

## International Zeitschrift (IZ) 11.1, December 2016

*International Zeitschrift (IZ)* is a journal for dialogue and analysis of current events with an international legal focus. We also feature historical and philosophical content that can help us better understand the context for events we witness and experience in the present. Our goal is to help make people better educated about the interplay between the law, international events, and the philosophies and ideologies which give rise to them. While we feature articles written by a number of legal academics on various topics, we also accept article submissions from professors and students from a wide variety of disciplines. If you have an article which figures into the international discussion alluded to here, we welcome your submission.

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Law of the Sea

International Politics and Policy

Philosophy of Law

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Authors are required to send their manuscripts as a plain Microsoft Word document, with no special formatting to margins. The style we desire should be something akin to Turabian or Chicago, with footnotes only and no spaces between them. Manuscript submissions should be double spaced, fonts should be Times New Roman, twelve point for text and ten for footnotes. Looking at an article in this issue will give the prospective author a ready guide.

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C.G. Bateman

## Brexit, and After

Ian Townsend-Gault

### *In Memoriam*

Ian Townsend-Gault 1952-2016

As the Irish poet George Barker once wrote about our favourite people, they are oftentimes "a procession no one can follow after, but be as a little dog following a brass band:" so it was with Ian. Ian Townsend-Gault was a distinguished Professor of Law at the University of British Columbia, husband, father, grandfather, and dear friend, Ian was larger than life, and commanded every room he entered. If he happened to be the speaker, which he most often was, he took the audience to heights they never expected often leaving them speechless and wondering how they might themselves try to make this world a better place after hearing him explain and interpret the world's most pressing international events. He was a man of Cicero's stripe; you could not help but be enchanted by his captivating lectures and ability with the spoken word. This is what first drew me to Ian. What you read in the pages of this journal from Ian's hand is the result of my conviction that a man who spoke so well on subjects of pressing importance must also have his own forum in print. That happened in 2007, and I remember the conversation vividly. He was delighted to be the feature writer for what we came to know between us as IZ, or, more formally, *International Zeitschrift*. Ian and I were co-editors, and I took care of the management side, but it was really as I envisioned it, a vehicle for the brilliant and incisive insights of Ian.

On a personal level, he cared for his family very dearly, that was his first love and remained so until his recent passing in August of this year. I remember meeting Ian as my International Law professor in 2001, and was spellbound by his ability to inspire the students in his masterful delivery of a lecture. As I found myself in awe of him at times during his life, I now find myself in a somewhat similar state: his life was a procession no one can follow after, indeed.

### **Brexit, and After**

Ian Townsend-Gault

The post-Brexit shambles in the United Kingdom is even worse than the most pessimistic pundit might have predicted. Shock among members of the Remain camp has given way to anger, if not rage. The blatant opportunism, if not arrogant selfishness, of some of the politicians in the Leave campaign, is now apparent. An article by Jonathan Friedland available on the website of *The Guardian* displays not only controlled rage but the deepest contempt for the likes of Boris Johnson and Michael Gove, happy, he argues, to gamble the future of their country – which they profess to love so much – in order to

further themselves and increase their status. It is one thing for the uninformed person in the street to express satisfaction that “we have taken our island back”, but neither Johnson nor Gove fall into this category. They knew better. As Friedland writes, it simply beggars belief that Gove et al. could express satisfaction in regaining the sovereignty of the United Kingdom if the future of the country is imperilled: there can be no doubt that when Scotland’s First Minister says her country (which voted convincingly to Remain) will *not* leave the European Union, she means precisely what she says.

It seems more than ironic that, in the days following the Brexit result, the presidents of the United States and Mexico, in company with the Prime Minister of Canada, were preaching the gospel of cooperation and inter-dependency, in sharp contrast to the Leave message that “we can go it alone”, or at any rate, strike a deal with the EU that preserves Britain’s trading relationship without having to assume the responsibilities of full membership. This is to some extent an illusion. In order to import goods into the Union, manufacturers are required to abide by the standards it sets as regards quality and the like. They do not have a free hand in such matters, despite what their domestic legislation may say. Taken to its logical end, this may have a slightly odd result whereby non-member states or their citizens are required to assume certain obligations but have no say in setting the standards: obligations but no rights.

