

The Permanent Things and the Rational Order

by

Craig S. Wright

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*For those who build upon the permanent things
and for those who will inherit them*

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Preface

This book has had a long gestation. I came to the natural law tradition not through the conventional channels of academic philosophy but through the study of law itself—through the experience, repeated across many years of practice and scholarship, that the positive law as it stands is often inadequate to the demands of justice, and that the inadequacy is not merely a defect of drafting or interpretation but a consequence of the philosophical premises on which the modern legal order rests. The conviction that there exists a standard of justice superior to the enactments of any legislature, knowable by reason, and binding on all persons and all governments regardless of what the positive law may provide—this conviction, which is the animating principle of the natural law tradition, was not a conclusion I arrived at from reading Aquinas or Cicero, though their works gave it its richest expression. It was a conviction forced upon me by the law itself: by the recurring discovery that legal questions of the greatest consequence cannot be resolved within the framework of positive law alone, and that the attempt to do so produces results that are unsatisfactory by the law's own standards.

My intellectual formation was unusual in that it spanned disciplines that academic convention keeps rigorously separated. Training in law, computer science, economics, and theology gave me a perspective on legal and political order that was, from the outset, interdisciplinary in a way that the contemporary university discourages. The study of computer science taught me the power and the limits of formal systems—the lesson that no formal system can validate its own axioms, a lesson that has profound implications for legal positivism's claim that law can be understood as a self-contained system of rules

without reference to external moral standards. The study of economics taught me that the spontaneous order arising from free human interaction is not chaos but a form of rational order—a lesson that reinforced my conviction that the natural law tradition’s defence of individual liberty and property rights is grounded not in ideology but in the structure of human social reality. And the study of theology gave me access to the tradition of thought—stretching from Augustine through Aquinas to the present—that has provided the most sustained and most philosophically rigorous account of the relationship between divine providence, human reason, and the moral order of the universe.

The immediate impetus for this monograph was the growing sense, shared by many observers across the political spectrum, that the Western constitutional order is in crisis—not merely the ordinary crisis of political disagreement and institutional dysfunction, but a philosophical crisis that strikes at the foundations of the constitutional enterprise itself. The institutions of limited government, the protection of individual rights, the rule of law, the separation of powers—these achievements, which number among the central accomplishments of Western political civilisation, were built on natural-law foundations. Those foundations have been steadily displaced by two centuries of positivist critique—by the insistence that there is no law above the will of the sovereign, no rights that precede the state, no standard of justice that is not the product of human convention. The institutions, deprived of their philosophical sustenance, are faltering. The recovery of their foundations is not an academic exercise; it is a practical necessity.

The present work attempts that recovery. It is addressed to academic philosophers and legal scholars, and to other readers concerned with the preservation of constitutional government, individual liberty, and

the rule of law—who recognises that these things are not self-sustaining but require philosophical foundations that must be articulated, defended, and renewed in every generation. The argument proceeds in four parts. Part One traces the philosophical roots of the natural law tradition from its Graeco-Roman origins through the mediaeval synthesis, the early modern bifurcation, and the positivist interregnum. Part Two traces the tradition's institutional expression in the Anglo-American constitutional order, from Magna Carta through the founding, the second founding of the Civil War amendments, and the crisis of the twentieth century. Part Three offers a comparative perspective, examining the Continental European constitutional traditions, the law of nations, and the diverse institutional expressions of natural-law principles across the Western world. Part Four undertakes the constructive task: the reconstruction of the natural law tradition for the twenty-first century and its application to the central constitutional challenges of our time.

The argument of this monograph can be stated as a single proposition, and that proposition can be tested. Every constitutional order rests on normative axioms—concerning the dignity of the person, the limits of state power, the binding character of justice, and the relationship between law and moral truth—that the order itself cannot generate from within its own positive-legal framework. This is more than a metaphor, though it is not a formal proof in mathematical logic. The analogy is structural: a legal order, like any normative system, relies on foundational commitments that cannot be justified solely by the rules generated within that system. Legal positivism, from Austin's command theory through Hart's rule of recognition and Raz's sources thesis, attempts in different ways to identify law by reference to social facts rather than moral truth. Its strongest forms do not deny that morality matters to the justification of law; they deny that moral truth is necessary to identify law as law. The present argument is that this

separation fails when applied to constitutional authority, because constitutional orders depend on moral premises that their own positive rules cannot generate. Such attempts fail as accounts of constitutional authority, even where they succeed as accounts of legal identification—because the constitutional order’s deepest commitments (to human dignity, to limited government, to the rule of law itself) are not legal conclusions but moral premises—premises that the natural law tradition has articulated, defended, and transmitted across twenty-five centuries of Western civilisation.

The issue is not whether positive-law systems can identify valid enactments by pedigree, procedure, or official practice. They plainly can. The issue is whether those criteria can explain why the constitutional order binds, why fundamental rights operate as limits rather than permissions, and why some uses of legal form are corruptions of law rather than merely immoral laws.

