

THE JUSTICE OF THE EPICUREAN WISE MAN*

In this essay I discuss an important but neglected controversy in which the Stoics sought to discredit Epicurus' teaching on justice by showing that the Epicurean wise man, if immune from detection or punishment, will commit injustice whenever he may profit from it. Under the influence of this criticism, tradition has developed a view of Epicurus' position that makes it so weak and vulnerable that it is difficult to see how Epicureans could have defended it over the course of several centuries. There is decisive evidence, however, that Epicurus' critics seriously misrepresented his position, and that the tradition influenced by their polemic stands in need of fundamental revision.¹ My purpose here is to prove that the Epicurean wise man will not commit injustice, secretly or openly, because it is in his self-interest to be just; to reconstruct Epicurus' arguments for this teaching; to show how he defends his position against natural right theorists; and to clarify the larger issues at stake in his controversy with the Stoics. I begin by sketching the Stoic criticisms and the Epicurean response (section I). Next I show how these criticisms misconstrue Epicurus' position (section II) and reconstruct his positive argument for the wise man's justice (section III). I conclude by considering why Epicurus rejects natural right theories (section IV).

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¹ For the modern discussion, see R. Philippson, 'Die Rechtsphilosophie bei Epikureer', *AGP* 23 (1910), 289–337, 433–46; L. Strauss, *Natural Right and History* (Chicago, 1953), 109–15; A.-H. Chroust, 'The Philosophy of Law of the Epicureans', *Thomist* 16 (1953), 82–117, 217–67; R. Müller, 'Sur le concept de Physis dans la philosophie épicurienne du droit', in *Actes du VIIIe Congrès* (Association Guillaume Budé [Paris, 1969]), 305–18, and *Die epikureische Gesellschaftstheorie* (Berlin, 1972); D. Clay, 'Epicurus' *Kyria Doxa* XVII', *GRBS* 13 (1972), 59–66; J. Bollack, *La pensée du plaisir* (Paris, 1975), 353–92; V. Goldschmidt, *La doctrine d'Epicure et le droit* (Paris, 1977) and 'La théorie épicurienne du droit' in *Science and Speculation*, ed. J. Barnes *et al.* (Cambridge, 1982), 304–26 (subsequent citations refer to Goldschmidt's book); A. Laks, *Gnomon* 53 (1981), 1–4; A.-J. Voelke, 'Droit de la nature et nature du droit: Calliclès, Épicure, Carnéade', *Revue Philosophique* 172 (1982), 267–75; R. Müller, 'Konstituierung und Verbindlichkeit der Rechtsnormen bei Epikur', in *Συζήτησις: Studi... Gigante* (Naples, 1982), 153–83; N. Denyer, 'The Origins of Justice', *ibid.*, 133–52; and now the work of A. A. Long ('Pleasure and Social Utility – the virtues of being Epicurean', *Entretiens sur l'antiquité classique* 32 [1986], 283–329) and of P. Mitsis (see *infra*, n. 80), which was not available to me at the time of writing. Long does not consider the problem of the wise man's justice, but his wide-ranging discussion of the relation between Epicurus' doctrine of pleasure and his social philosophy is largely compatible with, and provides additional support for, the interpretation advanced herein (for our most important difference, see *infra*, n. 54).

The main texts for Epicurus' teaching on justice are *KD* 5, 17, 31–8; *Ep. ad Men.* 132; *SV* 7, 51, 70 and F519, F530–4 (fragments are cited according to H. Usener, *Epicurea* [Leipzig, 1887]), which should be supplemented by Hermarchus' account of the Epicurean genealogy of morals *ap. Porphyry, De Abst.* 1.7–12 (= F24 in K. Krohn, *Der Epikureer Hermarchos* [Berlin, 1921]); Colotes *ap. Plutarch, Adv. Col.* 1124d; Philodemus, *Rhet.* 1.249–59 (in S. Sudhaus, *Philodemi volumina rhetorica* i [Leipzig, 1882]); Diogenes of Oenoanda NF21 (in M. F. Smith, *Thirteen New Fragments of Diogenes of Oenoanda* [Vienna, 1974], 21–5); Cic. *De Fin.* 1.50–4, 57; Lucr. 5.958–9, 1011–1160; Hor. *Sat.* 1.3.99–114. D. L. 10.28 reports that Epicurus wrote *Περὶ δικαιοπραγίας* and *Περὶ δικαιοσύνης καὶ τῶν ἄλλων ἀρετῶν*, but nothing is known of their contents.

I

In his criticism of Epicurean ethics in *De Finibus* 2, Cicero challenges Torquatus' claim (1.50–4) that justice is choiceworthy not for its own sake, but solely for the security and pleasure it provides, by presenting him with the challenge that Glaucon raises in book 2 of Plato's *Republic* (358e–362c). Glaucon here argues in praise of the unjust life that even the just man, when made immune from detection by Gyges' ring, will commit great injustices to gratify his natural desire for more. Glaucon thereby challenges Socrates to prove that justice is by nature choiceworthy in itself, independently of its rewards and consequences. Similarly Cicero demands to know why, if justice is founded on utility rather than nature, the man untroubled by conscience or fear of punishment will refrain from the basest acts of injustice when his self-interest is at stake (2.51–9, 70–1; cf. 3.38, 70–1, *De Off.* 3.38–9). Like Glaucon's possessor of the ring of Gyges, the man Cicero envisages is free from self-torment and dread (which, according to Torquatus, are the inevitable consequence of injustice); instead, he shrewdly calculates profit in all he does, is fertile in devices for cheating in secret, and acts without witness or accomplice – he is like P. Sextilius Rufus, a man whose unjust use of the law to win great wealth does not trouble him.² On Epicurean principles, or so Cicero claims, this man will be justified in taking enormous risks when faced with the prospect of securing great pleasures for himself. And similarly, he thinks, the Epicurean wise man will commit any crime to obtain wealth and the pleasures it brings: *sic vester sapiens, magno aliquo emolumento commotus, cum causa, si opus erit, dimicabit. occultum facinus esse potuerit, gaudebit; deprehensus omnem poenam contemnet* (2.56–7; cf. *De Leg.* 1.41). In short, Cicero concludes, the Epicurean prefers the pretence of justice to the genuine thing (2.71).

In this polemic Cicero clearly is employing the Stoics' standard criticism of Epicurean justice. In the course of his exposition of the Stoic doctrine of natural law in *De Legibus* 1, he launches an attack on Epicurean justice from the Stoic standpoint: if utility rather than nature is the standard of justice, he argues, anyone free from fear of punishment will violate the laws whenever he believes it to be in his interest (1.40–3). The Epicurean view amounts, that is, to the destruction of justice: *ita fit ut nulla sit omnino iustitia, si neque natura est, eaque quae propter utilitatem constituitur, utilitate illa convellitur* (1.42; cf. *De Fin.* 3.70–1; *Acad.* 2.139–40); it abolishes *οἰκείωσις*, man's natural impulse to love his fellow-man, which the Stoics consider the very foundation of justice.³ These criticisms proved influential,⁴ but it is no longer

² It is a characteristic feature of Cicero's argumentative strategy to appeal to cases like this which call into question the Epicurean claim that hedonism is compatible with traditional notions of virtue, as Dr Inwood argues in an unpublished paper, 'Rhetorica Disputatio: The Strategy of *De Finibus* 2'.

³ Cf. Cic. *De Leg.* 1.42–3, *De Fin.* 3.62–8; D. L. 7.85–6; Plut. *De Stoic. Repugn.* 1039b–e, *De Soll. An.* 962a–b, *De Amore Proles* 495b–c; Porph. *De Abst.* 3.19; Hierocles coll. 6.22–11.21 (in H. von Arnim, *Hierokles, Ethische Elementarlehre* (Papyrus 9780) [Berliner Klassikertexte IV, 1906]); and the Anonymous Commentator on Plato's *Theaetetus*, coll. 5.36–6.35 (in H. Diels and W. Schubart, *Anonymer Kommentar zu Platons Theaetetus* (Papyrus 9782) [Berliner Klassikertexte II, 1905]). For the Stoic derivation of justice from *οἰκείωσις*, see S. G. Pembroke, 'Oikeiōsis' in *Problems in Stoicism*, ed. A. A. Long (London, 1971), 122–32. Epicurus' successor Hermarchus may have sought to forestall the Stoics' criticism by integrating *οἰκείωσις* into his genealogy of morals on a purely utilitarian basis; see P. A. Vander Waerdt, 'Hermarchus and the Epicurean Genealogy of Morals', forthcoming in *TAPA* 118 (1988).

⁴ Cf. Plut. *Non Posse* 1090c, 1104b, *Adv. Col.* 1127d–e; Sen. *Ep.* 97.15; Epict. *Diss.* 3.7.8–18; Clem. *Strom.* 4.22 [= F582]; Atticus ap. Eusebius, *Praep. Ev.* 15.799b–c [= F532]. Also: Epict. *Diss.* 2.20.6–20; C. Cassius Longinus to Cicero, *Ep.* 15.19.2 (on Epicurean political activity see

easy to reconstruct the controversy over the nature of justice in which the Stoics and Epicureans engaged. It is clear that Epicureans were wont to debate this subject (cf. Cic. *De Off.* 3.38–9; *De Leg.* 1.39; *De Rep.* 3.26), but their fullest surviving response to their critics is a single line of Horace: *nec natura potest iusto secernere iniquum* (*Sat.* 1.3.113).⁵ Epicurus has had no Socrates to answer his Glaucon, and his wise man's reputation has suffered greatly as a result, even though there is abundant evidence that an Epicurean would have no interest in the kind of life praised by Glaucon.

The early history of our controversy is now obscure, and the evidence does not suffice to determine with certainty whose views Epicurus opposed in formulating his teaching on justice.⁶ It is common to see this teaching as an attempt to restore the social contract theory as an alternative to Platonic transcendence, but the evidence supporting this hypothesis is slender.⁷ There is more reason to think, however, that Epicurus deliberately opposed the Stoic theory of natural law as originally formulated in Zeno's *Republic*.⁸ Epicurus knew of Zeno (D.L. 7.5, 9), and his doctrine that justice, which is nothing in itself apart from a compact (*KD* 33), varies according to a community's particular circumstances (*KD* 36; Hermarchus 1.8.1, 1.12.4; see *infra*, section IV) stands in direct opposition to the cosmopolitan teaching of Zeno that each of us should not live differentiated by our respective rules of justice into cities and communities, but that we should consider all men our fellow-demesmen and -citizens, living a single way of life (Plut. *De Alex. Virt.* 329a–b).⁹ Moreover, Epicurus is reported to have rejected the innovations attributed to Zeno in his radical critique of existing institutions.¹⁰ The fact that Epicurus contradicts Zeno on all these points suggests that he wrote in deliberate opposition to his *Republic*, although the possibility cannot be

A. Momigliano, *JRS* 31 [1941], 151–7). Cicero is drawing on an orthodox Stoic account since he ties his criticism to *οἰκείωσις*, but his more general charge (the one most commonly brought against Epicurus), that Epicurean hedonism is incompatible with justice, need not depend specifically upon Stoic doctrine.

