered us from these terrors. Now that we are liberated, we have no fear of the gods, for we realize that they neither create trouble for themselves, nor seek to impose it on another. We venerate with devoted reverence their pre-eminent and outstanding nature."²⁰³ Cotta is quick to offer a critique.

It is not immediately apparent why Cotta begins by declaring the existence of the gods to be the crucial issue.²⁰⁴ Cicero himself had singled out providence in his Preface. Further, Cotta is all but silent on Velleius' arguments against providence in book one;²⁰⁵ instead, he chooses to focus on Epicurus' alleged clandestine atheism in order to dismiss his views on the gods altogether.²⁰⁶ This difficulty is resolved when we consider that Cotta is speaking with an Epicurean, a supposed natural philosopher, rather than a Stoic or citizen. The principal issue for the natural philosopher is whether the gods exist at all; for the citizen, whether they are providential, rewarding or punishing human conduct.

²⁰¹ *ND* 1.54. Cf. *DRN* 1.951-1117.

²⁰² *Ibid.* Cf. *DRN* 1.445-82, 2.80-166, 5.416-508.

²⁰³ *ND* 1.56.

²⁰⁴ *ND* 1.61.

²⁰⁵ Cf. *ND* 1.91, 100.

²⁰⁶ *ND* 1.61, 85, 123, 3.3.

Cotta chides Velleius: “So are you, the natural philosopher who with gimlet eye hunts down the secrets of nature, not ashamed to look for evidence of the truth in minds steeped in familiar convention?”²⁰⁷ This is to say: is Velleius not ashamed to accept such arguments *ex consensu gentium* that the gods only assume human form, let alone exist at all? No doubt, Cotta teases, Jupiter always sports a beard while Apollo is clean shaven; or that their names truly are Jupiter and Apollo.²⁰⁸ Why assume the form of the gods human? Do we not have reports of crocodiles, ibises, and cats being worshipped by the Egyptians? To be sure, as a man, nothing seems more beautiful to you than other human beings. But as a natural philosopher, can you not see how a mare must appear to a stallion, or how any beast on land or sea does not delight in its own species?²⁰⁹ Cotta continues:

[W]as anyone ever so blind in his survey of realities as not to see that these human shapes have been ascribed to the gods for one of two possible reasons? Either some strategy of the philosophers sought to divert more easily the minds of the unsophisticated from debased living towards observance of the gods; or superstition ensured that statues were furnished for men to worship in the belief that they were addressing the gods themselves. Poets, printers, sculptors have nurtured these attitudes, because it was not easy to preserve the impression that gods were active and creative if they were represented by non-human shapes.²¹⁰

²⁰⁷ ND 1.83-4. Cf. 3.40-64.

²⁰⁸ ND 1.81-4.

²⁰⁹ ND 1.76-77.

²¹⁰ ND 1.77. Cf. Aristotle, *Metaphysics* 1074b.

Both reasons given by Cotta are essentially the same: whether fashioned deliberately or not by philosophers' prose, poets' verse, or sculptors' chisels, man more easily accepts providential gods in human guise. But come now, says Cotta, while some epigoni of Epicurus may actually believe such tripe, what did Epicurus himself believe? Did he not give merely nominal assent to the gods' existence while dispensing with them in reality to avoid incurring the Athenians' displeasure?²¹¹ How else can one explain his ridiculous doctrine of quasi-body and quasi-blood? Did not Velleius himself just now state that according to Epicurus all things are the chance corporeal combinations of atoms and must with time decay?²¹²

Velleius himself does not dare deny the gods' existence.²¹³ A senator, he seems to be more citizen than natural philosopher. Cotta therefore separates Velleius from his master and accuses Epicurus directly of clandestine atheism.²¹⁴ Beliefs like the existence of the gods are often popularly, if only publicly, held in order to avoid indictment. Cotta cites the example of Protagoras of Abdora who opened his book on the nature of the gods with the words, "I cannot say whether the gods exist or not," and by order of the Athenians was banished from Athens and had his books publicly burnt.²¹⁵ "I personally think that this precedent induced many more reluctant to

²¹¹ ND 1.85.

²¹² ND 1.68-75.

²¹³ ND 1.87.

²¹⁴ ND 1.57-61.

²¹⁵ Cf. Diogenes Laertius, *Lives of Eminent Philosophers* 9.51-2. Hereafter cited as Diogenes Laertius. The first line of Protagoras' treatise *On the Gods* has been preserved by Diogenes Laertius (9.51): "As to the gods, I have no means of knowing

declare similar convictions, for mere expressions of doubt could not guarantee them immunity from punishment.”²¹⁶ One need only mention in passing the similar charges and fates of Anaxagoras of Clazomenae²¹⁷ and Socrates.²¹⁸ The first book ends with Cotta siding with the Stoic Posidonius in dismissing Epicurus as one who did not grapple seriously with the problem of the gods. He could not have been such an idiot as to fashion the gods in human form and along such muddled lines as quasi-body and quasi-blood.²¹⁹ Epicurus did not believe in the gods at all; his teachings on them were mere lip-service to avert popular odium.²²⁰

either that they exist or that they do not exist. For many are the obstacles that impede knowledge, both the obscurity of the question and the shortness of human life.” Plato in his *Theaetetus* (151e) attributes to him the statement: “Man is the measure of all things, of things that are that they are, and of things that are not that they are not.” As Walsh, *The Nature of the Gods*, p. 147 n.2 remarks, such a statement excludes any appeal to divine revelation about the gods’ existence.

²¹⁶ ND 1.63.

²¹⁷ Diogenes Laertius 2.6-15; Plutarch, *Life of Pericles* 16-32 and *Life of Nicias* 23.

²¹⁸ Plato, *Apology of Socrates*; Xenophon, *Apology of Socrates to the Jury*. Of course, unlike Protagoras or Anaxagoras who fled Athens to avoid indictment, Socrates stood trial and paid the ultimate penalty.

²¹⁹ Cf. Mayor, “On the Design and Execution of the Dialogue,” p. ix.

²²⁰ ND 1.123. Cf. 3.3. Also cf. Strauss, “Notes on Lucretius,” p. 134: “Yet if we consider the crucial importance of the Epicurean gods in the Epicurean presentation of the truth, are we not driven to say that in the decisive respect Epicurus too is a poet? Do the Epicurean gods not magnify or embellish the whole?”

III

Throughout *De Natura Deorum* there exists a tension between Cotta the philosopher and Cotta the priest; between Cotta's conflicting acceptance of the demands of philosophy on the one hand and revelation on the other; between Cotta's seeming agreement with Lucretius the Epicurean and with Balbus the Stoic. Whether Cicero the author was actually a Stoic remains to be seen; Cicero the character cast his vote in favor of Stoicism and thus providence.

Cotta's silence on Velleius' attack on providence in book one is taken up and expanded upon in book three in response to Balbus' Stoic presentation of the gods in book two. Balbus had divided his argument into four sections: the gods' existence, the nature of the divine, providential governance of the universe, and the world ordered for man's benefit.²²¹ These four divisions are essentially two, the gods' existence and their providential nature. Cotta critiques them accordingly.²²² More revealing than the arguments themselves are the concerns underlying them. Like Lucretius, Cotta seems to adhere strictly to the demands of philosophical reasoning. When beginning his critique of the divine nature, Cotta notes the important distinction between what one can see for oneself as opposed to what is simply received from others.²²³ He will continually ask Balbus, not for rumor or hearsay, but

²²¹ ND 2.1-44, 2.45-72, 2.73-153, 2.154-68 resp.

²²² ND 3.10-19, 3.20-64, 3.65 (the section on providential government of the universe is almost entirely lost), 3.66-93 resp.

²²³ ND 3.20. Cf. Strauss, *Natural Right and History*, pp. 86-9.

rational proofs.²²⁴ Like Lucretius, he will seek human rather than superhuman explanations for phenomena. For example, when speaking on why many communities endowed brave citizens, now deceased, with divine status, he gives a political reason: “There are many communities in which the memory of brave men has clearly been hallowed by endowing them with the status of immortal gods. The purpose of this was to promote valour, so that the best citizens would be more willing to confront danger on behalf of the state.”²²⁵ Like Lucretius, Cotta attributes the workings of the universe not to the gods, but nature.²²⁶ When a natural explanation is not forthcoming, he notes men like Balbus are quick to ascribe them to the divine: “All such [workings of the universe] require an explanation, but you Stoics in your inability to provide one hasten to seek sanctuary with God.”²²⁷ And like Lucretius, Cotta makes a distinction between what the many are capable of believing and the truth the philosopher is supposed to seek.²²⁸ It is no accident that these and other such arguments earned Cotta and thus Cicero the reputation among some for being an atheist.²²⁹

²²⁴ *ND* 3.6, 10, 13, 20, 77, 92.

²²⁵ *ND* 3.50.

²²⁶ *ND* 3.24, 27-8, 65.

²²⁷ *ND* 3.25.

²²⁸ *ND* 1.83, 3.11, 39-40.

²²⁹ E.g., Augustine and Hume. Cf. Augustine, *De Civitate Dei* 4.30 and 5.9; Price, “Sceptics in Cicero and Hume,” p. 102-3.

And yet like Janus, Cotta has an entirely different face he presents to the world which adheres strictly to the demands of revelation. Cotta continually takes pains to draw attention to his role as priest and his acceptance of ancestral authority.²³⁰ How can these two conflicting positions be reconciled? Here it is helpful to turn once more to Cicero's own admonishment in his Preface. There Cicero had stated that the crucial issue concerning the gods was providence. The emphasis on providence was owed to its political importance. If the activities touching upon religious obligation owed by man for divine supervision are mere façade and pretence, they can contain no true devotion; if they contain no true devotion, then all sense of the holy and of religious obligation is destroyed. If this were to occur, political society, he maintained, would be thrown into great confusion and the preeminent virtue of justice would disappear. This caution is continually repeated by Cotta.²³¹ For example, before discussing whether the gods reward virtue and punish vice, the backbone of the doctrine of providence, Cotta cautions:

I broach this topic with reluctance, since my discourse seems to lend authority to misbehaviour. That would be a justifiable assumption, if without recourse

²³⁰ ND 1.61, 3.1-10, 15, 43, 53, 61, 63. This contrast is portrayed nowhere better than in Cotta's opening remarks on Epicureanism in book one (1.61): "In this investigation of the nature of the gods, the primary issue is whether they exist or not. You say that it is difficult to deny it. I agree, if the question is posed in public, but it is quite easy in this type of conversation conducted between friends. So though I am a *pontifex* myself, and though I believe that our ritual and our state-observances should be most religiously maintained, I should certainly like to be persuaded of the fundamental issue that the gods exist, not merely as an expression of opinion but as a statement of truth; for many troubling considerations occur to me which sometimes lead me to think they do not exist at all."

²³¹ ND 1.77, 102, 115-22, 3.50, 77-8, 85.

to any appeal to heaven our very awareness of virtue and of vices did not carry such considerable weight. Once that awareness is removed, the whole moral edifice collapses. Just as a household or a state appears to be ordered without a sense of reason and discipline, if rewards are not offered for just behaviour and punishments for misdemeanours, so there is certainly no divine governance in the universe, in so far as it is directed towards men, if no distinction is made in it between persons who are good and those who are evil.²³²

Cotta the character and Cicero the author both begin from the perspective of the citizen in the interests of healthy political life. It would not do to write a dialogue in which the state religion or the divine as such is outright attacked—not only for the author’s own safety, but in the interests of persuading the leading citizens that doing one’s duty to the state is divinely sanctioned.²³³ If Epicurus had taught that the good is the same as the pleasant and the pleasant entirely corporeal—with no superhuman arbiter—Cicero recognized the politically ruinous implications.²³⁴ If one were to begin to think of political society as a social contract in which patriotism is based on calculations of foregoing pleasure if it is likely to bring greater pain, and fleeing pain if it promises greater pleasure, what causes a citizen to obey the laws unobserved—to

²³² *ND* 3.85. Cf. Plato, *Laws* 10.885b.