Each Part of this monograph tests a distinct dimension of this thesis. Part One establishes the philosophical ground: it traces the tradition’s identification of the axioms (the objective moral order, the dignity of rational nature, the distinction between just and unjust law) and shows how the positivist critique, from Bentham’s ‘nonsense upon stilts’ through Hart’s rule of recognition, attempted to eliminate them—and why the attempt generates the very incoherence that the incompleteness analogy predicts. Part Two demonstrates the institutional inheritance: it shows that the Anglo-American constitutional order, from Magna Carta through the founding to the Fourteenth Amendment, was built on natural-law axioms that the framers understood as prior to and more authoritative than any positive enactment, and that the twentieth century’s attempt to sustain those institutions while denying their philosophical foundations has produced the constitutional dysfunction the present

era inherits. Part Three extends the test to the Continental European traditions—the French, German, and international legal orders—showing that the same pattern obtains: constitutional commitments to dignity, proportionality, and the priority of fundamental rights rest on axioms that no purely positivist jurisprudence can supply. Part Four undertakes the constructive task: it synthesises the rationalist and prudential-traditionalist streams of the natural law tradition into a unified theory and demonstrates that the theory generates specific constitutional doctrines capable of application to the central controversies of the twenty-first century.

This thesis makes the monograph an intervention in a specific contemporary debate, not merely a contribution to intellectual history. It is written in full awareness of—and in explicit disagreement with—the strongest living defences of legal positivism: Joseph Raz's exclusive positivism and service conception of authority, which concedes that the justification of law is a moral question while insisting that the identification of law is not; Jeremy Waldron's democratic constitutionalism, which accepts objective moral truth but denies that judicial enforcement of that truth is legitimate; the 'modest positivism' of John Gardner and Julie Dickson, which claims to have purged the separation thesis of its most vulnerable commitments; and Brian Leiter's naturalist challenge, which argues that moral realism is explanatorily idle. Each of these positions receives its strongest formulation and its most direct response in the chapters that follow. The monograph also accepts the foundational achievement of John Finnis and the New Natural Law school, while contending that its account of self-evident practical principles requires supplementation by a fuller theory of tradition, institutional practice, and constitutional judgment. The result is a natural-law constitutionalism that is neither a nostalgic appeal to a lost intellectual world nor a sectarian programme requiring confessional commitment, but a philo-

sophically rigorous, institutionally specific account of what the constitutional order requires and why positivism cannot supply it.

I owe debts of gratitude to more people than I can name here. The intellectual debts are recorded in the footnotes and bibliography; the personal debts are deeper and less easily catalogued. I am grateful to the many colleagues and students whose questions, objections, and insights have sharpened the argument at every point; to the institutions that provided the time and resources necessary for sustained scholarly work; and to my family, whose patience with the demands of a project of this scale has been extraordinary. The remaining errors and inadequacies are, of course, entirely my own.

The reader will find that this monograph takes seriously ideas that much of the contemporary academy regards as settled – and as having been settled against the natural law tradition. I make no apology for this. The permanent things do not become less true because they are unfashionable; and it is precisely when a civilisation has forgotten its foundations that the work of recovery becomes most necessary.

Dr Craig S. Wright

London, 2026

Part One

The Roots of the Higher Law

The philosophical task of Part One is to defend the claim that the constitutional order's foundational axioms are real—that they are not projections of cultural preference or historical accident but apprehensions of an objective moral order accessible to practical reason. This requires tracing the tradition's discovery of those axioms, from the Greek identification of the distinction between nature and convention, through the Christian synthesis of reason and revelation, the early modern bifurcation into rationalist and prudential-traditionalist streams, and the positivist attempt to eliminate the axioms altogether. The positivist interregnum is the crux: the chapters that follow will show that positivism's failure to supply its own normative foundations is not an oversight to be corrected but a structural deficiency inherent in any attempt to reduce law to social fact.

Chapter One

The Moral Order of the Cosmos

Graeco-Roman Foundations of Natural Law

*True law is right reason in
agreement with nature;
it is of universal application,
unchanging and everlasting.*

— Cicero, *De Re Publica*,
III.xxii.33

The idea that there exists a law higher than the enactments of any legislature—a standard of justice that is not made but discovered, not willed into being by sovereign decree but apprehended by the exercise of disciplined reason—is among the oldest and most enduring ideas in the history of Western political thought. It is also among the most contested. From the moment the Greek philosophers first distinguished between what is just *by nature* and what is just merely *by convention*, an argument was set in motion that has never been resolved and that cannot, by its very nature, be finally settled—for it concerns the permanent question of whether the political order is answerable to a moral reality it did not create.¹

¹ The distinction between *phusis* (nature) and *nomos* (convention or law) is the generative problem of Greek political philosophy. Its earliest articulations are found in the fragments of Heraclitus and in the debates recorded by Thucydides. See Felix Heinemann, *Nomos und Physis: Herkunft und Bedeutung einer Antithese im griechischen Denken des 5. Jahrhunderts* (Basel: Friedrich Reinhardt, 1945); W. K. C. Guthrie, *A History of Greek Philosophy*, vol. III (Cambridge: Cambridge University Press, 1969), 55–134.