⁵ Horace here is contradicting the Stoic view according to which *nec solum ius et iniuria natura dividicatur, sed omnia omnia honesta et turpia* (Cic. *De Leg.* 1.44); for his use of Epicurean doctrine in this *Satire* see Goldschmidt (*supra* [n. 1], 150–65).

⁶ For Epicurus' response to Glaucon's challenge, see *infra*, p. 418; for his revision of social contract theory, see *infra*, pp. 420–1. Müller (*supra* [n. 1 (1972)], 55–61, 83–7) discusses the influence of Democritus.

⁷ So e.g. Goldschmidt (*supra* [n. 1], 72–3, 78–9) attempts to read *KD* 33 as a polemic against Plato, but the connexions adduced seem to me too general to serve as proof of deliberate polemic.

⁸ The evidence for Zeno's *Republic* is collected in *SVF* i.259–71 and in Philodemus' *De Stoicis*, now re-edited with commentary by T. Dorandi, *CERC* 12 (1982), 91–133. For discussion see H. C. Baldry, 'Zeno's Ideal State', *JHS* 79 (1959), 3–15; J. M. Rist, *Stoic Philosophy* (Cambridge, 1969), 64–72; J. Ferguson, *Utopias of the Classical World* (Ithaca, 1975), 111–21; R. Müller, 'Zur Staatsauffassung der frühen Stoa' in *Proceedings of the VIIth Congress... of Classical Studies*, ed. J. Harmata (Budapest, 1984), i.303–11; and *infra*, n. 12.

⁹ See also Goldschmidt (*supra* [n. 1], 17–18, 142–50), and *infra*, section IV. I take Plutarch's *πάντας ἀνθρώπους* to refer not to all men (Baldry [*supra* [n. 8], 12–13]; J. L. Moles, *JHS* 103 [1983], 115), but only to all wise men (O. Murray, *CR* 80 [1966], 369).

¹⁰ Summarily: (i) Zeno holds that Eros is a god of friendship, concord and even liberty (Athenaeus 561c [= *SVF* i.263]; cf. D.L. 7.129), and advocates the community of wives among wise men (D.L. 7.33, 131); Epicurus that the wise man will not fall in love, and that intercourse never has profited anyone (D.L. 10.118). (ii) Zeno prohibits the building of temples, law-courts and gymnasia (D.L. 7.33 [= *SVF* i.264–7, with further testimonial), Epicurus' wise man will dedicate statues (D.L. 10.121) in adhering to traditional religious practices (cf. *infra*, n. 24), and will take a suit to court (D.L. 10.120). (iii) Zeno rejects the introduction of money (D.L. 7.33); the Epicurean accepts it (D.L. 10.120). (iv) Zeno's wise man will marry and father children (D.L. 7.121); Epicurus' will not (D.L. 10.119). (v) Zeno says that the wise man will participate in public affairs (Sen. *De Otio* 3.2 [= *SVF* i.271]; cf. D.L. 7.121–2), Epicurus that he will not (D.L. 10.119).

excluded entirely that Diogenes Laertius, in compiling his treatise on the wise man (10.117–21), has conflated Epicurus' own views with those of his followers.¹¹

Whether or not Epicurus explicitly opposed Zeno, however, it is clear that he has a strong line of defence against the Stoics and other natural right theorists, one which enables him to defend his wise man against his critics' polemic.¹² Epicurus considered the question of whether the wise man will commit injustice in his *Διαπορίαι*, and our reconstruction of his answer will show why it is in the wise man's self-interest to be just. Moreover, even if the debate between the Stoics and Epicureans over the nature of justice does not originate with the schools' founders, it clearly had become prominent by the time of Epicurus' successor, Hermarchus,¹³ and the debate itself is most illuminating in helping us to arrive at a better understanding of the considerable doctrinal resources of Epicurus' position.

There has been renewed interest in Epicurean justice in recent years, but scholars have tended to accept uncritically the charges of Epicurus' ancient opponents, neglecting the abundant evidence which proves that Epicurus could have defended his wise man against attacks like that of Cicero. Some have accepted without question the charge that his wise man will violate the laws when he knows that he will escape

¹¹ This section cites several works by Epicurus including the *Διαπορίαι* (10.119), in which he considered the wise man's justice (see *infra*, section II); since this work considered a series of problems concerning the wise man, D.L. 10.117–21 may partly summarize its contents, perhaps drawing upon the epitome of Epicurus' moral teaching by Diogenes of Tarsus, which is cited (10.118; cf. 10.26) on a question apparently considered in the *Διαπορίαι*. M. Giusta, 'Passi dossografici di morale epicurea nel X libro di Diogene Laerzio', *AAT* 97 (1962–3), 120–74 supposes this doxography to be of Stoic origin: if so, it might exaggerate the extent to which Epicurus was concerned to oppose the Stoics, although the fact remains that it is based closely on Epicurus' writings. For the notorious orthodoxy of the Epicurean school, see D. Clay, 'Individual and Community in the First Generation of the Epicurean School' in *Συζήτησις* (*supra*, n. 1), 255–79.

¹² In reconstructing this controversy, we must bear in mind that the Stoic theory underwent important changes between the time of Zeno and that of Cicero. Zeno wrote the *Republic* while still a student of the Cynic Crates (D.L. 7.4), and many of his doctrines were influenced by Antisthenes and Diogenes (see particularly Rist [*supra* (n. 8), 54–80], 'Zeno and Stoic Consistency', *Phronesis* 22 [1977], 167–74; M. H. Fisch, 'Alexander and the Stoics', *AJP* 58 [1937], 132–4). Although Chrysippus defended some of these Cynic tenets (cannibalism: *SVF* iii.747–53 [cf. Cleanthes, i.584]; incest: iii.734–6, 753; community of women and children: iii.728, 744–5), later Stoics were so shocked to find incest (*SVF* i.256) and cannibalism (i.254) in Zeno's work that they rejected the *Republic* as spurious, or excused it on account of Zeno's youth (cf. Philod. *De Stoiciis*, col. 9.1–19; D.L. 7.32–4). As expounded by Cicero, the Stoic theory of natural law bears little trace of its Cynic origins: not only is natural law compatible with civil society, it is even embodied in its ideal form in the Roman constitution (*De Rep.* 1.70, 2.22–3, 3.33; cf. *De Fin.* 3.65–8). (For Cicero's position see Strauss [*supra*, n. 1], 153–6; J. E. Holton, 'Marcus Tullius Cicero' in *History of Political Thought*, edd. L. Strauss and J. Cropsey [Chicago, 1972], 130–50; W. Nicgorski, 'Cicero and the Rebirth of Political Philosophy', *Political Science Reviewer* 8 [1978], 93–4.) Such developments in the Stoic theory are likely to have influenced their line of attack against Epicurean justice, although the most fundamental point of contention seems not to have changed: Cicero no less than Zeno maintains that one law is valid for all nations according to nature (cf. Plut. *De Alex. Virt.* 329a–b with Cic. *De Rep.* 3.33), whereas Epicureans hold that justice has no natural basis apart from a compact.

The Stoic theory of natural law and its development is a neglected subject, and I am presently engaged in a comprehensive study. For the current state of the discussion see H. Koester, 'The Concept of Natural Law in Greek Thought' in *Religions in Antiquity*, ed. J. Neusner (Leiden, 1968), 521–41; G. Watson, 'Natural Law and Stoicism' in *Problems in Stoicism*, ed. A. A. Long (London, 1971), 216–38; R. A. Horsley, 'The Law of Nature in Philo and Cicero', *HThR* 71 (1978), 35–59; G. Striker, 'The Origins of Natural Law', *Proceedings of the Boston Area Colloquium in Ancient Philosophy* 2 (1986), 79–94 (with a reply by B. Inwood, *ibid.* 95–101).

¹³ Cf. my article cited *supra*, n. 3.

detection,¹⁴ while others have held that his sole motivation for refraining from injustice is fear of harm from others.¹⁵ Even Leo Strauss, whose inquiries into the problem of natural right are invaluable, thinks that for Epicurus 'justice has a salutary effect only if one is thought to be just'.¹⁶ Occasionally it is noticed that Epicurus' opponents criticized him unjustly, but no one has shown how he would have answered their criticism.¹⁷

In these pages I shall argue, however, that Epicurus ties his teaching on justice to a doctrine of the human good which restricts the wise man's possible objects of choice to the highest pleasures and so eliminates the ordinary motives for injustice. Contrary to the claim of Epicurus' critics, the wise man will not commit injustice, secretly or openly, because injustice is contrary to his self-interest. This conclusion follows directly from the fact that the wise man, knowing that *eudaimonia* consists in freedom from pain, seeks to gratify only the natural desires conducive to *ataraxia* and to avoid all unnatural or unnecessary pleasures which would detract from his self-sufficiency, security and *ataraxia*. In particular, he has no interest in the acquisition of wealth, because wealth and external goods generally bring pains or unnecessary pleasures which would compromise his *ataraxia*. Consequently, since no pleasure obtainable by injustice could compensate the wise man for his loss of *ataraxia*, he will not commit injustice. He will refrain from wrong-doing not merely because he fears punishment, as Epicurus' critics claim, but because he has no interest in the inferior pleasures obtainable by injustice. The failure of these critics to recognize that Epicurus defends the wise man's justice in terms of his disposition toward pleasure undermines their polemic. Before reconstructing this positive argument for the wise man's justice, however, we must first consider the attack of Epicurus' critics on his position.

II

According to Plutarch (*Adv. Col.* 1127d = F18), Epicurus considered the very question raised by his critics in the *Διαπορίαι* (I quote the Loeb edition of De Lacy and Einarson, slightly modified):

¹⁴ So e.g. A. E. Taylor, *Epicurus* (London, 1911), 94; C. Bailey, *The Greek Atomists and Epicurus* (Oxford, 1928), 510–14; J. M. Rist, *Epicurus* (Cambridge, 1972), 116–17, 122–3.

¹⁵ So e.g. Denyer (*supra*, n. 1), 145–6, who claims that 'doing wrong has such benefits intrinsic to it that a sage would never agree to refrain from wronging others unless he got something very good in return' – 'an assurance that they will not harm him'. Sometimes it is recognized that fear of punishment alone does not motivate just action (e.g. C. Bailey, *Epicurus: The Extant Remains* [Oxford, 1926], 370; Müller [*supra* (n. 1), 1982], 159–60), but no one has developed the point.