²³³ *ND* 1. 118. Cf. *Div.* 1.8, 2.148; Lactantius, *Divinarum Institutionum* 1.17.4, 2.3.1-2; Holton, “Marcus Tullius Cicero,” pp. 156-57; Momigliano, “The Theological Efforts of the Roman Upper Classes,” pp. 199-211; Nicgorski, “Cicero, Citizenship, and the Epicurean Temptation,” pp. 15-18. The latter passage from Lactantius preserves one of the lost sections on providence from book three: “Such arguments should not be publicly aired in case discussion of this sort subverts the practice of the state religion.”

²³⁴ Cf. *ND* 1.111, 115-18.

say nothing of giving the ultimate sacrifice on the battlefield?²³⁵ In short, if there was much of Zeno in Cato, there was just as much of Epicurus in Caesar.²³⁶

The solution to this political problem lies in the dialogue form. The dialogue allows the philosopher, “to conceal one’s own private opinion, to relieve others from error and in every disputation to look for the most probable solution.”²³⁷ The dialogue allows conflicting positions to be presented and their presentation to be directed, but the philosopher’s own views remain concealed. The burden of ultimate conclusions is placed on the reader. The reader therefore must be sensitive to the dramatic details of the dialogue, the place, time, actions, and speeches of the characters. Less than sensitive readers will gleam partial but salutary truths; the more serious, more comprehensive if problematic truths.²³⁸ In *De Natura Deorum* one may find many of these telling dramatic details. Cicero was very aware that to the Romans philosophical speculation was in itself a rather undignified if not suspicious

²³⁵ Cf. *Leg.* 1.40-1; *Fin.* 2.52-60; *Tusc.* 5.95; Nicgorski, “Cicero and the Epicurean Temptation,” pp. 10-15. It is amusing to recall that Hobbes, a modern Epicurean and social contract theorist, proudly boasted of being the first to flee England at the outbreak of the English Civil War.

²³⁶ Cf. Sallust, *De Coniuratione Cataline* 51.20 and 52.13; Frank C. Bourne, “Caesar the Epicurean,” *The Classical World*, 70 (1977), pp. 417-32.

²³⁷ *Tusc.* 5.11.

²³⁸ Cf. Beard, “Cicero and Divination,” pp. 33-6, 40-5; Holton, “Marcus Tullius Cicero,” p. 157-8; Levine, “The Original Design and the Publication of the *De Natura Deorum*,” pp. 7-36; Levine, “Cicero and the Literary Dialogue,” pp. 146-51; Momigliano, “The Theological Efforts of the Roman Upper Classes,” pp. 208-9; Nicgorski, “Cicero and the Rebirth of Political Philosophy,” p. 70; Price, “Skeptics in Cicero and Hume,” pp. 99, 106; Leo Strauss, “Restatement on Xenophon’s *Hiero*,” *What is Political Philosophy? And Other Studies* (Chicago, 1959), pp. 126-7; West, “Cicero’s Teaching on Natural Law,” p. 70.

Greek activity.²³⁹ It thus had to be presented in a suitably respectable Roman setting. Therefore we find, as in so many of Cicero's dialogues, the time and setting of *De Natura Deorum* to be during a holiday when public business was suspended.²⁴⁰ Only during holidays after the performance of civic responsibilities did the Romans permit such leisure time.²⁴¹ But it was not enough to have the right setting; Cicero also needed the right people to participate in the dialogue. The *auctoritas* of the Romans selected must be great, their character fitting for the role. Thus in *De Natura Deorum* Cicero chose three very respectable Roman men to present the three schools of thought. It is most likely for this reason that Gaius Velleius, a senator, was chosen to represent the Epicurean school rather than Lucretius, a poet.²⁴² Further, Cicero decided against casting the dialogue in contemporary times with himself as the principal speaker for fear of the personal risks he would take in treating sensitive public issues with this own voice. Instead he decided to set the dialogue in the historical past between 77 and 75 BC and give himself an all but mute role.²⁴³ When

²³⁹ Cf. *Or.* 2.1-6 and 153-56 on the natural Roman distrust for all things Greek and the need to dissimulate one's knowledge of them. Also consider Tacitus, *Agricola* 4.

²⁴⁰ *ND* 1.15.

²⁴¹ Cf. *Pro Archia* 13; Levine, "Cicero and the Literary Dialogue," pp. 146-7. Cf. also *Or.* 1.24, which takes place during the leisure offered by the *Ludi Romani*; or *Rep.* 1.14 which also takes place on the *Feriae Latinae*; or *Leg.* 2.69, which is conducted over one long summer day.

²⁴² Cf. *Academica* 2.5-6, hereafter cited as *Ac.*; Beard, "Cicero and Divination," pp. 44-5; R. E. Jones, "Cicero's Accuracy of Characterization in His Dialogues," *American Journal of Philology*, 60 (1939), p. 307; Levine, "Cicero and the Literary Dialogue," p. 147.

²⁴³ Cf. *Ad Q. Fr.* 3.5.1-2; Levine, "The Original Design and the Publication of the *De Natura Deorum*," pp. 13-14; Levine, "Cicero and the Literary Dialogue," p. 148.

he does speak, it is either to distance himself from his own school or declare partiality for the Stoic and thus providential account.²⁴⁴ Finally, Cicero is able to make the unpleasant Academic skepticism palatable to the Romans by enlisting the aid of the priest Gaius Aurelius Cotta:

Paradoxical as the resulting dichotomy may seem, the introduction of a pontiff to play the main Academic role in Cicero's stead represents a brilliant and bold attempt to obtain for the negative criticism of the dogmatic theologies the objectivity necessary to satisfy the Roman audience that their own traditional religion was not being undermined; for the figure of Cotta through his high priestly function was intended to give this assurance.²⁴⁵

When we consider the function of the dialogue as used by Cicero generally and in *De Natura Deorum* specifically, the arguments of Cotta the philosopher impress us as being closer to those of Cicero the author than those of Cotta the priest.²⁴⁶ After all, Cicero himself in his Preface had urged the reader, "to look to the weight of reason rather than authority," and when reviewing the arguments on the nature of the gods, "to pass judgement on which of their views is true."²⁴⁷ Cicero

²⁴⁴ *ND* 1.17, 3.95. Cf. Beard, "Cicero and Divination," pp. 43-4; Levine, "The Original Design and the Publication of the *De Natura Deorum*," pp. 19-22; Levine, "Cicero and the Literary Dialogue," p. 150.

²⁴⁵ Levine, "The Original Design and the Publication of the *De Natura Deorum*," p. 24. Cf. Beard, "Cicero and Divination," pp. 42-3; Levine, "Cicero and the Literary Dialogue," p. 150.

²⁴⁶ For the opposite but ultimately problematic view, cf. DeFilipo, "Cicero vs. Cotta in *De natura deorum*," pp. 179-82; Pease, "The Conclusion of Cicero's *De Natura Deorum*," p. 36; Taran, "Cicero's Attitude Towards Stoicism and Skepticism in the *De natura deorum*," pp. 17-22.

²⁴⁷ *ND* 1.10 and 1.13 resp.

thus seems to have been sympathetic to much of Lucretius' teaching on religion and providence. What then separates him from Lucretius—why was he not an Epicurean but rather a tireless opponent of Epicureanism?

IV

Cotta had accused Epicurus at the end of book one of utterly undermining religious observance, overturning the temples and altars of the immortal gods, not by violence, as Xerxes had done,²⁴⁸ but by the force of his arguments. Why should men worship the gods when the gods show no regard for them let alone take no responsibility or action of any kind?²⁴⁹

Piety means giving the gods their due; but what religious law can we follow, when humans and gods have no common bond? Religious observance is expertise in divine worship, but I fail to understand why the gods should be worshipped if we neither obtain nor anticipate any blessing from them.²⁵⁰

Why revere the gods when we see in them no outstanding qualities? The Epicureans believe they banish superstition when they expunge men of religious fear; in fact, they banish the religious observation embraced by devoted worship.²⁵¹ If

²⁴⁸ Herodotus 8.109.

²⁴⁹ *ND* 1.115.

²⁵⁰ *ND* 1.116.

²⁵¹ Cf. Mayor, "On the Design and Execution of the Dialogue," p. ix.

providence is linked to religious observation and religious observation to salutary political life, Cotta's next rebuke becomes clear: "Then again, some have said that belief in immortal gods was a total invention by the sages in the interests of the state, so that those who could not be impelled by reason should be constrained by religious awe to a sense of duty; surely they too have utterly undermined all religion?"²⁵²

Cotta gives two images of political man. There is the man who obeys the laws "impelled by reason" to a sense of political duty. This reason itself is something of a religious one in which he believes "humans and gods have a common bond." The Stoics and most honest citizens are such men. Then there is the man who cannot be compelled by reason and must be "constrained by religious awe to a sense of duty." Such a wicked man would otherwise act in the interests of his own pleasure when positive law fails. In either case, religious observation is necessary for healthy political life. Epicurus and his disciples fail to recognize this because they dismiss all political activity as conventional. Lucretius may have been the most profound of the Epicureans and therefore the conventionalists, but he ultimately sided with the Garden. In refusing to allow the gods to accord help and favor to men, providence, he, like his master Epicurus, "wholly uprooted religion from human hearts".²⁵³ "For if we explain and rationalize these rituals, we gain more knowledge of natural philosophy than of gods."²⁵⁴ So, too, do we understand even less of political man. There is a link between piety and healthy political society. But to truly understand

²⁵² *ND* 1.118. Cf. 1.77 and 3.50 where Cotta himself gives precisely such undermining arguments.

²⁵³ *ND* 1.121.

²⁵⁴ *ND* 1.119.

this link, we must turn from Cicero's *De Natura Deorum* to his *De Legibus*. There we also find two images of political man, but in the form of two different foundations and reasons for law. We must descend from the nature of the gods to that of political society.

Chapter Three: The Nature of Convention

I

Conventionalism holds all political activity to be artificial, entirely determined by man and thus able to be dismissed by man. The most developed form of classical conventionalism is Epicureanism and the most comprehensive account of Epicureanism is Lucretius' *De Rerum Natura*. In that account there may be observed a tension between Epicurus' reduction of all human existence to corporeal pleasure and pain, and Lucretius' own persistent suspicion of a theological-political nature peculiar to man. This reasonable suspicion reveals the seams in the argument from convention. The alternatives are the arguments from revelation and nature. Lucretius' contemporary Cicero and his *De Natura Deorum* provide a thoughtful account of the argument from nature. In that account it is observed that man as he now exists is necessarily, not willfully, political, and that his political nature requires the argument from revelation for salutary political life. While this political nature was suspected by Lucretius, it was ultimately rejected in favor of the perspective of the natural philosopher. Cicero and those who sympathize with him begin with it in favor of the perspective of the citizen. But while *De Natura Deorum* was primarily intended as a bridge between the arguments of revelation and nature, Cicero's *De Legibus* or *On the Laws* is principally concerned with political life. The latter is a descent from the former.