Events since the decision was announced have moved with such rapidity that it seemed rash to try to write something sensible about what has been going on. The pace of events may be slackening, but battle lines have been established. It is surely more than surprising that David Cameron and members of his government calmly announced that discussions with the EU will have to await the decision on a new leader for the Conservative Party (due probably in October). It is as if the opinions of the 27 other members of the Union didn’t matter. The larger countries, however, have made it clear that The EU will set the agenda, not the [apparently] departing British. And why should they not? They did not cause this crisis. They want matters resolved quickly, and again, why should they not?

What I intend to present here is a sort of stock-taking: where are we at, and where are we going? Indeed, where have we been? One way of doing this is to pose a number of questions, questions designed to probe the forces, real and imaginary, that have brought the United Kingdom to this pass.

### **Why did the referendum take place at all?**

The answer to this is simple. Cameron was faced with apparently deep divisions within his party, not to mention the challenge from the United Kingdom Independence Party [UKIP]. Something not unlike this has happened before. In 1975, the Conservative government of Edward Heath, a staunch European and the man who brought the United Kingdom into what was then simply known as the Common Market, was defeated in a general election fought on grounds which had nothing to do with Europe. The Labour government of Harold Wilson was returned to power, and while the Prime Minister was a supporter of the European project, some prominent members of his government and party were not. Wilson’s solution was to hold a referendum on continued membership in an

organization which was very much less ambitious than the present EU. Like Cameron, he made some pretence of “renegotiating” some aspects of the deal agreed to by Heath. The country voted overwhelmingly in favour of continued membership.

Although some in Britain remained ambivalent about Europe, to put it no more strongly than that, matters became serious with the accession to power of Margaret Thatcher. In her, they had someone in 10 Downing Street who was openly quasi-hostile or at least combative towards Brussels: It has to be said that her fellow heads of government seemed willing to accommodate her as best they could. There were of course limits to this – a treaty is a legally binding document conferring rights and demanding obligations, and its terms cannot be varied by friendly chat over dinner.

The point is, I think, is that Mrs. Thatcher made it respectable to be anti-European to some degree or other, ranging from the somewhat to the extreme. UKIP is the direct result of the latter. Having said this, we should remember that there are Eurosceptics in many member states, some of whom have been elected to the European Parliament in Strasburg.

I referred in the introduction to this essay to the charge brought by Jonathan Friedland and others that the Brexit fiasco had its roots in the ambitions of certain politicians to advance their careers and status. While there is nothing wrong with this as such, to do so at the expense of the manifest best interests of your country is utterly reprehensible. One can take some comfort from the fact that Boris Johnson has perhaps reaped what he sowed.

### **Was the Referendum necessary?**

Clearly not. David Cameron, an overt supporter of Europe, won the last British general election by a convincing majority. It seems to me he could have taken comfort and more from that fact. It would surely have been an option to say to dissenters in his own party, “Here I am, come at me if you want”. This would in all likelihood have led to at least one challenge to his leadership, but there is nothing new in that. Would this not have been a more principled approach, one founded on parliamentary democracy as the UK has understood it for more than one hundred years?

I believe it is also possible to argue that the whole approach to the Referendum, if the Referendum was going to be, was very ill-advised. The notion that the future of the United Kingdom could be decided on the basis of 50% plus one was surely incredible. There was a plebiscite in Scotland in the late 1970s on establishing an assembly with some powers devolved from Westminster. The majority of voters were in favour, but the majority did not reach the required threshold of 60%. Why was there no threshold in a referendum dealing with matters of rather greater importance?

There can be only one answer. The Remain side thought it was bound to win. This was only one of the many miscalculations the British government made. There were others: with all due respect to the individuals concerned, it is surely something of a waste of time to warn citizens in shopping malls in the North of England of the likely consequences to

the stock exchange and the City of a decision to quit the EU. Why would they care? Indeed, this sort of rhetoric would only serve to underline the gulf between “the establishment” and “ordinary people”.

### **Are the results of the Referendum binding?**

My answer to this question would be that morally, one might answer in the affirmative, even though the majority in favour of leaving was hardly enormous. Legally speaking, the answer is no. Indeed, as I write on July 2, 2016, tens of thousands of young people (the demographic in England most notably in favour of remaining) have rallied in Trafalgar Square demanding that the results of the Referendum be regarded as “advisory”. There would of course be some considerable political fallout from a decision to regard the results of the Referendum in this way. Having said this, there are some reports that people who voted to Leave are having second thoughts. The consequences appear to be far beyond anything they had expected.