¹⁶ Strauss (*supra* [n. 1], 109–11). Strauss' view seems to be influenced by Cicero's argument (*De Fin.* 2.50, 71–2) that the Epicurean wise man cannot live pleasantly without the approval of public opinion, although Strauss does not cite either passage. This view is not supported by any Epicurean text and is mistaken: what the Epicureans mean by 'justly' is not what the many approve but rather is what is socially advantageous (cf. *KD* 37–8; Hermarchus 1.8.4). Moreover, the distinction Strauss draws between justice and the other virtues (which he thinks have a salutary effect in themselves) is explicitly contradicted by Torquatus, who says that justice admits of nearly the same treatment as the other virtues, and who emphasizes its tranquillizing effect on the mind quite apart from others' recognition of it (*De Fin.* 1.50); see *infra*, section III.

¹⁷ See M. Packer, *Cicero's Presentation of Epicurean Ethics* (New York, 1938), 32–4, 91–3. The most promising suggestion I have seen is the undeveloped insight of Müller (*supra* [n. 1] (1982)], 155): 'Weil der Weise sich auf die natürlichen und notwendigen Bedürfnisse beschränke, werde es für ihn höchstwahrscheinlich gar keine Versuchung geben, Rechtsbrecher zu werden. Weil der Weise die Tugenden... als Instrument für die Gewinnung des höchsten Gutes, der Lust, einsetze, werde er gerecht handeln.'

ὅτι δὲ οὐ νομοθέταις ἀλλὰ νόμοις ἐπολέμουν ἔξεστιν ἀκούειν Ἐπικούρου· ἐρωτᾷ γὰρ αὐτὸν ἐν ταῖς Διαπορίαις εἰ πράξει τινα ὃ σοφὸς ὧν οἱ νόμοι ἀπαγορεύουσιν, εἰδὼς ὅτι λήσει, καὶ ἀποκρίνεται· 'οὐκ εὖδοκον τὸ ἀπλοῦν ἐπικατηγόρημα,' τουτέστι, 'πράξω μὲν, οὐ βούλομαι δὲ ὁμολογεῖν.'

That their war, moreover, was not with lawgivers but with laws we may learn from Epicurus, who asks himself in the *Disputed Questions* whether the wise man who knows that he will not be found out will do certain things that the laws forbid. He answers, 'the unqualified predication is not free from difficulty' – that is, 'I shall do it, but I do not wish to admit it.'

The question Epicurus poses himself here is whether the wise man will obey the laws without qualification, or whether he may sometimes violate them if assured against detection. There is no consensus on Epicurus' answer.¹⁸ Some scholars hold that Epicurus would have declined to consider the question because he rejects the premiss that the wise man ever could be certain of escaping detection (*KD* 35), but this explanation reduces the problem to a quibble.¹⁹ Two positive explanations have been offered. Drawing upon Philodemus (*Rhet.*, col. 24.26–39), Philippson argues that the wise man faced with a conflict between law and natural justice will either obey or go into exile.²⁰ De Lacy and Einarson, on the other hand, maintain that 'it is no doubt this kind of law [described in *KD* 38], that enforces what has ceased to be just, that the sage will violate when assured of impunity'.²¹ Both explanations fail to recognize that Epicurus defends his wise man's justice in terms of his disposition toward pleasure, and consequently that his law-abidingness, if qualified in any way, must be qualified in terms of this disposition.²²

¹⁸ Its interpretation is complicated by a textual problem: Goldschmidt, De Lacy and Einarson accept the MSS reading ἐπικατηγόρημα (a *hapax*), while C. Diano, *Epicuri Ethica* (Florence, 1946), 147 and R. Westman, *Plutarch gegen Kolotes* (Acta Philosophia Fennica 7 [1955]), 186, following Usener, accept Stephanus' emendation ἐστι κατηγόρημα (which Diano explains: 'κατηγόρημα vox technica est atque id significat quod de quaque re, ut eius rei sit proprium, κατηγορεῖται'); see now A. Angeli's review of the question, *CERC* 11 (1981), 84–6. The sense of ἐπικατηγόρημα is unclear: it is usually taken to mean 'predicate', although it can also mean 'accusation' (so LSJ s.v., rejecting this as a *falsa lectio*). In my opinion the evidence is too slender to recover the precise logical sense Epicurus intended, but either reading seems to preclude an unqualified answer – which suggests, I take it, that Epicurus is unwilling to claim that the wise man will *never* violate the laws (see *infra*, pp. 416–18).

¹⁹ Of the question raised in Plutarch, E. Zeller, *Die Philosophie der Griechen*⁵ (Leipzig, 1923), iii(1).463 n. 4 says 'wollte sich Epikur nicht einlassen', and he is apparently followed in this approach by Diano and Westman (*supra*, n. 18), by Müller (*supra* [n. 1 (1982)], 154, 160) and by Goldschmidt (*supra* [n. 1], 121), whose attempt to cast Epicurus' problem in the form of an Aristotelian syllogism does not inspire confidence and whose discussion (118–23) arrives at no clear view of Epicurus' position. I doubt that Epicurus would have posed this question only to deny its premiss, especially since the Epicurean wise man will not feel fear in any circumstance (cf. Cic. *De Fin.* 2.57). Even if tenable, however, this explanation would mislead by implying that fear alone restrains injustice.

²⁰ Philippson (*supra* [n. 1], 302–3); cf. E. Bignone, *Epicuro* (Bari, 1920), 163–4 n. 2 and G. Arrighetti, *Epicuro: Opere*² (Turin, 1973), 573. This explanation leaves unclear (i) how to defend Philodemus' unparalleled suggestion on the basis of Epicurus' theory; (ii) why Epicurus would have considered the question problematic, were this his answer; and (iii) what relevance Philippson's explanation has to the condition specified – immunity from detection.

²¹ If De Lacy and Einarson *ad loc.*, note b, were right in assuming that fear of punishment alone motivates just action, why would the wise man violate only disadvantageous laws when immune from detection? Denyer (*supra* [n. 1], 145–6) has a variant on their view, and it is open to similar objections.

²² It is puzzling that scholars have overlooked this fact: pleasure and pain supply the motives of conduct (e.g. Cic. *De Fin.* 1.42), and hence it is the wise man's disposition toward pleasure which must determine whether he will commit injustice.

Epicurus' full answer to his question, I propose, is adumbrated in *De Fin.* 2.28 (quoted *infra*, p. 411): the wise man will choose only natural pleasures conducive to *ataraxia*; since he has no interest in the inferior pleasures obtainable by injustice, he has no motivation to wrong others (as Torquatus suggests, *De Fin.* 1.53). Given this theory, one could construct a case in which he might have to violate even a just law in order to obtain the natural pleasures necessary for life itself, and this is why Epicurus cannot give an unqualified answer to his question (see *infra*, pp. 416–18). But Epicurus plainly has a far stronger position than his critics credit him with, for he ties his teaching on justice to a doctrine of the human good which restricts the wise man's choice to the highest pleasures and so eliminates the ordinary motives for injustice. If Epicurus had held that fear of punishment *alone* motives justice, his critics would be right to question his wise man's justice when immune from detection; but in fact the wise man's disposition toward pleasure provides him with a motivation to be just quite independently of fear of punishment.²³

Let us begin by considering the uncharitable interpretation of Epicurus' position found in Plutarch and Cicero, whose polemical purpose – to tar the Epicureans with the disreputable associations of their maxim *λάθε βιώσας* (F551; cf. F554; Metrodorus F41 Koerte) – results in systematic misrepresentation of Epicurean doctrine. In the first place, the notion (Plut. *Adv. Col.* 1127d–e) of an Epicurean 'war' against the laws is contradicted by Epicurus' explicit injunctions against law-breaking (*SV* 51, 70; D. L. 10.118), and there is abundant evidence in the social and religious practices of the Epicurean community that it employed outward fidelity to the city's laws and customs to foster its own internal solidarity.²⁴ Plutarch himself preserves Colotes' praise of the ancient lawgivers for bringing human life from turmoil into great security by establishing law and government,²⁵ and this sentiment fully accords with the fundamental rôle Hermarchus and Lucretius assign to law in making civilized life possible. And Cicero, in his hostile reference to the discussion from the *Διαπορίαι*, reports that Epicurus denied that he would commit any wrong for pleasure's sake by asserting that nothing can enhance the pleasure of freedom from pain (see *infra*, section III). Finally, Epicurus repeatedly states that one must live justly in order to live pleasantly (*KD* 5; *Ep. ad Men.* 132; F519; Cic. *De Fin.* 1.50–4, 57),²⁶ and 'justly' for him can only

²³ Epicurus' position may have been influenced by Democritus, who clearly recognizes the insufficiency of law to restrain against injustice in secret (B181): *λάβρη μὲν γὰρ ἀμαρτέειν εἰκὸς τὸν εἰργμένον ἀδικίης ὑπὸ νόμου, τὸν δὲ ἐς τὸ δέον ἡγμένον πειθοὶ οὐκ εἰκὸς οὔτε λάβρη οὔτε φανερώς ἔρδειν τι πλημμελές.*

²⁴ See A. E. Raubitschek, 'Phaidros and his Roman Pupils', *Hesperia* 18 (1949), 96–103; the evidence and literature cited by H. Cherniss *ad* Plut. *De Stoic. Rep.* 1034c, note d; C. J. Castner, 'Epicurean Hetairai as Dedicants to Healing Deities?', *GRBS* 23 (1982), 51–7; B. Frischer, *The Sculpted Word* (Berkeley, 1982) with D. Clay, *AJP* 105 (1984), 484–9; D. Obbink, 'POxy. 215 and Epicurean Religious θεωρία' in *Atti del XVII Congresso Internazionale di Papirologia* (Naples, 1984), ii.607–19; D. Clay, 'The Cults of Epicurus', *Cerc* 16 (1986), 11–28.

²⁵ Plut. *Adv. Col.* 1124d: *τὸν βίον οἱ νόμους διατάξαντες καὶ νόμιμα καὶ τὸ βασιλεύεσθαι τὰς πόλεις καὶ ἄρχεσθαι καταστήσαντες εἰς πολλὴν ἀσφάλειαν καὶ ἡσυχίαν ἔθεντο καὶ θορύβων ἀπήλλαξαν· εἰ δέ τις ταῦτα ἀναίρησει, θηρίων βίον βιωσόμεθα καὶ ὁ προστυχὼν τὸν ἐντυχόντα μονοῦ κατέδεται.*

²⁶ Epicurus adopts a very strong view of the relation of virtue to *eudaimonia*: he claims not only that the pleasant life is inseparable from the virtues (*Ep. ad Men.* 132; cf. Sen. *Ep.* 85.18 [= F508]), but that virtue *alone* is inseparable from pleasure (D. L. 10.138). The first claim commits Epicurus to the position that virtuous conduct is necessary for *eudaimonia*; the second that virtue is sufficient for it. The source of virtue is *φρόνησις*, or 'sober reasoning' (*νήφων λογισμός*), which searches out the motives for all choice and avoidance and thereby generates the pleasant life (*Ep. ad Men.* 132). Epicurus thus conceives virtue as a cognitive state

mean in obedience to the community's laws, the compact of advantage which it naturally makes for the sake of security (*KD* 31–6). These laws differ according to a community's individual circumstances (see *infra*, section IV), and hence the content of justice is entirely derivative from the compact of advantage embodied in the positive legal order.²⁷ Since only law can provide the security necessary for *ataraxia*, the Epicurean who violates it plainly will deprive himself of the conditions necessary for genuine happiness. Thus Epicurus' teaching does not merely encourage law-abidingness, but positively requires it as a precondition of *eudaimonia*.