Divided into three extant books,²⁵⁵ the first book of *De Legibus* offers a substantial setting and proem, and two accounts of two possible foundations of law, the latter account concluding with an encomium in praise of philosophy.²⁵⁶ The second book begins with another substantial proem, resumes the discussion of the first foundation of law, and concludes with a discussion of religious law constituted on that first foundation.²⁵⁷ The second account is silently forgotten. The third book establishes magisterial law, again, based on the first account.²⁵⁸ The relevance of the two proems to the larger discussion of the law is not initial clear; however, understanding them proves crucial to a complete account of law and thus political society. This difficulty can only be removed at the end of the chapter after both accounts have been examined. Like *De Natura Deorum*, *De Legibus* is written as a dialogue and takes place on a holiday; unlike *De Natura Deorum*, it is acted out rather than recounted, has no dramatic date and offers no preface. Further, being first and foremost a political dialogue, *De Legibus* rarely ascends to the abstract discussion found in *De Natura Deorum*. The entire dialogue takes place, literally and

²⁵⁵ Only three books have survived. It is uncertain how many books there were but there appear to have been at least five. Cf. *Mac.* 5.4.8. The general consensus is that there were six books to coincide with *De Re Publica*, and that the third book as we have it is incomplete.

²⁵⁶ Cf. Cicero, *On the Commonwealth and On the Laws*, edited by James. E. G. Zetzel (Cambridge, 1999), 1.1-16, 1.17-35, 1.36-63, 58-62, resp. Cf. Seth Benardete, "Cicero's *De Legibus* I: Its Plan and Intention," *The American Journal of Philology*, 108 (1987), p. 303; Woldamar Gorler, "Silencing the Troublemaker: *De Legibus* 1.39 and the Continuity of Cicero's Scepticism," *Cicero the Philosopher: Twelve Papers*, edited by J. G. F. Powell, (Oxford, 1995), p. 86-7.

²⁵⁷ *Leg.* 2.1-7, 2.8-18, 2.19-69, resp.

²⁵⁸ Further subdivisions within this structure will be discussed over the course of the chapter.

figuratively, in the shade.²⁵⁹ This setting consciously imitates Plato's own *Laws*.²⁶⁰

The reader of *De Legibus*, like the reader of Plato's *Laws*, must be aware that the discussion of the laws is less an investigation of what is true or ideal and more what is appropriate or possible.

The conversation on the nature of law and the best civil laws takes place on Cicero's family estate in Arpinum over a long summer's day. A mature Cicero is joined by his younger brother, Quintus Tullius Cicero²⁶¹ and lifelong friend, Titus Pomponius Atticus.²⁶² While out walking one morning the trio comes across a grove and an oak which Atticus perceives to be the famous oak of Arpinum mentioned by

²⁵⁹ Cf. *Leg.* 1.14 and 2.1. Also cf. Macrobius, *Saturnalia* (Oxford, 2012), 5.4.8. Hereafter cited as *Mac.* after the name of the author. Being a summer's day, the interlocutors walk and talk under the shady trees along the bank of the Liris (*Leg.* 1.14), rest under them on an island in the Fibrenus (*Leg.* 2.1), and, eventually, when the midday sun's rays pierce the island's young trees, continue down the Liris to pursue the rest of the conversation under the shade of the alders (*Mac.* 5.4.8).

²⁶⁰ Cf. Plato, *Laws* 625b-c3. This will be discussed further in the conclusion.

²⁶¹ Quintus Tullius Cicero (c. 103-43) was Cicero's younger brother. A politically active man, he was praetor in 62 and would later serve with distinction as a legate with Caesar in Gaul. He was liberally educated in Greek philosophy and poetry. An uncritical adherent to his government and peers, the *optimates*, he was proscribed and murdered by the Second Triumvirate at the same time as his brother. *De Oratore* and, it is believed, *De Re Publica*—political dialogues—were dedicated to him. Cf. *Leg.* 2.17, 3.17; Zetzel, *On the Commonwealth and On the Laws*, p. 105 n.2 and 197.

²⁶² Titus Pomponius Atticus (109-32) was a lifelong friend to Cicero and Quintus. A man of great wealth, a member of the equestrian order, and an Epicurean, he shunned political life, preferring to live in Athens and so received the cognomen "Atticus". It is largely thanks to him we have Cicero's voluminous correspondence. He survived the proscriptions of the Second Triumvirate and had his daughter married to Augustus' general and close friend, Agrippa. Cf. Thomas G. West, "Cicero's Teaching on Natural Law," *St. John's Review*, 32 (1981), p. 76; Zetzel, *On the Commonwealth and On the Laws*, p. 192.

Cicero in his epic poem, *Marius*.²⁶³ The tree is quite old and if the famous original still survives, Atticus remarks, this is surely it. Quintus, a poet, responds: “It survives, Atticus, and it will always survive: its roots are in the imagination. No farmer’s cultivation can preserve a tree as long as one sown in a poet’s verse.”²⁶⁴ Atticus asks Quintus what he means. Do you really believe, Quintus replies, the olive tree they show today on the Acropolis in Athens to be the original; or the palm shown in Delos actually the same tree Homer’s Ulysses said he saw there?²⁶⁵ For many are the things which last longer in recollection than they do in nature.²⁶⁶ Atticus does not disagree with Quintus, but says that his question was intended for the author of the *Marius* himself. Did Cicero’s verses plant this oak or did he base his poem on some other account?²⁶⁷ Atticus does not seriously consider whether there may have ever been a true account or a real oak of Marius. Cicero responds by asking Atticus in turn whether he believes it true that Romulus took a stroll after his death and told Proculus Iulius that he was a god named Quirinus and ordered a temple to be dedicated to him on that spot; or that in Athens the North Wind picked up Orithyia? For that is what “they say.”²⁶⁸ Atticus does not understand—why does he ask? Cicero answers: “Only that you should not be too particular in your researches into things that are

²⁶³ The *Marius* is believed to have been written in the 50s. It is now lost.

²⁶⁴ *Leg.* 1.1

²⁶⁵ Cf. *Odyssey* 6.162.

²⁶⁶ *Leg.* 1.2.

²⁶⁷ *Leg.* 1.3.

²⁶⁸ *Ibid.*

handed down in stories of this kind.”²⁶⁹ But people who read the *Marius* wish to know the truth about the events related, Atticus retorts. Not that I would want to be called a liar, replies Cicero, but people behave ignorantly (*imperite*) when they look for truth in a poet. No doubt such people think Numa had conversations with Egeria or an eagle placed the priest’s cap on Tarquin’s head.²⁷⁰

The examples of Numa and Tarquin strike Quintus as being more akin to history than poetry. Surely Cicero draws a distinction between the two?²⁷¹ Cicero replies that in the case of poetry, everything aims at pleasure, in history, truth—although there *are* countless fables in Herodotus the father of history and in Theopompus.²⁷² Quintus’ introduction of history gives Atticus the opportunity for which he has been waiting. He requests that Cicero write a proper Roman history. Prior attempts by Romans have been dry, rustic, or plain ignorant, especially the early writers.²⁷³ It would seem the answer to Quintus’ question is that the distinction between poetry and history is often blurred.²⁷⁴ After all, much of what is reported concerns events which occurred long ago and are handed down by those who did not see them. Both Herodotus the father of history and the early Roman writers were as much poets as they were historians. In the case of the early Roman writers, Atticus

²⁶⁹ *Leg.* 1.4.

²⁷⁰ *Ibid.* Cf. Livy 1.19.5, 1.34.8.

²⁷¹ *Leg.* 1.5.

²⁷² *Ibid.*

²⁷³ *Leg.* 1.5-7.

²⁷⁴ Cf. Aristotle, *Poetics* 1451a36-b39.

notes that they were outright ignorant. Does this mean that the present Romans are ignorant about early Roman history and thus their ancestral ways, customs, and laws? How much of Roman law is fabulous?

Cicero is unwilling to accept Atticus' request. He only has snatches of free time. A history requires a good deal of free time arranged in advance and cannot be finished quickly.²⁷⁵ Atticus suggests Cicero obtain an ambassadorial appointment or some other such post which offers freedom and leisure. Cicero muses that he would not be adverse to following ancestral custom and accepting the privilege which comes with old age, sitting in a counselor's seat and giving legal advice to clients. Not only would he be able to fulfill Atticus' request, but even devote himself to larger and richer subjects.²⁷⁶ Atticus the Epicurean and philosopher dislikes the idea of Cicero sitting in court; far from freeing Cicero from duty, service to the courts would merely increase it. Quintus the Stoic and citizen approves of it.²⁷⁷ Thus the proem to the first book of *De Legibus* begins with a discussion of poetry, leads to a question on the distinction between poetry and history, and finally in turn broaches the main topic of law. There is a link between these three which we are not yet in a position to examine.

Since this is one of those snatches of time, asks Atticus, why not speak on the subject of civil law? After all, Cicero studied law from the time he was a young with Quintus Mucius Scaevola and seemed rather devoted to it. Atticus summons Cicero

²⁷⁵ *Leg.* 1.8-9.

²⁷⁶ *Leg.* 1.10.

²⁷⁷ *Leg.* 1.11-12.

to a long discussion, but since they have free time, Cicero is willing to undertake it. Quintus, too, is willing.²⁷⁸ The trio decides to walk along the shady bank of the Liris while Cicero explains his ideas on the civil law. However, Cicero is unwilling to speak on mundane legal matters such as the function of jurists, laws regarding water running off roofs, shared walls, and so forth. To be sure, such legal matters have their place and there is no shortage of eminent men who write on them.²⁷⁹ But for Cicero, the civil law is a small and narrow part of the larger nature of law.²⁸⁰ Atticus requests that since Cicero has written elsewhere about the best form of the commonwealth, like his beloved Plato before him, he also write about its laws.²⁸¹

Cicero: Then is this your wish? Just as with the Cretan Clinias and the Lacedaemonian Megillus, as [Plato] describes it, he spent a summer day in the cypress groves and forest paths of Cnossos, frequently stopping and occasionally resting, discoursing on public institutions and the best laws, in the same way let us walk and rest among these tall poplars on this green and shady bank and inquire into these same subjects more deeply than is required by the practical uses of the courts.

Atticus: That is exactly what I want to hear.

Cicero: What about Quintus?

²⁷⁸ *Leg.* 1.13.

²⁷⁹ *Leg.* 1.14. Cf. *Fin.* 1.12.

²⁸⁰ Cf. *Leg.* 1.17: “[Cicero:] We must explain the nature of law, and that needs to be looked for in human nature; we must consider the legislation through which states ought to be governed; and then we must deal with the laws and degrees of peoples as they are composed and written, in which the so-called civil laws of our people will not be left out.”

²⁸¹ It is interesting to note that throughout *De Legibus*, Plato is singled out as the philosopher Cicero admires most. Cf. *Leg.* 1.15, 3.1.

Quintus: Nothing better.²⁸²

The proem to the first book ends with the agreement of the trio to engage in a discussion of the nature of the law and the best civil laws with Cicero as the principal speaker. What follow are two accounts of the foundation or reason for law.

