

Pleasure, Pain, and Law: Epicurean Naturalism

Abstract: Similar to modern contract theorists, Epicurus envisages a way of life prior to the establishment of law. In this way of life, we harm others and they harm us, an arrangement that is not to our advantage. Injustice is not bad by nature, but pain and fear are. Because pain and fear attach to the life of harming and being harmed, we seek to establish laws. The law is 'by nature'—it is due to our natures as harmful and vulnerable beings that we need the law. But the law is nevertheless 'by convention'—in every given historical context, different laws will do the job of regulating social relationships in a way that is to our advantage. Epicurus thus formulates a kind of naturalism that is explicitly designed to account for social and political change as positive developments, rather than as violent crises.

My paper starts from the intuition that change can be a good thing—times change, and we want the law to be adjusted to new historical circumstances. More specifically, legal change can be desirable even though the previous law was not unjust at the time when it was instituted, but came to be unjust due to new developments within a society or culture. The most influential ancient political philosophies (that is, Plato's and Aristotle's theories, and the Stoic theory) arguably do not attend to this idea; and indeed, very few modern theories take it as their starting point. I shall suggest that Epicurus does just this: begin from the intuition that an evolving law might be a very good thing, and in fact, it might be what best reflects our natures. Epicurus thus proposes a unique kind of naturalism: a naturalism that embraces historical change.

Conflict in contractualist theories

Political change is, in antiquity, often discussed in terms of upheaval and disruption; a central notion here is *stasis*. It is a commonplace that *stasis*—conflict or faction—is what the Greeks feared most. If we think of *stasis* as civil war, it seems obvious that it is a bad thing. However, this perspective has a disadvantage: it views social and political change quite generally in a negative light. Political and legal systems change when one party

takes a stance against another. *Stasis* literally means something like rigidification of a division: different camps within a community come to see each other as opposing camps, and they begin to fight against each other. *Stasis* thus is the destruction of unity and stability; it destroys law and custom.

These ideas greatly influenced the modern contractualist tradition: as Hobbes argues, and as many have been persuaded, the contract that establishes the state must safeguard it against any kind of disruption. This reaction to the badness of internal strife, however, is one-sided. True, civil war is terrible and affects human life on many levels. But it may not be obvious that we prefer a condition where one particular constitution is considered untouchable, and where there is no room for historical progress and change.

Epicurus is the first contractualist in the history of political thought, and I think that he does a better job than Hobbes in reacting to the badness of *stasis*. The law is created in order to lift us out of a condition of war against each other; but the law must be historically changeable in order to be legitimate. This is the position that I shall outline, and that I want to recommend as an under-appreciated approach to well-known problems about *stasis*.

Some remarks on earlier Greek thought on political change

Before I turn to Epicurus, a few notes on Thucydides, arguably one of the greatest ancient political thinkers and surely one of the most important theorists on *stasis*. In his *History of the Peloponnesian War*, Thucydides explores a famous analogy: civil war is like the

plague, eating up a community and destroying everything of value in it. The same kinds of things happen in civil war on the one hand and during a plague on the other: the law breaks down; authorities like judges, government officials, and priests lose their power; conventions and customs dissolve; doctors and other people who play constructive roles in a community are driven away or derailed from their occupations; and finally even the closest familial bonds are destroyed. No one cares to bury the dead; no one feels any longer the obligations of closeness and kinship; everyone is 'out for themselves,' striving for survival in a barely human way. Hobbes spent years of his life translating Thucydides' *Histories of the Peloponnesian War*, and is deeply influenced by it. Strife and internal conflict are the very worst. The state must be set up in such a way as to make it impossible.

Plato and Aristotle do not deny that change could be for the better. However, they spend much time exploring the negative sides of political change. And in particular, they do not discuss the idea that a just set of laws might be exchanged for another just set of laws, where each of these sets of laws is just within the particular historical circumstances in which it is in force. This is of course an idealization: that a set of laws is fully just. But what matters for the present purposes is that this is a relevant case for political philosophy. There might not only be cases where the law is improved, and cases where constitutions deteriorate. There might also be cases of change which neither remedy a prior injustice, nor introduce a new injustice; rather, they reflect a change in historical circumstances. These are cases that Epicurus considers. Doing so, he not only conceives of a contractualist theory that embraces political change. He also conceives of a kind of

naturalism that emphasizes historical change. This is a much under-rated achievement. Naturalism tends to be associated with views according to which certain things are good and bad by virtue of agreeing or disagreeing with 'human nature,' where this is understood in non-historical terms. But construed along such lines, naturalism cannot be compelling. There are at least some domains of law that can only be assessed as just or unjust within a given historical context.