To disarm the more serious charge of Epicurus' critics, however, that the wise man will commit injustice in secret if immune from detection, we need to consider precisely why he must live justly in order to live pleasantly. Epicurus holds that justice is in the wise man's self-interest – not because it is choiceworthy for its own sake, as the Stoics and natural right theorists generally hold, but solely because of its utility in enabling him to lead a life of the highest pleasure. In support of this position, Epicurus offers two distinct arguments, a negative one intended to restrain injustice on the ground that fear inevitably torments the wrong-doer, and a positive one intended to promote justice on the ground that it is necessary to attain *ataraxia*. In attacking Epicurus' position, his critics reduce it to the negative argument that fear alone restrains wrong-doing; they entirely ignore the positive side of his position, and so make it out to be much weaker than in fact it is. Moreover, they fail to recognize that the negative argument is applicable only to those who lack the proper disposition toward the various classes of pleasure, and hence must be restrained from injustice through fear of punishment. Since the wise man possesses this proper disposition, he will act justly whether there are laws or not, and so Epicurus' critics are mistaken in supposing the argument from fear of punishment even to be relevant to the problem of the wise man's justice. Let us first consider this negative argument before turning to his account of why the wise man's disposition toward pleasure leads him to act justly.

Epicurus holds that injustice is an evil not in itself, but in that self-torment inevitably troubles one who violates the compact not to harm or be harmed (*KD* 34–5; cf. *SV* 7; F532, F537; Democritus B174). Men who commit injustice suffer from fear of detection even if they habitually escape punishment for their crimes: 'the fear of the future which always presses upon them does not allow them to be happy nor free from anxiety in the present' (F532).²⁸ The unjust man's punishment is loss of the security and *ataraxia* necessary to live pleasantly (*KD* 39–40). This is why Epicurus says *ὁ δίκαιος ἀταρακτότατος, ὁ δ' ἄδικος πλείστης ταραχῆς γέμων* (*KD* 17; cf. *SV* 70, F519): the former enjoys the *ataraxia* made possible by the laws, the latter suffers the psychic disturbances consequent upon losing their protection.²⁹ The Epicurean thus

which provides one with the disposition toward possible objects of choice conducive to, and sufficient for, *eudaimonia*. Given this general conception of virtue, it is hardly surprising that justice provides not merely a guarantee of security against harm, but also the psychic harmony necessary for *eudaimonia* (see *infra*, section III).

²⁷ Epicurus does not explicitly consider what the wise man should do when faced with a disadvantageous law. Although he formulates criteria whereby to decide whether or not a law is just (*KD* 37–8), no Epicurean text appeals from positive law to what is naturally advantageous. The explanation presumably is that the Epicurean, generally speaking, is not interested in the goods obtainable through political life (apart from security), and so does not seek its reform.

²⁸ Cf. Lucr. 3.1013–23, 5.1154–60, 1218–40; Plut. *Non Posse* 1104a–b; Cic. *De Rep.* 3.26, *Tusc. Disp.* 3.32–3.

²⁹ Cf. Clay (*supra* [n. 1], 59–66), who shows that Epicurus modelled *KD* 17 on Solon F11 (Diehl).

is law-abiding because he fears the psychic disturbances that inevitably beset the law-breaker.³⁰

Now Epicurus' critics, as we saw earlier, present him with the case of the supremely unjust man, one untroubled by conscience, and argue that such a man can have no motivation on Epicurean principles to refrain from injustice when immune from detection.³¹ Epicurus himself denies that the unjust man ever could be free from self-torment (*KD* 35), and so the issue sometimes is represented as coming down to the question of whether or not self-torment does in fact inevitably follow upon injustice (cf. *De Off.* 3.38–9).³² But, however that may be, his opponents' criticism is cogent only if fear of punishment is the wise man's sole reason to refrain from injustice. And, indeed, they do explicitly reduce his position to the negative argument that fear of detection *alone* prevents law-breaking,³³ ignoring entirely the positive argument that the wise man must be just in order to enjoy the highest pleasures. But by doing so they misrepresent Epicurus' position. For the negative argument that self-torment inevitably troubles the wrong-doer is not even applicable to the wise man, who will be just whether there are laws or not: *οἱ νόμοι χάριν τῶν σοφῶν κείνται, οὐχ ὅπως μὴ ἀδικῶσιν ἀλλ' ὅπως μὴ ἀδικῶνται* (F530). Laws are necessary to deter the many from injustice through fear of punishment, as Hermarchus explains in his account of the Epicurean genealogy of morals (1.7–8), but the wise man will be equally good whether anyone else is present or not (F533; cf. *SV* 79),³⁴ for he will not feel fear (cf. Cic. *De Fin.* 2.57) and he has no interest in the inferior pleasures obtainable by injustice. The wise man's disposition to choose only natural pleasures conducive to *ataraxia* provides him with a motivation to act justly quite apart from fear of punishment, and so Epicurus' critics simply fail to come to grips with his position.

Why has it not been recognized that the argument from fear of punishment does not apply to the wise man? Presumably because most Epicurean accounts consider justice from the point of view of the community rather than of the wise man. Ordinary men do of course refrain from injustice primarily because of fear, and that is why in the standard texts (Epicurus, *KD* 31–8; Hermarchus 1.7–12; Cic. *De Fin.* 1.50–4), which are not concerned specifically with the wise man, all the emphasis is placed on the negative side of Epicurus' position. This emphasis apparently has misled critics ancient and modern alike, who have failed to see that the wise man represents a special case: by failing to distinguish between the motivation of ordinary men and that of the wise man to be just they wrongly reduce Epicurus' position to the negative argument that fear alone promotes justice.

³⁰ According to Hermarchus (1.9.3–5), the ancient lawgivers introduced *fear* beyond punishment as an additional means of civilizing irrational savagery.

³¹ Cf. Cic. *De Fin.* 2.51–9, 70–1; *De Off.* 3.38–9; *De Leg.* 1.40–3; and the other passages cited *supra*, n. 4.

³² Cf. Goldschmidt (*supra* [n. 1], 110–11).

³³ So Cic. *De Leg.* 1.40–1; *De Fin.* 2.28, 53–9; *De Off.* 3.35–41, 77; Sen. *Ep.* 97.15; Plut. *Non Posse* 1090c, 1104b; Epict. *Diss.* 3.7.18; Clem. *Strom.* 4.22 (= F582).

³⁴ Usener's attribution of F533 to Epicurus is conjectural, but well accords with Epicurean doctrine. Hermarchus sharply distinguishes between the lawgivers, who understand the advantageous and act according to it without the law's compulsion, and the many, who are ignorant of it and must be restrained from mutual homicide by law – fear of penalty is their *φάρμακον* (1.8.3). 'If all men', he continues, 'were equally able to discern and remember the advantageous, they would have no need of laws' (1.8.4) – a doctrine confirmed by Diogenes of Oenoanda's account of the 'Golden Age' which will come when all mankind has been saved by Epicurus' philosophy: then 'all things will be full of justice and mutual love, and there will come to be no need of defensive walls or laws and all the things we contrive on account of one another' (NF21 Smith; cf. F25 col. 2.3–11 Chilton).

Epicurus' position, then, is far stronger than his critics assume, and it is evident how he would answer their polemic. The Epicurean wise man who encounters Cicero's helpless man in a desolate place (*De Leg.* 1.41) will refrain from killing and robbing him of his money not because he fears detection, but because he seeks only natural pleasures conducive to *ataraxia* and hence has no interest in wealth and its inferior pleasures. Let us now reconstruct this positive argument for the wise man's justice before turning, in conclusion, to consider the more general issues at stake in this controversy.

III

There is an extensive body of evidence concerning the wise man's disposition toward the various classes of pleasure which enables us to reconstruct the positive side of Epicurus' position. That Epicurus defended the wise man's justice in terms of his disposition toward pleasure emerges clearly from Cicero's testimony (*De Fin.* 2.28), which provides an invaluable clue for the reconstruction of Epicurus' argument:

sed tamen ex eo quod eam voluptatem quam omnes gentes hoc nomine appellant videtur amplexari saepe vehementius, in magnis interdum versatur angustiis, ut hominum conscientia remota nihil tam turpe sit quod voluptatis causa non videatur esse facturus. deinde ubi erubuit (vis enim est permagna naturae), confugit illuc ut neget accedere quidquam posse ad voluptatem nihil dolentis.

This passage is a report, albeit one coloured by Cicero's polemical purpose, of Epicurus' answer to the problem raised in the *Διαπορίαι*.³⁵ The last clause explains how he sought to avoid the impression that he would do anything in secret for the sake of pleasure: he asserted that nothing can enhance the pleasure of freedom from pain. Cicero's discussion does not throw further light on this argument, except to indicate that the pleasure in question is *katastematic* rather than *kinetic*.³⁶ But this argument coheres exactly with Epicurus' own texts, and I shall now try to show how he will have used it to secure the conclusion that the wise man will not commit injustice in secret.

To understand the relation between justice and pleasure in Epicurus' thought we must first see how the wise man orders his life so as to attain *ataraxia*, the end at which all his action aims and which somehow constitutes his highest pleasure and *eudaimonia*.³⁷ To attain this state of freedom from bodily and psychic disturbance he must eschew the political life of the many and expel all of their vain opinions from his life. He must acquire, in the first place, the natural good of security from his neighbours (*KD* 6), a goal which can be secured partly by the institution of law to prevent harm at the hands of the many (cf. F530; Hermarchus 1.7–12) and partly by a quiet life of retirement (*KD* 14, 40), governed according to the maxim *λάθε βιώσας* (F551). He may then set about ridding himself of all the vain opinions which rob the

³⁵ Goldschmidt (*supra* [n. 1], 118) denies that *De Fin.* 2.28 is a report of this discussion, but he offers no arguments.

³⁶ On *katastematic* pleasure see Rist (*supra* [n. 14], 102–22, 170–2). There is a challenging and thoughtful discussion in J. Gosling and C. Taylor, *The Greeks on Pleasure* (Oxford, 1982), 365–96, but I am not persuaded by their attempt to banish the distinction between *katastematic* and *kinetic* pleasure from Epicurus' thought: they do not seem to me justified in rejecting Cicero's unequivocal evidence or the traditional interpretation of D. L. 10.136. My argument in this essay does not require that Cicero's understanding of *katastematic* pleasure be correct, although it does require that *De Fin.* 2.28 be an accurate report of Epicurus' line of argument.

