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PLATO AND THE DOCTRINE OF NATURAL LAW*

HANS KELSEN**

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I. IDEALISTIC AND REALISTIC DOCTRINE OF LAW

As a result of the shocks which the existing social orders have experienced through two World Wars and the Russian Revolution, an intellectual movement is becoming increasingly evident in the Western World—one which, in sharp reaction to a scientific-positivistic and relativistic philosophy, aims at a return to metaphysics and theology, and—closely connected with this—to a renewal of the doctrine of natural law. The proponents of this trend believe they find valuable support in the philosophy of Plato, whose authority until recently was virtually uncontested—and in this they are justified.

Plato's doctrine of Ideas is the boldest of metaphysical speculations, for it transcends empirical reality farthest; and the intellectual system which he erected is in its total character more nearly theology than scientific philosophy.

Less successful is the appeal to Plato's authority in an effort to revive the theory of natural law, an attempt which has been made recently by two American authors, Joseph P. Maguire¹ and John Wild.² Wild goes so far as to assert that Plato is the founder of the

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1. MAGUIRE, *PLATO'S THEORY OF NATURAL LAW* 151-78 (Bellinger ed. 1947). This book is the tenth volume of the Yale Classical Studies. In text, it is cited: (*Maguire*).

2. WILD, *PLATO'S MODERN ENEMIES AND THE THEORY OF NATURAL LAW* (1953). Citations in the text will be in the form: (*Wild* 162). See also SOLMSEN, *PLATO'S THEOLOGY* 157, 184 (1942); STRAUSS, *NATURAL RIGHT AND HISTORY* 84-85, 135 (1953). The English translation of Plato used here has been *PLATO, DIALOGUES* (Jowett transl. 1875).

theory of natural law.³

The question of whether Plato was a proponent or the founder of the theory of natural law is significant not only because of the extraordinary role which his philosophy plays in connection with the intellectual movement mentioned at the outset; it is also important because an analysis of Plato's social philosophy which considers this question is highly informative as to the nature and value of the doctrine of natural law. Such an analysis presupposes, however, a clear definition of what is meant by "doctrine of natural law."

The so-called doctrine of natural law is a variety of certain theories of law, which may be designated *idealistic*, and which, in contrast to a *realistic* theory of law, assume that there is, beside and above the real or *positive* law established by human acts—custom or legislation—an *ideal* law, just or correct. The validity of positive law is therefore traced back to ideal law, *i.e.*, according to these theories, positive law may be regarded as valid in so far as it corresponds to ideal law. And thus these theories seek to justify positive law. The idealistic theories of law, of which the doctrine of natural law is only a particular case, are characterized by a *dualism* of two legal orders, one ideal and one real, whereas the realistic theory of law recognizes only one form of law, *positive* law, and by not seeking the reason for its validity in a superior normative order thus dispenses with a justification for positive law. Its proponents confine themselves to description and structural analysis.

The so-called doctrine of natural law is characterized by its assertion that it is able to find ideal law, *i.e.*, the rules for the correct and just conduct not only of men but also of things; hence norms commanding the good and prohibiting the evil, in nature in general and in human nature in particular. By "nature" is meant *empirical reality*, and by "human nature," the actual human condition. The main thesis of all doctrines of natural law is based on this foundation: all good is in accordance with nature, all evil is contrary to nature. Since man is looked on as an essentially reasonable being, and since it is assumed that the natural law controlling his conduct is to be found in his reason, the norms of correct, just human conduct are also represented as a law of reason.

The assertion that norms of the correct, just law are immanent in the empirical reality of nature could only be proved if an analysis of this reality could actually show a system of incontestable norms for the proper conduct of men as such an analysis shows a series of generally recognized, verifiable causal laws. Despite centuries of effort in this direction there has been no success. Rather the different

3. WILD, *op. cit. supra* note 2, at 134.

proponents of natural law—in contrast to the natural scientists—have presented the most various and contradictory principles of “natural” law;⁴ they have not been able, by means of the methods of the doctrine of natural law, to prove one of the many natural laws the only correct one to the exclusion of the others. That which the proponents of the doctrine of natural law claim to have *deduced* from nature is in reality subjective value judgments which they have *projected* into nature and which they retrieve from nature as objectively valid norms, like a circus-magician producing from his top hat rabbits and pigeons previously put into it. Nature as empirical reality is an aggregate of facts causally linked together. It is the answer to the question, “What is?” and why it is. The answer to the question, “What ought to be?” therefore can not be found in nature.

Since norms which command good and prohibit evil constitute values, particularly social values, the assumption that these norms can be determined by an analysis of empirical reality means that value is immanent in reality. Thereby the dualism of reality and value—or more generally formulated—of the “is” and the “ought”—is rejected. Thereby disappears as well the contrast between normative and causal law, and therefore the dualism of society and nature. For the doctrine of natural law, reality is value, the causal law is a norm, and nature—as in the view of primitives—is society. In respect to the relationship of the “is” and the “ought” the doctrine of natural law has a monistic character.

But this monism is in contradiction to the irrefutable fact that the assertion that something *is* has a completely different meaning from the assertion that something *ought* to be. To this many proponents of natural law declare that the immanence of value in reality which they assume does not mean the identity of the two; the “is” and the “ought” are to be distinguished. But they cannot deny that they arrive at the “ought” from the “is,” that from the fact that something *is* they conclude that it *ought* to be so, that they see as the reason for something’s being valuable, *i.e.*, good, the fact that it is *real*. This is an obviously false conclusion.

If the identity of reality and value is assumed, or the possibility of arriving at value from reality, then value judgments have the same character as reality-judgments; that is, they are equally objective and may be proved equally true or false by rational cognition. All relativity of value is thereby rejected; and there is no reason for excluding value judgments from a science of nature or of society. Nothing then lies in the way of assuming that scientific cognition can

4. See my article; Kelsen, *The Natural-Law Doctrine Before the Tribunal of Science*, 2 WESTERN POLITICAL Q. 481 (1949).

determine not only the appropriate means for realizing presupposed ends but also the ends which are to be realized.

If reality and value are identical, or if the latter is immanent in the former, then the reality of nature has essentially a normative meaning. This may be expressed by saying that nature is an authority endowed with will and that the proper conduct of men and things, the good, is that which is willed by nature.

This interpretation of nature has ultimately a religious origin. It goes back—consciously or unconsciously—to the belief that nature—that is, the world of empirical reality, *this* world, the world of our senses—was created by a superhuman, supernatural, divine authority, and, if not created, is still so ruled, that nature manifests the will of this divine personage. Without belief in a superhuman, supernatural power the assumption of a normative order immanent in empirical nature cannot occur. To be sure, many proponents of natural law in the seventeenth and eighteenth centuries maintained—and many modern renovators of this doctrine maintain again—that they are able to recognize the will of nature without recourse to the will of God, that the just and good law would be immanent in empirical nature even if this nature were not created and/or governed by God. But they would never have come on the thought of natural law if they did not believe, as they as good Christians did believe, that a benevolent God has created the world and governs it justly. Moreover, it makes little difference whether one imagines nature as being created and governed by God or as God itself because supposed to be a superhuman authority endowed with a norm-giving will commanding good and prohibiting evil. Animism, too, which imagines nature to be governed by spirits, was a religion; and the doctrine of natural law is only an animism of a higher order.

If the good, *i.e.*, the positive value, is asserted to be immanent in empirical reality as a fact, and not as the relation of a fact to a norm presupposed by the observer, then the evil, *i.e.*, the negative value, must also be asserted to be immanent in empirical reality as a fact. But there the doctrine of natural law falls into an insoluble contradiction which shows more clearly than anything else how untenable is its basis. For how can evil be real in a nature which wills the good and which is therefore, according to its essence, radically good? How can norms, which command the good and prohibit the evil and are immanent in nature, be counteracted if these norms have the character of natural laws with causal necessity, that is, if their "ought" is a "must"? How can evil be unnatural, *i.e.*, contrary to nature if good is natural, *i.e.*, accords with nature only because it is real in nature? It is the problem of theodicy which the doctrine of natural law can-

not avoid. It is understandable that in an effort to escape this contradiction one can hit on the desperate thought of simply denying evil. But in doing so one saws off the limb—so to speak—on which one is sitting; because, if there is no evil but only good, and if there can be only good and no evil whatsoever—since in a good nature there can be only good, and evil has no place—then norms which command good and prohibit evil are senseless. And a doctrine of natural law as a normative order is then without substance; and positive law, which reacts against the wrong with sanctions, no matter what form the wrong may take, is in no way justifiable.

An idealistic theory of law, which does not view ideal law as immanent in empirical reality as the doctrine of natural law does, but asserts it to be an emanation of the will of a transcendental authority can solve the problem of evil in reality in one of two ways: in the fashion of the gnostic good-evil speculation it can view this reality as not having been created by the transcendental legal or moral authority, that is, the godhead, but by a power foreign to the godhead; or, as in Manichaeism, it can interpret only the good in this reality as coming from the godhead, as proceeding from the principle of good, and visualizes the evil as the work of a contrary godhead, as the rule of a principle of evil. Empirical reality, in which good and evil alike are real, thus appears as a battleground of the two transcendental powers, which are personified in Christian religion as the good God and the evil Devil. That this theology, in holding to the omnipotence of God, annuls the dualistic solution to the theodicy problem and leaves the problem finally unresolved is not here the question. What does matter is that the dualistic solution is denied to a doctrine of natural law which maintains that ideal law is immanent in empirical reality, and that the doctrine is caught in the self-contradiction of the assertion essential to it that evil is real and is contrary to nature.

II. THE SO-CALLED "DYNAMIC" DOCTRINE OF NATURAL LAW

In his interpretation of Plato's social philosophy as a "theory of natural law" Maguire understands the doctrine of natural law to be a theory "which posits a universally applicable criterion, and a source of the moral validity of positive law and positive morality, independent of the legislator, in the case of law, and independent of society, in the case of the 'unwritten laws' of conduct."⁵ This is, however, no definition of the doctrine of natural law, but of an idealistic doctrine of law which sees the basis of validity of positive law or positive morality not in these normative orders but in another, superi-

5. MAGUIRE, *op. cit. supra* note 2, at 151.

or order; this higher order need not necessarily, as in the doctrine of natural law, be immanent in empirical reality. It is true that in Plato's social philosophy such an idealistic doctrine of law can be found—as we shall see. But this doctrine of law of Plato is in no way a doctrine of natural law in the specific sense above, in which this word can be used legitimately and is used in the modern endeavors to renovate this doctrine.

Wild speaks of the doctrine of natural law in this sense and believes he is able to demonstrate such a doctrine in Plato.

Quite correctly Wild emphasizes that the doctrine of natural law claims to arrive at its result—natural law—through the observation of empirical reality. For this reason he believes that it may be designated as a "realistic" philosophy. It is, he says, "a realistic tradition of philosophy, radically empirical in its methodology," since it claims "to derive all of its basic concepts from the observation of experienced facts." (*Wild* 73) If the doctrine of natural law were actually in a position, as it pretends, to perceive through an analysis of empirical reality the correct or just order of human conduct, it would in fact be a realistic theory of law. However, because it cannot do this—as even the theory of natural law developed by Wild shows—but only projects into reality a normative order which a particular observer has thought to be ideal, it is—in contrast to its self-interpretation—an idealistic and not a realistic theory of law. What matters here is the fact, correctly stressed by Wild, that the nature of the theory of natural law is empirical reality.