II

The first account of law begins with a concession. Cicero defines law as the highest reason, rooted in nature which commands what must be done and prohibits the opposite. Law is therefore a judgment about right and wrong conduct, a distinction between justice and injustice. To speak on law is to speak on justice, specifically, the highest law or justice which existed before there were any states. Thus Cicero turns to the beginning and source of justice in nature.²⁸³ Atticus remarks that he is willing to accept a discussion on law in which law is sought for in nature; for “with nature’s leadership there will be no possibility of getting lost.”²⁸⁴ However, Cicero interjects:

Cicero: Then, Atticus, will you grant me this (I know Quintus’ opinion), that all nature is ruled by the force or nature or reason or power or mind or will—or whatever other word there is that will indicate more plainly what I mean—of the immortal gods? If you don’t accept this, then I will have to make it the starting point of my case.

²⁸² *Leg.* 1.15-16.

²⁸³ *Leg.* 1.17-20.

²⁸⁴ *Leg.* 1.20.

Atticus: Of course I will grant it, if you wish; the singing of the birds and the noise of the river give me reason not to fear that any of my fellow students will hear me.²⁸⁵

Nature's leadership could very well mean nature as understood by the Epicureans, as atoms, void, and accident. By obtaining Atticus' concession, the foundation for the first account of law and justice is grounded on nature as understood by the Stoics, as providentially ordered by the gods.²⁸⁶ Nor is this concession out of keeping with Atticus' stance as an Epicurean. Atticus is willing to grant Cicero's request for three reasons: first, it was Atticus who had requested Cicero speak on law as Plato had done before him;²⁸⁷ second, Cicero is his friend and it is gratifying to please one's friends;²⁸⁸ and third, he is obviously enjoying himself and his surroundings.²⁸⁹ Atticus grants Cicero's request because it is pleasant for him to do so; his concession remains in accordance with Epicureanism.

The first account of law is a divine one. In *De Natura Deorum*, Cotta had observed that piety meant giving the gods their due, but had questioned what was due to inactive and idle gods who cared nothing for man, let alone had no common bond

²⁸⁵ *Leg.* 1.21. Those fellow students being Epicureans.

²⁸⁶ It is worth noting that previously Cicero had remarked that his speech on the law must be based on "popular conceptions" and "popular terms". Cf. *Leg.* 1.19.

²⁸⁷ *Leg.* 1.15. Cf. also *Leg.* 3.1 where Atticus comments that one can never praise Plato too much or too often.

²⁸⁸ *Leg.* 2.4.

²⁸⁹ *Leg.* 1.21, 1.28, 2.1, 2.4, 2.6.

with him.²⁹⁰ In *De Legibus*, a strictly political dialogue, we are told there is indeed such a bond. Here Cicero presents a teleological cosmology. Law (*lex*) is said to be the highest reason (*ratio summa*) of the cosmos. This highest law is itself traced back to the immortal gods who rule nature. The immortal gods have established a community of reason between man and god. Through reason, specifically, the right use of reason (*recta ratio*), man may know the highest law or justice. It is this highest reason which commands and prohibits human conduct regardless of the particular state one lives in.²⁹¹ Nor is everything said to be perishable or accidental. The gods gave to man the divine gift of a soul. Though the body is mortal and will eventually perish, the soul is divine and will last for eternity. It is the soul which forms the bond between man and god and allows for man's use of reason. And it is the soul which allows for man, alone among the animals, to perceive god; for all nations no matter how savage acknowledge the gods. We remember in *De Natura Deorum* that Cotta had argued against such a proof *ex consensu gentium*.²⁹²

So it is that in the first account the foundation or reason for law is providential gods who single out man for the greatest possible gift, the soul, which not only allows

²⁹⁰ ND 1.116. Cf. Benardete, "Cicero's *De Legibus* I," p. 303.

²⁹¹ Cf. *Leg.* 1.23: "[Cicero:] And therefore, since there is nothing better than reason and it is found in both humans and in god, reason forms the first bond between humans and god. And those who share in reason also share in right reason; and since that is law, we humans must be considered to be closely allied to gods by law. Furthermore, those who share law also share the procedures of justice; and those who have those things in common must be members of the same state, all the more so if they obey the same commands and authorities. Moreover, they do obey this celestial order, the divine mind and the all-powerful god, so that this whole cosmos must be considered to be the common state of gods and humans."

²⁹² Cf. *Leg.* 1.24 with ND 1.62.

for the use of reason and thus justice, but even grants man immortality. So it is that the gods' providential favor extends to the world as created and ordered for man's benefit.²⁹³ And so it is that man is "born for justice" owing to the common bond between man and god.²⁹⁴ We cannot but again remember Cotta's remarks to the contrary.²⁹⁵

III

The second account of law begins with an accusation. It seems to Atticus that Cicero has lost his own freedom of speech in his presentation of law thus far; or perhaps Cicero is the sort of man who follows the authority of another rather than his own judgment?²⁹⁶ Cicero replies:

Not always, Titus, but you see the direction of this discussion. My whole discourse aims at making commonwealths sound, establishing justice, and making all peoples healthy. For that reason I am afraid of making the mistake of starting from first principles that are not well considered and carefully examined; not that everyone should agree with them—that is impossible—but

²⁹³ *Leg.* 1.25: "[Cicero:] There is, therefore, a similarity between human and god. And since that is so, what closer or more certain relationship can there possibly be? That is why nature has bestowed such an abundance of things for human convenience and use, such that those things which exist seem to have been deliberately given to us, not randomly created—and this applies not only to the earth's profusion in bringing forth crops and fruits, but even to animals, some of which were created for human use, some for enjoyment, and some for food."

²⁹⁴ *Leg.* 1.28, 1.33. Cf. Benardete, "*Cicero's De Legibus* I," p. 303.

²⁹⁵ Cf. *ND* 3.66-93.

²⁹⁶ *Leg.* 1.36. Cf. Gorler, "Silencing the Troublemaker," p. 103.

so that they will have the approval of those who believe that all right and honorable things are desirable in their own account, and that either nothing at all should be considered good unless it is praiseworthy in itself or at least that nothing should be considered a great good except what can truly be praised in its own account.²⁹⁷

The first account of law is intended to strengthen commonwealths, establish justice, and make peoples healthy by seeking the approval of the sort of man introduced in *De Natura Deorum* who obeys the laws “impelled by reason” to a sense of political duty.²⁹⁸ This man may be persuaded by the reasonable argument from revelation that there is a common bond between man and god, reason, which the gods gave to man along with his soul, allowing for the use of right reason and therefore justice.²⁹⁹ Since justice so understood is divine, just actions may be considered desirable in themselves. Stoics and most honest citizens—of whom Quintus is one—

²⁹⁷ *Leg.* 1.37.

²⁹⁸ *ND* 1.118.

²⁹⁹ I do not make a distinction between reason and revelation. The argument from revelation is quite reasonable. Rather, it more helpful to distinguish between the argument from nature and the argument from revelation, that is, between philosophy and revelation. Cf. *ND* 3.71: “But is there any act of lust or greed or crime which is undertaken without preliminary design, or carried out without feeling or thought, in other words without reason? Every belief is based on reason; if true, it is right reason, but if false the reasoning is defective.” Cf. also Leo Strauss, “Philosophy and Revelation,” in Heinrich Meier, *Leo Strauss and the Theologico-Political Problem*, Marcus Brainard, trans. (Cambridge, 2006), pp. 141: “By the problem of reason and revelation I understand the problem of *philosophy* and revelation. ‘Reason’ is neutral: the rights of reason would seem to be recognized by believers in revelation and unbelievers alike. We rise above the level of neutrality, or triviality, we enter the arena of conflict, if we confront revelation with a particular *interpretation* of reason—with a view that *the* perfection of reason and *therefore the* perfection of man is philosophy: philosophy is incompatible with revelation: philosophy must try to *refute* revelation, and, if not revelation, at any rate theology must try to *refute* philosophy.

are this sort.³⁰⁰ But what of the second sort, the wicked man who cannot be compelled by the reasonable argument that justice is praiseworthy in itself and instead must be, “constrained by religious awe to a sense of duty?”³⁰¹

Immediately after drawing Atticus’ attention to the aim of the discourse in the first account, Cicero proceeds to banish the Epicureans, Atticus’ school, and silence the skeptical Academics, Cicero’s own school. Those, he says, who indulge themselves and are enslaved to their bodies, who judge everything to be sought or avoided by pleasure and pain—even if what they say is true, and this is not the place to discuss it—they must be ordered to talk in their gardens and stand away from the bonds of civil society, “of which they know nothing and have never wished to know anything.”³⁰² In keeping with Cotta’s stance in *De Natura Deorum*, Cicero’s rejection and banishment of Epicureanism as a political philosophy does not necessarily mean he rejects it as a natural philosophy. What is inappropriate is not necessarily untrue.³⁰³ As for the skeptical Academy which confuses all these questions, Cicero requests that its adherents remain silent. For if they attack these things which he has so neatly arranged and composed in the first account of law, they will cause excessive damage. However, unlike the Epicureans, not only does Cicero

³⁰⁰ Cf. *Leg.* 1.38. Cf. also West, “Cicero’s Teaching on Natural Law,” p. 75: “[Quintus] is possessed by a certain excess of the love of one’s own that typifies the citizen and gentleman at all times and places.”

³⁰¹ *ND* 1.118.

³⁰² *Leg.* 1.39.

³⁰³ Cf. *Leg.* 1.39 with *Or.* 3.64. Cf. also Nicgorski, “Cicero and the Epicurean Temptation,” p. 16.

request rather than order the Academy's silence, but even seeks to conciliate them, that is, persuade them of the worth of his political teaching.³⁰⁴ To do this he introduces a second foundation or reason for law.

The second account of law is a human one. Unlike the first account in which law was said to originate from the common bond between man and god, here it is said to be a phenomenon of the conscience which in itself is not a sufficient deterrent to the wicked man. Nor added to it are positivistic penalties. "If penalties and the fear of punishment rather than criminal behavior itself are the deterrent from an unjust and criminal existence, then no one is unjust, and the wicked should rather be considered incautious."³⁰⁵ Those who are not moved by the idea of honor as such to be good men, but rather by some sort of utility or profit, are not good but crafty. What would such a man do in the dark if he is afraid only of witnesses and judges? What would he do in some deserted place if he should encounter someone weak and alone from whom he could steal much money?³⁰⁶ Such a wicked man must be overawed by the fear of otherworldly penalties.

But perhaps someone might object that while there is no law by nature, there is law by convention. What then? Is not the most stupid thing of all, says Cicero, to declare just whatever has been ratified by a people's institutions or laws? What about

³⁰⁴ Cf. Gorler, "Silencing the Troublemaker," p. 87; Nicgorski, "Cicero's Paradoxes and His Idea of Unity," p. 560.

³⁰⁵ *Leg.* 1.40. It is interesting to note that this is the opposite of the modern approach to law best represented in the writings of Oliver Wendell Holmes, Jr. Cf. Holmes, "The Path of the Law," 10 *Harvard Law Review* 457 (1897).

³⁰⁶ *Leg.* 1.41. Cf. *Fin.* 2.52-60; *Tusc.* 5.95.

the law of tyrants, be they one, few, or many?³⁰⁷ Further, does not this understanding of law simply reinforce the idea of obedience out of utility or profit? Is justice established on the basis of utility not uprooted by that same utility?