³⁷ For the Epicurean account of how freedom from pain constitutes pleasure, see *De Fin.* 1.37–9 and, for some of the difficulties in this account, M. Hossenfelder, 'Epicurus – hedonist *malgré lui*' in *The Norms of Nature*, edd. M. Schofield and G. Striker (Cambridge, 1986), 245–63.

many of *eudaimonia*, above all their desire for wealth, political power and immortality: 'Happiness and blessedness do not consist in the amount of one's wealth or the importance of one's occupation or in having certain political offices or powers, but in freedom from pain, calmness of emotion and the condition of soul defined by nature' (Plut. *De Aud. Poetis* 37a [= F548]).³⁸ In general, the wise man seeks to attain security and *ataraxia* by making as many things as possible 'akin' to himself or at least not alien; everything else he expels from his life (*KD* 39; cf. *Ep. ad Men.* 132).

Yet security from the many and expulsion of their vain opinions brings no benefit so long as one's mind is troubled by fears concerning the gods, the phenomena of the sky, and death and its pains, and by failure to grasp the limits of pains and desires (*KD* 10–14). The wise man can banish these psychic disturbances only by mastering *φυσιολογία*, which teaches us that death is nothing to us and provides us with a disposition toward pleasure and pain which makes possible a life of *ataraxia* (*Ep. ad Her.* 78–83; *Ep. ad Pyth.* 85; *Ep. ad Men.* 132). From first to last, Epicurean philosophy is conceived on the model of medicine as a *θεραπεία* of the soul's passions, of its false opinions which generate vain and empty desires; and Epicurus regularly uses the comparison between medicine and philosophy to describe philosophy's curative effects on these malignant passions.³⁹ Indeed, this conception is reflected in his statement of the very task of philosophy: 'Vain and empty is the *logos* of that philosopher, by which no passion of a human being is therapeutically cured: for just as there is no benefit in a medical art which does not cast out the sickness of bodies, so there is no benefit in philosophy, if it does not cast out passion from the soul' (F221; cf. F219, F227). The purpose of philosophical activity, then, is to cure and remove the false opinions and passions of the soul which stand in the way of *ataraxia*.⁴⁰

³⁸ Epicurus holds that the wealth demanded by vain opinion stretches to infinity (*KD* 15; cf. *SV* 25, 67–9; *Ep. ad Men.* 130; D.L. 10.11; F181, F469; Lucr. 5.1117–19), that political power and fame are unable to provide security from the many (cf. *KD* 7 with *SV* 82, F552–4, F556 and Lucretius' denunciation of *ambitio*, 5.1120–35), and that the craving for immortality prevents one from enjoying life (*Ep. ad Men.* 124; cf. *KD* 19–20; Lucr. 3.830–1094). Yet he urges those who by nature are lovers of honour and glory to pursue politics, because they would suffer a greater disturbance from *ἀπραγμοσύνη* (F555; cf. F549).

³⁹ Cf. *Ep. ad Men.* 122; *SV* 54, 64; F220, F224, F471; Hermarchus 1.8.3; Cic. *De Fin.* 1.42, 59; Diog. Oen. F2 Chilton.

⁴⁰ For Epicurean *θεραπεία*, see M. Gigante, 'Philosophia medicans in Filodemo', *CErc* 5 (1975), 53–61 and M. Nussbaum, 'Therapeutic Arguments: Epicurus and Aristotle', in Schofield and Striker (*supra* [n. 37], 31–74). Nussbaum's central claim, that 'Epicurus' use of the analogy [between philosophy and medicine] is developed in reaction to Aristotle's ethical-medical analogies, both continuing and criticizing them', is not supported by solid evidence. F423 may conceivably be an attack on Peripatetic 'chatter about the good', but it does not mention the analogy, and the first sentence shows clearly that this is not its referent: Epicurus' objection to Aristotle (if he is indeed the target) is that he does not understand 'the nature of the good' as just defined, and there is no hint or implication that *θεραπεία* of the passions is at issue here. Hence Nussbaum's attempt to stitch this passage together with F211 is unfounded, especially since there is no need to refer the latter specifically to Aristotle. As to the arguments which she advances on pp. 65–6: (i) states as fact what needs to be proved; (ii) Epicurus' use of the ordinary term *ιατρεία* certainly does not prove that he was familiar with the Aristotelian use of the medical analogy; (iii) the documentation adduced does not support the claim that Philodemus 'seems to show detailed knowledge of Aristotle's use of the medical analogy', but even if correct this would not justify Nussbaum's central claim – Philodemus very often records later developments in the school, and hence one must have corroborating evidence to trace a point like this back to Epicurus. The fact that later Epicureans may have debated with Peripatetics on the analogy between medicine and philosophy proves nothing about the *genesis* of Epicurus' own views. Finally, the question of Epicurus' knowledge of Aristotle's ethical writing is far more problematic than Nussbaum allows, and her claim that 'we can safely invite ourselves to look for a

The wise man engages in the study of *φυσιολογία* in order to acquire a proper disposition toward the various classes of pleasure, to ensure that he habitually satisfies only natural desires whose fulfilment brings freedom from pain and *ataraxia*. Epicurus writes as follows (*Ep. ad Men.* 127–8):

We must consider that of desires some are natural, others vain, and that of the natural some are necessary, others merely natural; and of the necessary [and natural desires] some are necessary for *eudaimonia*, some for the undisturbed condition of the body, and some for life itself. For unerring contemplation of these matters knows to refer all choice and avoidance to the health of the body and the *ataraxia* of the soul, since this is the end of blessed living. For it is to attain this end that we do everything, to avoid pain and disturbance. And when this is altogether secured for us, all the tempest of the soul is dispersed, since the living animal has not to wander as though in search of something needful and to seek out something else by which he will fulfil the good of the soul and of the body.

To acquire health of the body and *ataraxia* of the soul, then, the wise man must distinguish desires according to this three-fold division (cf. *KD* 29; Cic. *De Fin.* 1.45, 2.26–8; *PHerc.* 1251, col. 5–6 [Schmid]; F456) so as to choose only those conducive to *ataraxia*. As the scholium on *KD* 29 states,⁴¹ only natural and necessary desires put an end to pain; and so the wise man usually will gratify only these:

οὐ βιαστέον τὴν φύσιν ἀλλὰ πειστέον· πεισόμεθα δὲ τὰς <τ> ἀναγκαίαις ἐπιθυμίαις ἐκπληροῦντες τὰς τε φυσικὰς ἂν μὴ βλάπτωσι, τὰς δὲ βλαβεράς πικρῶς ἐλέγχοντες (*SV* 21).

For although Epicurus holds that no pleasure is bad in itself, many of the desires which are not both necessary and natural bring disturbances many times greater than the pleasure, and hence must be avoided in order to live a life of *ataraxia* (*KD* 8; *Ep. ad Men.* 129; Cic. *De Fin.* 1.33). Indeed, all natural desires which if they go unfulfilled do not cause pain are due to vain opinion (cf. *KD* 26, 30). Accordingly the wise man, in seeking the greatest pleasures, must choose, by sober calculation of advantage and disadvantage, those which will bring him *eudaimonia* (*Ep. ad Men.* 128–32). He confronts every desire with this question: ‘What will happen to me, if the object of my desire is accomplished, and what if not?’ (*SV* 71). Generally speaking, he will restrict himself to the class of necessary and natural desires, since these alone ensure freedom from pain and *ataraxia*.⁴² Sometimes, however, when pain is unavoidable, he will endure pains in order to enjoy greater pleasures in the future, or he will refrain

relationship between the two thinkers on an ethical topic, even in the absence of more concrete evidence of a connexion’, itself methodologically unsound, leads in this case to an unfounded account of Epicurus’ relation to Aristotle.

⁴¹ φυσικὰς καὶ ἀναγκαίαις ἡγείται ὁ Ἐπίκουρος τὰς ἀληθινὰς ἀπολούσας, ὡς ποτὸν ἐπὶ δόξουσιν· φυσικὰς δὲ οὐκ ἀναγκαίαις δὲ τὰς ποικιλλούσας μόνον τὴν ἡδονήν, μὴ ὑπεξαιρουμένας δὲ τὸ ἀλγῆμα, ὡς πολυτελὴ σιτία· οὔτε δὲ φυσικὰς οὐτ’ ἀναγκαίαις, ὡς στεφάνους καὶ ἀνδριάντων ἀναθέσεις. Bailey (*supra* [n. 14], 493 n. 3) argues on the basis of F456 that ποικίλματα should be classified as unnatural and unnecessary desires; see next note.

⁴² The wise man will gratify natural but unnecessary desires only when they do not harm his *ataraxia*. Concerning these desires, Cicero reports that Epicurus *secundum autem genus cupiditatum nec ad potiendum difficile est censet nec vero ad carendum* (*Tusc. Disp.* 5.93), and Epicurus himself grants that πολυτελεία will sometimes be enjoyed if free of disagreeable consequences (cf. F181, *Ep. ad Men.* 131). Natural but unnecessary desires cannot remove pain, but merely ‘vary’ kinetic pleasure (schol. ad *KD* 29; cf. *KD* 18, F417); and, since kinetic pleasure cannot increase katastematic pleasure, it cannot improve the wise man’s state of *ataraxia* (cf. Rist [*supra* (n. 14), 106–8] and D.L. 10.136, where Epicurus clearly restricts *ataraxia* to katastematic pleasure). (For the possibility that natural but unnecessary desires are choiceworthy not as a class, but individually, see M. Wigodsky, *AJP* 107 [1986], 402–5.) Consequently the wise man will gratify natural but unnecessary desires as ποικίλματα only when they are compatible with his *ataraxia*; see further *infra*, n. 50.

from certain pleasures in order to avoid worse pains (cf. F442; Cic. *De Fin.* 1.32–3). To understand how the wise man employs pleasure as a criterion of choice, we must consider what exactly constitutes his *eudaimonia*.