According to Wild's correct characterization of the doctrine of natural law, the values or norms sought by this doctrine are immanent in empirical reality. "The most basic thesis involved in this theory is that value and existence"—Wild identifies "existence" with empirical reality—"are closely intertwined with one another." (*Wild* 64) "There are natural norms embedded in the structure of all material existence." (*Wild* 68) "Norms that are not man-made must actually exist in some sense. They must be embedded in the ontological structure of things." (*Wild* 105) Wild thus accepts the identification of the "is" and the "ought" of reality and value, which is essential for the theory of natural law. To be sure, he maintains that the doctrine of natural law does not lapse into the error of this identification. It only asserts that value cannot be separated from reality. (*Wild* 99) But values must still somehow "exist." "If values do not exist in some way, ethical reflection is much ado about nothing." But since Wild identifies existence and empirical reality, *i.e.*, facts, values can be existent for him only as facts. He says, "It is clear that values and disvalues are facts of *some kind.*" If, as Wild

assumes, value judgments can be true, "they must refer to *some kind* of existent fact." (*Wild* 66) But since there is only one kind of existent facts, namely the kind in which facts are existent in empirical reality, then according to this doctrine of natural law values must be existent in the same way as facts in empirical reality. Despite the assertion to the contrary even Wild's doctrine of natural law identifies "is" and "ought," reality and value.

His doctrine maintains that one can establish in empirical reality values or norms which represent natural law since this reality is of a dynamic character. Things are in perpetual flux, and this flux has as its goal the attainment of that which things do not yet possess. "[T]he world of nature is in flux towards what is not yet fully possessed . . . [N]atural entities are in a state of incompleteness or potency and . . . they are ever tending further towards something they now lack." (*Wild* 65) The dynamic character of nature manifests itself in "tendencies." Being or existence has a "tendential character." (*Wild* 65) Being or existence is always unfinished and incomplete, but impregnated, as it were, with a tendency towards fulfillment and completion. "Finite existence is always unfinished. As such, it is essentially characterized by tendencies towards fulfillment and completion." (*Wild* 67) Nature or existence "requires" (*Wild* 65) this fulfillment or completion. Therefore this fulfillment or completion of existence is good, and existence itself, valuable. "If the completion of existence is good, then existence itself must be valuable." (*Wild* 64) These tendencies which aim at perfection are the norms of natural law. With reference to the "perfective tendencies" Wild says: "When so understood and expressed in universal propositions, these tendencies are norms or moral laws." (*Wild* 66) This doctrine of natural law therefore declines to view norms as separated from reality and created by men: "This realistic doctrine is inconsistent with any view which would regard norms as separated from existent fact or as arbitrary constructions made by man." (*Wild* 66) Yet if what exists has the tendency to perfect itself, then everything that is must at least to a certain degree be as it ought to be, that is, good. But then it remains unclear why this tendency to the good does not always reach its goal completely, and quite unclear where evil comes from. For if the tendency to good is immanent in nature, this nature must be radically good and must have no place for evil. In fact Wild sees himself compelled to admit this. He says (*Wild* 151) that the realistic ethic of the doctrine of natural law "must hold that existence is radically good" and "Evil is non-existence . . ." (*Wild* 146, and likewise 65) This can only mean that evil does not exist. But since with a negation of evil he would make every ethics impossible, including his own doctrine of natural law, he cannot

maintain this consequence which unavoidably follows from his "dynamic interpretation of nature." He must—in contrast to what has just been quoted—"reject the conclusion that existence as such is good" (*Wild* 65) and concede that evil exists. "Indubitable empirical evidence shows us that evil in some sense really exists, as well as what is good." (*Wild* 65) Wild speaks of "positive existent evil." (*Wild* 65) He emphasizes that not only good but also evil is a mode of existence, an existential category. (*Wild* 107) On the other hand, he maintains that "existence itself must be good." (*Wild* 106) That is the consequence of a theory that the tendency to good is immanent in all existence. It is in obvious contradiction to the concession of the existence of evil. If evil exists and existence has a tendential character, then there must be not only tendencies to good but tendencies to evil as well. But this Wild cannot concede. Therefore he asserts that evil exists not as the goal of a tendency directed toward it but as "privation" (*Wild* 65), "frustration" (*Wild* 65), or "destruction." (*Wild* 146) "If existence is deprived of what it requires for its completion, evil arises." (*Wild* 65) He defines good as the realization of tendency, evil as prevention of tendency. "When these ontological facts are clearly recognized, the notion of goodness as the realization of tendency and that of evil as the obstruction of tendency will no longer seem strange or dubious." (*Wild* 75) The existential tendencies are "at first imperfect and incomplete." "They may either be frustrated with a resulting evil, or completed with a resulting good." (*Wild* 65) This is in contradiction to the thesis at the bottom of the dynamic theory that all finite existence is always incomplete. For if good is the result of the fulfillment of existential tendencies, there can be no good at all—since all existence is final and incomplete. This in turn contradicts the other assertion that all existence is radically good. Therefore, good cannot exist in the fulfillment of tendencies, but only in the tendencies themselves, provided that these are directed at the good.

But if, as Wild must concede, evil also exists—if only as the obstruction of fulfillment or completion of a tendency—then there must also be, according to a dynamic theory of existence, tendencies to evil. The fact that a tendency is prevented from reaching its goal, good, that the realization of good at which a tendency is directed is frustrated, can only be the result of a counter tendency. If the existence of good is the result of a tendency, the existence of evil can also be only the result of a tendency. For existence, as Wild emphatically stresses, has an essentially tendential character. (*Wild* 65) Then there cannot be—as the dynamic theory maintains—only tendencies to good. The positive existence of evil which Wild has conceded cannot be interpreted merely negatively—as "obstruction"—it must be posi-

tively construed as the fulfillment of a tendency. Then there are two opposing tendencies immanent in empirical reality: one directed at good, one at evil.

Actually Wild distinguishes two kinds of tendencies: on the one hand, "essential" or "natural" tendencies, which appear in human nature as "indispensable needs" or "deliberate or voluntary desire fused with practical reason," and on the other hand "dispensable," "ephemeral," or "raw" appetites. (*Wild* 68, 70) Essential tendencies are those common to all human beings. The doctrine of natural law assumes, says Wild, that men have certain traits in common which are essential to the individual. "The theory of natural law . . . implies that human nature is an ordered set of traits possessed in common by every human individual and essential to his being." (*Wild* 66) "Some tendencies are peculiar to the individual entity. But other essential tendencies are shared in common by those possessing a similar nature." (*Wild* 67) To be sure, Wild does not speak of unessential tendencies or tendencies contrary to nature. But if there are "essential" tendencies, there must also be unessential ones. And, if the necessary wants of human nature are tendencies, unnecessary desires must also be tendencies, unessential tendencies, but still tendencies. Wild designates these unnecessary desires also as "random interests" and says that they are "antinatural": "Random interests which obstruct the full realization of essential common tendencies are condemned as antinatural. The maximizing of such appetites is evil, not good." (*Wild* 69) But that means that besides essentially natural tendencies directed at good, there must also be unessential, antinatural tendencies directed at evil, at obstructing the realization of the good. This is also apparent from the fact that only essential tendencies may be construed as "norms or moral laws," (*Wild* 66) or as "natural rights." "Human existence is constituted by diverse tendencies, some shared by every human individual and indispensable to human life, others peculiar to certain individuals or groups, and dispensable. The latter are commonly called *desires*, *interests*, or *compulsions*" [in another context *appetites*]. The former are rightly distinguished as needs. They must be realized to some degree if human life is to be lived at all—for example, the need for food and the need for education. When clearly focused by rational insight, they are called rights." (*Wild* 218) The dynamic doctrine of natural law is based on this distinction between essential, *i.e.*, natural, and unessential, *i.e.*, random, antinatural, tendencies. Wild admits this, but speaks of "actions" rather than of "tendencies."

The pattern of action which is universally required for the living of human life is essential. This is the standard of natural law. All other acts are incidental. If they conflict with essential natural needs ["needs"]

are "tendencies"] they are evil. If they further the realization of such natural needs in the concrete, they are good. If they do neither, they are indifferent. This is the theory. It evidently rests on the possibility of distinguishing between what is essential to an entity and what is incidental. . . . (Wild 77)

But how can an objective consideration of reality which does not presuppose value judgments distinguish between essential and unessential tendencies (or actions) if they are equally existent? Wild's answer is: essential and therefore natural is what is required for human life. But is life in general and human life in particular required? Can one, from the facts of natural reality, conclude as a norm that life in general and human life in particular ought to be preserved and promoted? On this norm is based the distinction between essential and unessential tendencies. Such a norm cannot be deduced, however, from the facts of natural reality. This is not only because from the standpoint of an objective perception of reality human life takes no preference over non-human life, and tendencies directed at preserving and promoting life take no preference over tendencies directed at the destruction of life—for all tendencies are equally existent and "natural." It is rather because even if there were only tendencies directed at preservation and promotion of human life, or if opposing tendencies were only an exception—and this obviously cannot be so since all that lives must die, and the phenomenon of life, especially of human life, appears only in a minute part of the natural reality known to us—even then one could still not conclude from this fact that life or only human life ought to be preserved and promoted and that therefore only what corresponds to this norm is good and what contradicts it is evil. This norm is not immanent in natural reality but is projected into it by the observer. On this norm, and not on natural reality, the dynamic doctrine of natural law is based. The doctrine is therefore—like all doctrines of natural law—exactly the opposite of a realistic theory based only on the observation of experienced facts.

It only ceases to be contradictory to disqualify tendencies in natural reality as "contrary to nature" when one means by "nature" not the objects of an observation directed at describing and explaining reality—a causal order of actual occurrences—but a normative order of human conduct. Only the latter can be counteracted, not the former. Only when a normative interpretation takes the place of an explicative interpretation can one mean by nature—as the dynamic doctrine of natural law does—solely those tendencies directed at good. This is only possible if one projects into reality the difference between good and evil, for one can not find this difference in the reality available to empirical perception. Wild makes this projection when,

in contradiction to his proclaimed principle of deducing all basic concepts of his theory from the observation of experienced facts, he operates with a concept of "nature" which he differentiates from the concept of being or existence—a concept that includes all experienced facts. He says expressly that the doctrine of natural law does not refer to all-encompassing being but to a "nature" which must be distinguished from this being. "The appeal is not made to being but to nature. One cannot make a normative appeal to existence, which is all-inclusive." (*Wild* 76) But a "normative appeal" is incompatible with a theory which derives its basic concepts from experienced facts. Such a theory can only determine what is, not what ought to be. He continues: "But natural existence can be distinguished from existence. Many things happen to a man, either from external influences, or from his own free choice, which are not in accordance with his nature and his natural tendencies." (*Wild* 76) But the tendencies that are the result of external influences, and in particular the tendencies which are expressed in his own "free choice," are, since they do actually exist, no less "natural" than those which Wild would regard as the only "natural" ones. To prove the difference between natural and antinatural tendencies as established in empirical facts, he refers to the distinction between health and sickness: "If this were not true, we could not distinguish between the healthy, or sound state and that which is unhealthy and unsound." That which preserves life is healthy, that which destroys it is unhealthy. But disease is just as natural a fact as health. It is only possible to identify the healthy with the "natural" and the unhealthy with the antinatural when the judgment that a living being is healthy or diseased includes a *value* judgment, when the norm is *presupposed* that living beings ought to be healthy and not diseased, the norm that life ought to be preserved and not destroyed, and when this norm is *projected* into nature so that one can say that nature commands health and prohibits disease. That means, however, that one shoves into the place of nature as a system of causally connected facts the animistic idea of a norm-setting nature endowed with will and power. Wild does this when he admits that he uses the word "nature" to express normative relations and in particular the "good" or "fitting" conditions of existential fulfillment. He says: "The word is used to express the general relation of fitness, and the dynamic entities ordered into a world or cosmos by this normative relation. . . . [T]he word is often used to describe the good or fitting condition of existential fulfillments." (*Wild* 108) The "nature" from which this "dynamic" theory pretends to deduce the just order of human conduct is simply the normative order itself which the theory presupposed.