[I]f justice is obedience to the written laws and institutions of a people, and if (as these same people say)³⁰⁸ everything is to be measured by utility, then whoever thinks that it will be advantageous to him will neglect the laws and will break them if he can. The result is that there is no justice at all if it is not by nature, and the justice set up on a basis of utility is uprooted by that same utility: if nature will not confirm justice, all virtues will be eliminated. Where will be a place for liberality, for love of country, for piety, for the desire to do well by others or return kindness? These all arise because we are inclined by nature to love other humans, and that is the foundation of justice.³⁰⁹

In sum, in the first account of law we were told that the foundation for justice was the common bond between man and god, in the second, that it is man's own natural affection;³¹⁰ previously that law is the highest reason, now, that it is a phenomenon of human conscience;³¹¹ before that man is born for justice, here, that he is born for civil society.³¹² The foundation or reason for law in the first account rests on providential gods, the second, on human nature alone. Both accounts demonstrate

³⁰⁷ *Leg.* 1.42. Cf. *Leg.* 1.44-7.

³⁰⁸ I.e., the Epicureans.

³⁰⁹ *Leg.* 1.42-3. Cf. *Leg.* 1.48-52; *Fin.* 49-50.

³¹⁰ Cf. *Leg.* 1.23 with 1.43.

³¹¹ Cf. *Leg.* 1.18 with 1.40.

³¹² Cf. *Leg.* 1.28 with 1.62. Also cf. Benardete, "Cicero's *De Legibus* I," p. 303.

that man's political nature requires the argument from revelation for salutary political life.

The second account of law is the only ascent in *De Legibus* and it is quickly terminated by Quintus. If Cicero and Atticus were permitted, they would continue on to discuss the supreme good, by which all things may be judged.³¹³ Quintus is quite satisfied with the first account of law and is persuaded that the good has been sufficiently brought to light. He is impatient to discuss the civil law and so declares the question of the highest good to be irrelevant in the present discourse.³¹⁴ Cicero ironically remarks that Quintus speaks "most prudently." He yields to his brother and concludes the second account of law, but not before giving an encomium to what they briefly ascended, nor would again return to in the remainder of the dialogue, philosophy.³¹⁵ In the second book Quintus will request that the trio, "sit in the shade and return to that part of the discussion from which we digressed." Cicero will begin his account of law for a third and final time, "From Jupiter the beginning of songs," since, "now we too must take the starting point of the discussion from Jupiter and the

³¹³ *Leg.* 1.52. Cf. *Leg.* 1.53-5. The discussion of the supreme good is taken up by Cicero in *De Finibus Bonorum et Malorum*.

³¹⁴ *Leg.* 1.56-7. Cf. West, "Cicero's Teaching on Natural Law," p. 78: "Quintus' urgency springs from the same source as the urgency of law itself, which cannot hold in abeyance its dispensations of what it holds to be just and unjust without endangering the political order. So Quintus calls Cicero and Atticus back from the leisure of philosophy to the practical problems of everyday life that demand instant attention, and thus he unknowingly draws a veil over the unsolved problem."

³¹⁵ *Leg.* 1.58-63.

other immortal gods.” Quintus declares it right to do so and replaces Atticus as the primary interlocutor.³¹⁶

IV

We are now in a position to examine the proems to books one and two and thus glean Cicero’s complete teaching on law.³¹⁷ Again, it is not immediately apparent what relevance either has in a dialogue on law. The proem to book two begins with Atticus suggesting that since Cicero must begin his speech again and they have walked enough that they sit down and continue their conversation on the island in the Fibrenus. Atticus is enthralled by the beauty of the place and with Cicero’s family estate in general.³¹⁸ Cicero remarks that he too seeks out the beauty and restfulness of the place whenever possible—but adds that he has another cause for pleasure in coming here. Arpinum is his and his brother’s true fatherland. Here one may find Cicero’s family rituals and the traces of his ancestors; here one may enter the house of his father and grandfather; here one may see the place where Cicero was born and raised. “And so something abides deep in my mind and feelings which makes me take all the more pleasure in this place, just as the wisest of men is said to have

³¹⁶ *Leg.* 2.7.

³¹⁷ *Leg.* 1.1-16 and 2.1-7 resp.

³¹⁸ *Leg.* 2.1-2.

refused immortality so that he could see Ithaca again.”³¹⁹ Arpinum, says Cicero, is so to speak his “cradle.”³²⁰

Atticus does not understand Cicero’s comment that Arpinum is his “true fatherland.” What of Rome? Indeed, says Cicero, all those born in *municipia* or municipalities have two fatherlands, one given by nature, the other by citizenship. Cicero is Tusculan by nature and Roman by convention.

But of necessity that one takes precedence in our affections whose name ‘commonwealth’ belongs to the entire citizen body, on behalf of which we have an obligation to die, to which we should give ourselves entirely and in which we should place and almost consecrate everything we have. But in our affections the one that bore us stands almost as high as the one which received us; and so I will never deny that this is my fatherland, while recognizing that the other one is greater and that this one is contained within it. . .³²¹

The idea Cicero wishes to convey with respect to the Roman *municipia* is very much in keeping with what Tocqueville would later teach regarding the New England towns in America. In both the Roman *municipia* and the New England towns a citizen had a deep vested interest; both were the most immediate extension from the family of the love of one’s own. It is here where the vast majority of men concentrate their interest and ambition.³²² From the *municipium* or town, by degree, the citizen

³¹⁹ Leg. 2.3. Cf. *Odyssey* 5.135-6.

³²⁰ Leg. 2.4.

³²¹ Leg. 2.5.

³²² Cf. Alexis de Tocqueville, *Democracy in America*, Harvey C. Mansfield and Delba Winthrop, trans. (Chicago, 2002), I 1.5, pp. 63-4: “It is in the township, at the center of the ordinary relations for life, that desire for esteem, the need of real

may extend his interest to the greater multitude of his fellow peers. Eventually, this vested extension may even prompt him to love his country at the expense of his immediate relations. The seeds of justice are first and foremost planted in the love of one's own family and town. This attachment is natural; its extension to the larger citizenry and state, while higher in precedence, is nonetheless conventional.³²³ To best promote good laws, citizens must be inculcated with them while young within their "true fatherland", the fatherland by nature. Thus the second proem introduces the crucial relationship between the love of one's own and law. Such law seeded early on in this most immediate of soils forms the mores and customs of a people, the unwritten law. And it is this unwritten law which legislates best.

We will remember that the proem to book one begins with a discussion of poetry, leads to a question on the distinction between poetry and history, and finally in turn broaches the main topic of law. The dialogue began with Atticus coming across an old tree which he takes to be the fabulous tree of Marius should it should still survive. Quintus the poet remarked that it would always survive, for its roots are in the imagination. No farmer's cultivation can preserve a tree as long as one sown in a poet's verse. When Atticus presses Cicero for the truth of the story, Cicero replies that only fools seek truth in a poet. The discussion of poetry introduces the topic of history and raises the question as to whether there is a distinction between the two. The implicit answer was that the distinction between poetry and history is often

interest, the taste for power and attention, come to be concentrated; these passions, which so often trouble society, change character when they can be expressed so near the domestic hearth and in a way in the bosom of the family."

³²³ Cf. *Off.* 1.53-8.

blurred. After all, much of what is reported concerns events which occurred long ago and are handed down by those who did not see them. Both Herodotus the father of history and the early Roman writers were as much poets as they were historians. In the case of the early Roman writers, Atticus had noted that they were outright ignorant. Their histories are quite suspect. We are therefore left to wonder whether the present Romans are not equally ignorant about early Roman history and thus their ancestral ways, customs, and laws. Law first appears in the dialogue as something handed down by unreliable sources from a time long ago which may or may not be entirely fabulous. Thus the first proem introduces the relationship between poetry and law. The unwritten higher law of mores and customs which determine mundane legal matters such as the function of jurists, laws regarding water running off roofs, shared walls, and so forth has much of its origins in poetry.³²⁴

When considered together, the proems in books one and two offer Cicero's complete teaching on the law. Law is part poetry and part love of one's own. The relationship between poetry and law answers how the law originates; the love of one's own and law, why it is obeyed. Initially law does indeed appear to be simply conventional, determined by man and thus able to be dismissed by man. But when we consider that man requires law, be he the honest man of the first account of law or the wicked man of the second, law emerges as something natural, not artificial.³²⁵

The conventionalist argues that law is made, the naturalist that law is grown; the first

³²⁴ Cf. Benardete, "Cicero's *De Legibus* I," pp. 299-300; West, "Cicero's Teaching on Natural Law," p. 76.

³²⁵ Cf. Holton, "Marcus Tullius Cicero," p. 163.

is a conscious act, the second an unconscious inheritance; the former implies that law is mere artifice or contrivance, brought into being out of utility and thus able to be changed or dismissed by that same utility, the latter implies that law is natural, born into and cultivated, readily accepted from birth and thus fundamentally changed only with great difficulty.³²⁶ Cicero's complete teaching on law demonstrates not only that political man naturally requires the law, but how it naturally originates and why it is naturally obeyed. It demonstrates that political society, far from being artificial, is quite natural. Obedience to law, however, especially fundamental law, requires piety. A healthy political society is one in which its citizens show dutiful respect to the source of the higher law in which justice originates. If a citizenry loses its piety, it risks becoming corrupt. Justice constituted solely on the basis of utility is undermined by that same utility. Better law may make for better citizens, but piety is required if the law is to be obeyed.

³²⁶ It is well understood that the mundane laws of any given political society, such as, to quote Cicero, the function of jurists, laws regarding water running off roofs, shared walls, and so forth, are numerous, and may be legislated at a moment's notice for the sake of utility. I say "may" because even mundane laws may in time pass into an unconscious inheritance and become difficult to change. At any rate, law as discussed here means fundamental law, law which substantially determines a regime or a people's character. For example, modern liberal democracy begins with the fundamental law that all men are created equal and therefore have an equal right to the franchise.

Conclusion

I

Justice is argued by the conventionalist to be artificial rather than natural and thus those who practice it to be fools. If justice were natural rather than conventional it would be manifestly known to all men, at all times, everywhere. But in point of fact notions of justice change, not only from society to society, but even in the same society from age to age. It is the product of human society. Moreover, justice is not desired for its own sake, but always in the interest or utility of some one or few. There is no common good. Laws are observed because of punishments, not justice. Man seeks society not out of affection, but calculation. It was weakness which caused individuals living in solitude to seek their own self-preservation in the first communities; weakness which made political society possible; weakness which is the mother of justice. And since justice is conventional rather than natural it is only wise to seem just, but practice injustice. All successful individuals and nations have acted in this manner. Those who practice justice too strictly risk weakening their own power. No one may reasonably be expected to follow a course which may lead to their impoverishment or destruction. The individual or nation must therefore appear just while practicing injustice. All the benefits stemming from the appearance of justice will be had while all the misfortunes from too strictly practicing it will be avoided. To appear just but practice injustice—that is human nature. Man always acts out of considerations of utility.

If justice is truly arbitrary and the best regime truly a fiction then it is then quite reasonable to constitute a society which aims at man's true end, pleasure, while securing it by means of his true bearing, passion. This reorientation of political society by utility was achieved in modernity. But was it warranted? As we have observed, such an argument depends on all human need being reduced to the corporeal pleasure of individuals living in solitude. Epicurus had argued that all the objects of man's attachment are valuable, not in themselves, but only insofar as they serve to produce bodily well-being. Those pleasures called spiritual are not essentially different. The wise man is more inclined towards happiness, not because wisdom itself is worth pursuing, but because wisdom better ensures pleasure and wards off pain. Such a use of reason in no way changes the nature of pleasure; it simply ensures its continuation. Epicurus' understanding of happiness contradicts many of his disciple Lucretius' most important findings about the nature of man. Throughout Lucretius' poem we observed a tension between Epicurus' corporeal reductionism and Lucretius' own grudging admission that there might be needs, still more fundamental, exclusive to men living in political society. Lucretius' discussion of religion and the nature of political man suggest two such needs, first, the alleviation of a fundamental fear that the eternal is not lovable, nor the lovable eternal, and, second, the belief in providential gods who reward virtue and punish vice in deterring unjust conduct. The reader of Lucretius' *De Rerum Natura* was left with the persistent suspicion that man is most pleased when he is secure, not simply in bodily well-being, but in the comfort of providence and justice. Thus we parted ways with Lucretius. His rejection of this theological-political problem seemed to

ignore his own most important findings regarding religion and the nature of political man.

