

Phi 213 Sp13: some ideas of natural law

Aristotle (384-322 B.C.E.)

1 Of political justice 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, e.g. that a prisoner's ransom shall be a mina. . . . It is evident which sort of thing, among things capable of being otherwise, is by nature, and which is not but is legal and conventional. . . . The things which are just by virtue of convention and expediency are like measures; for wine and corn measures are not everywhere equal. . . . Similarly, the things which are just not by nature but by human enactment are not everywhere the same, since constitutions also are not the same, though there is but one which is everywhere by nature the best. [*Nicomachean Ethics*, W. D. Ross (tr.), 1134<sup>b</sup>-1135<sup>a</sup>.]

Cicero (106-43 B.C.E.) [The translation is from *The Hellenistic Philosophers*, Long and Sedley, eds. (Cambridge: Cambridge University Press, 1987). This is from a work that survives only in fragments, and the immediate context of this passage is not known.]

2 True law is right reason, in agreement with nature, diffused over everyone, consistent, everlasting.... There will not be a different law at Rome and at Athens, or a different law now and in the future, but one law, everlasting and immutable, will hold good for all peoples and at all times.... Whoever does not obey it is fleeing from himself and treating his human nature with contempt. [*Republic*, 3.33.]

Ulpian (d. 228 C.E.)

3 When a man means to give his attention to law (*jus*), he ought first to know whence the term *jus* is derived. Now *jus* is so called from *justitia*; in fact, according to the nice definition of Celsus, *jus* is the art of what is good and fair. [The *Digest* of Justinian, C. H. Munro (tr.), book I, title 1, article 1.]

4 Justice is a constant, unailing disposition to give every one his legal due. 1. The principles of law are these: Live uprightly, injure no man, give every man his due. 2. To be learned in the law (*jurisprudentia*) is to be acquainted with divine and human things, to know what is just and what is unjust. [*Ibid.*, article 10.]

Julius Paulus (fl. c. 200 C.E.)

5 The word *jus* is used in a number of different senses: in the first place, in that in which the name is applied to that which is under all circumstances fair and right, as in the case of natural law; secondly, where the word signifies that which is available for the benefit of all or most persons in any particular state, as in the case of the expression civil law. [*Ibid.*, article 11.]

- 6 Justice is the set and constant purpose which gives to every man his due. Jurisprudence is the knowledge of things divine and human, the science of the just and the unjust. [The *Institutes* of Justinian, J. B. Moyle (tr.), title 1, section 1.]
- 7 The precepts of the law are these: to live honestly, to injure no one, and to give every man his due. [*Ibid.*, section 3.]
- 8 The law of nature is that which she has taught all animals; a law not peculiar to the human race, but shared by all living creatures, whether denizens of the air, the dry land, or the sea. Hence comes the union of male and female, which we call marriage; hence the procreation and rearing of children, for this is a law by the knowledge of which we see even the lower animals are distinguished. The civil law of Rome, and the law of all nations, differ from each other thus. The laws of every people governed by statutes and customs are partly peculiar to itself, partly common to all mankind. Those rules which a state enacts for its own members are peculiar to itself, and are called civil law: those rules prescribed by natural reason for all men are observed by all peoples alike, and are called the law of nations. Thus the laws of the Roman people are partly peculiar to itself, partly common to all nations; a distinction of which we shall take notice as occasion offers. Civil law takes its name from the state wherein it binds; for instance, the civil law of Athens, it being quite correct to speak thus of the enactments of Solon or Draco. So too we call the law of the Roman people the civil law of the Romans, or the law of the Quirites; the law, that is to say, which they observe, the Romans being called Quirites after Quirinus. Whenever we speak, however, of civil law, without any qualification, we mean our own; exactly as, when “the poet” is spoken of, without addition or qualification, the Greeks understand the great Homer, and we understand Vergil. But the law of nations is common to the whole human race; for nations have settled certain things for themselves as occasion and the necessities of human life required. For instance, wars arose, and then followed captivity and slavery, which are contrary to the law of nature; for by the law of nature all men from the beginning were born free. The law of nations again is the source of almost all contracts; for instance, sale, hire, partnership, deposit, loan for consumption, and very many others. [*Ibid.*, title 2, sections 1-2.]
- 9 But the laws of nature, which are observed by all nations alike, are established, as it were, by divine providence, and remain ever fixed and immutable: but the municipal laws of each individual state are subject to frequent change, either by the tacit consent of the people, or by the subsequent enactment of another statute. [*Ibid.*, section 11.]