This monograph is concerned with that argument in its entirety — with the intellectual tradition that answers the question affirmatively and insists that positive law is measured, whether its makers acknowledge it or not, against an objective moral order accessible to human reason. The tradition in question is what jurists and philosophers have called, with varying degrees of precision, the *natural law*. It is a tradition of remarkable longevity and equally remarkable internal diversity. It has been formulated in the language of Platonic metaphysics and Aristotelian teleology, of Stoic cosmology and Roman jurisprudence, of Christian theology and Enlightenment rationalism, of common-law prescription and revolutionary declaration. Its exponents have included pagan philosophers and Christian saints, Roman praetors and English judges, American founders and Continental jurists. Yet beneath this variety there persists a structural continuity that is the first concern of this study to demonstrate: the conviction that the authority of law is not exhausted by the fact of its enactment, and that the human mind is capable of grasping the principles by which positive enactments are to be judged.²

The present chapter traces the foundations of this tradition in the Greek and Roman worlds. Its purpose is not antiquarian. The ancient formulations of natural law are not merely of historical interest; they are the conceptual bedrock on which the entire subsequent tradition has been constructed, and they contain within themselves the essential tensions—between reason and nature, between the universal

² Heinrich Rommen, whose *Die ewige Wiederkehr des Naturrechts* (1936; English translation: *The Natural Law: A Study in Legal and Social History and Philosophy*, trans. Thomas R. Hanley [St. Louis: B. Herder, 1947]) remains the finest single-volume survey of the tradition, observed that the history of natural law is one of ‘eternal recurrence’—that every attempt to banish the concept from legal and political thought has been followed, within a generation or two, by its revival in a new form. The present study confirms Rommen’s observation while offering a different explanatory framework.

and the particular, between the ideal and the institutional—that have animated every later phase of the tradition’s development. To understand what natural law has meant in the constitutions of modern states and the jurisprudence of modern courts, one must first understand what it meant to the philosophers who gave it its characteristic form.³

I. The Discovery of Nature and the Problem of Justice

The natural law tradition did not spring fully formed from any single thinker’s mind. It emerged gradually, over the course of several centuries, from the distinctively Greek discovery that the world possesses an intelligible order—a *phusis* or ‘nature’—that is not identical with the customs, laws, and conventions of any particular city. This discovery, which is the founding act of philosophy itself, had immediate and revolutionary implications for political life. If there is a nature of things that the mind can apprehend, then the question arises irresistibly whether the laws and institutions under which men live accord with that nature or defy it. The category of the *natural* creates, by its very existence, the possibility of judging the *conventional*—and it was precisely this possibility that the earliest Greek thinkers began to exploit.⁴

³ Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1953), 81–164, provides the most penetrating modern treatment of the classical natural right doctrine. The present chapter is indebted to Strauss’s analysis at numerous points, though it departs from his interpretive framework in respects that will become apparent. See also the important corrective offered by John Finnis, *Natural Law and Natural Rights*, 2nd ed. (Oxford: Clarendon Press, 2011), 18–55, who argues that the classical tradition is better understood as a tradition of natural law than of natural right.

⁴ The philosophical discovery of nature is the central theme of Strauss’s account: ‘Philosophy is the quest for the “principles” of all things, and this means primarily the quest for the “beginnings” of all things or for “the first things.”’

The fifth-century Sophists were the first to draw the distinction between nature and convention with full explicitness and to deploy it as a weapon against the claims of existing law. But the Sophists drew from the distinction a conclusion that the natural-law tradition has consistently rejected. For the Sophists—or at any rate for the more radical among them—the discovery that law is conventional meant that law is merely conventional: that it has no rational foundation, that it serves the interest of the strong, and that the ‘natural’ condition of man is one of unlimited self-assertion unconstrained by moral obligation. Thrasymachus in the *Republic* declares that justice is nothing other than the advantage of the stronger. Callicles in the *Gorgias* insists that nature herself teaches that the superior man should have more than the inferior, and that the laws which prevent this are the contrivances of the weak. The anonymous author of the *Dissoi Logoi* argues that what is just and unjust varies from city to city, proving that justice has no ground in nature.⁵

The significance of the Sophistic position is hard to overstate, because it represents the enduring alternative to natural law—the view that will recur, in different philosophical vocabularies, in every subsequent era. Legal positivism, moral relativism, historicism, and deconstructionism are all, at bottom, variations on the Sophistic thesis that there is no natural standard of justice. Every serious defence of

Strauss, *Natural Right and History*, 82. The implications for political philosophy are drawn out in the same work, 83–89. See also Eric Voegelin, *Order and History*, vol. II: *The World of the Polis* (Baton Rouge: Louisiana State University Press, 1957), who traces the emergence of philosophical consciousness as a movement from the ‘compact’ order of myth to the ‘differentiated’ order of reason.