If Lucretius had suspected that providence weighed heavily on man; Cicero was more certain of it. If Lucretius had tentatively recognized its political implications; Cicero began with them. And if Lucretius had reluctantly incorporated the needs of the citizen into his work on natural philosophy; Cicero's philosophical works start from the perspective of the citizen and surface only indirectly to natural philosophy. Thus to better understand those needs of man which have nothing to do with his body, it was helpful to turn from Lucretius to his Roman contemporary, Cicero. Cicero, too, had recognized that the crucial issue concerning the gods is providence. The reason for providence's importance, according to Cicero, was similar to that given by Lucretius. The emphasis on providence was owed to its political importance. If the activities touching upon religious obligation owed by man for divine supervision are mere façade and pretence, they can contain no true devotion; if they contain no true devotion, then all sense of the holy and of religious obligation is destroyed. If this were to occur, political society, he maintained, would be thrown into great confusion and the preeminent virtue of justice would disappear. This caution caused Cicero to approach political society from the perspective of the citizen. The perspective of the citizen warrants something other than a scientific treatise; it merits the dialogue form. The dialogue allows conflicting positions to be presented and their presentation to be directed, but the philosopher's own views remain concealed. The burden of ultimate conclusions is placed on the reader. The reader therefore must be sensitive to the dramatic details of the dialogue, the place,

time, actions, and speeches of the characters. Less than sensitive readers will gleam partial, but salutary truths; the more serious, more comprehensive if problematic truths. And yet when we read *De Natura Deorum* closely, we observe that Cicero was not unsympathetic of much of Lucretius' teaching on religion and providence. The question then became what separated him from Lucretius—why was he not an Epicurean but rather a tireless opponent of Epicureanism? Cicero presented two images of man in *De Natura Deorum*. There is the man who obeys the laws “impelled by reason” to a sense of political duty. This reason itself is something of a religious one in which he believes, “humans and gods have a common bond.” The Stoics and most honest citizens are such men. Then there is the man who cannot be compelled by reason and must be, “constrained by religious awe to a sense of duty.” Such a wicked man would otherwise act in the interests of his own pleasure when positive law fails. In either case, religious observation is necessary for healthy political life. Epicurus and his disciplines failed to recognize this because they dismissed all political activity as conventional. If one approaches man's rituals and conventions simply from the perspective of natural philosophy, it stands to reason that one gains more knowledge of natural philosophy than political philosophy. The Epicureans were so intent on examining providence as natural philosophers that they missed the crucial fact that regardless of the existence of providence—political man *demand*s providence. This suggests a link between piety and healthy political society. To more clearly understand this link, it was helpful to turn from Cicero's *De Natura Deorum* to his *De Legibus*. There we also found two images of political man, but in the form of two different foundations and reasons for law.

Cicero's *De Legibus* takes place, literally and figuratively, in the shade, rarely ascending to the abstract discussion found in *De Natura Deorum*. The purported aim of the dialogue is, first, to discuss the foundation or reason for law, and, second, to prescribe good civil laws given that foundation or reason. However, there are actually two accounts and thus two foundations given. Only one foundation is ultimately continued with past the first book; civil laws are prescribed based on it in the second and third while the other account is silently forgotten. Finally, the first two books feature substantial proems on matters whose relevance to law is initially unclear but whose understanding ultimately proves crucial to a complete account of law and thus political society. The first account of law is a divine one. In *De Natura Deorum*, Cotta had observed that piety meant giving the gods their due, but had questioned what was due to inactive and idle gods who cared nothing for man let alone had no common bond with him. In *De Legibus*, a strictly political dialogue, we are told there is indeed such a bond. The gods gave to man the divine gift of a soul. It is the soul which forms the bond between man and god and allows for man's use of reason. The right use of this reason reveals justice. Thus in the first account the foundation or reason for law is providential gods who single out man for the greatest possible gift, the soul, which allows for the use of reason and therefore justice. After Atticus' accusation that Cicero seemed to have lost his own freedom of speech in this presentation of law, we are told the purpose of the account. The first account of law was intended to strengthen commonwealths, establish justice, and make peoples healthy by seeking the approval of the sort of man introduced in *De Natura Deorum* who obeys the laws "impelled by reason" to a sense of political duty. This man may

be persuaded by the reasonable argument from revelation that since justice is divine, just actions may be considered desirable in themselves. But what of the second sort, the wicked man who cannot be compelled by the reasonable argument that justice is praiseworthy in itself and instead must be, “constrained by religious awe to a sense of duty?” Cicero thus embarked on a second reason or foundation for law. The second account is a human one. If in the first account of law we were told that the foundation for justice was the common bond between man and god, in the second, that it is man’s own natural affection; if previously that law is the highest reason, now, that it is a phenomenon of human conscience; if before that man is born for justice, here, that he is born for civil society. The foundation or reason for law in the first account rests on providential gods, the second, on human nature alone. But this natural affection and conscience is in itself not a sufficient deterrent to the wicked man. Nor added to them are positivistic penalties. The wicked man must be overawed by a fear of otherworldly penalties. Both accounts demonstrated that man’s political nature requires the argument from revelation for salutary political life. But to demonstrate that man needs law is not the same thing as demonstrating what law is. To understand Cicero’s complete teaching on law, we turned to his two seemingly out of place, but ultimately telling proems in books one and two. There we observed that law is part poetry and part love of one’s own. The relationship between poetry and law answers how the law originates; the love of one’s own and law, why it is obeyed. The complete teaching on law demonstrates not only that political man naturally requires the law, but how it naturally originates and why it is naturally obeyed. It demonstrates that political society, far from being artificial, is quite natural.

Obedience to law, however, especially fundamental law, requires piety. A healthy political society is one in which its citizens show dutiful respect to the source of the higher law in which justice originates. If a citizenry loses its piety, it risks becoming corrupt. Justice constituted solely on the basis of utility is undermined by that same utility. Thus Cicero concludes that while better law may make for better citizens, piety is required if the law is to be obeyed. No more revealing evidence for Cicero's argument may be found than in the histories of Tacitus. Writing two centuries after Cicero, Tacitus, observing this very corruption in the late Roman Empire, poignantly wrote: *corruptissima re publica plurimae leges*—"the laws are most numerous when the commonwealth is most corrupt."³²⁷

II

Cicero's analysis of the problem of conventionalism did not originate *ex nihilo*, but as he admits is inherited from the philosophical legacy of Aristotle and, especially, Plato.³²⁸ This is not to say he does not remain his own man—that would be to repeat the misconception that Cicero was a mere translator of others' ideas.³²⁹ This is explicitly denied by Cicero himself in the second book of *De Legibus*, after what he calls his proem to the law and before his discussion of religious law:

³²⁷ Tacitus, *Annals* 3.27.

³²⁸ Cf. *Leg.* 1.15, 38, 55, 2.14, 39, 41, 45, 67, 69, 3.1, 5, 14.

³²⁹ E.g., Cicero often disagrees with Plato. To take but a few examples, cf. *Leg.* 3.32; *Ac.* 1.10, 17, 18; *Tusc.* 1.7, 2.9; to say nothing of *De Oratore* as a whole in answer to Plato's *Phaedrus* and *Gorgias*.

Marcus: This is the proem to the law, to use Plato's term.

Quintus: Yes indeed, brother, and I am particularly pleased that you concentrate on subjects and ideas different from his. There is nothing so unlike Plato as what you said earlier, or as this preface concerning the gods. The only thing you seem to me to imitate is this style.

Marcus: Perhaps I wish to; but who can or ever will be able to imitate him? It's easy enough to translate his ideas, and I would do that if I didn't prefer to be myself. What is the difficulty in translating the same things in virtually the same words?

Quintus: I quite agree. But as you yourself just said, I prefer you to be yourself.³³⁰

At any rate, to better understand Cicero's analysis of the deficiencies of conventionalism, it remains in this conclusion to discuss his relationship to Aristotle and Plato. In approaching this question, worthy of a book itself, I focus on Cicero's use of Aristotle and Plato in *De Natura Deorum* and *De Legibus* specifically while considering the larger Ciceronian corpus more generally. As Cicero was far more influenced by Plato than Aristotle, I begin with the latter.

"Aristotle far excels all others—the exception always being Plato—in both genius and diligence," writes Cicero in the first book of his *Tusculanae Disputationes*.³³¹ Along with Plato, Cicero believed Aristotle represented all that is best in philosophy; merely translating their "divine talents" would have been a

³³⁰ Leg. 2.17. Despite what Quintus asserts, in his proem to the law, Cicero, while indeed remaining himself, follows in the footsteps of Plato's *Laws*. Cf. Leg. 2.14 with Plato, *Laws* 4.723a and Leg. 2.15 with *Laws* 4.722d.

³³¹ *Tusc.* 1.22.

patriotic service to Rome.³³² Cicero even went so far as to name the two gymnasia in his Tusculan villa the Academy and Lyceum.³³³ Aristotle's primary importance for Cicero seems to have been rhetorical. This is meant in two ways, first, in the actual technical practice of rhetoric, and, second, in the consistent creation of an artificial dichotomy throughout his dialogues for philosophical ends. To begin with the first, none of Aristotle's dialogues have survived, but as mentioned in the second chapter, it is believed that Cicero wrote dialogues in the manner of Aristotle in which the speeches of the other interlocutors were introduced in such a way that the principal part rested with the author himself, a device found throughout Cicero's dialogues. However, the evidence for this assertion is contentious and, so far as I know, largely based off a single letter of Cicero's.³³⁴ It is further speculated that Cicero was influenced by what he believed Aristotle's great rhetorical innovation: elaborate and abundant speeches made on either side of an issue (*utrumque partem dicere*). By such a rhetorical method of arguing on both sides, Cicero believed, one may best uncover the most probable truth. But this, too, is a contentious claim, for the most part because while Cicero consistently singles out Aristotle for introducing this manner of arguing,³³⁵ scholars have had difficulty locating exactly where in the

³³² Cf. *Fin.* 1.7.

³³³ Cf. *Tusc.* 2.9, 3.7; *Div.* 1.8, 2.8.

³³⁴ Cf. *Ad. Att.* 13.19. Cf. also Levine, "The Original Design and the Publication of the *De Natura Deorum*," p. 17; Levine, "Cicero and the Literary Dialogue," p. 149.

³³⁵ Cf. *Or.* 3.80; *Orator* 46; *Fin.* 5.10; *Tusc.* 2.9.