I do not believe anyone expected the post-Referendum fallout to be as serious and widespread as it has proved to be. The British police report a 500% increase in hate crimes directed at immigrants. Was that reasonably foreseeable? Whether it was or not, it is yet one more illustration of the absolute folly of the whole Referendum project. Amongst other consequences: the unleashing of naked bigotry, the possible departure of Scotland from the Union (to say nothing of the future of Northern Ireland), chaos in the leadership of the Conservative and Labour parties, fury in the capitals of the other twenty seven members of the EU, their making it clear that it is they who will set the agenda for the next while, not Westminster. It is simply not good enough to say that none of the above was “reasonably foreseeable”. Governments are elected to safeguard the best interests of their people. By this measure, Cameron’s Conservatives have failed.

### **Sovereignty Regained?**

What do we mean in the year 2016 by “sovereignty”? I referred earlier to the conclusions of the presidents of United States, Mexico and the Prime Minister of Canada on the need to recognize the essential interdependence of the members of the international community. It has been so for decades. On the eve of Harold Wilson’s referendum, the BBC interviewed the Right Honourable Harold MacMillan, a former prime minister, and before that, the holder of many cabinet offices, and a decorated hero of the First World War.

MacMillan – a scion of the famous publishing house – was a somewhat Edwardian figure, now come into his own, perhaps. He poured scorn on the notion of the regaining of sovereignty, asking how a country that could not defend itself, feed itself, and was dependent on others for its sources of energy [this was 1975, let us remember] could in all seriousness talk in such terms. Have things changed so much that the dialogue is so very different today?

Sovereignty cannot possibly mean today what it might have meant to the likes of Thomas Cromwell and his successors. This is not to say that countries surrender essential elements of self-government either to another country, or to some supranational

organization. However, there is no doubt that the legal basis for what is now the European Union was established by cases brought before the European Court of Justice in 1963 and 1964 which had to tackle this very question. Put briefly, it was this: if there is a conflict between member state and European Law [that is, remember, that the various treaties constituting what is now the European Union have normative content, not to mention laws issued by Brussels – today with the consent of the European Parliament], which will prevail? This was simply not addressed in the founding document of the European project, the Treaty of Rome, 1957. It became necessary for the Court to grasp the nettle, and indeed it did. It postulated the idea that the legal basis for what was then the common market was a “pooling of sovereignty” for certain purposes. This justified giving preference to European norms over national laws. One can only pause to consider that the United Kingdom was well aware of this when it joined the common market in 1973.

Have things changed so significantly since MacMillan made his authoritative and very convincing pronouncement? I for one do not think so. The extraordinary explosion of international law since 1945, much of it due to the work of the specialized agencies of the United Nations and the International Trade Organization, has woven a dense web of mutual rights and obligations all of which have been expressed in treaty form. In other words, the international community has used international law as a means whereby states are increasingly bound one to the other, not otherwise. Perhaps I can emphasize once again that treaties are not “guidelines”. They are normative instruments. They create rights enforceable against the rest of the world, and may, and usually do, impose concomitant obligations. Of course many states embrace the rights and would rather not deal with the obligations – a phenomenon not exactly unknown amongst private citizens. This is a reality that people who think like Donald Trump simply do not recognize, but it is the case, whether they like it or not. It is this to which the principal participants in the “Three Amigos” meeting in Ottawa were referring.

### **What Next?**

This question is impossible to answer, for many of the reasons set out above. The appalling fact, as many have said, is that there was no plan for what might happen should the Leave side prevail. The situation is of course hopelessly complicated by domestic political turmoil within the United Kingdom. If we add to this the implacable attitude being adopted by the larger states of the EU, as well as their determination that the British vote will not lead to the unraveling of the Union [for reasons that are far from clear so far as I am concerned], the future appears horribly complicated. Furthermore, it is simply not possible that Britain can simply “leave”. The UK has been part of the EU for 40 years. The degree of entanglement is enormous, and may well take years to sort out.

### **Brexit in a Global Context**

The British media have of course been obsessed by Brexit since the result was declared, at least so far as I can judge from the BBC World News, its website and that of *The Guardian*, among others. But the migrant crisis in Europe continues, with women, men and children making hazardous voyages across the Mediterranean in unseaworthy vessels to be given a less than enthusiastic welcome upon arrival, if indeed they do arrive: what is

Brexit to them?; there are bombings and shootings in Baghdad, Istanbul, Mogadishu and Dakar and elsewhere; the military offensive against ISIS continues; the parliamentary standoff in Spain seems set to continue; Austria's highest court has ordered a rerun of that country's election; and as I write, the chance of there being a stalemate in the general election in Australia appears to be high. Marine areas such as the South China Sea remain in a high state of tension, and there are those well-qualified to address the issue [I do not belong in this category] who argue we are losing the fight against climate change. Where might we slot Brexit in given this ghastly humanitarian agenda?