III. THE DYNAMIC NATURE OF EMPIRICAL REALITY AS THE BASIS OF A PLATONIC DOCTRINE OF NATURAL LAW

Wild believes that he is able to demonstrate this dynamic doctrine of natural law in the philosophy of Plato. He asserts: "Plato's ethics is founded on the nature of man and the nature of things" (*Wild* 10) "on strictly empirical grounds connected with the analysis of human nature and its essential tendencies towards realization." (*Wild* 136) But according to Plato not only the nature of man, but the nature of everything existing in empirical reality is characterized by "an active factor of dynamism or tendency which urges it towards further existence not yet acquired." (*Wild* 137) This means that Plato deduces the norms which prescribe the good in general and the just conduct of men in particular from nature as empirical reality perceptible to the senses; which in turn means that Plato regards this reality as essentially good, since, if norms may be deduced from reality at all, only a good reality can be the basis of a natural law. Wild says himself of a realistic ethics: "Such an ethics must hold that existence is radically good." (*Wild* 151)

This attempt to demonstrate a Platonic doctrine of natural law founded on the perception of empirical reality is doomed from the start because of the negative attitude which Plato takes towards this empirical reality.⁶ According to his doctrine of ideas the particular things which are perceptible to the senses, which are in a state of becoming, and which arise and pass away are merely images or shadows of ideas. "Ideas are, as it were, patterns fixed in nature, (*ἐν τῇ φύσει*) and other things are like them, and resemblances of them—what is meant by the participation of other things in the ideas, is really assimilation to them." (*Parmenides* 132) In this sentence "nature" (*φύσις*) cannot mean empirical reality. The things of empirical reality, however, are but objects of mere opinion, not of genuine knowledge. True knowledge of constantly changing empirical reality is completely impossible. In *Cratylus* 439-40 Plato says through Socrates: "Then how can that be a real thing which is never in the same shape? . . . nor yet can they be known by any one; for at the moment the observer approaches them they become other and of another nature so that you cannot get any further in knowing their nature or state, for you cannot know that which has no state." These constantly changing things of empirical reality are therefore assigned no real being. This can only be sought in the realm of ideas, which transcendental, removed from all arising and passing, is accessible to the only genuine knowledge. "And the soul is like the

6. See Reino Palas, *Die Bewertung der Sinnenwelt bei Platon*, 48 *ANNALES ACADEMIAE SCIENTIARUM FENNICAE* 2 (1941) (see notably the section beginning at 204).

eye," we read in the *Republic* 508, "when resting upon that on which truth and being shine,"—that is, ideas—"the soul perceives and understands and is radiant with intelligence; but when turned towards the twilight of becoming and perishing, then she has opinion only, and goes blinking about, and is first of one opinion and then of another, and seems to have no intelligence." That which is only an image is not something truly existent; it is in a certain sense non-existent. (*Sophist* 240) Only the truly existent "must be placed in the class of the good;" that which is becoming and only exists for the sake of being "must . . . be placed in some other class." (*Philebus* 54) Empirical reality, which is perpetual becoming, arising and passing, is therefore not only not truly existent, but also not good, even perhaps evil. How could norms for just human conduct be derived from such an empirical reality?

As proof that tendencies to completion are, according to Plato, immanent in empirical reality, Wild cites various passages from the Platonic dialogues, most of which furnish no proof. Thus he quotes *Phaedrus* 270: "Ought we not to consider first whether that which we wish to learn and to teach is a simple or multiform thing, and if simple, then to inquire what power it has of acting or being acted upon in relation to other things." But there is nothing to indicate that this "power" (*δύναμις*) is a tendency to completion. From there he proceeds to *Timaeus* 62: "But things which are contracted contrary to nature are by nature (*κατὰ φύσιν*) at war, and force themselves apart." But this assertion pertains to a purely physiological phenomenon. It occurs in the course of a completely value-free explanation of the sense impression of cold. "And to this war and convulsion," the passage continues, "the name of shivering and trembling is given; and the whole affection and the cause of the affection are both termed cold." There is no mention of a tendency to completion. Neither is there in the *Republic* 433 where justice demands "that one should practice one thing only, the thing to which his nature was best adapted." The fact, often emphasized in this dialogue, that only few are called to govern because most men are not fitted to by nature, in no way leads to the conclusion that Plato believed that a tendency to perfection was immanent in human nature. Least of all *Cratylus* 393, where Plato finds it "contrary to nature" that a horse should give birth to a calf. Wild concludes from this that Plato assumes "subrational tendencies" as immanent in empirical reality. He presents as Plato's doctrine: "Since the world is not a chaos, subrational tendencies are fulfilled for the most part, though there are always exceptions. Plato sometimes uses the word *nature* to refer to those regular sequences determined by recurrent tendencies. Thus monstrous births are not natural, but that a horse should

generate a horse is according to nature." (*Wild* 142) But from the passage quoted it follows only that Plato characterizes "regular sequences" as natural, not that he views these "regular sequences" as determined by tendencies.

Only one passage cited by Wild seems to indicate that Plato assumes tendencies in the things of empirical reality in the sense of Wild's doctrine of natural rights. It is *Phaedo* 75. Here, says Wild, the thought is expressed that ideas, like equality and justice, are never quite present in concrete things but have the tendency to approach their prototypes as far as possible and thus to perfect themselves: "Pure forms such as equality and justice are never wholly present in the concrete beings which only partake of them. Nevertheless, the forms are somehow *partially* present in their imitations, seeking and tending to perfect themselves so far as possible." (*Wild* 142) In the passage to which Wild refers the question is treated: how is it possible for one to recognize two things in empirical reality as equal. Socrates emphasizes that no two concrete things are ever completely equal; their empirically ascertainable equality falls short of absolute equality, the idea of equality. "From the senses then is derived the knowledge that all sensible things aim at an absolute equality of which they fall short." It is hardly admissible to assume—as Wild does—that it may therefore be stated as a general principle of the doctrine of ideas that *all* empirical things have the immanent tendency to resemble their prototypes, ideas. In *Parmenides* 130 Plato expressly denies the existence of ideas of certain material things such as "hair, mud, dirt, or anything else which is vile and paltry." Of these things Socrates says here: "Visible things like these are such as they appear to us." Moreover, in Plato's doctrine of ideas there is no idea of evil, although—as we will see later—he assigns evil to empirical reality. But even if one puts aside these considerations one cannot view the passage from the *Phaedo* as proof of a realistic Platonic doctrine of natural law founded on the tendential character of empirical reality, that is, only on observed facts. For the assumption of the tendencies under consideration here is based not on the observation of facts but on metaphysical speculation. The ideas which empirical things strive to approach are beyond empirical reality and cannot at all be recognized by man, who exists in empirical reality. Only the soul, loosed from the body, is able to see them. If we hold two things in empirical reality to be equal, we do so because our soul has seen the idea of equality before its union with the body, that is, before our birth, and has remembered it after birth. "Then we must have acquired the knowledge of equality at some previous time . . . before we began to see or hear or perceive in any way, we must have had a knowledge of absolute equality . . . then we also knew before

we were born and at the instant of birth not only the equal or the greater or the less, but all other ideas." The thesis that the cognition of empirical reality—so far as this is possible—is based on recollection of what the soul has seen in its pre-existence and will see in its post-existence, is an important link in the proof of the immortality of the soul with which the dialogue *Phaedo* essentially deals. The tendencies of the images to perfect themselves by approaching their prototypes are quite the opposite of empirically observed facts; and a doctrine of law based on these tendencies is no doctrine of natural law in the sense of Wild's definition of this concept. For "nature" in this doctrine is not empirical reality but the world of ideas which transcends this reality. Actually Plato uses the word *φύσις* (nature)—although not exclusively—to mean the expression of the true being of ideas, which coincides for him with the absolute "Ought." Thus in *Phaedo* 103 he opposes the world of ideas—τὸ ἐν τῇ φύσει—to the world of empirical reality—τὸ ἐν ἡμῖν; in the *Republic* 597 he speaks of the idea as something present ἐν τῇ φύσει; and in *Phaedrus* 254 he characterizes the idea of beauty as ἡ τοῦ κάλλους φύσις.⁷ In *Cratylus* 389 it is explained that an artificially produced object (the example given is a shuttle made by a carpenter) is best made when it is fashioned after the idea of the object, when the artisan is guided by the idea of what he wishes to make. Then the form of what he is creating is in accordance with nature (*φύσις*). This is asserted in answer to the question, "And how does the legislator make names? and to what does he look?" The legislator will have to be guided by *ideas* if he is to govern the conduct of men "according to *nature*."

IV. PLATO'S DOCTRINE OF GOOD AND EVIL IN THE NATURE OF EMPIRICAL REALITY

If a theory of law pretends to deduce the just norms of human conduct from empirical reality, it must, as we have already emphasized, presuppose that this reality is essentially good and if it must concede the existence of evil, it can only be an exception, an abnormality, or, as in the dynamic doctrine of natural law, a mere frustration of tendencies to good which are immanent in empirical reality. From this standpoint too Platonic ethics is the exact opposite of a doctrine of natural law founded on empirical reality.

To show that according to Plato nature is the proper order of original tendencies directed at good, Wild refers (*Wild* 143) to *Laws* 903. In this passage Plato seeks to prove that the gods not only exist but care for human affairs as well. The Athenian says: "Let us say to the youth" (who doubts):—"The ruler of the universe has

7. See also *Parmenides* 132.

ordered all things with a view to the excellence and preservation of the whole, and each part has an appointed state of action and passion [meaning a state of enduring pain]." The fact that things behave in accordance with divine order which aims at the perfection of the entire universe must by no means be interpreted as a tendency immanent in things to this behavior. It is hardly possible to assume that things, especially human beings, have the original "tendency" to endure pain. For it follows, as we shall see, that by "passion" is meant the divine punishment which awaits those who do not act in accordance with the divine order directed at the good. The Athenian continues: "Now, as the soul combining first with one body and then with another undergoes all sorts of changes, either of herself, or through the influence of another soul, [that is, a bad soul; *Laws* 904] all that remains to the player of the game is that he should shift the pieces; sending the better nature to the better place, and the worst to the worst, and so assigning to them their proper portion." The "proper portion" is the reward granted by the gods to the good and the punishment of the gods which threatens the evil, particularly the punishments in Hades.

This passage proves that, if according to Plato there are such things as incipient tendencies, there must be tendencies to evil as well as to good, that the evil is not less existent and hence not less "natural" than the good, and that the order of nature which Plato has in mind is a divine, transcendental order, not one which is empirically ascertainable.

For his assertion that according to Plato incipient tendencies can be weak or misled and not reach their fulfillment, that the evil is non-existence because destruction, Wild cites *Laws* 906 (*Wild* 144, 146). In this passage we read: "For as we acknowledge the world to be full of many goods and also of evils, and of more evils than goods, there is, as we affirm, an immortal conflict going on among us, which requires marvellous watchfulness; and in that conflict the gods and demigods are our allies, and we are their property. Injustice and insolence and folly are the destruction of us, and justice and temperance and wisdom are our salvation." The view is then rejected that the gods are prepared to pardon unjust and wicked men. "Injustice and insolence . . . are the destruction of us" means that the evil which we do is punished mercilessly by the gods. The gods fix their punishments partly in this world, but mainly in the world beyond, in Hades (*Laws* 905). If good and evil are represented as two equal powers at war with one another, then evil must indeed be quite existent in empirical reality. The divine order of the world, which is essentially an order of punishment and which thereby helps the good to victory over the evil, would be senseless otherwise.