Epicurus holds that by nature all animals from birth seek pleasure as the *summum bonum* and that they continue to do so as long as they remain unperverted (D.L. 10.137; Cic. *De Fin.* 1.30–1, 71, 2.31; F398), for pleasure is what is *οἰκεῖον* to them (*Ep. ad Men.* 129; D.L. 10.34; F398, F509; *PHerc.* 346, ed. Capasso). Their desires, as we have seen, fall into several classes so far as regards their necessity and naturalness.⁴³ Now *eudaimonia* apparently must include the pleasures connected with a healthy body, and those necessary for life itself (*Ep. ad Men.* 129–32).⁴⁴ Indeed, in a way all other pleasures are referable to them: 'The beginning and root of all good is the pleasure of the stomach; wisdom and the refinements are referable to this' (F409; cf. F67; Cic. *Tusc. Disp.* 3.41–2; Metrodorus, F6–7, F39–F42 Koerte). This statement certainly does not mean that Epicurus reduced all good to gluttony, as his ancient critics chose to interpret him (cf. Cic. *De Fin.* 2.7, 20–5, 29; Plut. *Non Posse* 1098d; Sextus, *PH* 3.194–6), but rather that the beginning and root of all good consists in the recognition that the stomach cries out not to be hungry (*SV* 33); that when its needs are satisfied one may enjoy freedom from pain; and that once one adopts the proper attitude toward the body's needs and desires – recognizing that it is not the stomach that is insatiable, but the false opinion that the stomach needs an unlimited amount to fill it (*SV* 59; cf. *Ep. ad Men.* 130–2; *KD* 20, 30) – one may attain *ataraxia*.⁴⁵ The mind's pleasures thus are rooted in the body.⁴⁶ But, since the body experiences only its present pleasure or pain, whereas the soul dwells on past and future as well as present experiences, mental pleasures contribute far more than bodily ones to *eudaimonia*.⁴⁷ Hence one can acquire the continued expectation of bodily pleasures only through the proper disposition of the soul. The wise man's *eudaimonia* thus consists in choosing natural pleasures conducive to *ataraxia*, which provides him with the proper disposition toward the body's desires and frees him from psychic disturbances. In this state he will attain the highest happiness, the kind which belongs to a god and admits of no increase (D.L. 10.121).⁴⁸

When one considers the wise man's disposition toward pleasure, one sees readily enough why it is in his self-interest to be just. The wise man seeks to gratify only natural desires conducive to *ataraxia*, and to enjoy the resultant pleasures in a continuous, katastematic condition. He certainly has no desire to acquire wealth, for he has purged his soul of the vain opinion that he has any need of wealth beyond the little necessary to meet the easily satisfied requirements of life itself (*KD* 15);⁴⁹ rather, he would distribute any wealth he might happen to obtain in order to win his neighbours' gratitude (*SV* 67). The assumption of Epicurus' critics (Cic. *De Fin.* 2.56; Epict. *Diss.*

⁴³ For Cicero's objections see *De Fin.* 2.26–30, and for the Stoic response to the doctrine that pleasure is animals' 'first impulse', D.L. 7.85–6 and Cic. *De Fin.* 3.17.

⁴⁴ For a possible qualification, see *infra* n. 59 with the corresponding text. Natural and necessary desires of course are easily satisfied (e.g. *KD* 21). Hence the wise man eschews the pleasures of profligates, which engender vain opinions and so trouble both body and soul (*KD* 10; *SV* 68–9, 81; *Ep. ad Men.* 131); rather, he seeks to attain a reasoned understanding of the end and limits of the flesh and thereby to remove the pain due to want (*KD* 20–1).

⁴⁵ Cf. Rist (*supra* [n. 14], 104–5, 108–9).

⁴⁶ For this controversial doctrine, see *KD* 18, 20; Cic. *De Fin.* 1.41, 55–6; 2.89, 106–7; and generally F429–39.

⁴⁷ Cf. Cic. *De Fin.* 1.55–6, *Tusc. Disp.* 5.96; D.L. 10.137; Diog. Oen. F37–8 Chilton, NF20 Smith.

⁴⁸ Cf. Torquatus' account of the wise man's state of happiness (*De Fin.* 1.62; cf. 1.40–1, F68).

⁴⁹ Cf. *SV* 25, 67–9; F469, F548; Cic. *Tusc. Disp.* 5.90–1; Lucr. 5.1117–19.

3.7.11–8) that his wise man will be attracted to wealth and its pleasures thus is mistaken: since he gratifies only desires conducive to *ataraxia*, he will never commit injustice ‘for gain’ (F582).⁵⁰ By tying his teaching on justice to a doctrine of the human good which restricts the wise man’s possible objects of choice to natural pleasures, Epicurus eliminates the ordinary motives for injustice.⁵¹

Given the wise man’s disposition to choose only those goods compatible with *ataraxia*, we can understand why it is invariably in his self-interest to be just. In Epicurus’ view, each of the virtues is a psychic state which provides its possessor with the disposition towards objects of choice necessary to attain *eudaimonia*.⁵² In the case of justice, Epicurus repeatedly emphasizes that the fruit of a just disposition is *ataraxia* (KD 17, F519; cf. Cic. *De Fin.* 1.50–4, 57). Since the wise man is properly disposed toward the classes of desire, he will not wrong another to acquire some external object in the mistaken belief that it will bring him *eudaimonia*. As Torquatus suggests (*De Fin.* 1.51), no act of injustice could provide a benefit commensurate with the penalties inevitably attendant upon it in the form of punishment or fear of punishment.⁵³ In every case, the unjust man is motivated by improper or excessive desire which corrupts and torments his soul, leads him to act contrary to his own self-interest, and deprives him of *ataraxia*. The just man, on the other hand, benefits from the psychic harmony provided by justice in two ways: justice tranquillizes his mind, freeing him from the psychic disturbances which impede *ataraxia*; and it warrants hope of a never-failing supply of the things that an uncorrupted nature needs (Cic. *De Fin.* 1.50). Given that psychic harmony depends upon just conduct, it is hardly surprising that justice not only never causes anyone harm, but that it always adds some benefit (Cic. loc. cit.). Just conduct is always in one’s self-interest because it provides the psychic harmony necessary to lead a life of the highest pleasure.⁵⁴

⁵⁰ It might be objected that the wise man, since he will sometimes gratify natural but unnecessary desires, may commit injustice in order to vary his pleasure. The whole notion of variation is unclear, as Cicero complains (*De Fin.* 2.10), and it is also unclear why the wise man would undertake to gratify desires which do not contribute to his *ataraxia* (cf. *supra* [n. 42]). *De Fin.* 2.28 seems to rule out injustice merely for the sake of variation, since the argument that nothing can enhance the pleasure of freedom from pain is used to avoid the conclusion that Epicurus would do injustice for pleasure’s sake. In any event, I doubt that variation, however understood, could serve as a significant motivation for injustice: the wise man will gratify *only* natural desires compatible with his *ataraxia*, and this restriction severely limits his interest in external goods.

⁵¹ Thus the Epicurean wise man will avoid all acts of what Aristotle terms particular injustice and traces to *πλεονεξία* or ‘the pleasure of gain’ (EN 1130a32–b5).

⁵² Cf. *supra*, n. 26.

⁵³ Carneades confirms this interpretation by reporting that, for the Epicureans, nothing obtainable by injustice can offset the penalty of fear which burdens the unjust man: *nullum autem emolumentum esse, nullum iniustitia partum praemium tantum, semper ut timeas, semper ut adesce, semper ut impendere aliquam poenam putes, damna...* (Cic. *De Rep.* 3.26).

⁵⁴ This conclusion presents serious difficulties for the view of Long (*supra* [n. 1], 301–5, 323) that for Epicurus friendship ‘has a positive value and constitutive connexion with happiness, which needs to be clearly distinguished from that of mere justice. No pleasurable sentiment or intrinsic value pertains to just conduct.’ Epicurus does consider friendship the greatest possession in securing blessedness (KD 27; cf. SV 52, 78), but Long’s attempt to divorce just conduct from pleasurable sentiment is contradicted not only by *Ep. ad Men.* 132, according to which ‘sober reasoning’ or prudence actually generates the pleasant life, with which the virtues are naturally bound up (cf. KD 5; Cic. *De Fin.* 1.57; D.L. 10.138; F70, F509, F512; and *supra*, n. 26), but also by Torquatus’ extended argument that justice is desirable precisely because it is productive of pleasure: *itaque ne iustitiam quidem recte quis dixerit per se ipsam optabilem, sed quia iucunditatis vel plurimum afferat* (Cic. *De Fin.* 1.53; cf. 1.42). Long seems to assume (p. 302) that the Epicurean is just merely because of the utility of the social contract, but, as I have argued in detail, his disposition to satisfy only natural desires conducive to *ataraxia* provides him with

Once seen in this light, Cicero's report (*De Fin.* 2.28; quoted *supra*, p. 411) that Epicurus, in order to avoid the conclusion that he would do any wrong for pleasure's sake, asserted that nothing can enhance the pleasure of freedom from pain, makes excellent sense. Given that justice is choiceworthy solely because it is useful in securing the highest pleasures, Epicurus must show why it is in one's self-interest to refrain from unjust gain when guaranteed against detection. He does this simply by pointing out that nothing can enhance freedom from pain. There is no reason to commit injustice because no external good could improve one's *ataraxia*, while injustice inevitably would cause psychic disturbance.⁵⁵

What then is Epicurus' answer to the question he poses in the *Διαπορίαι*? Will the wise man *always* obey the laws, without exception, or is there a case in which he might violate them, if the fear of punishment is removed? It is obvious that the wise man, given his disposition toward pleasure, has no interest in the wealth his critics suppose him eager to acquire. But one may try to construct a problem case, more plausible than that advanced by Epicurus' critics, in which the wise man has some motivation to commit injustice. Certain of Epicurus' statements about friendship, for example, could lead one to wonder whether the wise man might commit injustice for the sake of a friend in need. Thus Epicurus holds that the wise man will work as much for his friend's pleasure as his own (*Cic. De Fin.* 1.67–8), that for the sake of friendship one should even take risks (*SV* 28; cf. *Plut. Adv. Col.* 1111b; *D.L.* 10.120a), and that sometimes the wise man will even die for a friend (*D.L.* 10.121b).⁵⁶ Nowhere, however, does Epicurus imply that the wise man will ever act for a friend in a way that conflicts

a motivation to act justly quite independently of whether or not those around him adhere to the social contract.

⁵⁵ Why does Cicero fail to take into account Epicurus' positive argument for the wise man's justice when attacking his theory in *De Fin.* 2.51–9? Presumably because he rejects the tenets about pleasure on which Epicurus bases this argument: Cicero believes that Epicurus, for all his protestations, really is a vulgar hedonist (2.20–4), that his three-fold classification of desires is confused and untenable (2.26–30), that, in consequence, his wise man will indeed be attracted to great wealth and its pleasures (2.56–7), and that he cannot justify the distinction between *katastematic* and *kinetic* pleasure he uses in defending the wise man's justice (2.28).