Whatever the outcome after Brexit, it would appear that our sorry world is to be destined to continue on its sorry way.

July 2, 2016

## Explainer: what are the legal implications of the South China Sea ruling?<sup>1</sup>

Clive Schofield<sup>2</sup>

The ruling in the case brought by the Philippines against China's activities in the South China Sea is significant – not just because it involves China, but because it tackles key ambiguities and uncertainties in the United Nations Convention on the Law of the Sea (UNCLOS).

### **The decision**

Both China and the Philippines are parties to UNCLOS. As it arose from the convention, the tribunal that heard the case could not resolve the core sovereignty issues at stake – that is, who owns which feature.

The key findings can be summarised as follows:

- Any historic rights to resources in the waters within China's apparent claim to areas within the so-called **nine-dash line** were extinguished where they were incompatible with the maritime zones set out under UNCLOS.
- None of the disputed above-high-tide features in the Spratly Islands, individually or collectively, are capable of generating extended maritime claims (beyond a 12-nautical-mile territorial sea).
- China has violated the sovereign rights of the Philippines in its exclusive economic zone (EEZ) by interfering with Philippine fishing and petroleum exploration activities, constructing artificial islands, and failing to prevent Chinese fishermen from fishing in the Philippines' EEZ.
- China has caused severe harm to the coral reef environment and violated its obligation to preserve and protect fragile ecosystems and the habitat of depleted, threatened or endangered species through its recent large-scale land reclamation and construction of artificial islands on seven features in the South China Sea.
- China has aggravated the dispute since the start of the arbitration process, particularly through large-scale land reclamation and artificial island construction activities, which have inflicted irreparable harm on the marine environment.

### **Reinforcing the rule of law at sea**

By tackling key “unfinished business” in the Law of the Sea, especially countering apparently historically inspired unilateral claims to maritime spaces, as well as clarifying the status of insular features and their capacity to generate broad maritime claims, the decision is hugely significant for the Law of the Sea's development and international law generally.

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<sup>1</sup> This article was originally published on *The Conversation* July 13, 2016:

<https://theconversation.com/explainer-what-are-the-legal-implications-of-the-south-china-sea-ruling-62421>

<sup>2</sup> Clive is a professor and Challenge Lead, Sustaining Coastal and Marine Zones, University of Wollongong.

UNCLOS is a remarkable treaty. Almost all countries subscribe to it. While it is notable that the United States is not a party, the US nonetheless conducts its maritime claims and policies in line with the convention's terms.

A key achievement of the convention was agreement on an overarching spatial framework of maritime claims. This includes a territorial sea out to 12 nautical miles and an EEZ out to a 200-nautical-mile limit. These expansions of maritime claims offshore are balanced by the rights of other states in these zones – for example, by guaranteeing freedom of navigation.

Exceptions to the rule threaten this structure. Some countries sign up to the convention's terms but still try to maintain more expansive unilateral claims, often justified on hazy historical grounds.

This ruling arguably closes loopholes and counters temptations to engage in exceptionalism on the part of some countries.



The disputed South China Sea area. Author/*American Journal of International Law*

### Does it matter?

The decision undoubtedly represents a sweeping victory for the Philippines. It is, however, unenforceable. And from the outset China has refused to recognise the tribunal's jurisdiction.

China's reaction to the verdict was swift and uncompromising. A Foreign Ministry statement declared the decision was "null and void with no binding force".

Nonetheless, the tribunal did evaluate whether it had the jurisdiction to hear the case. For the most part, it determined it did on questions related to the Law of the Sea. As far as the tribunal is concerned, the award is legally binding on China as a party to UNCLOS.

China appears highly likely to simply ignore the ruling, at least in the near term. Its vigorous opposition to the decision may also lead to escalation – for instance, an intensification of China’s island-building campaign in new locations and an increase in enforcement actions within the nine-dash line. This may lead to a proliferation of incidents with other South China Sea countries and a distinct rise in regional tensions.

The decision’s longer-term value may be profound, however. It fundamentally undermines key aspects of China’s position in the South China Sea. This will undoubtedly inform future interactions between China and its neighbours.

The guardedly good news is China has already indicated it will seek to “maintain peace and stability in the South China Sea” in accordance with international law.