⁵ Plato, *Republic*, 338c–339a (Thrasymachus); *Gorgias*, 482c–486d (Callicles). The *Dissoi Logoi*, a late fifth-century sophistic text, is preserved in the manuscripts of Sextus Empiricus; for text and commentary see T. M. Robinson, *Contrasting Arguments: An Edition of the Dissoi Logoi* (New York: Arno Press, 1979). On the Sophists generally, see Guthrie, *History of Greek Philosophy*, vol. III, 55–175; G. B. Kerferd, *The Sophistic Movement* (Cambridge: Cambridge University Press, 1981).

natural law must therefore begin where Plato began: by confronting the Sophistic challenge and demonstrating that it is self-refuting.⁶

II. Plato and the Objectivity of Justice

It was Plato who first mounted a systematic philosophical response to the Sophistic denial of natural justice, and his achievement in doing so is foundational for the entire natural law tradition—even for those strands of it that have explicitly rejected Platonic metaphysics. The core of Plato's response is the doctrine of the Forms: the thesis that the objects of genuine knowledge are not the fluctuating particulars of sense experience but eternal, immutable, intelligible realities of which sensible things are imperfect participations. Applied to the moral and political domain, this doctrine yields the proposition that justice is not a word whose meaning shifts with the convenience of the powerful, but a real, objective, intelligible order that the philosopher can come to know and that the legislator is bound to approximate.⁷

The *Republic* is, in its deepest intention, an answer to Thrasymachus. Plato's strategy is to show that justice is not merely advantageous to

⁶ The self-refuting character of radical conventionalism is the central insight of Plato's early and middle dialogues. If all moral judgments are merely conventional, then the judgment that 'all moral judgments are merely conventional' is itself merely conventional and has no claim on our rational assent. Strauss, *Natural Right and History*, 93–98, develops this point with characteristic rigour. For a contemporary restatement, see John Finnis, 'Scepticism, Self-Refutation, and the Good of Truth,' in P. M. S. Hacker and J. Raz, eds., *Law, Morality, and Society: Essays in Honour of H. L. A. Hart* (Oxford: Clarendon Press, 1977), 247–267.

⁷ The fullest statement of the doctrine of the Forms as it bears on justice and political order is found in *Republic*, Books V–VII, especially the analogies of the Sun, the Divided Line, and the Cave (505a–521b). For the application to legislation, see *Laws*, especially Books I, IV, and X. The secondary literature is enormous; for a judicious introduction see Julia Annas, *An Introduction to Plato's Republic* (Oxford: Clarendon Press, 1981), 195–271.

the community—though it is that—but constitutive of the well-ordered soul. The just man is not the man who obeys the laws because he fears punishment; he is the man whose soul is rightly ordered, whose rational faculty governs his spirited and appetitive elements in accordance with the good. The just city, correspondingly, is not the city that imposes order by force but the city whose institutions reflect the natural hierarchy of human capacities and direct them toward their proper ends. Justice, for Plato, is thus a condition of objective rightness—an alignment of the soul and the polity with the order of being itself.⁸

Two features of Plato's account are particularly important for the subsequent natural-law tradition. The first is the insistence on the objectivity of moral knowledge. For Plato, the propositions of ethics are not expressions of feeling, cultural preferences, or legislative will; they are truths about the structure of reality, knowable in principle by any rational mind that submits to the discipline of philosophical inquiry. This claim—that moral knowledge is genuine knowledge, not opinion—is the foundation stone of every natural law theory, however far it may depart from Plato's specific metaphysical commitments. Without it, the entire tradition collapses into one or another form of the conventionalism it exists to oppose.⁹

⁸ Republic, 441c–444a (the tripartite soul and the definition of justice as the proper ordering of its parts). The analogy between the just soul and the just city, which structures the entire argument of the Republic, is introduced at 368c–369a. On the metaphysical foundations of Platonic justice, see Raphael Demos, 'A Fallacy in Plato's Republic?' *Philosophical Review* 73 (1964): 395–398; and the more sympathetic treatment in Annas, *Introduction to Plato's Republic*, 72–152.

⁹ The distinction between knowledge (episteme) and opinion (doxa) is developed in Republic V (474b–480a) and is presupposed by the entire account of the philosopher-ruler. Finnis, *Natural Law and Natural Rights*, 59–75, argues that the core natural law claim about moral objectivity can be sustained without commitment to the full Platonic metaphysics of the Forms. The present study

The second crucial feature is the subordination of positive law to a higher standard. The *Laws*, Plato's last and longest dialogue, makes this explicit. The Athenian Stranger insists that the true legislator does not impose his will arbitrarily but seeks to conform the laws of the city to the dictates of reason and virtue. Legislation that departs from this standard is not, in the fullest sense, law at all; it is an exercise of force masquerading as authority.¹⁰

Plato's account is not without its difficulties, and the natural law tradition has been obliged to grapple with them from the beginning. The most pressing is the question of accessibility: if the standard of justice is the Form of the Good, apprehensible only by philosopher-kings who have completed the arduous ascent from the Cave, then natural law is in practice the possession of a tiny intellectual elite—a conclusion that sits uneasily with the tradition's characteristic claim that the fundamental principles of justice are accessible to ordinary practical reason. It was Aristotle who first addressed this difficulty, and his solution—which relocated the foundation of natural justice from transcendent metaphysics to the practical reasoning of the

adopts a similar position while insisting, with Strauss, that Plato's formulation remains philosophically indispensable as the paradigmatic statement of the problem.