Wild believes that he is also able to find in the *Republic* 352 the doctrine that evil in empirical reality has only a so-to-speak negative existence, that it is only obstruction or frustration of tendencies immanent in empirical reality and directed at good. (Wild 146) This is the passage where—according to Wild—Plato teaches that injustice brings man into conflict with himself and makes it “impossible for him to do anything.” Socrates does in fact say: “And is not injustice equally fatal when existing in a single person; in the first place rendering him incapable of action because he is not at unity with himself, and in the second place making him an enemy to himself and the just?” But this assertion is preceded by an explanation that a *group* of individuals—a state or band of robbers—which is not unified cannot accomplish anything as a group and that their disunity is brought on by their unjust conduct with one another.” And this is because injustice creates divisions and hatreds and fighting, and justice imparts harmony and friendship.” (*Republic* 351) After the passage cited above by Wild, Socrates asserts as “the remainder of my report” that “the unjust are incapable of common action.” “Common” means as a community, because dissent rends the community. But in their mutual relations the unjust are quite capable of action since it is in their actions that “divisions,” “hatred,” and “fighting” are expressed, the results of their injustice. Evil, or injustice, appears just as positive a factor as justice. And its effects within a community are conspicuous. The effect of justice and injustice on the individual is not the essential thing here. If “the unjust are incapable of action” were taken literally there would be no unjust action. The sentence means that injustice makes men incapable of acting correctly or justly. Just as according to Plato man can only “will” the good, so he can only “act” justly. Just as “will” means to will what one ought to will, “to act” means to act as one ought to act. It is this representation of the “ought” as the “is” that is so characteristic of Plato’s ethical speculation. When Plato says of the unjust man that “he is in discord and disunity with himself,” he says so only to make clear the analogy between the unjust society and the unjust individual. This “disunity” in the unjust man does not mean, however, a conflict between good and evil tendencies in the individual. It means the conflict between the real nature of a man, who is unjust, and the ideal nature, according to which he ought to be just. Socrates later concedes that a community of men who are only “half-villains in their enterprises,” who have something of justice yet about them, can still accomplish something, since they are not completely disunited; that only the utterly unjust are utterly incapable of action. The “utterly unjust” are those in whom there is no conflict at all between justice and injustice and who therefore are not at variance with

themselves. Try as one may, he cannot conclude from this that evil, *i.e.*, injustice, is merely a check on the tendencies toward good, *i.e.*, justice, which reside in man.

Wild further attempts to prove that the evil in Plato's philosophy is only characterized negatively as a frustration or destruction of the positively existent good by saying that for Plato the good, in particular the just, is the health of the soul and evil or injustice the sickness. This identification of good and healthy, and evil and sick is of decisive importance for Wild's doctrine of natural law because with it he believes he is able to answer the question of how one recognizes good and evil, *i.e.*, value, in empirical reality. The answer is: just as one recognizes health and sickness in a living being. We have already shown that this is no answer to the question. We shall now see if Plato's philosophy confirms Wild's error.

Wild refers (*Wild* 146) to *Gorgias* 477 where in fact justice is related to health, and injustice to sickness. Plato presents justice as a sort of health and injustice as a sort of sickness in still other places: for example, the *Republic* 410, 490, *Phaedo* 69. But in all these passages it is a matter of little more than a comparison. *Alcibiades I* explains it. There the difference is stressed between justice and injustice on the one hand and health and sickness on the other. Socrates calls to Alcibiades' attention: "I do not suppose that you ever saw or heard of men quarrelling over the principles of health and disease to such an extent as to go to war and kill one another for the sake of them? . . . But of the quarrels about justice and injustice . . ." (*Alcibiades I* 112). The dialogue proceeds to the thesis that to perceive what is good and just, bad and unjust one must not look to the body, as in the question of health and sickness, but to the soul, which is our divine part. One must "look only at what is bright and divine, and act with a view to them." "In that mirror you (Alcibiades and the state) will see and know yourselves and your own good," (*Alcibiades I* 134) that is, justice. And since the question is raised, how can Alcibiades escape from his present condition, one of injustice, and Alcibiades answers: "By your help, Socrates," Socrates replies: "That is not well said, Alcibiades." To Alcibiades' question: "What ought I to have said?" Socrates answers: "By the help of God" (*Alcibiades I* 135) Justice is to be sought in Him, not in the physical world of empirical reality.

Wild also refers (*Wild* 155) to the passage beginning at *Republic* 443. Here Socrates says that justice and injustice "are like disease and health; being in the soul just what disease and health are in the body." "Then virtue is the health and beauty and well-being of the soul, and vice the disease and weakness and deformity of the same."

Here there seems to be more than a mere comparison of justice and health, injustice and sickness; there seems to be an identity. But how does Plato arrive at this identity? Does he define the concepts "health" and "sickness" as facts of empirical reality which can be established by value-free biological or psychological observation? That is the decisive question if a real doctrine of natural law based on the observation of facts is to be found in Plato. The health of the soul—virtue or justice—has a certain mutual relation, according to the passage quoted, to the three parts of the soul: the soul is healthy when reason with the help of spirit controls desire. This is "natural" since it is the task of the rational faculty to rule. (*Republic* 441) The soul is sick when this relation is reversed. "The creation of health is the institution of a natural order and government of one by another in the parts of the body; and the creation of disease is the production of a state of things at variance with this natural order." (*Republic* 444) No one will seriously maintain that this is the result of physiological or biological observation of empirical nature. The thesis of the control of desire by reason is an ethical-political postulate set up to justify the rule of philosophers over the mass of working people. The "nature" with which the rule of reason over desire accords cannot possibly be the nature of empirical reality since here the "anti-natural" rule of desire over reason is in Plato's own view more frequent than the "natural" rule of reason over desire. The assertion that the rule of reason over desire will effect just action cannot refer to empirical reason for even highly unjust actions can be the result of reasoned, unimpassioned consideration. It is the divine reason, the reason commanding the good, which is meant here, the reason which prevails in the ideal state, the reason of philosophers who have perceived the idea of the good. That reason ought to rule in man means nothing else than that the good ought to rule. And that the man ruled by reason is just is only the metaphorically disguised tautology that good is just or that just is good. To say that the rule of reason is healthy means nothing more than that this rule is just or good. It is obvious that the quite vague remark about the health of the body—the natural "rule" of certain parts of the body not closely defined over other parts likewise not closely defined—has nothing to do with biology. This "health" too is an ethical-political construction which serves to justify the rule of philosophers. It is constructed on the model of the "health of the soul" just as the health of the soul is constructed on the model of the health of the ideal state, that is, according to a condition viewed as just, and not the other way around.

Moreover, the Platonic equation of health and justice, sickness and injustice fails at the point decisive for Wild's doctrine of natural

law: the assertion that one can establish the good or justice and the evil or injustice through the simple observation of facts, just as health and disease. After his assertion that justice is a sort of health and injustice a sort of disease, Socrates says one must still investigate "which is the more profitable, to be just and act justly and practice virtue, whether seen or unseen of gods and men, or to be unjust and act unjustly. . . ." Socrates thus assumes the possibility that justice in a man may remain unrecognized—in view of the transcendental nature of justice this is quite possible. He is therefore far from maintaining that one can ascertain justice and injustice just as one can ascertain health and disease in a living organism. To this question of Socrates Plato answers through Glaucon that it is ridiculous to doubt that it is useful to be just and act justly. "We think that, when the bodily constitution is gone, we are no longer capable of living, or, what amounts to the same: life is no longer enduring (*οὐ βιωτὸν εἶναι*), though pampered with all kinds of meats and drinks, and having all wealth and all power; and shall we be told that when the very essence of the vital principle (the soul) is undermined and corrupted, life is still worth having to a man (*βιωτὸν ἄρα ἔσται*), if only he be allowed to do whatever he likes with the single exception that he is not to acquire justice and virtue, or to escape from injustice and vice" The thought here suggested is that injustice of the soul is not a disease in the same sense as a disease of the body. For life is biologically impaired by physical disease, even destroyed; by injustice it stops being *morally* worth living. But the unjust man's soul is quite alive even though this life is no longer valuable *from the point of view of a moral order* assumed to be valid. The word *βιωτός* is used quite appropriately in both cases: it is translated once "life is . . . enduring" and once "life is worth having." It has both meanings: a biological and an ethical one.

To demonstrate a Platonic doctrine of natural law based on empirical reality, Wild also cites *Laws* 892, where the essence and working of the soul is discussed. (*Wild* 138-39) Plato asserts through the Athenian that, in contrast to the view of the materialists, the soul originated before the body: "She is among the first of things, and before all bodies . . . then in the truest sense and beyond other things the soul may be said to exist by *nature*" (*εἶναι διαφερόντως φύσει*). The Athenian also says: "The soul is prior to the body; . . . the body is second and comes afterwards, and has, according to nature (*κατὰ φύσιν*) to obey the soul, [Jowett translates "is born to obey the soul"] which is the ruler." This means that the soul is the "first origin and moving power of all that is and . . . the source of change and motion in all things." (*Laws* 896) The order of nature according to which

the soul originated before the body and is therefore the source of all change is consequently a causal order. But the priority of the soul over the body is only stressed as a basis for maintaining the existence of the gods; and the belief in the gods is the main ideological instrument in the legislation of the state, with which the dialogue is concerned. "In the next place, must we not of necessity admit that the soul is the cause of good and evil, base and honorable, just and unjust, and of all other opposites, if we suppose her to be the cause of all things?" Here we see more plainly that the order of nature according to which the soul is the source of everything, especially of all motion and change, is thought to be a causal and not a moral order. As a moral order only the good could be traced to it and only the good be viewed as according to nature. But on this point Plato shifts, in the person of the Athenian, from a causal to a normative manner of viewing. He attempts to interpret the causal order of nature as a moral order as well. He ends in the same situation as Christian theology which seeks to conceive of God as the ultimate cause of all occurrence and at the same time as the highest moral authority, the absolute good, and the personification of the moral world order which ordains good. This leads to the problem of theodicy. How can God, who wills good, cause evil? Christian theology attempts to escape the contradiction by assuming an anti-God, Satan. God is the cause only of good; the cause of evil is the God's foe, the anti-God. Plato proceeds in the same way. After he has established that the soul, which according to the order of nature is the origin of everything and thus plays the role of God, he must regard this God as the source of good and evil. Thus he gets into the same difficulty as the Christian theology. Since he wishes to portray God as *prima causa*, the ultimate cause, he must allow God to be the source of evil as well as of good, thus depriving him of the essential function for which he had introduced him into the legislation of the state: the function of the highest moral authority. Therefore he cannot assume *one* soul, but must assume *two*: one, the source of good, and one, the source of evil. The Athenian says: "And as the soul orders and inhabits all things that move, however moving, must we not say that she orders also the heavens?" Cleinias answers: "Of course." The Athenian asks: "One or more?" Quite characteristically he does not wait for Cleinias' reply, but gives it himself: "More than one—I will answer for you; at any rate, we must not suppose that there are less than two—one the author of good, and the other of evil." To this Cleinias answers: "Very true."