This indicates it is unlikely to disrupt freedom of navigation and trade through a water body that carries US\$5 trillion per year in trade. That includes almost one-third of the global oil trade, over half of global liquefied natural gas exports and more than half of Australia’s international trade by value.

### **Implications beyond the South China Sea**

The ruling has the potential to reach far beyond the South China Sea and transform the international maritime map.

It indicates historic claims cannot be readily sustained. This undermines the unilateral claims of certain countries – such as Canada’s historical claims related to its Arctic archipelago.

Even though the ruling is technically only binding on China and the Philippines, it carries considerable legal weight as an authoritative and unanimous ruling by an international judicial body. As a result of uncertainties over which insular features can generate what maritime zones, many countries have advanced expansive maritime claims from small islands. These claims are now in jeopardy.

For example, the US claims 200-nautical-mile EEZs from several remote Pacific island territories that appear remarkably similar to some of the South China Sea features that the tribunal found could not generate extended maritime claims. The US welcomed the ruling, but it will be intriguing to see whether the US and other countries modify their practices in light of it.

## Socrates and Cicero: Functionality as Justice

C.G. Bateman

### Introduction

#### *Justice as functional appropriateness*

The characteristic of functionality within a person or body politic was an important part of ancient Greek and Roman ideas about justice. This paper briefly examines the basic nature of ancient Greek and Roman justice from the philosophical perspective of Plato and Cicero, exclusively. As two of the most influential ‘natural law’ philosophers in an interdependent nexus of ideas about justice within philosophical ideologies from the classic period, Plato and Cicero’s ideas constitute an important branch of philosophical inquiry into the nature of justice which focuses on the community rather than the individual. This analysis will focus on Socrates’ depiction of justice in Plato’s writings, followed by some convergent thoughts from Cicero on what justice seems to have meant to him as well.

Plato’s *Republic*, the starting point for this discussion, is the place where we find Socrates being forced by his interlocutors to give them a definition of justice: to which he finally gives in and presents them with an overtly functional-centric description:

You remember how, when we first began to establish our commonwealth and several times since, we have laid down, as a universal principle, that everyone ought to perform the one function in the community for which his nature best suited him, well I believe that that principle, or some form of it, is justice.<sup>1</sup>

In Socrates’ definition, each person’s nature has best suited them for a function in the context of a community; and carrying out that function is where he suggests we find justice in our own experience. Similarly, Cicero’s definition of justice, from his treatise *The Laws*, builds on this theme of our nature. For Cicero, justice emanates from us in our nature, and it is something which is harmonious, unchangeable, and eternal.<sup>2</sup> He wrote, “[w]e must clarify the nature of justice, and that has to be deduced from the nature of man.”<sup>3</sup> He goes on:

There is one single justice. It binds together human society and has been established by one, single, law. That law is right reason in commanding and forbidding. A man

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<sup>1</sup>Socrates/Plato, *The Republic of Plato*, trans. Ed. Francis MacDonald Cornford (New York: Oxford University Press, 1959), 127.

<sup>2</sup>Cicero, *On the State*, 3.33, as in *Cicero, Selected Works*, trans. Michael Grant (Bungay: Penguin Books, 1960), 7.

<sup>3</sup>Cicero, *The Republic and the Laws*, trans. Niall Rudd (Oxford: University Press, 1998), 103.

who does not acknowledge this law is unjust, whether it has been written down anywhere or not.<sup>4</sup>

For Cicero, as well, justice is a distinct unified reality, not a theoretical construct or philosophical idea; and the confluence with Socrates' idea of justice is found in its natural function of binding society together. He further elaborates this by stating that "my whole thesis aims to bring stability to states, steadiness to cities and well-being to communities."<sup>5</sup> Socrates had been after the very same thing, encouraging each person to take the role that was best suited to the proper functioning of society at large: and this especially if we acknowledge, which we must, that Plato's *Republic* is a dialogue seeking to answer what justice is for a whole functioning person, concerning which his recommendations for the state are only used as an analog to better appreciate the individual human/citizen experience. Socrates was trying to determine the way in which a person should live a just life, not primarily the state: although one wonders, at times, if this line became blurred in the voluminous writings of Plato. Is it possible that Plato dovetails mere politics into the swaths of Socrates' teaching on justice for the individual? Perhaps.