Aristotelian corpus Cicero could have formed this opinion. Some point to Aristotle's lost dialogues; others to strained interpretations of Aristotle's *Rhetoric* and *Topics*.³³⁶

It is striking that Cicero omits Aristotle and his Peripatetic school from the discussion in *De Natura Deorum*. In the opening of the dialogue, Cotta explicitly states that if Marcus Piso were present, they would have representatives of all the reputable schools. But no need to regret his absence, says Cotta, for the Stoics and Peripatetics differ merely in words, not substance.³³⁷ This claim that the Stoics and Peripatetics were substantively no different is repeated in other dialogues.³³⁸

However, the differences between Stoic and Aristotelian theology are striking:

The god or gods of *Metaphysics* 12 are immaterial, whereas the Stoic gods are material beings. The god of *Metaphysics* 12 is transcendent, in Stoicism god is immanent in every smallest part of the universe. God does not directly care about the good order of the cosmos in *Metaphysics* 12, nor for human beings, whereas God's providence is his most prominent characteristic in Stoicism, especially as presented by Balbus in *De natura deorum* 2. The cosmos has no divinely caused beginning in Aristotle, and of course no final consumption by fire. One could go on listing items like this, but we have already enough to show that there is a difference, as we might well say, *toto caelo*.³³⁹

³³⁶ Cf. A. A. Long, "Cicero's Plato and Aristotle," *Cicero the Philosopher: Twelve Papers*, edited by J. G. F. Powell (Oxford, 1995), pp. 53-8; May and Wisse, *Cicero: On the Ideal Orator*, pp. 34 and 248 n. 99.

³³⁷ *ND* 1.16.

³³⁸ E.g., *Leg.* 1.55; *Fin.* 3.10; *Tusc.* 5.32-3.

³³⁹ David J. Furley, "Aristotelian Material in Cicero's *De natura deorum*," *Cicero's knowledge of the Peripatos*, edited by William F. Fortenbaugh and Peter Steinmetz (New Brunswick, 1989), p. 202.

As Aristotle's popular dialogues have been entirely lost, I do not consider here the possibility that Cicero's judgment may have originated from them. Apart from a single Aristotelian dialogue mentioned in *De Natura Deorum, On Philosophy*,³⁴⁰ there is simply too little evidence from which to judge. One might very well then accuse Cicero of ignorance of the difference between Aristotelian and Stoic theology. But in truth Cicero well understood the important theological distinctions listed above and outlined them in his *Academica*—written before *De Natura Deorum*.³⁴¹ Thus it is not on account of ignorance that Cicero classified Aristotle with the Stoics in *De Natura Deorum*. What then is to be gained from doing so?

... Cicero omitted a Peripatetic spokesman from his team of theologians, not because he was ignorant, nor because he thought it unimportant, nor for reasons of literary elegance, nor by chance. His reason was that he thought of theology as intimately connected with cosmology, and in cosmology he thought of two opposed sides: Epicureanism on the one hand, and an amalgam of Aristotle and the Stoics on the other. It was enough to expound these two positive theologies, and allow each of them to be criticized by the school that specialized in the criticism of others.³⁴²

This is precisely what we have seen as Cicero's primary objective in *De Natura Deorum*. In a dialogue in which he identifies providence as the key issue, it makes very good sense to create a dichotomy, albeit an artificial one, between

³⁴⁰ Cf. *ND* 1.33, 107, 2.42, 44, 94ff.

³⁴¹ Cf. *Ac.* 2.119. Both dialogues were written in 45 B.C. but *Academica* was written first, followed by *De Finibus, Tusculanae Disputationes* and only then, *De Natura Deorum*.

³⁴² Furley, "Aristotelian Material in Cicero's *De natura deorum*," p. 204.

Epicureanism and Stoicism, chaos and providence, chance and purpose. This allows Cicero to highlight the contrast between the perspective of the natural philosopher and that of the citizen. Inclusion of a nuanced account of the Peripatetic school would have only muddled the issue. Thus Cumming noted: “[Cicero’s] arrivals at solutions to political problems regularly take the philosophical form of reconciling other oppositions between philosophical positions by anchoring them all to their common opposition to Epicureanism.”³⁴³ This same dichotomy may also be found for similar reasons in *De Legibus*. There the Peripatetic school is also stated to differ from the Stoic merely in words, not substance. However, in *De Legibus* the dichotomy allows Cicero to enlist the Peripatetics, along with the Academy and Stoa, in support of the first reason and foundation for law, the divine account.³⁴⁴

III

The exception for Cicero is always Plato, “our Plato,”³⁴⁵ “the first philosopher in rank,”³⁴⁶ “that god of ours,”³⁴⁷ “a philosopher’s god.”³⁴⁸ Plato is cited by Cicero

³⁴³ Cf. Robert Denoon Cumming, *Human Nature and History* (Chicago, 1969), p. 236.

³⁴⁴ Cf. *Leg.* 1.55.

³⁴⁵ *Rep.* 4.5; *Leg.* 3.5.

³⁴⁶ *Fin.* 5.7.

³⁴⁷ *Ad Att.* 4.16.3.

³⁴⁸ *ND* 2.32.

more than any other author; the sheer number of references is nothing short of staggering.³⁴⁹ He translated Plato's *Protagoras* and *Timaeus* into Latin, the latter immediately before writing *De Natura Deorum*.³⁵⁰ This intimate familiarity with the *Timaeus* is apparent in *De Natura Deorum*, in particular in the presentation of the doctrine of providence and immortality of the soul ridiculed by Velleius and praised by Balbus.³⁵¹ In *De Legibus*, Cicero would follow in Plato's footsteps, sharing with him the belief in the power of persuasion,³⁵² the need for the sanctity of oaths and treatises,³⁵³ and the refusal to allow the gods to be propitiated by the wicked.³⁵⁴ One may carry Cicero's admiration for Plato almost to the point of declaring that he desired to become a Roman Plato, as when he himself went so far as to cite Plato's seventh letter, comparing his own situation with Caesar to that of Plato's with Dionysius of Syracuse.³⁵⁵

³⁴⁹ For a complete list, cf. Thelma B. DeGraff, "Plato in Cicero," *Classical Philology*, 35 (1940), p. 143-53.

³⁵⁰ *Ibid.*, 144-46.

³⁵¹ Cf. *ND* 1.18, 24, 30 with Plato, *Timaeus* 28c for Velleius' criticism; *ND* 2. 32, 51, 58 with *Timaeus* 39 and 89a for similarities with Balbus' account. Cf. also DeGraff, "Plato in Cicero," pp. 148-49; Walsh, *On the Nature of the Gods*, pp. 177 n.32, 179 n.51, 180 n.58.

³⁵² Cf. *Leg.* 2.14 with Plato, *Laws* 718b-23d.

³⁵³ Cf. *Leg.* 2.16 with Plato, *Laws* 722d.

³⁵⁴ Cf. *Leg.* 2.41 with Plato, *Laws* 716e. For a brief discussion of these three comparisons, cf. also DeGraff, "Plato in Cicero," pp. 149-50.

³⁵⁵ Cf. *Ad Att.* 9.13.4.

In addition to Aristotle, Cicero consciously imitated Plato's dialogue form,³⁵⁶ titled his own political works *De Re Publica* and *De Legibus* after Plato's *Republic* and *Laws*, and even borrowed directly from Plato's scene-setting.³⁵⁷ The most notable examples of this latter imitation may be found in Cicero's three most ostensibly political works, *De Oratore*, *De Re Publica*, and *De Legibus*. The setting of *De Oratore* has the interlocutors follow the suggestion of Scaevola who requests a discussion on rhetoric and the ideal orator after the example of Socrates in the *Phaedrus*. "For your plane tree (*platanus*) here suggests this to me, by spreading its broad boughs to shade this place exactly like that other plane tree whose shade Socrates sought—which seems to me to have grown not so much because of the little stream described there as owing to Plato's words."³⁵⁸ In both the *Phaedrus* and *De*

³⁵⁶ Cf. Quintilian, *Institutionis Oratoriae* 10.1.123.

³⁵⁷ Long, "Cicero's Plato and Aristotle," p. 43. Cf. also Walter Nicgorski, "Cicero's Socrates: Assessment of the 'Socratic Turn'," *Law and Philosophy: The Practice of Theory: essays in honor of George Anastaplo*, edited by John A. Murley, Robert L. Stone and William T. Braithwaite (Athens, 1992), p. 215: "Citation and imitation of Plato's works is found throughout Cicero's writings; arguments with Plato and differences with him appear in a context of great respect and obvious deference. The *Phaedrus* and *Gorgias* explicitly frame Cicero's discussion of rhetoric; the *Phaedo* looms powerfully over his discussions of death and immortality; and Plato's *Republic* and *Laws* are partly imitated and partly disputed in Cicero's works by the same names. Plato alone, with no mention of Socrates, is for Cicero 'that divine man', 'the wisest and by far the most learned man of Greece', 'the most learned and venerable of all philosophers', 'the outstanding Greek writer on political theory', and the thinker so deeply respected by Cicero that he has himself and his young interlocutor in the first book of the *Tusculans* proclaim, no doubt a bit playfully and clearly at variance with earnest and principled Aristotelian thinking, that they would rather go wrong with Plato than be right with his adversaries."

³⁵⁸ *Or.* 1.28.

Oratore, the interlocutors sit under plane trees, that is, Plato trees.³⁵⁹ But rather than throw themselves on the grass with their bare feet, as Socrates did, the interlocutors in *De Oratore* call for cushions and sit on the stone benches under the plane tree.³⁶⁰ Such comfort and civility is Cicero's way of calling attention to the fact that he is a philosophical late-comer; philosophy, new and young at the time of Socrates, is now old and well-traveled in late Republican Rome.³⁶¹ As mentioned in the third chapter, the discussion in *De Legibus* takes place, literally and figuratively, in the shade throughout the entire dialogue. Being a summer's day, the interlocutors walk and talk under the shady trees along the bank of the Liris,³⁶² rest under them on an island in the Fibrenus,³⁶³ and, eventually, when the midday sun's rays pierce the island's young trees, continue down the Liris to pursue the rest of the conversation under the shade of the alders.³⁶⁴ This is in conscious imitation of Plato's own *Laws*.³⁶⁵

Just as with the Cretan Clinias and the Lacedaemonian Megillus, as [Plato] describes it, he spent a summer day in the cypress groves and forest paths of Cnossos, frequently stopping and occasionally resting, discoursing on public

³⁵⁹ "Plane tree" translates as *platanos* in Greek and *platanus* in Latin.

³⁶⁰ Cf. *Or.* 1.28-9 with Plato, *Phaedrus* 229a-230c.

³⁶¹ Cf. Woldemar Gorler, "From Athens to Tusculum: Gleaning the Background of Cicero's *De oratore*," *Rhetorica: A Journal of the History of Rhetoric*, 6 (1988), pp. 216-17.

³⁶² *Leg.* 1.14.

³⁶³ *Leg.* 2.1.

³⁶⁴ *Mac.* 5.4.8.

³⁶⁵ Cf. Plato, *Laws* 625b-c3.

institutions and the best laws, in the same way let us walk and rest among these tall poplars on the green and shady bank and inquire into these same subjects more deeply than is required by the practical uses of the courts.³⁶⁶

The reason for the similar setting in both Plato's *Laws* and Cicero's *De Legibus*, as we have observed in the third chapter, is owed to the nature of the discussion. The topic is the law, a subject which necessarily involves the early history, ancestral ways, and customs handed down by unreliable sources from a time long ago which may or may not be entirely fabulous. The setting opposite to *De Legibus*, again both literally and figuratively, may be found in *De Re Publica*. There the discussion takes place in winter and the interlocutors sit under the sun in an open field for warmth and illumination.³⁶⁷ The setting in *De Re Publica* is also owed to the nature of the discussion. The topic is the best regime. It is pursued in a speculative manner which, with the exception of the brief ascent in the second account of law, is certainly not to be found in *De Legibus*. This is again in conscious imitation of Plato's *Republic* in which, as Cicero himself points out, Plato, "created a state more to be desired than expected; one as small as possible, not one that could exist, but one in which the principles of civic organization could be discerned."³⁶⁸ Finally, while *De Legibus* begins with the topic of poetry, a fabulous art, and through it eventually broaches the subject of law and thus political society,³⁶⁹ *De Re Publica* begins with

³⁶⁶ *Leg.* 1.15.