¹⁰ *Laws*, 713e–714a: 'Where the law is subject to some other authority and has none of its own, the collapse of the state, in my view, is not far off; but if law is the master of the government and the government is its slave, then the situation is full of promise and men enjoy all the blessings that the gods shower on a state.' The passage anticipates, in remarkably compressed form, the central claims of the mediaeval and modern natural law traditions regarding the supremacy of law over arbitrary will. See further Trevor J. Saunders, *Plato's Penal Code: Tradition, Controversy, and Reform in Greek Penology* (Oxford: Clarendon Press, 1991).

mature moral agent—set the tradition on a path it has followed, with significant detours, ever since.¹¹

III. Aristotle and the Grounding of Natural Justice in Practical Reason

If Plato established the objectivity of justice as a principle, it was Aristotle who gave natural law its characteristic method—and, in so doing, rendered it capable of the institutional application that the tradition has long demanded. Aristotle's achievement was to relocate the foundation of natural justice from the transcendent realm of the Forms to the immanent domain of practical reason, without surrendering the claim to objectivity that Plato had vindicated against the Sophists. This relocation is the single most important intellectual event in the pre-Christian history of the natural law tradition, and its consequences ramify through every subsequent phase of the tradition's development.¹²

The decisive passage is in Book V of the *Nicomachean Ethics*, where Aristotle distinguishes between natural justice and legal justice. 'Of political justice,' he writes, 'part is natural, part legal—natural, that which everywhere has the same force and does not exist by people's thinking this or that; legal, that which is originally indifferent, but when it has been laid down is not indifferent.' The passage is

¹¹ The tension between the Platonic and Aristotelian approaches to moral knowledge is one of the enduring structural features of the natural law tradition. Alasdair MacIntyre, *Whose Justice? Which Rationality?* (Notre Dame: University of Notre Dame Press, 1988), 69–145, provides a penetrating analysis. Finnis's project in *Natural Law and Natural Rights* can be understood, in part, as an attempt to resolve this tension by grounding natural law in self-evident practical principles that do not require the metaphysical ascent Plato demands. See Finnis, 33–36, 59–99.

¹² On the Platonic–Aristotelian tension, see further the discussion and references in the preceding note.

compressed and has been the subject of centuries of commentary, but its essential import is clear: there are principles of justice that obtain independently of any legislative act, that hold across times and places, and that are distinguishable from the merely conventional arrangements that vary from polity to polity. This is the classical statement of the natural law proposition in its Aristotelian form.¹³

Aristotle's departure from Plato is not a repudiation but a transformation. He does not deny that justice is objective; he denies that its objectivity requires the metaphysical apparatus of the Forms. For Aristotle, the standard of natural justice is not a transcendent Idea subsisting in a separate realm of being but the telos of human nature itself—the end or flourishing toward which human life is naturally directed. Man is, by nature, a rational and political animal; the good for man consists in the excellent exercise of his distinctive rational and social capacities; and the principles of natural justice are those principles that conduce to, or are required by, this distinctively human form of flourishing. Justice is natural not because it corresponds to an eternal blueprint but because it is rationally necessary for the achievement of the human good.¹⁴

¹³ *Nicomachean Ethics*, V.7, 1134b18–24. The translation is that of W. D. Ross, revised by J. O. Urmson, in *The Complete Works of Aristotle*, ed. Jonathan Barnes (Princeton: Princeton University Press, 1984). The interpretive difficulties are immense. Strauss, *Natural Right and History*, 156–163, argues that Aristotle's natural right is mutable and that this mutability is the key to understanding his position. Finnis, *Natural Law and Natural Rights*, 281–290, and *Aquinas: Moral, Political, and Legal Theory* (Oxford: Oxford University Press, 1998), 126–142, contests this reading and argues that Aristotle's natural justice includes both invariable first principles and variable applications. The present study follows Finnis on this point.

¹⁴ The teleological foundations of Aristotle's ethics are set out in *Nicomachean Ethics*, I.7 (the 'function argument' for human good as rational activity in accordance with virtue) and *Politics*, I.2 (man as a political animal whose nature is fulfilled in the polis). The link between teleology and natural justice is drawn

This teleological grounding has two consequences of lasting importance. The first is that natural law, in the Aristotelian tradition, is discoverable not by mystical intuition or metaphysical speculation but by the exercise of practical reason—by the same faculty of deliberation and judgment that the mature moral agent employs in the concrete circumstances of action. Aristotle’s man of practical wisdom, the *phronimos*, is the embodiment of natural law reasoning: he perceives the right course of action not by deducing it from abstract principles but by grasping the morally salient features of the situation in the light of his habituated understanding of human good. The principles of natural justice are, in this sense, available to anyone who has been properly educated in virtue—not merely to the philosopher-king.¹⁵

The second consequence is that natural law is not a rigid code of invariable prescriptions but a set of principles whose application varies with circumstances—what later Thomistic thinkers would call a ‘natural law with a variable content.’ Aristotle is emphatic that natural justice, though everywhere possessing normative force, does

explicitly at *Nicomachean Ethics*, V.7, 1134b30–33, where Aristotle insists that natural justice is not immutable in the way that fire burns equally in Greece and in Persia, but is nonetheless natural and distinguishable from the merely conventional. For the philosophical significance of Aristotelian teleology for natural law, see Henry B. Veatch, *Rational Man: A Modern Interpretation of Aristotelian Ethics* (Bloomington: Indiana University Press, 1962), 37–89.