Another impressive aspect of Cicero's idea of natural law and justice is that it is characterized as a universal truth for all ages. He writes, in another work entitled *On the State*, that:

Any attempt to supersede this law, to repeal any part of it is sinful; to cancel it entirely is impossible. Neither the Senate nor the assembly can exempt us from its demands; we need no interpreter or expounder of it but ourselves. There will not be one law at Rome, one at Athens, or one now and one later, but all nations will be subject all the time to this one changeless and everlasting law.<sup>6</sup>

Truly, for Cicero, a natural law theorist<sup>7</sup> in the extreme, law is one: and his sense of what is just is inextricably tied to the good of the community in the way of Socrates. Cicero also gives a very specific example of what justice would look like in an interpersonal exchange in his monograph *The Laws*. He suggests what a just man would do who came across someone alone and crippled in the desert. He says, "[o]ur naturally good and just man will talk to him, help him, and put him on the right road. But the fellow who does nothing for anyone else, and measures everything by his own advantage – you see, I fancy, what *he will* do!"<sup>8</sup> His contrast between the just and the unjust here hinges on

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<sup>4</sup> Ibid., 112.

<sup>5</sup> Ibid., 10.

<sup>6</sup> Cicero, *On the State*, 1960, 7.

<sup>7</sup> Long, A.A., *Cicero's Plato and Aristotle*, 6-7.

<sup>8</sup> Cicero, *The Republic and the Laws*, 111. Of course, from our modern day vantage point this tale of just action accords virtually exactly with the parable of the Good Samaritan credited to Jesus of Nazareth in the New Testament Gospel of *Luke* 10.29-38: but Cicero lived some hundred years or more before Jesus did, and what relation exists between the separate analogies, while perhaps interesting, is not of concern here. What is of concern is this idea of what 'neighbour' and 'justice' meant, for two well known teachers of antiquity, helping the other, being concerned with someone other than oneself. Is this not what seems to be the focal point of what is accorded the highest commendation? In other words, for someone to be a just

whether or not the man assists his fellow human being to foster the wellbeing of the whole community. The unjust man cares only for himself and not the community.

It seems that what both Socrates and Cicero are emphasizing in their respective definitions of justice is that the community is the most important entity in relation to the individual. For the human being, justice is about whether or not they are participating in their community in the way that nature intended them to. The individual is constrained by what nature has dictated to them in the proper working of the whole community: and in Socrates' case, his ideal person come republic. Cicero, too, admitted that his reason for writing *The Laws* was for the benefit of states and communities, and for their proper working.<sup>9</sup> For both thinkers, the ideal form of justice involved each person conforming to a functional design. The end goal for both philosophers was to facilitate the right functioning of society, for the good of all, while the exclusive focus on personal pleasures and indulgences was eschewed as being morally distasteful because it ran counter to the public good.

### **Plato and Various Functions**

According to Socrates, people were made up of various natures that could be represented by elements of gold, silver, iron and bronze. Socrates uses a metaphor which describes how people were born out of the earth, some with gold in their character, some with silver and others with iron or bronze. Those of gold are the guardians, the silver represents the auxiliaries who physically guard the city against and within from evils. The silver auxiliary types are likened to sheep dogs that the shepherd needs to keep the flock in line. And the iron and bronze people are tradespeople and farmers who work in the community and surrounding areas under the leadership and guidance of the rulers.<sup>10</sup> Socrates further instructs that parents must fearlessly put their child in the class to which he or she belongs; if an iron or bronze nature, then to farming or labour, if the child shows signs of gold or silver, the parents must encourage them to move up in the republic's community ladder.<sup>11</sup> Presumably, the natures of the children would become manifest to their parents and other community members, although since this is presented by Plato as Socrates's metaphor/analogy, we cannot assume such a determination was considered possible. Each elemental nature represented a different functional aptitude and each was to be encouraged along those lines. While such a categorization of peoples into rubrics based on supposed qualities is offensive to us in this era, it is still worth remembering two things: at bottom, Socrates was really aiming at justice in the individual, not the state; second, the principle which arises is that what is good for the parts is better for the whole, and such a proposition seems eminently reasonable. For instance, if the children (parts) of a family are dressed properly for cold weather, say, the better their health and, ergo, that of their parents with them (whole) is going to be.

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member of their society, it was their duty to care for the other: for indeed, one person is not a society, but two, by definition, is.

<sup>9</sup>Cicero, *The Republic and the Laws*, "My whole thesis aims to bring stability to states, steadiness to cities, and well-being to communities," 110.

<sup>10</sup> Plato, *The Republic of Plato*, Cornford, 106-107.

<sup>11</sup>See note 11.