The doctrine of the two world souls, one good and one evil, has caused trouble for the apologetic Platonic interpretation, since it contradicts the other doctrine of Plato according to which the soul

represents good and the body evil. Various attempts have therefore been made to interpret it away. But these attempts are all the more hopeless—as we have seen—since the two-soul doctrine is the inevitable consequence of the Platonic and the Christian theological attempt to comprehend nature at once as a causal and a normative order.

In the construction of an evil soul which causes evil in the world there is clearly expressed the assumption of a real existence of evil in the world of experience, that is, in the world of nature determined by causal law. No natural law can be based on this nature.

After the necessity for assuming two world souls has been proved, the world soul is characterized: she is "herself a goddess, when truly receiving the divine mind she disciplines all things rightly to their happiness; but when she is the companion of folly, she does the very contrary of this." (*Laws* 897)

The next step is to establish that of the two souls only the good soul led by divine reason can be regarded as the guide of heaven and earth and the entire surrounding universe—insofar as the path of heavenly bodies is complete. "But if the world moves wildly and irregularly"—a possibility which does not seem ruled out—"then the evil soul guides it." (*Laws* 897) Later a number of good world souls appear in the place of the one, evidently to make this soul theology accord with the polytheistic popular religion of the Greeks. The Athenian explains in summary that the visible revolution of the heavenly bodies takes place through the care and guidance of the best soul. Thereupon Cleinias says: ". . . there would be impiety in asserting that any but the most perfect soul or *souls* carries around the heavens." (*Laws* 898) One must therefore assume that all stars are set in motion by good souls. And now the Athenian draws the conclusion at which this speculation has been directed. "Since a soul or souls having every sort of excellence are the causes of all of them, those souls are gods, whether they are living beings and reside in bodies, and in this way order the whole heaven, or whatever be the place and mode of their existence;—and will anyone who admits all this venture to deny that all things are full of gods?" (*Laws* 899)

If this is the basis of a theory of law it can only be a radically theological, metaphysical theory, not a realistic one based on empirical reality. One can concur with Wild's assertion that Plato, Aristotle, and their Greek and Arab successors developed their theories of law with no reference to Christian revelation. But Plato's theology is not very different from Christian theology, and certainly influenced it. Plato's doctrine of law is founded on pure theology and not, as Wild insists, "on strictly empirical grounds connected with the analysis

of human nature and its essential tendencies towards realization."
(*Wild* 136)

V. PLATO'S DOCTRINE OF GOOD AND EVIL IN THE NATURE OF MAN

If a natural law applicable to all men is to be founded on the actual nature of man and deduced from this nature, then there must be in empirical reality a uniform nature of man—all men must be alike—and the common nature of men must be good—men must be actually good or at least want the good. Expressed in the language of the dynamic doctrine of natural law, a tendency to the good but no tendency to the evil must be immanent in the common nature of man. Wild maintains that this is Plato's view of the nature of man and that this anthropology is at the bottom of the Platonic doctrine of natural law.

For Plato, he says (*Wild* 18), "human nature is one." "He certainly believed in the moral unity of man. This is proved . . . by countless passages which may be quoted from his discussions of the human soul and of wisdom and virtue, which are the same everywhere for all men." (*Wild* 30) That is to say not only wisdom and virtue—the moral order—but also the souls of men which the moral order addresses are the same. Wild emphasizes: "Plato conceived of the good for man as the realization of human nature in all its phases under the guidance of reason which alone deserves to rule. His ethics is based upon his anthropology." (*Wild* 31) By the nature of man Plato means "those traits and tendencies which all men share in common." (*Wild* 38) "In Plato's opinion such rules must be founded on, and derived from the actual nature, factually found in man." (*Wild* 15)

It is obvious that such a theory of human nature contradicts reality, since the nature of men is quite different when judged morally—there are good and evil, reasonable and unreasonable men, saints and criminals—and that if the suppositions of a doctrine of natural law based on the like, good-seeking nature of all men were met, all legal order would be superfluous. The natural law doctrine of the equality of men pertains not to the real but to the ideal nature of men. The thesis that all men *are* alike, in the typical mixing of the "is" and the "ought," means only that all men ought to be treated alike, *i.e.*, well, although they are actually not alike. One cannot deduce a natural law from the ideal nature of man because this nature is the natural law itself or the natural law projected into real nature. However, all these arguments do not come into question in this connection. Here we should see only if we can find in Plato the anthropology on which Wild bases his Platonic doctrine of natural law. First those passages from Plato which Wild cites as proof that

Plato bases his doctrine of natural law on the nature common to all men, on essential common tendencies. In *Timaeus* 69 Plato says all souls were created according to a formula. But this passage speaks decidedly against a uniform nature of men which tends to good. For here it says that the immortal beings—the gods, created by the divine maker—created the mortal beings, men, by placing immortal soul-substance left them by the creator into mortal bodies. Man therefore is composed of a mortal body and an immortal soul. Furthermore the gods gave man, in addition to his immortal soul, a second, mortal soul. “They . . . constructed within the body a soul of another nature which was mortal, subject to terrible and irresistible affections,—first of all pleasure, the greatest incitement to evil; then, pain, which deters from good; also rashness and fear, two foolish counsellors, anger hard to be appeased, and hope easily led astray;—these they mingled with irrational sense and with all-daring love according to necessary laws, and so framed man.” It clearly follows that both good and evil tendencies are essential to the nature of man. Moreover, according to Plato the relation between the immortal soul directed at good and the mortal soul directed at evil is quite different within different individuals; there are men led by reason and inclined to good and men determined by “irrational sense” and inclined to evil. Therefore the actual natures of man are very different. Only the immortal soul-substance which the divine creator has left the gods for making man is uniform. But this is obviously only the good substantialized in this mythical presentation, the moral norm presupposed by Plato and projected on the real nature of man, the ideal nature of man. Wild refers further to the *Statesman* 268-74 where Plato compares the art of governing with the art of raising cattle, and the relation between the ruler, who alone possesses the art of the statesman, and the ruled, who do not share this art, with the relation of a shepherd to his flock. But this dialogue in particular shows Plato’s view of the radical difference in human nature. In this comparison there is enunciated the essential contrast between the nature of the man whose lot is to rule and the nature of men whose lot is to be ruled. Rule should fall to him who according to his nature is able to acquire the “science of government” (*Statesman* 292), the “royal science” (*Statesman* 259), the royal art of ruling. Only a few have this capability. “Do you think that the multitude in a State can attain political Science? ‘Impossible.’” (*Statesman* 292) “For we do not appoint oxen to be the lords of oxen, or goats of goats; but we ourselves are a superior race and rule over them.” (*Laws* 713) The difference between the nature of the true ruler and those men who are subject by their natures to be ruled is as great as that between shepherd and herd, between man and animal. Therefore absolute

monarchy is the best form of government, and democracy the worst. The true ruler differs in his nature not only from the mass of men ruled. There is also an essential difference between the nature of the genuine ruler, the king, and that of a tyrant. One ought not to group king and tyrant in the same class for they are "utterly distinct, like their modes of government." (*Statesman* 276)

The view of the essential difference in human nature appears especially clearly in Plato's presentation of the goals of the royal science of government. "Those who have no share of manliness and temperance, or any other virtuous inclination, and, from the necessity of an evil nature, are violently carried away to godlessness and insolence and injustice, she gets rid of by death and exile, and punishes them with the greatest of disgraces But those who are wallowing in ignorance and baseness she bows under the yoke of slavery." (*Statesman* 308-09) Unjust conduct corresponds to the nature of men who so conduct themselves, and slavery is justified when it answers the inferior nature of men placed in this condition. These bad natures stand opposed to "the rest of the citizens, out of whom, if they have education, something noble may be made." The true art of government should employ these latter in a way appropriate to their nature and beneficial to the state. In so doing it must form a durable union of "those whose natures tend rather to courage" and "those who incline to order and gentleness." But "Can we say that such a connection as will lastingly unite the evil with one another or with the good, or that any science would seriously think of using a bond of this kind to join such materials? Impossible." (*Statesman* 309) A uniform human nature is out of the question.

Plato's view that men are not alike but very essentially different in their actual nature is the basis of his political theory, which aims at an apology for autocracy and a passionate rejection of democracy. This is even clearer in the *Republic* than in the *Statesman*. Here he says (*Republic* 428) that the ideal state in which a small minority rules a majority completely without political rights is erected "according to nature" (*κατὰ φύσιν*). The "nature" which he means is the actual nature of man. Of this nature he declares, "I am myself reminded that we are not all alike; there are diversities of nature among us which are adapted to different occupations" (*Republic* 370). From this assumption Plato arrives at the principle "that one man should practice one thing only, the thing to which his nature (*φύσις*) was best adapted" (*Republic* 433). This justifies the demand that in the ideal state government be reserved for a few philosophers to the exclusion of the mass of people. For only a few possess a philosophical nature, and the nature of most men renders them incapable of learning philosophy. Plato therefore stresses most em-

phatically the difference between "philosophical nature and non-philosophical nature" (*κρίνειν μέλλης φύσιν φιλόσοφόν τε καὶ μὴ*) (*Republic* 485). He maintains that "there will be discovered to be some natures who ought to study philosophy and to be leaders in the State; and others who are not born to be philosophers, and are meant to be followers rather than leaders" (*Republic* 474). "For the multitude [Jowett: the "world"] cannot possibly be a philosopher" (*Republic* 494). The ideal state must therefore be exactly the opposite of a democracy, which is founded on the false assumption that men are alike in their real nature.

The fact that men are not alike—that there is no uniform human nature—is the explanation for Plato of good and evil men. He traces to their nature—or to what is often the same in Plato,⁸ to their soul—conduct which is to be judged good as well as that which is to be judged evil. "For all, good and evil, whether in the body or in human nature, originates . . . in the soul, and overflows from thence." (*Charmides* 156) In *Laws* 655 there is a discussion of certain choral dances which express vice. Only those men will find pleasure in them whose nature corresponds to such a portrayal, whereas those whose natures oppose the dances will condemn them. The difference between good and evil natural inclinations is unmistakable. Time and again there is in Plato a question of men who in their nature are good, just, and reasonable, and of those who in their nature are evil, unjust, and unreasonable. (See, e.g., *Laws* 900, 931-32.) In *Laws* 710 the Athenian speaks of "the natural gift of children and animals, of whom some live continently and others incontinently." And *Laws* 766: "Man, as we say, is a tame or civilized animal; nevertheless he requires proper instruction and a fortunate nature, and then of all animals he becomes the most divine and most civilized; but if he be insufficiently or ill educated he is the most savage of earthly creatures." Here a distinction is made between a fortunate and unfortunate nature (*φύσις*), although the power is not attributed to it alone to withhold man from evil—in addition, he must have proper instruction to enter on a good life. Therefore the legislator must regulate the education of youth and not allow it "to become a secondary or accidental matter." The myth which aims to justify the division of the ideal state into three classes (*Republic* 415) is quite characteristic of Plato's view of the nature of men. The basic thought is that every man would be grouped in the class appropriate to his nature. The myth expresses it: "God has framed you differently.

8. In *The Republic* 576, for instance, the "soul" of the tyrant is synonymous with the "nature" of the tyrant (*τυραννική φύσις*) and in *The Republic* (454) we read "that a physician and one who is in mind a physician (*ιατρικὴν τὴν ψυχὴν*) may be said to have the same nature (*τὴν αὐτὴν φύσιν*).