¹⁵ The concept of *phronesis* (practical wisdom) is developed in *Nicomachean Ethics*, VI.5–8, especially 1140a24–b30. Its political implications are drawn out in *Politics*, III.4 and VII.1–3. The relationship between *phronesis* and natural law is a crux of the tradition. Finnis argues that practical reason grasps the first principles of natural law not by deduction from theoretical knowledge of human nature but by a direct, non-inferential apprehension of the basic human goods. See *Natural Law and Natural Rights*, 33–36, 59–99. This reading is controversial; for a defence of the ‘derivationist’ interpretation see Ralph McInerny, *Aquinas on Human Action: A Theory of Practice* (Washington: Catholic University of America Press, 1992), 179–197.

not dictate identical institutional arrangements in every polity. The best constitution for a given people depends on their character, their history, their material conditions, and the range of practical possibilities open to them. This sensitivity to circumstance—this refusal to collapse practical wisdom into mechanical rule-following—is one of the most enduring features of the Aristotelian contribution to the natural law tradition, and it marks a decisive difference between the Aristotelian approach and the rigid, ahistorical rationalism that would characterise some later versions of the doctrine.¹⁶

It is worth pausing to observe how much of the subsequent tradition is already contained, in embryo, in Aristotle's brief discussion. The insistence that natural justice is objective but not mechanically uniform; the grounding of moral normativity in human nature and the requirements of human flourishing; the recognition that practical reason operates not by deduction from first principles but by the prudential assessment of particular situations; the implicit distinction between the fundamental principles of natural law and the variable arrangements of positive law that implement them—all of these ideas, which will occupy jurists and philosophers for the next two millennia, are present in the *Nicomachean Ethics*. It is no exaggeration to say that the history of the natural law tradition is, in substantial measure, a

¹⁶ *Nicomachean Ethics*, V.7, 1134b29–33. Aristotle's acknowledgment that natural justice is in some sense changeable has generated an enormous interpretive literature. The 'variable content' formulation originates with Rudolf Stammler, *Die Lehre von dem richtigen Rechte* (Berlin: J. Guttentag, 1902), trans. Isaac Husik as *The Theory of Justice* (New York: Macmillan, 1925), and was adopted by Rommen, *The Natural Law*, 211–227. For the argument that Aristotle's natural justice includes both invariable and variable elements, see Yack, *The Problems of a Political Animal: Community, Justice, and Conflict in Aristotelian Political Thought* (Berkeley: University of California Press, 1993), 132–161.

history of attempts to elaborate, refine, and apply the insights compressed into a few paragraphs of Aristotle's treatise on justice.¹⁷

IV. The Stoic Revolution: Natural Law as Universal Reason

The Stoic school effected a transformation of the natural law idea that was, in certain respects, as consequential as Aristotle's. Where Aristotle had grounded natural justice in the teleological structure of human nature and the exercise of practical reason within the polis, the Stoics universalised the concept, detaching it from any particular political community and identifying it with the rational order of the cosmos itself. For the Stoics, the universe is pervaded by a divine rational principle—the *logos*—that governs all things and in which every rational being participates by virtue of possessing reason. Natural law, in the Stoic understanding, is nothing other than this universal logos as it applies to human conduct: it is the law of reason, binding on all rational creatures regardless of their citizenship, their station, or their epoch.¹⁸

¹⁷ This judgment is shared, with varying degrees of emphasis, by virtually all the major historians of the tradition. See Finnis, *Natural Law and Natural Rights*, 18–55; MacIntyre, *Whose Justice? Which Rationality?*, 103–145; Rommen, *The Natural Law*, 3–35; and, from a more critical perspective, Michel Villey, *Le droit et les droits de l'homme* (Paris: Presses Universitaires de France, 1983), 41–72.

¹⁸ The fragments of the early Stoics are collected in Hans von Arnim, *Stoicorum Veterum Fragmenta*, 4 vols. (Leipzig: B. G. Teubner, 1903–1924). For accessible treatments of Stoic natural law doctrine, see A. A. Long, 'Stoic Philosophers on Persons, Property-Ownership and Community,' in R. Sorabji, ed., *Aristotle and After* (London: Institute of Classical Studies, 1997), 13–31; Brad Inwood, ed., *The Cambridge Companion to the Stoics* (Cambridge: Cambridge University Press, 2003), especially the essays by Long and Inwood; and A. A. Long, *Epictetus: A Stoic and Socratic Guide to Life* (Oxford: Clarendon Press, 2002), 142–187.

The implications of this universalisation were immense. In the first place, the Stoic doctrine implied the fundamental equality of all human beings—an idea without precedent in Greek political thought, which had typically assumed the natural superiority of Greeks over barbarians and of free men over slaves. If all rational beings participate in the same *logos* and are subject to the same natural law, then the distinctions of rank, nationality, and legal status that divide men are, from the standpoint of nature, morally irrelevant. Seneca could declare that the slave possesses the same rational nature as the senator; Marcus Aurelius could affirm from the imperial throne that all men are citizens of a single cosmopolis governed by a common law. These were not merely edifying sentiments; they were logical consequences of the Stoic metaphysics, and they introduced into the Western tradition an ideal of universal moral community that would profoundly shape the development of natural law in its Christian, Enlightenment, and modern forms.¹⁹