### *Guardians and the Community*

We can see how difficult it would be to imagine Socrates intended his ideas to refer to the state when we consider his guardian requirements: “first, none of them must possess any private property beyond the barest necessities. Next, no one is to have any dwelling or storehouse that is not open for all to enter at will.”<sup>12</sup> Socrates' guardians were expected to forfeit the petty pleasures of material goods for the common good of all. He talks about the guardians' communal duty in the discussion of the 'allegory of the cave'.<sup>13</sup> In this particular allegory, an imagined individual breaks free of their cave dwelling existence to begin an intellectual journey upwards towards the light of the sun, which represents the “essential form of goodness.”<sup>14</sup> Socrates claims that this essential form of Goodness in the visible world brings forth life<sup>15</sup> and also that “...it is itself sovereign in the intelligible world and the parent of intelligence and truth. Without having had a vision of this Form no one can act with wisdom, either in his own life or in matters of state.”<sup>16</sup> Further to this, he notes that these noblest of natures, his guardians, once enlightened in this way and seeing the form of goodness, must then come back down and help their peer human beings since they have the wisdom to make decisions in their stead. For Socrates, it is important that they are not allowed to simply enjoy their new found wisdom but must come down and help their fellow humans since “...the law is not concerned to make any one class [e]specially happy, but to ensure the welfare of the commonwealth as a whole.”<sup>17</sup> This egalitarian sentiment in Plato's *Republic* is an idea which may help us realize new “forms” of societal order in our own era of developing democracies. It is here the principle of Socrates that is important, not the details of his allegories, analogies, and metaphors, however interesting they might be.

### **Cicero: Plato's Functionality**

If any one person in history can be said to have attempted such a noble feat as to obtain as much of the guardian quality as they could manage, it must be Cicero. While it is true that Cicero may not have come the full way to realizing such stature in his life, Socrates had answered the aforementioned objection and actually allowed that it may not be possible, after all, to achieve every aspect of the ideal state, and hence pure justice in a

<sup>12</sup> Plato, *The Republic of Plato*, Cornford, 108.

<sup>13</sup> Ibid., The Allegory of the Cave in Plato's *Republic* at pp. 227-235. This is a metaphor of tremendous renown which is dominated by the struggle of humans to escape the dark ignorance of cave life and move up out in to the light where the essential form of goodness could be held. Only then would a person be in a position to lead the others still in the cave and encourage them to flee. Socrates points out that as with philosophers such as himself the cave dwellers would likely berate him and even kill him for trying to change their understanding of reality. The convergence with Cicero's ideal of justice is in the unchanging nature of such truth.

<sup>14</sup> Ibid., 231: “In the world of knowledge, the last thing to be perceived and only with great difficulty is the essential form of goodness. Once it is perceived, the conclusion must follow that, for all things, this is the cause of whatever is right and good; in the visible world it gives birth to light and to the lord of light while it is itself sovereign in the intelligible world and the parent of intelligence and truth. Without having had a vision of this form no one can act with wisdom, either in his own life or in matters of state.”

<sup>15</sup> Ibid., 231.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid., 234.

life lived, but that it would suffice if as much as possible could be done.<sup>18</sup> I think Cicero's life demonstrated a valiant effort to employ as many aspects of the guardian in his own life as was possible, and one cannot help but think Socrates would have approved of such a state of praxis, of such a life.

Cicero had a flair for engaging philosophical ideals in his own life such that being a lover of wisdom was just as important to him as serving the Republic of Rome in his various capacities. J.G.F. Powell wrote that "Cicero is a rare example of a man whose circumstances and instincts led him to a practical career in public life, but who was also fascinated by philosophical study of the education of the intellect and personality."<sup>19</sup> Cicero's philosophical strictures translated regularly into action in his civic life as well, and that made him particularly unique. Robert N. Wilkin observes that, "[p]erhaps he lacked the originality of the pure philosophers... but he was that more rare character – a practical philosopher."<sup>20</sup> Cicero went beyond mere imitation: and while there is no question that his writings reveal a deep reverence for the intricate mores of his forbears, he takes their ideas the all important step further by engaging them in practice. Socrates, Plato, and Aristotle, of course, did not do so to the same degree. But that is not to fault them, perhaps their subtle distinctions and philosophical and literary acumen may not have blossomed the way it did had they been the hand maiden of the politics of their day.