⁵⁶ There is a challenging discussion of Epicurus' theory of friendship by P. Mitsis, 'Epicurus on Friendship and Altruism', forthcoming in *OSAP* 5 (1987), which usefully brings out some competing tensions in Epicurus' position. But I cannot accept his conclusion that Epicurus recognizes an altruistic basis for friendship which is inconsistent with his hedonism because it sets up another end or criterion of choice than pleasure. It is evident from Cicero's account of the three different ways in which Epicureans treat friendship (*De Fin.* 1.66–70) that there was considerable uncertainty within the school as to how to explain it on egoistic grounds; probably no clear explanation was available in Epicurus' own writings. Hence it is hardly surprising that his position seems unclear in certain respects. But the evidence Mitsis adduces to show that Epicurus recognizes a non-egoistic basis for friendship is very weak: his argument depends crucially on accepting Usener's emendation of *SV* 32 (πάσα φιλία δι' εαυτὴν ἀρετή [αἰρετή Usener]: ἀρχὴν δ' εἰληφέν ἀπὸ τῆς ὀφελίας), the MSS reading of which is perfectly defensible (so e.g. Long [*supra* (n. 1), 305]), since *De Fin.* 1.68 does not purport to represent Epicurus' own view and moreover is an elaboration of an argument that starts (*De Fin.* 1.66) from the premiss that our friend's pleasures are not to be desired to the same degree as our own. (Mitsis misrepresents Cicero throughout by assuming that *De Fin.* 1.66–8 presents Epicurus' own view: in fact, Cicero represents it only as one of the three treatments of the subject current in the school, and *De Fin.* 2.82 does not suffice to assign the whole argument to Epicurus.) This evidence seems to me far too slender to justify Mitsis' claim that Epicurus recognizes an altruistic basis for friendship and therewith another end of action than pleasure, no trace of which may be found in Epicurus' surviving accounts of the criterion of choice. Clearly, Epicurus' followers found it difficult to construct a theory of friendship on an entirely egoistic foundation; but this difficulty does not justify revision of Epicurus' constantly repeated doctrine that pleasure is the sole criterion of choice.

with his own pleasure and *eudaimonia*,⁵⁷ and it is hard to see how, given the close link in Epicurus' thought between justice and *ataraxia*, the wise man could commit injustice for a friend's sake without ruining his own security and *eudaimonia*. There is no reason to suppose that the mutual obligations of an Epicurean friendship extend to wrong-doing or self-abnegation.

A more serious challenge to Epicurus' position is posed by the hypothetical case in which even a just (i.e., socially advantageous) law deprives the wise man of some natural and necessary pleasure – of sustenance during a time of famine, for example. In this extreme case, if he were somehow assured against detection, neither the positive nor the negative side of Epicurus' argument against law-breaking would seem to be operative, and so it is possible that the wise man would violate the law.⁵⁸ But it is still far from clear that he would do so. The difficulty is that Epicurus never specifies the desires whose satisfaction he considers necessary for *eudaimonia*.⁵⁹ At times he seems to include bodily health (*Ep. ad Men.* 127, *SV* 33; cf. D.L. 10.120b: *δοκεῖ δ' αὐτοῖς... καὶ τὴν ὑγίειαν τισὶ μὲν ἀγαθόν, τισὶ δὲ ἀδιάφορον*), which would require minimal food and protection from the elements, but he also states explicitly that virtue alone, in contradistinction for example to food, is inseparable from pleasure: *ὁ δ' Ἐπίκουρος καὶ ἀχώριστόν φησιν τῆς ἡδονῆς τὴν ἀρετὴν μόνην· τὰ δ' ἄλλα χωρίζεσθαι, οἷον βρωτὰ* (D.L. 10.138, F506). Hence it is hard to evaluate Epicurus' claim, often repeated (see *supra*, n. 58), that proper objects of choice are easily attained without wrong-doing, that only minimal external goods are necessary for *eudaimonia*. Is any desire so necessary that its satisfaction would outweigh the psychic disturbance attendant upon unjust action? One could certainly construct a plausible negative answer on Epicurean grounds. Since the Epicurean wise man does not fear death,⁶⁰ he has no particular concern even for his own survival: he neither seeks to escape nor fears the cessation of life (*Ep. ad Men.* 126 [accepting Usener's supplement]). When deprived even of the minimal resources necessary for survival, therefore, he presumably will quit life readily, without regret, for its duration has no bearing on his pleasure and *eudaimonia* (*KD* 19–20; cf. *Ep. ad Men.* 124–5; Cic. *De Fin.* 2.88–9).⁶¹ If the wise

⁵⁷ This point is effectively made by Long (*supra* [n. 1], 305 n. 22 [on p. 306]). Since the Epicurean has no fear of death, dying for a friend could be defended on egoistic grounds as an appropriate way of avoiding pain.

⁵⁸ Presumably it is a case like this that leads Epicurus, in the passage from the *Διαπορίαι* discussed earlier, to decline to give an unqualified answer to the question of the wise man's justice. To avoid the conclusion that the wise man might commit injustice in an extreme case, one would have to deny the premiss that the wise man ever could be immune from detection (cf. *supra*, n. 19), or argue that the wise man, since he will do what is advantageous whether or not there are laws (*supra*, n. 34), will violate them only to act according to what is naturally advantageous (this option restricts the view of De Lacy and Einarson [*supra*, n. 21] to an extreme case in which the wise man must violate the law to satisfy a natural and necessary desire). In the absence of discussion in our sources, any attempt to cash out these alternatives must remain conjectural. The important point is that natural desires are easily gratified without wrong-doing (cf. *KD* 21, *Ep. ad Men.* 130–1, 133, F469; Cic. *De Fin.* 1.53, 2.90–1, *Tusc. Disp.* 5.93), and the wise man's disposition toward pleasure narrows the circumstances in which he might violate the law to the extreme case in which it thwarts some natural and necessary desire (clearly not what Epicurus' critics had in mind). If one believes that he would commit injustice to vary his pleasure, these circumstances would be expanded, but not significantly (see *supra*, n. 50).

⁵⁹ I owe this point to unpublished work by Dr Mitsis.

⁶⁰ For Epicurean arguments concerning death, see D. J. Furley, 'Nothing to Us?' in Schofield and Striker (*supra* [n. 37], 75–91).

⁶¹ So also if confronted with great pains: Epicurus holds that these will quickly put an end to life, while pains of long duration are not severe (F447; cf. F448; *KD* 4; *SV* 4).

man will not commit injustice even to secure his own survival, it is difficult to see what circumstance could lead him to do so.

Yet even if one finds in this hypothetical case a possible exception to the wise man's law-abidingness, it must be emphasized that this case need cause Epicurus no embarrassment at the hands of his critics. In the first place, if the wise man commits injustice for the sake of some natural desire necessary for life itself, he would do so for the sake of self-preservation, not out of self-aggrandizement. Secondly, the wise man's disposition to satisfy only natural desires conducive to *ataraxia* rules out injustice in all but the most extreme case.⁶² If Epicurus does admit that self-preservation may sometimes necessitate violation even of a just or advantageous law, he is by no means alone. In fact, all of the leading classical natural right theorists would agree with him. Aristotle explicitly states that *all* natural right is changeable (*EN* 1134b18–1135a5; cf. ps.-Ar. *MM* 1194b30–1195a8), evidently because there is no principle of justice which is not subject to exception in an extreme case.⁶³ Plato finds law imperfect because it is unable, in view of its generality, to enjoin the best for all (*Statesman* 294a–c), and on one interpretation the Stoic wise man has complete authority to violate the general provisions of natural law in the light of special circumstances.⁶⁴ If Epicurus is unwilling to rule out entirely the possibility that his wise man might be forced to violate a law were it to thwart some natural desire necessary for life itself, his view has its counterpart in the natural right teaching that no principle of justice is beyond exception in an extreme case.

It is now clear that Epicurus, contrary to his critics' charge, has a worthy reply to Glaucon's challenge. In his exposition of the conventionalist thesis at the beginning of *Republic* 2 (358e–362c), Glaucon traces the origin of justice to a compromise among men who hold that injustice is by nature good to inflict but even more evil to suffer, and who accordingly make a compact neither to inflict nor to suffer injustice. If one accepts their premiss that human nature always wants more and pursues that as a natural good (359c), it would seem to follow that even the just man will commit injustice when assured against detection. Epicurus does agree with Glaucon's view that justice originates in a compact against mutual harm (*KD* 31–3), but the similarities between their positions end here. Not only does Epicurus deny Glaucon's premiss that the possessor of Gyges' ring ever could be certain of escaping detection (*KD* 35), but he ties his theory of justice to an entirely different doctrine of the human good (see further *infra*, pp. 420–1). For Epicurus, justice is not a compromise between inflicting and suffering harm; it is rather a guarantee that one may live free of fear and so be capable of attaining *ataraxia*. Since Epicurus denies Glaucon's premiss that human beings always strive for *πλεονεξία* as a natural good, he may also deny his conclusion that even the just man will commit injustice when guaranteed against detection. Epicurus thus is well-equipped to answer Glaucon's challenge. He does not accept Glaucon's demand to show that justice is choiceworthy for its own sake, independent of rewards and consequences, since he denies that justice is ever anything in itself (*KD* 31); but he does show why one must be just in order to live a life of the highest pleasure and *eudaimonia*. Epicurus' version of the conventionalist teaching deserves to be recognized as a powerful alternative to the natural right theories of Plato, Aristotle and the Stoics.

⁶² See *supra*, n. 58.

⁶³ See Strauss (*supra* [n. 1], 156–63).

⁶⁴ See B. Inwood, 'Goal and Target in Stoicism', *Journal of Philosophy* 88 (1986), 553–4.

IV

It will be evident by now that the failure of Epicurus' critics to grasp that his teaching on justice is parasitic on his doctrine of the human good undermines their polemic. But even so, we still must consider the broader issues which motivated this controversy. In particular, we must consider why Epicurus' theory does not amount to one of natural right,⁶⁵ and why he rejects such theories.

Epicurus' teaching on 'the nature of justice' (*KD* 37) differs from a doctrine of natural right, which holds that the principles of justice are inherent in nature and therefore apply immutably to all peoples regardless of the differences in their circumstances and customs: as Cicero sums up the Stoic doctrine, *est enim unum ius, quo devincta est hominum societas, et quod lex constituit una; quae lex est recta ratio imperandi atque prohibendi; quam qui ignorat, is est iniustus, sive est illa scripta uspiam sive nusquam* (*De Leg.* 1.42). Epicurus does consider justice to have a *πρόληψις*,⁶⁶ and thinks that it is a natural outcome of man's experience and reflection to arrive at a certain notion of justice, i.e., what is advantageous.⁶⁷ But what is advantageous is specified not by nature, but by the particular needs and circumstances of a given community (*KD* 36).⁶⁸

κατὰ μὲν <τὸ> κοινὸν πᾶσι τὸ δίκαιον τὸ αὐτό, συμφέρον γάρ τι ἦν ἐν τῇ πρὸς ἀλλήλους κοινωνίᾳ· κατὰ δὲ τὸ ἴδιον χώρας καὶ ὅσων δὴ ποτε αἰτίων οὐ πᾶσι συνέπεται τὸ αὐτὸ δίκαιον εἶναι.

In its common notion justice is the same for all, since it is a kind of advantage in men's common dealings with one another; but in relation to the particular character of a country and the other causes which there are, the same thing does not turn out to be just for all.