In the second place, the Stoic identification of natural law with cosmic reason gave the concept a normative absolutism that it had not possessed in Aristotle. For Aristotle, natural justice was, as we have seen, in some measure variable—its fundamental principles were unchanging, but their application was sensitive to circumstance and context. The Stoics, by contrast, tended to conceive of natural law as a set of immutable, exceptionless precepts dictated by the *logos* and binding at all times and in all places. This rigidity was, in one sense, a

¹⁹ Seneca, *Epistulae Morales*, 47.1–21 (on the moral equality of slaves and masters); Marcus Aurelius, *Meditations*, IV.4, VI.44, XII.36. The cosmopolitan implications of Stoic ethics are analysed in Malcolm Schofield, *The Stoic Idea of the City* (Cambridge: Cambridge University Press, 1991; repr. Chicago: University of Chicago Press, 1999). For the lasting influence on the natural law tradition, see Rommen, *The Natural Law*, 17–25; and Ernst Troeltsch, *The Social Teaching of the Christian Churches*, trans. Olive Wyon, 2 vols. (London: Allen & Unwin, 1931), I:63–109.

philosophical strength: it gave the natural law doctrine an uncompromising moral seriousness and freed it from the suspicion of relativistic accommodation that might attach to a more flexible formulation. But it was also a weakness, for it made the Stoic natural law difficult to apply to the complexities of actual political and legal life—a difficulty that the Roman jurists, inheritors of Stoic thought, would have to confront.²⁰

Yet the Stoic contribution to the natural law tradition extends beyond metaphysics and ethics into a domain of the greatest practical consequence: the theory of law itself. It was through the medium of Stoic philosophy that the idea of a universal natural law entered Roman jurisprudence and, through Roman jurisprudence, became a structural element of Western legal thought. The Roman jurists—Gaius, Ulpian, Paul—drew on Stoic conceptions when they distinguished the *jus naturale* (the law common to all living things, or in some formulations to all rational beings) from the *jus gentium* (the law common to all nations) and the *jus civile* (the law peculiar to a given city or people). The precise relationship among these categories was never fully clarified in the Roman sources—the distinction between *jus naturale* and *jus gentium*, in particular, shifted from writer to writer—but the underlying principle was consistent: the positive law of any particular state was to be measured against, and

²⁰ The absolutism of Stoic natural law is evident in the fragments of Chrysippus (in von Arnim, SVF, II.1077, 1127–1131) and in Cicero's restatement in *De Legibus*, I.vi.18–I.xii.33. The tension between Stoic rigidity and practical legal application is explored in Peter Garnsey, *Thinking about Property: From Antiquity to the Age of Revolution* (Cambridge: Cambridge University Press, 2007), 73–106, and in Michel Villey, *La formation de la pensée juridique moderne*, 4th ed. (Paris: Montchrestien, 1975), 97–152.

supplemented by, a higher law accessible to reason and common to all mankind.²¹

The Stoic-Roman synthesis had a further consequence that shaped the entire later history of the tradition. By embedding natural law within a working legal system—the most sophisticated legal system the ancient world produced—the Roman jurists demonstrated that the higher law was not merely a philosopher’s ideal but a practical instrument of legal reasoning. The praetors used the *jus gentium* and the principles of *aequitas* (equity) to soften the rigidities of the *jus civile*, to extend legal protections to non-citizens, and to develop substantive rules of contract, property, and delict that embodied rational principles of fairness. Natural law, in the hands of the Roman jurists, ceased to be a purely theoretical construct and became an operative element of the living law. This practical embedding of the higher law concept in institutional practice is the Roman contribution to the tradition—and it is a contribution without which the subsequent development of natural law in the common-law and constitutional traditions of the West would have been impossible.²²

²¹ The tripartite distinction is set out most clearly in the Digest of Justinian, 1.1.1–6 (Ulpian and Paul). See Peter Stein, *Roman Law in European History* (Cambridge: Cambridge University Press, 1999), 25–38; Barry Nicholas, *An Introduction to Roman Law* (Oxford: Clarendon Press, 1962), 54–60; and, for a sophisticated philosophical analysis, Tony Honoré, *Ulpian: Pioneer of Human Rights*, 2nd ed. (Oxford: Oxford University Press, 2002), 76–109. The ambiguity between *jus naturale* and *jus gentium* is discussed in J. M. Kelly, *A Short History of Western Legal Theory* (Oxford: Clarendon Press, 1992), 57–73.

²² The practical operation of natural law reasoning in Roman jurisprudence is the subject of a large literature. See Fritz Schulz, *Principles of Roman Law*, trans. Marguerite Wolff (Oxford: Clarendon Press, 1936), 27–56; Max Kaser, *Das römische Privatrecht*, 2nd ed., 2 vols. (Munich: C. H. Beck, 1971–75), I:192–207; and, for the specifically Stoic influence, Robert W. Carlyle and Alexander J. Carlyle, *A History of Mediaeval Political Theory in the West*, 6 vols. (Edinburgh: Blackwood, 1903–1936), I:1–64. The concept of *aequitas* and its relationship to