Custom and law: some options

Both Epicurean and Stoic political philosophy return to the early Greek debate about nature (*phusis*) and custom (law or convention, *nomos/thesis*). As I said in my reply to Philip Mitsis and Richard Sorabji last night, I think that this debate is about core questions of political philosophy, even though these are not the questions that certain modern thinkers (such as Locke or Kant) consider central to political philosophy. They are, in my view, important, because value pluralism is one of the most prominent features of our political lives: we need to assess our own practices in the full awareness that others hold different values, live by different laws, believe in different gods, and so on.

It makes a great difference how we react to this realization:

- (a) whether we, for example, simply insist that we are right and others are wrong (the view that the sophists ascribe to their opponents);
- (b) whether we take the more sophisticated position that, while there really is only one way to live for everyone, no particular state is arranged in this way—thus, no culture can claim to live 'naturally' while others live 'unnaturally' (the position of the Stoics);

(c) whether we adopt some kind of cultural relativism (presumably the stance of some sophists);

(d) or finally, whether we try to combine the view that claims about values can be true and false with a positive appreciation of historical change (Epicurus' view).

These positions can be described in terms of the relationship between nature and law.

(a) The traditional view, criticized by the sophists, is that '*our laws are natural* and therefore right.'

(b) The Stoic view is that there is *one natural law*, which the wise person would be able to fully understand; however, no given society up to now lives by this law.

(c) The sophistic view is that all laws are *merely by convention*; nothing is right or wrong by nature.

(d) For Epicurus, it is a fact about the nature of human beings that they need to regulate their co-existence by laws. In this sense, the law is *natural*. But the content of the law—what precisely is considered just and unjust—is by convention; in this sense, justice is established by a contract.

Epicurus' premise: pleasure is good and pain is bad

Recall the first premise of Epicurean ethics: that pleasure is good and pain is bad. This premise is both descriptive and normative. Epicurus argues that observation tells us that living beings, including human beings, strive for pleasure. Before we are corrupted by false opinions, and that is, at the very beginning of our lives, nature makes us strive for pleasure; that pleasure is good is the 'judgment of nature.' However, we need to become

good at pursuing pleasure. That is, we need to figure out which pleasures are, in the long run, pleasurable, and which pains in the long run painful, and then act accordingly.

Assuming that we want our lives go well, we ought to pursue pleasure; we should pursue the right pleasures, and we should pursue them in the right ways. Conversely, we should avoid pains, or rather, avoid those that are painful in the long run, trading short-term pains for long-term pleasures.

The naturalistic starting-point of Epicurus' political philosophy is precisely this: that pain is bad for us. With a view to relations between people, this most immediately means that harming each other is bad for us. Harming each other is related to pain in two ways: first, many harms involve pains, such as, when someone attacks us or offends us (bodily and psychological pain); second, fear of harm (the anticipation that others will harm us) is a psychological pain—it disturbs and upsets us. Accordingly, it is to our advantage to have an arrangement where we shall not harm each other.

Why it is to our advantage to have laws

In making this argument, Epicurus asks what deters people from harming each other.

Epicurus does not think that anything other than punishment will do. That is, he does not attempt to argue that we might be able to understand that bad deeds damage our souls, as Plato argues in the *Republic*. No such insight is likely to keep us from wrong-doing. Only the fact that harming others brings more pain than pleasure will motivate us accordingly.

But what makes it the case that harming others brings more pain than pleasure? Epicurus'

response is: the fear of punishment. And there is no stable expectation of punishment without a state, an authority that takes on the task of assigning punishments. We need laws—and that is, a society with a constitution and legal institutions—for there to be fear of punishment. Epicurus addresses these issues with a view to the kind of case that Plato discusses in the famous Ring of Gyges example. In such a case, someone harms others while she is, *ex hypothesi*, invisible. That is, the deed she is unobserved and shall remain undetected. For Plato, it is worthwhile to ask whether the deed would nevertheless be bad for the agent, because of the way it affects her soul. Epicurus does not take this perspective. Rather, he argues that once justice (and that is, a state with laws) is in place, we can in principle never know that we shall remain undetected. Whether or not others find out about our deed, we must consider it *possible* that they could. Accordingly, we shall spend our lives in fear of being hunted down and punished. We shall never have piece of mind. Psychological pain (anxiety, distress, worry) is particularly bad pain; it leaves us exhausted and gradually destroys us. Wrong-doing thus brings, via fear of punishment, in the long run more pain than pleasure. It is not to our advantage.

Historically changeable laws

The fact that pain is bad thus is the reason why human beings tend to set up laws. An arrangement in which others are likely to harm us and we are likely to harm others is not good for us: we spend our lives in pain. Once there are laws, it is painful for us to break them; because now we have to assume that we could be found out. Thus, we seek to establish laws because pain is bad; and then we act in accordance with the law because pain is bad.