As a writer, Cicero mimicked Plato's winning style voraciously and in the style of genuine affectation, presenting his arguments and ideas in much the same way, even seconding the very titles, as Plato's dialogues. His actions mirrored his principles and he often used his oratorical flair and finger-tip grasp of rhetoric to bring about justice in his own context of the very late Roman Republic. Robert N. Wilkin wrote, "[w]hatever its merits in law, in politics Cicero's oratory served a very good purpose. He employed it to expose the machinations of evil conspirators and to bring public sentiment to bear against unwholesome measures."<sup>21</sup> These efforts seemed in line with his character; being one that openly adopted and adhered, as much as he could manage in that tumultuous time in which he lived, to the strictures and structures set out by Plato for a truly just life.

The intersection between Plato and Cicero, and the subsequent tendency of Cicero to model a guardian-like character, is also evident in the juxtaposition of claims made by the respective figures on the subject of wisdom. Socrates, in Plato's *Republic*, says in a discussion about lovers of wisdom: "Need I remind you that a man will deserve to be

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<sup>18</sup> Ibid., 178, Chapter XVIII, Socrates is telling his interlocutors that they should not expect to see this society in working order down to the last detail, but rather that they should be happy if they reach as close an approximation to it as possible. His character advises, "You must admit that we shall have found a way to meet your demand for realization, if we can discover how a state might be constituted in the closest accordance with our description. Will that not content you? It would be enough for me." In the same way, I think this pragmatic sentiment is magnified in the life of Cicero, who reached as far in to philosophy as he reasonably could, while still being at the epicentre of his political culture and ties, constantly putting his ideals in the crucible of practical experience.

<sup>19</sup> *Cicero the Philosopher: Twelve Papers*, 2.

<sup>20</sup> Robert N. Wilkin, *Eternal Lawyer: A Legal Biography of Cicero* (New York: The MacMillan Company, 1947), 209.

<sup>21</sup> Wilkins, *Eternal Lawyer*, 78.

called a lover of this or that, only if it is clear that he loves that thing as a whole, not merely in parts.”<sup>22</sup> This statement correlates somewhat with Cicero’s instruction to his son:

My son: every part of philosophy is fruitful and rewarding, none barren or desolate. But the most luxuriantly fertile field of all is that of our moral obligations – since, if we clearly understand these, we have mastered the rules for leading a good and consistent life.<sup>23</sup>

Here again, another piece of evidence which bolsters the notion that Cicero was attempting a manifestation of Socrates’ ideals as he found them in Plato’s writing. The comment also shows that the Roman senator was committed to perpetuating the philosophical ideal of the guardian in his own life, the lives of his family members, and more generally, therefore, to the Roman citizens who were exposed to his life and writings. He may not have been empty of personal property or prestige, but his concern for philosophical praxis was evidenced in his political activities. In this one thing, then, Cicero surpasses his Greek forbears.

### **Conclusion**

What is clear about the philosophical ideas of both thinkers, regardless of their epistemological lineage, is that justice was something defined in terms of people working under the structures of their natures, and this for the benefit of the entire community. Justice was defined in terms of functionality within a social matrix and both writers expounded doctrines intended to make communities and states, nay, people, conform to this ideal as far as they reasonably could. By defining justice as communally functional actions, the logical corollary demonstrated by Cicero’s “man in the desert” scenario was that injustice takes the form of selfish action. Essentially, engaging in your functional role in the community is concerned with the other, which is very similar to the ethos of a number of core religious teachings that call on the body politic to care for those in need of such and to consider not only oneself but, very importantly, the other who is for all practical purposes us ourselves. The society is a body working together, but of course a hand cannot serve as the head, it must bring food to the head, etc.

Socrates’ guardian class were a very important group in his ideal state/person, being the designated leaders/thinkers and commanding apparatus, yet their role was just as functionally relevant as the farmer and builder. Cicero’s own life emulated many of the characteristics required by Socrates to qualify as a guardian, and perhaps none more than the requirement that one must be a lover of wisdom. Cicero’s commitment to philosophy and politics worked in tandem to great effect, and his administration of substantive justice made him more eligible than just about any political figure one could imagine as being part of that group of citizens Socrates longed to see: a philosopher king and a guardian over the good of the community.

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<sup>22</sup> *Plato’s Republic*, 181.

<sup>23</sup> Cicero, *Personal Statement to Cicero’s Son*, *Cicero: Selected Works*, Grant, 1960, 160.

I think it is trite to claim that Cicero was only recapitulating the ideas of Plato: the ideas *were* from Socrates, Plato, and Aristotle, but Cicero was so convinced of their veracity that he re-thought them and re-wrote them out for his own community. In the writing of the ideas, over again, as always, they took a new shape, and here in the hands of one of history's greatest rhetoricians.