We may now observe the shape of the ancient natural law tradition as a whole. Three distinct but overlapping streams had emerged by the end of the classical period. The first, originating with Plato, insisted on the objectivity and knowability of moral truth and established the fundamental proposition that positive law is answerable to a higher standard. The second, originating with Aristotle, grounded that standard in the teleological structure of human nature and the practical reasoning of the virtuous agent, giving the tradition its characteristic flexibility and its orientation toward the concrete conditions of political life. The third, originating with the Stoics and institutionalised by the Roman jurists, universalised the natural law, identified it with cosmic reason, and demonstrated its capacity to function as an operative principle of legal practice. Each stream contributed something essential; none was, by itself, sufficient. The mediaeval synthesis that Aquinas would achieve in the thirteenth century drew on all three—and the tensions among them would persist, under different names and in different vocabularies, through every subsequent phase of the tradition's history.²³

natural law is treated with particular insight in Peter G. Stein, *Regulae Iuris: From Juristic Rules to Legal Maxims* (Edinburgh: Edinburgh University Press, 1966), 44–77.

²³ The triple origin of the natural law tradition is recognised, in various formulations, by most major historians. Rommen, *The Natural Law*, 3–43, provides the classic account. D'Entrèves, *Natural Law: An Introduction to Legal Philosophy*, 2nd ed. (London: Hutchinson, 1970), 13–47, offers a complementary treatment. The present analysis differs from both in emphasising the structural tensions among the three streams rather than their convergence—tensions that, as subsequent chapters will show, are never fully resolved and that constitute the dynamic principle of the tradition's historical development.

V. Cicero and the Canonical Formulation of Natural Law

No figure in the ancient world did more to transmit the natural law idea to later ages than Marcus Tullius Cicero. He was not, in the strictest sense, an original philosopher; his genius was synthetic, rhetorical, and juridical. But it was precisely these qualities that made him a central mediator between Greek philosophy and the Roman—and, through the Romans, the Western—legal tradition. In the *De Re Publica* and the *De Legibus*, Cicero forged a statement of the natural law doctrine so lucid, so comprehensive, and so perfectly adapted to the needs of legal and political argument that it became the touchstone for virtually every subsequent articulation of the tradition, from the Church Fathers through the American founding.²⁴

The celebrated passage in the *De Re Publica*, preserved by Lactantius, is the single most quoted statement in the entire natural law tradition and deserves careful analysis. Cicero declares that true law is right reason in agreement with nature; that it is of universal application, unchanging and everlasting; that it summons to duty by its commands and averts from wrongdoing by its prohibitions; that it is not one thing at Rome and another at Athens, one thing today and another tomorrow, but one eternal and unchangeable law binding all nations at all times; and that the being who disobeys it flees from

²⁴ On Cicero's role as the essential transmitter of natural law doctrine, see Neal Wood, *Cicero's Social and Political Thought* (Berkeley: University of California Press, 1988), 68–123; E. M. Atkins, 'Cicero,' in Christopher Rowe and Malcolm Schofield, eds., *The Cambridge History of Greek and Roman Political Thought* (Cambridge: Cambridge University Press, 2000), 477–516; and Jed W. Atkins, *Cicero on Politics and the Limits of Reason: The Republic and Laws* (Cambridge: Cambridge University Press, 2013), which offers the most recent comprehensive philosophical treatment.

himself and, in denying his human nature, suffers the greatest of penalties even if he escapes the conventional punishments of men.²⁵

Several features of this passage are particularly important. First, Cicero identifies natural law with *recta ratio*—right reason—thereby establishing the rationalist credentials of the doctrine in terms that would echo through the centuries. Natural law is not feeling, not custom, not the dictate of an arbitrary will, divine or human. It is the delivance of reason operating in accordance with the nature of things. This formulation is Stoic in its metaphysical foundations—the identification of reason with nature presupposes the Stoic doctrine of the *logos*—but it is expressed with a precision and a normative force that the extant Stoic fragments do not match. It was Cicero’s formulation, not Chrysippus’s, that gave the Western tradition its canonical vocabulary for the higher law.²⁶

Second, Cicero insists on the universality and immutability of natural law with an absolutism that goes beyond even the Stoic sources. It is not one thing at Rome and another at Athens—a proposition that

²⁵ De Re Publica, III.xxii.33, as preserved in Lactantius, *Divinae Institutiones*, VI.8.6–9. The passage was unavailable in the Middle Ages except through Lactantius’s quotation; the palimpsest of the De Re Publica was not rediscovered until 1820. For the text and its transmission, see James E. G. Zetzel, ed., *Cicero: De Re Publica, Selections* (Cambridge: Cambridge University Press, 1995), 1–32. The passage’s influence on subsequent natural law thinking is traced in A. P. d’Entrèves, *Natural Law: An Introduction to Legal Philosophy*, 2nd ed. (London: Hutchinson, 1970), 20–32.

²⁶ The phrase *recta ratio naturae congruens* is Cicero’s own coinage and has no precise Stoic precedent, though the underlying concept is thoroughly Stoic. See A. A. Long, ‘Cicero’s Politics in De Officiis,’ in A. Laks and M. Schofield, eds., *Justice and Generosity: Studies in Hellenistic Social and Political Philosophy* (Cambridge: Cambridge University Press, 1995), 213–240. For the subsequent career of the phrase in mediaeval and modern thought, see Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150–1625* (Grand Rapids: Eerdmans, 2001), 44–77.