For Epicurus, justice always consists in what is advantageous, but there is no specific measure that is just by nature, and hence in effect in all communities. This point is well brought out by Hermarchus in refuting certain thinkers⁶⁹ who hold that some measures are advantageous everywhere: 'Among the laws which are not advantageous everywhere are those relating to the consumption and destruction of animals: these laws are determined among the majority of races with a view to the particular character of the country; it is not necessary for us to abide by them because we do not dwell in this place' (1.12.4; cf. 1.8.1). This example is striking: even the regulation of man's relations with his natural competitors and enemies is dependent upon local circumstances. Nor is there a universal prohibition against homicide: Hermarchus argues that it arose solely from the lawgivers' calculation that it is advantageous for survival; it is accepted only by 'the majority' of peoples (cf. 1.7.4; Lucr. 5.1024-7); and any community may kill without quarter those who threaten it (cf. 1.11.3-5, 1.12.6; Democritus B257-61). Hermarchus' introduction of *οἰκείωσις* into the Epicurean genealogy of morals might have been used to provide a basis for a universal prohibition of homicide, but this development postdates Epicurus and Hermarchus himself restricts *οἰκείωσις* to those who contribute to their community's survival.⁷⁰

Epicurus thus recognizes a single criterion for justice, the community's advantage,

⁶⁵ This is the view of Philippson (*supra* [n. 1], 295, 298-9), rightly rejected by Müller (*supra* [n. 1 (1969)] and Goldschmidt (*supra* [n. 1], 170-86).

⁶⁶ See Goldschmidt (*supra* [n. 1], 223-40).

⁶⁷ Note the similar rôle played by the differences in the abodes of various nations in Epicurus' account of the origins of language (*Ep. ad Her.* 75-6).

⁶⁸ For commentary on this text, see Goldschmidt (*supra* [n. 1], 125-38).

⁶⁹ On the problem of their identity, see Goldschmidt (*supra* [n. 1], 176-9).

⁷⁰ Cf. *supra*, n. 3.

but he holds that the advantageous has no natural or universal basis, and hence that there are no principles of justice apart from a compact and no natural right applicable everywhere. The ultimate reason for Epicurus' denial of natural right would seem to be his denial that man has any natural inclination toward community (F523–5),⁷¹ that he is by nature a 'political animal' who requires a certain kind of political community to live well.⁷² From this view it follows that there is no such thing as a communal good by nature: if all right is derivative from communities, and all communities are conventional, there can be no principles of justice which naturally apply in the absence of a compact. This would seem to be the basic issue at stake in the Stoics' controversy with Epicurus. The Stoics derive the principles of justice from natural law, the Epicureans from the compact of advantage embodied in the positive legal order. The Stoics hold that man has a communal good by nature, Epicurus that this communal good is wholly derivative from a community's compact.

In the ancient discussion the controversy over the justice of the Epicurean wise man seems to have overshadowed this more fundamental issue. As we have seen, Epicurus defends his teaching on justice against the criticisms of natural right theorists by tying it to his doctrine on the human good, and his denial of natural right protects his theory from the standard sceptical attack on positive theories of justice.⁷³ What the Stoics need to show, in order to undermine the foundations of his teaching, is that he is mistaken to deny that there is a communal good by nature. They need to establish two propositions: first, that man is a political animal who requires a certain kind of political community to live well; and second, that there is in consequence a specifiable communal good which applies everywhere independently of a community's particular circumstances. There is a hint of criticism along these lines in Cicero's objection (*De Leg.* 1.42–3) that the Epicurean doctrine abolishes *οἰκείωσις*, but he does not develop it into a comprehensive critique.⁷⁴

The Epicurean teaching on justice as we have reconstructed it holds a special place among 'conventionalist' theories of justice which deny natural right and derive justice from some kind of social compact. Prior to Socrates, those thinkers who raised the

⁷¹ For other considerations, see Strauss (*supra* [n. 1], 108).

⁷² Aristotle's understanding of man as by nature a political animal who possesses a common function which can only be properly realized in a certain kind of political community (*HA* 487b33–488a14; *Pol.* 1253a2–18, 1278b17–30; *EE* 1242a19–28; *EN* 1097b11, 1162a16–21, 1169b16–22) has its counterpart in the Stoic doctrine that man is a *πολιτικόν* or *συναγελαστικόν* ζῷον (cf. *SVF* iii.262, 314; *Cic. De Fin.* 3.62–3; Hierocles col. 11.13–21; and Pembroke [*supra* (n. 3)], 125–7 with 144–5 nn. 61–3).

⁷³ According to Sextus, the sceptic suspends judgment concerning the natural existence of anything good or bad because of the diversity of custom, and follows undogmatically the ordinary way of life (*PH* 3.235–8); for the sceptic's notion of belief, see now M. Frede, 'The Sceptic's Two Kinds of Assent and the Question of the Possibility of Knowledge', in *Philosophy and History*, ed. R. Rorty *et al.* (Cambridge, 1984), 255–78. The diversity of custom is of course wholly ineffective as an argument against natural right (see particularly Strauss [*supra* (n. 1), 9–10, 97–101, 124–6]), but it is also ineffective against Epicurus, whose view that what is just varies according to a community's particular circumstances is merely confirmed by the manifest diversity of opinion concerning the just (note Carneades' use of Epicurean views in his attack on natural right, *De Rep.* 3.26). Since Epicurus' teaching on justice is parasitic on his doctrine of the human good, the acute sceptic presumably would attack *via* the latter. Polystratus' *On Irrational Contempt* (ed. G. Indelli [Naples, 1978]) is an interesting response to sceptical arguments from the Epicurean standpoint; see Goldschmidt (*supra* [n. 1], 180–6).

⁷⁴ This paragraph applies only to Chrysippus and later Stoics who make *οἰκείωσις* the basis for their teaching on justice. Zeno accepted the *principia naturae* in his controversy with Polemo and so laid the basis for personal *οἰκείωσις*, but it is not clear that he developed a theory of social *οἰκείωσις* (cf. Porph. *De Abst.* 3.19; *Cic. De Fin.* 4.45; D.L. 7.87), and hence we cannot assume that Zeno would have argued against Epicurus' theory in the same way later Stoics did.

question of whether justice or law is founded in nature seem to have answered it in the negative,⁷⁵ and throughout the fifth century the doctrine of social contract was employed in various ways and for various purposes by 'antinomians' who attacked the conventional legal order as an unjust impediment to pursuit of the natural good.⁷⁶ Scholars customarily trace Epicurus' teaching on justice to these sophistic theories, but generally have failed to see how Epicurus revises them to accord with his teaching on the human good.⁷⁷ Epicurus agrees with his sophistic predecessors that justice is specified solely by convention, not by nature; but he rejects their view of the best way of life. For Epicurus law serves to secure the conditions necessary for philosophy,⁷⁸ and hence it is not an unnatural check on man's pursuit of the good but rather an indispensable condition of it. Epicurus' doctrine of the human good, which restricts the proper objects of choice to natural pleasures conducive to *ataraxia*, leads him to reverse the use most of the sophists made of the social contract theory: they used it to attack the positive legal order as an obstacle to the natural good of dominating others; he uses it to support the positive legal order as an aid to the natural good of obtaining the security necessary to pursue philosophy. Epicurus agrees with his sophistic predecessors that each man by nature seeks only his own good, that there is no communal good by nature which can justify self-abnegation or self-sacrifice. But he differs radically from them on the question of what constitutes the human good, and his use of the social contract theory differs accordingly.

Many of Epicurus' ancient critics shared Cicero's view (*De Fin.* 2.74–7) that Epicureanism is incompatible with political life itself, that no statesman could responsibly proclaim publicly that pleasure and advantage are the sole criteria for right conduct. This is a telling objection against Torquatus, to whom falls the daunting task of trying to reconcile hedonism with the traditional moral culture of Rome.⁷⁹ But it seems unlikely that this objection would impress Epicurus himself, whose political teaching is summed up in the maxims *λάβε βιώσας* (F551) and *μὴ πολιτεύεσθαι* (D.L. 10.119; Cic. *Ad Att.* 14.20.5; F8), since he is certain that politics is inherently inimical to *eudaimonia*. This radical depreciation of political life is no doubt responsible for the vehemence of Epicurus' critics, who find the Epicurean teaching on justice at odds with social and political necessity. But their disagreement on this point does not justify their misguided attack on the justice of his wise man. Given his

⁷⁵ The *locus classicus* is *Laws* 10.889e–890a; cf. 891c–892c, 966c–968a; Aristotle, *Soph. Elen.* 173a7–18; Heraclitus B102.

⁷⁶ See G. B. Kerferd's survey, *The Sophistic Movement* (Cambridge, 1981), 111–30, 139–62. One thinks at once not only of Glaucon's canonical exposition of the conventionalist thesis, but also of Thrasymachus (*Rep.* 338c), Callicles (*Gorg.* 482c–486d), Hippias (*Prot.* 337c–e), Antiphon (who seems to be engaged in a critique of popular views about justice rather than a positive exposition: D. J. Furley, 'Antiphon's Case Against Justice', in *The Sophists and their Legacy*, ed. G. B. Kerferd [*Hermes Einzelschriften* 44 = Wiesbaden, 1981], 81–91, developing an idea of Kerferd's) and the Critias fragment (D.K. 88B25), now assigned by A. Dihle (*Hermes* 105 [1977], 127–42; see *contra* D. F. Sutton, *CQ* N.S. 31 [1981], 33–8) to Euripides. But the doctrine of social contract as originally formulated seems to have been politically neutral (so Strauss [*supra* (n. 1), 119] and, independently, C. H. Kahn, 'The Origins of Social Contract Theory', in Kerferd, *op. cit.*, 92–108), and it was also employed by such thinkers as Protagoras (Plato, *Prot.* 320c–328d), and the authors of the Anonymus Iamblichi and Ps.-Demosthenes XXV, to defend the *νόμοι* against the claims of nature as a necessary and positive constituent of social life.

⁷⁷ An exception is Strauss (*supra* [n. 1], 114–15), who properly distinguishes vulgar from philosophic conventionalism. More typical are the views of Bailey (*supra* [n. 14], 511) and of Denyer (*supra* [n. 1], 144–7), who wrongly assimilate Epicurus' theory to that of the sophists.

⁷⁸ This is the clear implication of F530, quoted *supra*, p. 410.

⁷⁹ For the Epicurean claim that hedonism is compatible with traditional notions of virtue, see especially Cic. *De Fin.* 2.49–51; F513.

disposition to choose only natural pleasures compatible with *ataraxia*, the Epicurean wise man has no interest in the inferior pleasures obtainable by wrong-doing and so will not commit injustice, whether immune from detection or not.⁸⁰

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⁸⁰ After this essay had been accepted for publication, Dr Phillip Mitsis of Cornell University kindly sent me the chapter on 'Epicurean Virtues' in his book (in preparation) on Hellenistic ethics. Since this work is not yet available to the general public, I shall not discuss it in detail here. But Mitsis has independently recognized the dependence of Epicurus' theory of justice on his doctrine of the human good (though we approach the question in different ways), and his original and stimulating discussion of such related topics as Epicurus' cognitive conception of virtue and the precise form of his social contract teaching deserves the careful attention of scholars.