Since our psychologies and physiologies—and that is, importantly, our receptivities to pain—are fundamental to our natures, it is a fact of nature that we benefit from setting up laws. This is the sense in which the law is 'by nature': it is in response to our natures that we benefit from having laws. But as it stands, this does not yet say anything about the specific content of these laws. Accordingly, the question of *which laws are just* is considered a further question, and one that is not discussed in terms of what is natural or unnatural. Rather, it is discussed in terms of what, within a given historical context, is to our *advantage*. The only thing that is natural about the law is that we are better off with laws than without laws.

A law loses legitimacy if it no longer is to our advantage; then a revised law must be formulated. This kind of change is not envisaged as an upheaval which would dissolve the contract and society as a whole—it is not envisaged as *stasis*, civil war, or rebellion. Rather, it is envisaged as a gradual reformulation of laws as one goes along. Epicurus explicitly addresses the question of whether, if justice is established by a contract, our notions of justice are somehow not fully valid—whether they are 'merely' by convention in a way which discredits their normative force. His answer is 'no.' Even if a law is merely right in a given historical situation, it has, in this given situation, full normative force. I submit that this is a very attractive kind of political naturalism.

Some relevant texts

Text I. Cicero, *On ends/ De finibus* 1.29-32 (LS 21A, tr. LS with changes)

We are investigating what is the final and ultimate good [...] Epicurus situates this in pleasure, which he wants to be the greatest good with pain as the greatest bad. His doctrine begins in this way: as soon as every animal is born, it seeks pleasure and rejoices in it as the greatest good, while it rejects pain as the greatest bad and, as far as possible, avoids it; and it does this when it is not yet corrupted, on the innocent and sound judgment of nature itself. Hence he says there is no need to prove or discuss why pleasure should be pursued (*expetenda*) and pain avoided (*fugiendus*). He thinks these matters are sensed (*sentiri*) just like the heat of fire, the whiteness of snow and the sweetness of honey, none of which needs confirmation by elaborate arguments; it is enough to remind us of them. For there is a difference between an argument and conclusion reached by reasoning and a simple observation and reminder. The former discloses certain hidden and as it were obscure matters, the latter judges what is directly accessible and evident. Since man has nothing left if sensations are removed from him, it must be the case that nature itself judges what is in accordance with or contrary to nature. What does it perceive or what does it judge except pleasure and pain as a basis for its pursuit or avoidance of everything? Some of our school, however, want to transmit these doctrines in a subtler way: they deny that it is sufficient to judge what is good or bad by sensation, saying that one can also understand by the mind and by reason that pleasure in itself is to be desired and pain in itself is to be fled. So they say that this notion is virtually natural to us and implanted into our minds, so that we sense that the one is to be desired and the other to be rejected. [...] No one rejects or dislikes or avoids pleasure itself because it is pleasure, but because great pains result for those who do not know how to pursue pleasure rationally. Nor again is there anyone who loves, goes after, or wants to get pain itself because it is pain, but because circumstances sometimes occur which enable him to gain some great pleasure by toil and pain [...]

Text II. Epicurus, *Key doctrines* 31-5 (LS 22A, tr. LS)

Nature's justice is a guarantee of utility with a view to not harming one another and not being harmed. Nothing is just or unjust in relation to those creatures which were unable to make contracts over not harming one another and not being harmed; so too with all peoples which were unable or unwilling to make contracts over not harming and not being harmed. Justice was never anything *per se*, but a contract, regularly arising at some place or other in people's dealings with one another, over not harming or being harmed. Injustice is something bad not *per se* but in the fear that arises from the suspicion that one will not escape the notice of those who have the authority to punish those things. No one who secretly infringes any of the terms of a mutual contract made with a view to not harming and not being harmed can be confident that he will escape detection even if he does so countless times. For right up to his death it is unclear whether he will actually escape.

Text III. Epicurus, *Key doctrines* 36-7, 17, 40 (LS 22B, tr. 22B)

Taken generally, justice is the same for all, since it is something useful in people's social relationships. But in the light of what is peculiar to a region and to the whole range of determinants, the same things do not turn out to be just for all. What is legally deemed to be just has its existence in the domain of justice whenever it is attested to be useful in the requirements of social relationships, whether or not it turns out to be the same for all. But if someone makes a law and it does not happen to accord with the utility of social relationships, it no longer has the nature of justice. And even if what is useful in the sphere of justice changes but fits the preconception of some time, it was no less just throughout that time for those who do not confuse themselves with empty utterances but simply look at the facts.

[17] The just <life> is most free from disturbance, but the unjust life is full of the greatest disturbance.

[40] Those who had the power to eliminate all fear of their neighbor live together accordingly in the most pleasurable way, through having the firmest pledge of security.