Some of you have the power of command, and in the composition of these he has mingled gold, wherefore also they have the greatest honor; others he has made of silver, to be auxiliaries; others again who are to be husbandman and craftsman he has composed of brass and iron." To be sure, "a golden parent will sometimes have a silver son, or a silver parent a golden son." But God commands the rulers above all things to "watch over their offspring and see what elements mingle in their souls [Jowett: "in their nature"] for if the son of a golden or silver parent has an admixture of brass and iron, then nature orders a transposition of ranks, and the eye of the ruler must not be pitiful towards the child because he has to descend in the scale and become a husbandman or artisan . . ." Only because the natures of men differ as radically as do gold, silver, and iron is the division into classes justified. There is no such thing for Plato as a like nature for all men from which a law, alike for all men at all times, can be deduced. The three classes of the ideal state correspond to the three parts of the soul: the reasonable, the passionate, and the desirous. (*Republic* 439-41) The relation of these three parts to one another is the actual nature of man. Since this relation is different in different men, the nature of man in different individuals is quite different. The proper relation exists when the reasonable part rules the desirous with the aid of the passionate. When Plato characterizes the rule of reason as "according to nature" (*Republic* 444), he means the ideal, not the real nature of man; and this ideal nature is nothing else but the moral norm which he has presupposed as applicable to all men but which he has not deduced from the real nature of man.

Wild believes he is able to conclude from the *Republic* 353 that Plato bases the norms of natural law on the nature of the soul of man. Plato teaches here that the nature of the human soul is expressed in its specific function, and that this natural function is virtue and moral conduct. But in this passage Plato says only that each thing has a specific function, and performs it well or poorly; and the correct performance of a thing he calls "virtue" (*ἀρετή*). The specific function of the human soul is "to superintend and command and deliberate and the like." And "then an evil soul must necessarily be an evil ruler and superintendent, and the good soul a good ruler." The soul rules well when it rules justly. Justice is the virtue of the soul, injustice its defect. "Then the just soul and the just man will live well, and the unjust man will live ill." (*Republic* 353) It does not follow from this passage that virtue is the nature of the soul and moral conduct the natural function of man. There are good, virtuous souls and evil, virtuousless souls just as there are just and unjust men. A soul has virtue if its condition is such as it ought to be according to the presupposed moral order, that is, if it is just. Virtue

is justice, and the real nature of man is not necessarily just.

In his judgment of the real nature of man Plato is quite pessimistic. When in *Laws* 854 the Athenian mentions the crime of robbing temples, he expresses his concern at the "weakness of human nature generally"; he speaks of "incurable or almost incurable criminals"; and stresses that, when men turn to robbing temples, it is a "tormenting drive," which has developed in them. Plato is clearly not of the opinion that "original tendencies" of men are aimed only at good. In another context (*Laws* 691) the Athenian says that there is no man whose soul is of such nature (*ψυχῆς φύσις*) that he, "young and irresponsible, . . . will be able to sustain the temptation of arbitrary power—no one who will not, under such circumstances, become filled with folly, that worst of diseases. . . ." Somewhat later he says (*Laws* 713) "that no human nature invested with supreme power is able to order human affairs and not overflow with insolence and wrong." "Mankind must have laws, and conform to them, or their life would be as bad as that of the most savage beast. And the reason is that no man's nature (*φύσις ἀνθρώπων οὐδενός*) is able to know what is best for human society; or knowing, always able and willing to do what is best. . . . If a man were born so divinely gifted that he could naturally (*φύσει*) apprehend the truth, he would have no need of laws to rule over him. . . . But there is no such mind anywhere, or at least not much; and therefore we must choose law and order, which are second best." (*Laws* 874-75) Here Plato says most explicitly that if man's nature were essentially good—or, as Wild would put it, if the tendencies common to all men and essential to their nature were aimed at the good—then every law, and especially a natural law would be superfluous.

To recognize the true nature of man, Wild says, one must observe individuals "who have pushed their capacities to the very breaking point." (*Wild* 148) We must penetrate appearances "to what is really there *in nature*." It is hard to understand how one can conclude in this fashion that the good is the realization of actual human nature. For a man who has pushed his capacities to the breaking point can as easily be a criminal as a saint. The nature realized in him can as easily be evil as good. Here Wild cites among other passages the *Republic* 611. But this passage, which deals with the soul as the nature of man, shows exactly the opposite of what Wild wishes to prove, namely that good is immanent in empirical reality and that a natural law may consequently be deduced from this reality. Plato says, if one wishes to discern the true nature of the soul, "not as we now behold her, marred by communion with the body and other miseries, you must contemplate her with the eye of reason, in her

original purity," that is to say, as she exists released from the body, beyond empirical reality, in the transcendental realm of ideas. "Then her beauty will be revealed." She will not appear as she does in empirical reality where she can be and cause both good and evil. "Then . . . justice and injustice and all the things we have described will be manifested more clearly." We must regard her as "kindred with the immortal and eternal and divine." But that means the nature of the soul cannot be recognized in empirical reality. Plato actually says in *Timaeus* 72 that only God knows the truth concerning the nature of the soul. If the soul is the "nature" on which Plato's doctrine is founded, it is not the nature of empirical reality, not real but ideal nature. And thus the basic principle of the doctrine of natural law—obtaining norms of justice through observation of empirical reality—is fundamentally rejected by Plato himself.

VI. THE "NATURAL" SANCTIONS

The view that Plato is a proponent of the doctrine of natural law seems to find some substantiation in *Laws* 793 where ἀγραφα νόμιμα are spoken of and called "the bonds of the whole state." Wild believes that he finds here Plato's doctrine of "unwritten laws of nature" which "hold universally and underlie the written positive laws of every genuinely human community." (*Wild* 153) But if one looks more closely, it is hardly tenable that ἀγραφα νόμιμα refer to such a natural law. They are mentioned by the Athenian after a discussion of "many little things, not always apparent" which occur "in private life" and which "by reason of their smallness and frequent occurrence there would be an unseemliness and want of propriety in making . . . penal by law." On the other hand it is impossible to "be silent" about them. It is a question of the care for pregnant women and children under three years of age. One cannot handle these matters with sanctions decreed by law only with unofficial "precept" and "admonition" (*Laws* 788). This advice by legislators, which is not legally binding, hardly has a general natural law as its model. At the end of the discussion the Athenian remarks "that all the matters which we are now describing are commonly called by the general name of ἀγραφα νόμιμα." This term is best translated "unwritten customs," not as it now and then appears, "unwritten laws." The Athenian sets them on a par with "the laws of our ancestors" (πατρίους νομοῦς). Of these he says "they are the bonds of the whole state, and come in between the written laws which are or are hereafter to be laid down; they are just ancestral customs of great antiquity, which, if they are rightly ordered and made habitual, shield and preserve the previously existing written law." These remarks are difficult to

understand, especially because of the context of their connection with the passage concerning care for pregnant women and new-born children. For this subject is, because of its little importance, one which is not to be regulated by law. In any case, the basis of the laws to which these remarks pertain is not natural law but time-honored custom; and the process which is presented here is the codification of customary law, not the transformation of natural law into positive law.

The view that Plato is a proponent of the doctrine of natural law is also based by Maguire and Wild on Plato's assumption of "natural sanctions." That is, Wild assumes a natural law which is at once a moral law and according to which antinatural, morally bad conduct of man necessarily brings on the doer evil consequences. The idea of *poenae naturales*, which plays a prominent part in the doctrine of natural law, is actually found in antiquity, in a fragment from Antiphon:⁹

Whoever transgresses against legal (positive law) statutes, if it remains hidden, is spared shame and punishment. . . . But whoever seeks to violate, contrary to possibility, one of the laws of nature which have grown together with us will find the harm no less, if it remains hidden from all men, and no greater if all take note of it. The damage is based not on mere opinion, but on truth. The observation of these things is generally made for the reason that most legal regulations are inimical to nature.

What are the facts to which natural sanctions are bound, and of what do these sanctions consist? The answer is: "Life and death are subject to nature; life comes to man from the beneficial, death from the non-beneficial." The sanctions therefore are: death as punishment, life as reward; the conditional facts are: the beneficial is that which brings life; the non-beneficial that which brings death.

Observation of empirical reality does in fact show that certain facts, especially certain manners of behavior bring death to man and others conserve life. There is between these conditions and their consequences a connection which can be described as a causal law. But an observation of nature made without moral presuppositions will not allow this connection to be construed as normative; that is one cannot assume that nature commands that which preserves life and forbids that which brings death. Only then could the causal law be seen as a moral law. But this must be the case if legal norms are maintained to have been deduced from nature. As we have already shown, this is based on the projection to nature of the norm, which presupposed as self-evident by the observer: that man ought to live and ought not to die; and this norm is the objectification of man's

9. 2 DIELS, DIE FRAGMENTE DER VORSOKRATIKER 346 (5th ed. 1935).

subjective wish to live and not to die. So-called natural sanctions are not sanctions immanent in empirical reality. Therefore there are no natural sanctions. Nature knows no sanctions, since it commands and forbids nothing, and promises neither punishment nor reward.

Maguire believes he is able to see Plato's assumption of *poenae naturales* in the precept that the just man is happy and the unjust man unhappy. (Maguire 159) Plato first defends this thesis in book I of the *Republic* 354 where Socrates asserts: "Then the just soul and the just man will live well (*εὖ βιώσεται*), and the unjust man will live ill And he who lives well (*εὖ ζῶν*) is blessed and happy, and who lives ill the reverse of happy." But this is hardly more than a sophistical play on words, based on the double meaning of *εὖ ζῆν*—to live morally and to live happily. Maguire refers to the *Republic* 571-88. Wild, too, quotes (Wild 143) this section of the dialogue to prove that according to Plato the tendency to the good in every thing is realized only gradually. "This law is enforced by inexorable natural sanctions." But Wild overlooks the fact that sanctions, and in particular punishments, are reactions against evil conduct; and, if they are applied to "tendencies," there must be tendencies to the evil. This Wild denies, though not very consistently.

However, the passages from book IX of the *Republic* cited by Maguire and Wild by no means contain a theory of natural sanctions. Neither do they deal with the happiness of the just or unhappiness of the unjust man. Rather they pertain to the tyrannically minded man in whose soul certain immoral but innate desires prevail and who therefore is capable of any crime. But this is only a particular case of an unjust man. Even if Plato were to prove that the tyrannically minded man was necessarily unhappy, he would not have proved that every unjust man was. The remarks in question come from an examination of various forms of government and are essentially intended to show that tyranny is a bad form of government in comparison with monarchy. The tyrannically ruled state is an unhappy state: "A tyranny is the wretchedest form of government and the rule of a king the happiest." (*Republic* 576) Plato uses here the parallel, of which he is fond, between state and man. But he does not reason that because the tyrannically minded man is unhappy the tyrannically ruled state must be unhappy, but just the other way around, that because the tyrannically ruled state is unhappy the tyrannically minded man must be. Socrates says to Glaucon, "Let me ask you not to forget the parallel of the individual and the State; bearing this in mind, and glancing in turn from one to the other of them, will you tell me their respective conditions?" (*Republic* 577) It is then shown that the tyrannically ruled state is unhappy. Of

what does its "unhappiness" consist? First of all, it is not "free" but "enslaved." "Then if the man is like the State . . . his soul is full of meanness and vulgarity." "Meanness and vulgarity" are explained more clearly: "And the State which is enslaved under a tyrant is utterly incapable of acting voluntarily." "And also the soul which is under a tyrant is least capable of doing what she desires; there is a gadfly which goads her, and she is full of trouble and remorse." The proposition that a tyrannically ruled state does not do what it wants and is therefore not free is developed further in *Gorgias*, beginning at 446. Socrates declares that tyrants do what they please but not what they "will." For they do not know what is good. Their soul is blind. One can only "will" the good, the just. But that means one can only "will" what one ought to will. The "real" will is the one that *ought* to be, in conformity with a moral norm! So far as he is happy who is free, and he is free who can do what he "wills," a tyrannically ruled state and therefore a tyrannically minded man must be unhappy. Neither the one nor the other does what he wills since he does not do what he *ought* to do, the good or just. He is not happy for he is not just. Since happiness is identified with justice and unhappiness with injustice, the thesis that the just man is happy and the unjust man unhappy runs into empty tautology. The discussion of whether the watchmen who rule the ideal state are happy shows quite clearly that especially the "happiness" of the just man consists of his justice and not of a condition which is different from just conduct and caused by it and which therefore cannot be construed as a natural sanction or reward for his justice. After Socrates has pictured their condition and life, Adeimantus remarks (*Republic* 419) "that for their own good you are making these people miserable"; and Socrates does not deny it. Rather he emphasizes that it is not the intention in constructing an ideal state to make one class particularly happy but to make the state happy. The important thing is the happiness of the entire state. (*Republic* 420-21, 519) Now, the watchmen who rule the state are prototypes of just men. If the ideal state is a just one, it is so because it is justly ruled. But if one examines what constitutes the "happiness" of the ideal state, he finds that it is nothing but its justice.