³⁶⁷ *Rep.* 1.18.

³⁶⁸ *Rep.* 2.52.

³⁶⁹ *Leg.* 1.1-16.

the topic of astronomy, a natural science, and eventually turns to the subject of the best regime and thus the best political society.³⁷⁰ In short, following Plato, Cicero's *De Legibus* takes place in the darkness of convention; *De Re Publica*, the light of philosophy.

Cicero further draws a revealing distinction between Plato and Socrates. This is not immediately apparent. In the majority of Cicero's works, mention made of Socrates, Cicero's Socrates, is the same as Plato's Socrates. He will often refer to the philosophical position of "Socrates and Plato," or himself as a "follower of Socrates and Plato," or contrast the united two against other philosophers.³⁷¹ Or he will maintain that Plato shared Socrates' skepticism, a position Cicero himself embraced.³⁷² Or he will point out that Plato's Socrates was not the historical Socrates, but largely a character of Plato's creation. And it is this modified Socrates which Cicero pairs with Plato and with whom he is in substantial agreement.³⁷³ The distinction Cicero made between the historical Socrates and the Platonic was between the former's more rigid turn to moral and political philosophy, contrasted with the latter's embrace of knowledge as such, as represented by Plato's own Pythagorean pursuits. After the death of Socrates, Plato chose to leave Athens, something Socrates was always loath to do, in order to seek further wisdom from the Pythagoreans living in Egypt, Italy, and Sicily. Cicero knew the historical Socrates repudiated such

³⁷⁰ *Rep.* 1.14-38.

³⁷¹ *Tusc.* 1.53-55; *Fin.* 5.84; *Off.* 1.2. Cf. Nicgorski, "Cicero's Socrates," p. 216.

³⁷² *Ac.* 2.74-5.

³⁷³ *Tusc.* 1.97; *Fin.* 2.2; *Off.* 3.67.

pursuits;³⁷⁴ Plato attributed them to him in order to magnify and beautify him.³⁷⁵

Neither Plato's enlarged philosophical pursuits nor is his embellishment of Socrates disparaged by Cicero.³⁷⁶ Nicgorski comments:

It appears, in fact, that Plato's journeys can be taken as an openness to the full sun or the sunniest of perspectives and hence can be taken to represent philosophy in its fullness; one might wonder whether the limiting Socratic questions are seen by Cicero to set a horizon to philosophy with which Romans are understandably comfortable, but nonetheless too comfortable.³⁷⁷

Cicero saw Socrates as the founder of all philosophy as it was known in Cicero's time.³⁷⁸ All schools contemporary with Cicero traced their lineages back to him, Academics, Peripatetics, Stoics, even Epicureans. It was specifically Socrates' turn to matters of life and character which separated him from all prior philosophers and which marked him as the source of all subsequent philosophy.³⁷⁹ But while Socrates was for Cicero the founder of philosophy, Plato, not Socrates, was its

³⁷⁴ *Fin.* 5.87.

³⁷⁵ *Rep.* 1.16. Cf. Degraff, "Plato in Cicero," p. 150 n.71; Nicgorski, "Cicero's Socrates," pp. 216-19.

³⁷⁶ Nicgorski, "Cicero's Socrates," pp. 224-25.

³⁷⁷ *Ibid.*, p. 219.

³⁷⁸ *Or.* 1.2; *Rep.* 3.5; *Ac.* 1.3, 15; *Fin.* 2.88; *Tusc.* 3.8. Cf. Degraff, "Plato in Cicero," p. 150.

³⁷⁹ *Tusc.* 2.8, 4.5-6, 5.119-20; *Off.* 3.61-2. Cf. Nicgorski, "Cicero's Socrates," pp. 219-20.

perfection.³⁸⁰ This much said in reply to Cicero's detractors who argue he was not open to the "full sun" of philosophy.

A final word on Cicero's philosophical affiliation with Plato. Cicero consistently describes himself as an Academic skeptic, a position which, as discussed in the introduction and second chapter, considered absolute knowledge unobtainable; what can be known is what is more or less probable. Arguments are advanced on both sides of an issue in order to uncover the most likely answer.³⁸¹ Cicero associated this Academic skepticism with the position taken by Plato himself.³⁸² However, it must be stressed that this Academic skepticism was not Pyrrhonism. Academic skepticism did not debar one from accepting verisimilitude or highly probable arguments. Writing in the context of whether he ought to follow Pompey into the newly formed First Triumvirate with Caesar and Crassus, Cicero commented: "I come now to the month of January, and my political position; I shall argue on both sides in the fashion of the Socratics, but in the end, as they do, come down on one."³⁸³ Cicero similarly comes down on what he believes the most probable argument in his philosophical works. However, as we have observed in the second and third chapters, his own opinion of the probable truth is rarely what is explicitly stated, as when the

³⁸⁰ For Socrates as founder of philosophy, cf. *Fin.* 2.1; *Tusc.* 5.47; *ND* 1.93. For Plato as perfection of philosophy, cf. *Fin.* 5.7; *ND* 2.32; *Ad Q. Fr.* 1.1.29. Cf. Nicgorski, "Cicero's Socrates," p. 220.

³⁸¹ Cf. *Ac.* 1.17, 2.7-9; *Fin.* 2.2-3; *Tusc.* 5.11; *ND* 1.6; *Div.* 1.7, 2.8-9; *De Fato*, 3-4, hereafter cited as *Fat.*; *Off.* 2.7-8. Cf. also Long, "Cicero's Plato and Aristotle," p. 40.

³⁸² *Ac.* 1.46.

³⁸³ *Ad Att.* 2.3.3.

character Cicero decides in favor of the Stoic account of the gods in *De Natura Deorum* or the first account of law in *De Legibus*, but rather is revealed, not only in each dialogue as a whole, but in the larger Ciceronian corpus. Consider that Cicero's introduction of the two types of political men, the honest man "impelled by reason" and the wicked man "constrained by religious awe" in *De Natura Deorum* had to be understood in light of the two accounts of law in *De Legibus*. Many more such examples could be given. The two settings of *De Re Publica* and *De Legibus* alert careful readers that those dialogues are to be taken as two halves of a whole political teaching. The Stoic remedy for the fear of death and other ills in *Tusculanae Disputationes* must be considered in light of the crushing objections to Stoicism in books three and four of *De Finibus*, the latter written immediately before the former. The affirmation of traditional Roman religious rites and denial of the gods' existence in *De Natura Deorum* must be contrasted with the affirmation of the gods' existence, but denial of traditional Roman religious rites in *De Divinatione*, the latter written immediately after in supplement to the former.³⁸⁴ Such use of the dialogue form in requiring readers to reconcile not only conflicting positions within the same dialogue, but across several dialogues was very in keeping with Plato, as Cicero knew well.³⁸⁵

³⁸⁴ For the contrast between *De Natura Deorum* and *De Divinatione*, cf. Momigliano, "The Theological Efforts of the Roman Upper Classes," p. 209: "The *De natura deorum* had paid lip service to the traditional values of Roman religious tradition, including *auspicia*, but had been a rigorous denial of the possibility of the gods. In *De divinatione* the game was inverted: lip service was paid to religion, but any forms of divination, including the traditional forms of Roman religion, was denied any merit and probability."

³⁸⁵ Cf. *Or.* 2.313; *Orator* 50; *Tusc.* 5.11. Cf. also esp. *Tusc.* 5.32-3 where Cicero has an interlocutor explicitly draw attention to his inconsistency across his dialogues. Cicero replies: "Take that way with other people who are handicapped in argument

It cannot be denied that Cicero was a political man who believed active political participation essential;³⁸⁶ but nor can it be denied that he was a philosopher who, like Plato, believed philosophy essential to the best life.³⁸⁷ No more fitting word on this final point may be given to conclude this dissertation than that given by Cicero himself. It will be remembered that at the end of the first book of *De Legibus*, Quintus, impatient to discuss the civil law, objects to any further discussion *de finibus bonorum et malorum*. Cicero yields to his brother and concludes the second account of law, but not before giving a poetic encomium to what they briefly ascended, nor would again return to in the remainder of the dialogue, philosophy:

But as things are, since law ought to correct vices and encourage virtues, then knowledge of how to live should be drawn from it. Thus it is the case that wisdom is the mother of all good things, from the love of which philosophy took its name in Greek. The gods have given to human existence nothing richer, nothing more outstanding, nothing more noble. Philosophy alone has taught us, in addition to everything else, the most difficult of all things, that we should know ourselves; and the force and significance of this maxim are such that it was attributed not to some human but to the god of Delphi. The person who knows himself will first recognize that he has something divine and will think that his own reason within himself is a sort of consecrated image of the divine. He will always do and think things worthy of this great gift of the gods; and when he has studied and made a complete examination of himself, he will understand how he came into life fitted out by nature, and what tools he has for getting and possessing wisdom, since in the beginning he formed the first sketchy conceptions of all things in his mind; and when light has been cast on them under the guidance of wisdom he recognizes that he is a good man and for that reason he perceives that he will be blessed. For when the mind, through the knowledge and perception of virtue, has departed from obedience to and indulgence of the body, and has conquered pleasure like

by rules: I live from day to day; I say anything that strikes my mind as probable; and so I alone am free.”

³⁸⁶ Cf. *Rep.* 1.9-11.

³⁸⁷ Cf. *Ac.* 1.4, 8, 10-11; *Off.* 2.17.

some blot of disgrace, and has escaped all fear of death and pain, and has entered the bond of affection with his own—and has recognized as his own all those who are linked with him by nature—and has taken up the worship of the gods and pure religion, and has sharpened the gaze of his mind, like that of the eyes, for the selection of good things and the rejection of the opposite, the virtue which is called “prudence” from the capacity to see ahead,—what can be said or thought to be more blessed than he? And when he has studied the heaven, lands, seas, and the nature of things, and has seen where they come from and where they are going and when and how they will perish, what in them is mortal and bound to die, what is divine and eternal; and when he has (so to speak) got a grip on the god who guides and rules these things and has recognized that he is not bound by human walls as a citizen of one particular spot but a citizen of the whole world as if it were a single city—then in this perception and understanding of nature, by the immortal gods, how he will know himself, as Pythian Apollo commands, how he will scorn and despise and think as nothing all which are commonly called magnificent! And he will fortify all these things as if by a fence through the method of argument, the knowledge of judging true and false, the science of understanding logical consequences and contradictions. And when he realizes that he is born for civil society, he will realize that he must use not just that refined type of argument but also a more expansive style of speaking, through which to guide peoples, to establish laws, to chastise the wicked and protect the good, to praise famous men and to issue instructions for safety and glory suited to persuading his fellow citizens, to exhort people to honor, to call them back from crime, to be able to comfort the afflicted, to enshrine in eternal memorials the deeds and opinions of brave and wise men together with the disgraces of the wicked. And of all these great and numerous things which are recognized as present in man by those who wish to know themselves, the parent and teacher of them is philosophy.³⁸⁸

³⁸⁸ *Leg.* 1.58-62.

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