When in the course of picturing the tyrannical temper Plato declares that the tyrannical soul must be "full of trouble and remorse" (*Republic* 577), his statement is based not on psychological analysis but on ethical speculation. The true meaning is that a tyrannical soul ought to be "full of trouble and remorse." There can be no question of a natural sanction immanent in the soul or nature of the unjust man because this speculation in no way pertains to the empirical nature of man.

The unhappiness of a tyrannically ruled state consists also in the State's being "poor" and "full of fear." In no other state will one find "more of lamentation and sorrow and groaning and pain." (*Republic* 578) This can only mean that men living in a tyrannically ruled state are poor and in constant fear and therefore unhappy, no matter if they themselves are just or unjust, tyrannically or not tyrannically minded. From this is concluded, without any examination of the soul of a tyrannically minded man, that he "must be always poor and insatiable . . . and full of fear." (*Republic* 578) Such a conclusion is quite unfounded. Plato is not so much concerned with the unhappiness of the unjust men as with the injustice of the tyrannical state.

Plato subsequently discusses the case (*Republic* 578-79) of a tyrannically minded man who comes to power and—it does not follow necessarily—becomes a tyrannical ruler. He must live in constant fear and must therefore be unhappy. Plato in fact presents this as the result of psychological observation. If the observation is correct, it pertains to such a rare case of immoral conduct that no conclusions can be drawn from it for the general Platonic theory that immoral conduct will inevitably visit the doer with natural, physical, or psychic evil.

Moreover Plato occasionally admits that unjust men can to the end of their days lead a life which they find happy. In *Laws* 899-900 the Athenian says to Cleinias, "Perhaps you have seen impious men growing old and leaving their children's children in high offices, and their prosperity shakes your faith"; you have observed "men by . . . criminal means from small beginnings attaining to sovereignty and the pinnacle of greatness." But he assures us that "the fortunes of evil and unrighteous men in private as well as public life, which though not really happy, are wrongly counted happy in the judgment of men and are celebrated both by poets and prose writers." It is evident here that in the thesis the just man is happy and the unjust man unhappy Plato does not mean by "happiness" what psychological observation of empirical reality alone could yield, a real condition of the soul and that which men find to be happiness, the gratification of wishes, but rather an ideal condition, that which men *ought* to find happiness to be.

In the *Republic*, beginning at 588, the doctrine which links justice with happiness and injustice with unhappiness is presented to show that just action is useful, unjust action harmful to man. But how is this assertion proved? Socrates declares as a generally recognized principle: "Is not the noble that which subjects the beast to the man, or rather to the god in man; and the ignoble that which subjects the man to the beast?" "Then how would a man profit if he received gold and silver on the condition that he was to enslave the noblest

part of him to the worst?" This is nothing else but the tautology that gaining gold unjustly is unjust. For example, someone who gave his son or daughter into slavery for gold would not be profited but rather would make himself unhappy. "Eriphyle took the necklace as the price of her husband's life, but he is taking a bribe in order to compass a worse ruin." In the legend Eriphyle is murdered by Alcmaeon, her son, in revenge for the death of his father. But this act of revenge is in no way a "natural" sanction, but one decreed by the social order and imposed as a duty on the son. When Plato presumes that he who sells his son or daughter into slavery calls up still greater evil on himself, he is speaking of nothing other than the divine punishment which awaits the evil-doer in Hades. And these too, are not natural sanctions, immanent in the empirical reality of nature, but transcendental sanctions. This is clear in the *Republic* 618 where—in the report which the mystic person, Er, makes on his experiences in the world beyond—the consequences of a just and unjust life on happiness and unhappiness are discussed. Man must be capable of distinguishing just and unjust modes of living. The choice of the just life is the best for life and death, but one must go down to Hades convinced of this (in Hades departed souls select their future mode of living) in order "that there too he may be undazzled by the desire of wealth or the other allurements of evil, lest coming upon tyrannies and similar villainies, he do irremediable wrongs to others and suffer yet worse himself." The evil which he will suffer is the transcendental punishment inflicted on the unjust in Hades, not *poenae naturales*, not sanctions immanent in empirical reality.

Wild believes (*Wild* 139-40) he is able to demonstrate a doctrine of natural law based on the existence of natural sanctions particularly in *Laws* 714-16. These remarks, he says, are "a clear expression of Plato's conception of a moral law founded on the very nature of things and thus enforced by natural sanctions." "Disobedience is inexorably punished in the long run by privation and destruction." Here the question is in fact "what is to be the standard of just and unjust," "the best way of expressing the natural definition of justice" (*τὸν φύσει ὄρον τοῦ δικαίου*). The question is put more precisely (*Laws* 715): Should the state be entrusted to power or to reasonable insight, that is, should the content of law be determined by mere power or by reason? In answering this question the Athenian says of states in which the government relies solely on power, "Now, according to our view, such governments are not polities at all, nor are laws right which are passed for the good of particular classes and not for the good of the whole state. States which have such laws are not polities but parties, and their notions of justice are simply unmeaning." How does one recognize that a law is made in the interest of the whole

state and not merely in the interest of a particular class? The legislator always maintains that the former is so. Plato does not go into this question. But the Athenian says: "I say this, because I am going to assert that we must not entrust the government in your state to any one because he is rich, or because he possesses any other advantage, such as strength, or stature, or again birth: but he who is most obedient to the laws of the state, he shall win the palm; and to him who is victorious in the first degree should be given the highest office and chief ministry of the gods; and the second to him who bears the second palm, and on a similar principle shall all the other offices be assigned to those who come next in order." Those whom one usually calls "rulers," one must call "servants of the law." "I certainly believe that upon such service or ministry depends the well- or ill-being of the state." This can only mean that the application of laws should be entrusted to men who are willing to observe them truly. But this is not an answer to the question of a "natural definition of justice." It does not answer how laws should be made, what their content should be, and which laws should be issued, but rather who should apply the established laws. The answer is self-evident, since one cannot entrust the application of laws to those who will not adhere to them. If, however, obedience to established laws is the most important thing, then this legal philosophy amounts to a demand for a state in which the government, its subordinate organs, and the courts in their functions are bound to laws, to general legal norms—a demand which has nothing to do with natural law and which can be made on the basis of a strict legal positivism. That is in fact the case here, for further on we read: "For that state in which the law is subject and has no authority, I perceive to be on the highway to ruin; but I see that the state in which the law is above the rulers, and the rulers are the inferiors of the law, has salvation, and every blessing which the gods can confer." That law must be master in the state and not dependent on the power of the ruler does not mean, according to the above, that law cannot be made by the ruler himself. The government can be subject and bound to a law which it itself has made; it can apply it strictly without arbitrary exceptions. If the end which the Athenian predicts for a state where authorities are not subject to the laws is to be interpreted as a sanction, then the sanction is the consequence not of antinatural conduct, but of illegal action by the government against existing positive laws. And this sanction is not a natural one, immanent in empirical reality, but one imposed by the gods, a transcendental sanction. If Plato had had a doctrine of natural law in mind, he would not have placed heavy emphasis on the observance of legislated laws, but on the correspondence of the content of laws to the norms immanent in natural reality.

But there is no trace of that to be found here.

The "rule of law" has been discussed already in *Laws* 190. There the Athenian says that it is a justifiable demand that parents should rule over children, "that the noble should rule over the ignoble," "that the elder should rule and the younger obey," "that slaves should be ruled, and their masters rule," and then "that the stronger shall rule, and the weaker be ruled." To this Cleinias replies: "That is a rule not to be disobeyed." The Athenian in no way contradicts him but says: "Yes, and a rule which prevails very widely among all creatures, and is according to nature, as the Theban poet Pindar once said." But he adds as the sixth kind of rule "that the wise should lead and command, and the ignorant follow and obey; and yet, O thou most wise Pindar, as I should reply to him, this surely is not contrary to nature, but according to nature, being the rule of law over willing subjects and not a rule of compulsion." (In his poem Pindar says of the rule of law: it is "king over all that is mortal or immortal," and "exercises boldly the greatest power with a mighty hand.") One may regard as the laws which should prevail in the state those which are voluntarily obeyed; and one may assume that these are the laws decreed in the interest of the entire state and not of a single class. If Plato has previously declared the rule of the stronger to be according to nature, he has only done so because he means by the "stronger"—as in *Gorgias* 490—the judicious. But how can one assume that the ignorant who have no insight into what is in the interest of the entire state will voluntarily obey such laws? Laws based on the voluntary obedience of those whose conduct they govern, because they are in accordance with nature in general and the nature of man in particular, do not need sanctions. But the laws which Plato suggests in *Laws* provide for Draconic punishment for those who refuse obedience. The "nature" with which the rule of law is in accordance and which one voluntarily obeys cannot be real nature; it can only be an ideal nature. This "nature" is none else than God, and the "natural law" above the law of the state is "divine law."

Directly after his prediction that a state whose government acts against legislated laws will reap ill, and the state whose authorities are subject to these laws will reap good from the gods, the Athenian says that the citizens of the state to be founded must be warned as follows: "God, as the old tradition declares, holding in His hand the beginning, middle and end of all that is, travels according to His nature in a straight line towards the accomplishment of His end. Justice always accompanies Him, and is the punisher of those who fall short of the divine law. To justice, he who would be happy holds fast, and follows in her company with all humility and order." But

whoever, swollen with pride and insolence, thinks that he needs neither guide nor leader, "but is himself able to be the guide of others," and brings everything into a state of confusion, "he pays a penalty which justice cannot but approve, and is utterly destroyed, and his family and city with him." "Every man," Cleinias says, "ought to make up his mind that he will be one of the followers of God; there can be no doubt of that." (*Laws* 716) The question here is not so much one of the destruction of the state as of the individual punishment which threatens him who does not obey divine law. Not to obey divine law is synonymous with not to be "one of the followers of God." The "old tradition" to which Plato refers here is a precept of Orphic religion. The "punisher" of those who fall short of the divine law is in Orphic belief a court in the beyond, as Plato portrays it in *Gorgias* 523-24. The punishments imposed here are exactly the opposite of *poenae naturales*. It is typically Platonic that this religion is placed in the service of the state and that they are threatened with divine punishment who rebel against the ruler and leader of the state and thus create confusion. Quite characteristic is what Plato says of "what life is agreeable to God, and becoming in His followers." It is that life "expressed . . . in the old saying 'like agrees with like, with measure measure'"; but "the measure of all things is God." He who is agreeable to God must endeavor—with moderate conduct—to be similar to God. That is, he follows God who acts as God wills. This is an empty tautology. The expression of conduct "agreeable to God," "the mark at which we ought to aim" is contained in the "conclusion, which is also the noblest and truest of all sayings,—that for the good man to offer sacrifice to the Gods, and hold converse with them by means of prayers and offerings and every kind of service, is the noblest and the best of all things, and also the most conducive to a happy life." He will reach the goal of "service" best who complies with the principle "that next after the Olympian Gods and the Gods of the State, honor should be given to the Gods below. . . . Next to these Gods a wise man will do service to the demons or spirits, and then to the heroes, and after them will follow the private and ancestral Gods, who are worshipped as the law prescribes in the places which are sacred to them . . ." and so forth. The divinity which in accordance with nature and accompanied by justice wends its eternal way and makes stern judgment proves finally to be the gods of the Greek state religion; "divine law" is the regulations of this religion. When Plato raises the question of the natural definition of justice, he means—as the following shows—nothing more than the proper, appropriate legislation; and the proper, appropriate legislation is, in the opinion of the Athenian, who is Plato's mouthpiece, a legislation which guarantees the state religion

and in particular the cult which the state religion prescribes. That is the only tangible result of this passage from *Laws*, which Wild interprets as the clear expression of the Platonic doctrine of natural law. It has nothing to do with natural law. When Plato uses here the phrase "according to nature" (*κατὰ φύσιν*), it means—as it often does in English—nothing else but "appropriate," or "correct," or "moral," with no thought of any normative function of nature, even though the origin of this formula may lie in such a concept.

In another passage which Wild cites (*Wild* 139) as proof of a Platonic doctrine of natural law—*Laws* 870—the formula means nothing else. It is set forth here that the longing for wealth is highly pernicious, that it leads to bloody murders, and that to avoid this "the truth . . . should be spoken in all states—namely, that riches are for the sake of the body, as the body is for the sake of the soul. They are good, and wealth is intended by nature (*πέφυκε*) to be for the sake of them, and is therefore inferior to them both, and third in order in excellence." Wild sees here the assertion that "this order of subordination exists by nature." (*Wild* 139) The essential thing in this subordination is that the welfare of the soul comes before the welfare of the body. The welfare of the soul, according to Plato, consists in morality. That the body must serve the soul means only that man must act morally. The conclusion from the subordination above is that one "should seek to be rich justly and temperately," that is, one must use wealth in conformity with the norms of morality. If this is the proper disposition of wealth, then "nature" means in effect morality, and not empirical reality. In this very connection Plato uses the formula *κατὰ φύσιν* in a way which excludes the concept of "natural" sanctions, *i.e.*, sanctions determined by causal laws and scientifically ascertainable by observation of empirical reality. The Athenian proposes "a prelude concerning crimes of violence in general;" and says: "I must not omit to mention a tradition which is firmly believed by many, and has been received by them from those who are learned in the mysteries: they say that such deeds will be punished in the world below, and also that when the perpetrators return to this world they will pay the natural penalty (*ἀναγκαῖον εἶναι τὴν κατὰ φύσιν δίκην ἐκτίσαι*) which is due to the sufferer, and end their lives in like manner by the hand of another." The "natural" punishments are those in Hades and those which in the transmigration of souls of the Orphic-Pythagorean mystery-religions, threaten one after the rebirth. The necessity (*ἀνάγκη*) according to which these punishments occur is not that of a causal natural law, but the absolute validity of the norm of retribution established by the divine will.

In Book X of *Laws* (904-05) there is a passage in which Plato ex-

pressly refers to a legal order above positive law. According to this order there is after death a change of place in which the principle of retribution is realized. The souls of good or virtuous men are rewarded by being carried to a place "which is perfect in holiness." The souls of the evil go to Hades where they undergo the just punishment of the gods; after their rebirth they must suffer the same evil which in their previous life they have committed. The Athenian then cites a passage in the *Odyssey* (XIX, 43): "Thus wills the law (*δίκη*) of the Olympic gods." This divine legal order has been elevated by its founders above all other legal orders. No one can boast "of having resisted it victoriously." The Athenian maintains the existence of this divine legal order of law to prove that there are gods and that they are concerned about men. If this divine legal order is designated as a natural one, then "nature" does not mean empirical reality—as in a true doctrine of natural law—but a transcendental divinity. Such a doctrine is not positivistic, but idealistic and thoroughly theological. It is, however, not a doctrine of natural law in the sense of a realistic doctrine of natural law based on empirically observable facts of sensibly perceptible reality which attempts to deduce the just norms of human conduct from this reality.

VII. THE "NATURAL" ORDER OF LAW IN PLATO'S PHILOSOPHY

Plato says expressly that this reality given to our senses is not his "nature." In *Laws* 889-90 he comes to the distinction of the Sophists between things which are praiseworthy (*καλὰ*) by nature (*φύσει*) and things which are praiseworthy by law (*νόμῳ*) and to the sophistic thesis that there is no law which is just by nature, "that legislation is entirely a work of art [not of nature] and is based on assumptions which are not true." The Athenian rejects this view because "in this way the young fall into impieties, under the idea that the gods are not such as the law bids them imagine; and hence arise contentions, these philosophers inviting them to lead a true life according to nature, that is, to live in real dominion over others, and not in legal subjection to them." It is apparent here that Plato identifies the view that there is no law by nature with the view that there is no law established by the gods. Denial of a natural law is a denial of the existence of the gods. True nature is God. This becomes even clearer in the following passage where the Athenian discusses the view of the materialistic Sophists that originally there were only sensibly perceptible bodies; the sensibly imperceptible soul came later. Since by "nature" they mean that which originated first, they assume that only the physical world is "nature." The Athenian counters this view by saying that not the body but the soul and "the things which are of soul's kindred" are "prior to that

which is hard and soft and heavy and light," or to "fire or air," that is, prior to sensibly perceptible reality, to "nature and works of nature, which however is a wrong term for men to apply to them." That means the term "nature" must correctly be ascribed to the soul and the soul's kindred. (*Laws* 892) By "the soul's kindred" only divinity can be meant. Divinity—not sensibly perceptible reality—is "nature" in the true sense of the word and as such is the "chief author of their (bodies') change and transpositions." Divinity is *natura naturans*, the *prima causa*, God. Wild himself concedes this when he believes he finds in Plato's doctrine of natural law "a rational living principle of natural order." This principle, he admits, is God. (*Wild* 139)

In *Gorgias* 507-08, where the problem of the relation between φύσις and νόμος, between nature and law, is in the forefront, Socrates says that a man into whose soul justice has not entered "is the friend neither of God nor man, for he is incapable of communion, and he who is incapable of communion is also incapable of friendship." This he supports with a saying of "philosophers"—that is, of the Pythagoreans—"that communion and friendship and orderliness and temperance and justice bind together heaven and earth and gods and men, and that this universe is therefore called Cosmos or order, not disorder or misrule." This is a normative interpretation of nature characteristic of all theological-metaphysical speculation. It is noteworthy that the normative order according to which nature is interpreted in theological-metaphysical speculation is established by a superhuman transcendental authority. From this presupposed natural order it follows that the legal order of human conduct should correspond to cosmic order, and that the justice which is realized in the legal order has as its model the justice of the natural order. In his attempt to demonstrate a Platonic doctrine of natural law Maguire refers to this passage in *Gorgias*. (*Maguire* 160-72) He says that this dialogue "seems to imply that the physical universe is, in some sense, a norm for the moral conduct of men and that, in particular, it embodies the ethico-political norms of measure and orderliness, fraternity, self-restraint and justice." (*Maguire* 162) In *Gorgias* Plato "establishes the physical universe (rather its orderliness) as the criterion of Right." (*Maguire* 163) But Maguire emphasizes correctly that it is not the sensibly perceptible empirical reality of the cosmos but a reality behind it which is the model: "It is never the visible universe which is to be imitated, but the Reality behind it." (*Maguire* 172) This reality "behind" empirical reality is Platonic divinity.

It is curious that in the very dialogue which more than any other concerns the just establishment of positive law in a state—that is, *Laws*—Plato makes no use of his doctrine of ideas which is devoted

above all to the problem of justice. And in the *Republic* where the problem of justice is the center of attention and where apparently for this reason, Plato presents his doctrine of ideas, he applies it only vaguely to positive law, which plays here a subordinate role. In the analogy of the cave in Book VII Socrates says there is nothing "surprising in one who passes from divine contemplations to the evil state of man, misbehaving himself in a ridiculous manner; if, while his eyes are blinking and before he has become accustomed to the surrounding darkness, he is compelled to fight in courts of law, or in other places, about the images or the shadows of images of justice, and is endeavoring to meet the conceptions of those who have never yet seen absolute justice." (*Republic* 517) In the courts of the state which exist in social reality there is applied the positive law made by men who have not seen the idea of justice. This law is only a shadow of justice. In the ideal state however the philosopher-rulers, to whom jurisdiction is entrusted (*Republic* 433), have seen the idea of the good, which includes justice. (*Republic* 490, 519, 540) Plato is not very clear about the law which they make. It seems that the governmental activity of the philosopher-rulers is expressed more in the form of individual decisions than in the enactment of laws, *i.e.*, general norms. Certain remarks in Book IV (425) indicate this. Here Plato declares himself against legislation, particularly about "the business of the agora, and the ordinary dealings between man and man, or again about agreements with artisans; about insult and injury, or the commencement of actions, and the appointment of juries . . . there may also arise questions about any impositions and extractions of market and harbor dues which may be required, and in general about the regulations of markets, police, harbors, and the like." Plato justifies his position: "I think . . . there is no need to impose laws about them on good men; what regulations are necessary they will find out soon enough themselves." By "good men" probably the rulers are meant. One may assume that what Plato says of legislation in *The Statesman* 294 applies to the ideal state: "The best thing of all is not that the law should rule, but that a man should rule, supposing him to have wisdom and royal power. . . . Because the law does not perfectly comprehend what is noblest and most just for all and therefore cannot enforce what is best. The differences of men and actions, and the endless irregular movements of human things, do not admit of any universal and simple rule. And no art whatsoever can lay down a rule which will last for all time. . . . But the law is always striving to make one."¹⁰

10. This view seems to contradict a later remark on the arts of the judge to the effect that the righteous judge only decides the dealings of men with one another "to be just or unjust in accordance with the standard which he

The model after which positive law is to be fashioned—whether in general or individual norms—are not some norms immanent in the nature of empirical reality, but the idea of justice which is contained in the idea of the good. And this idea is so transcendent that it lies not only beyond empirical being which is only apparent but beyond true being as well and therefore beyond the rationally discernible. (*Republic* 509) Only in a state of religious ecstasy can it be glimpsed by a few who have been selected by divine grace. (*Epistle VII* 341)¹¹ In its application to positive law Plato's doctrine of ideas is the exact opposite of a doctrine of natural law founded on observable facts of empirical reality.

receives from the king and legislator." (*Statesman* 305) But this statement, as the following passage shows, designates only the limits of the judicial function: "Then the inference is that the power of the judge is not royal, but only the power of a guardian of the law which ministers to the royal power."

11. See the essay *Platonic Justice* in my *WHAT IS JUSTICE?* 82 (1957).