

*The Origin of Justice*

The Epicureans defend a kind of social contract theory and so endorse the following three claims that other ancient social contract theorists also endorse:<sup>1</sup>

- (1) There is an original condition of mankind, in which human beings do not yet live in a community.
- (2) There is some deficiency associated with the original condition that makes it necessary for human beings to unite and hence to form a community.
- (3) Human beings form a community by means of agreements (*sunthēkail foedera*) and so remedy the deficiency of the original condition.

Furthermore, the Epicureans clearly distinguish between a *pactum unionis* and a *pactum subiectionis* in their theory. By the former, agents make agreements with each other to form communities (explaining the creation of justice), and by the latter agents make agreements with a ruler to form legal and political states (explaining the creation of the laws). This makes their theory quite complex, even if the focus of their theorizing lies on the agreements of the first kind that leads to the creation of justice.

This chapter provides a detailed account of the Epicurean social contract by focusing on the creation of justice and law. It shows that (1) agreements stand at the center of the Epicurean account, (2) both justice and law are historical products, and (3) human beings are not by nature social and political beings. As a result, the Epicureans side with defenders of *nomos* in the *nomos-physis* debate. However, the chapter will also demonstrate that the Epicurean account of justice importantly depends on the common good or what is beneficial to everyone. In the end, then, a commitment to what is beneficial is at the heart of the process of cultural development that

<sup>1</sup> Kahn 1981, 93.

makes life in groups, on the one hand, and political and legal communities, on the other hand, possible and necessary. As a result of this, it would be incorrect to view the Epicureans only as defenders of *nomos*, but one should note that on their view, *nomos* is importantly constrained by certain natural features, that is, *phusis*.

By showing what kind of social contract theory the Epicureans defend, the chapter also aims at refuting some common beliefs about the Epicurean social contract. For instance, the Epicurean account is sometimes characterized as Hobbesian.<sup>2</sup> However, this chapter will argue that such a reading would be mistaken (even if Hobbes himself drew on Epicurean texts to develop his ideas). If the Epicurean account is to be assimilated to a modern position, the ideas of Jean-Jacques Rousseau are a much better fit.

Epicurus' own ideas on how human communities came to be, which were perhaps found in book XII of *On Nature*, have unfortunately not come down to us.<sup>3</sup> Fortunately, though, the Roman Epicurean Lucretius' account, which is probably closely modeled on Epicurus' own version, can be found at *On the Nature of Things* V.925–1457.<sup>4</sup> This text will be the principal source in this chapter. Writing roughly 200 years after Epicurus and addressing a Roman audience, for whom Epicurean ideas are a bitter pill to swallow,<sup>5</sup> Lucretius likely adapts his account to the needs of his audience, thus making it necessary for the reader to be cautious of potential idiosyncrasies in comparison to orthodox Epicureanism. Accordingly, we are fortunate to have an (albeit severely) truncated Epicurean account of the development of political communities that is ascribed to the second head of the Garden, Hermarchus, which will at times serve as a counterpart to the Lucretian description and help to distill a unified account of how Epicurean justice and law come to be.<sup>6</sup>

<sup>2</sup> See, for instance, Perelli 1967, 166–71; and Spinelli 2019, 389–90, *pace* Robitzsch 2017.

<sup>3</sup> See Long and Sedley 1987, II.151. The Epicurean story is only one of many; *Kulturentstehungslehre* was a flourishing genre in antiquity. See above all Lovejoy and Boas 1965 [1935] as well as the studies by Cole 1990 [1967]; Spoerri 1959; and Gatz 1967. A helpful overview of the different themes in prehistory and accounts of the Golden Age are found in Campbell 2002b, 20–32; and Campbell 2003, 336–53 (= appendix B).

<sup>4</sup> For an attempt to reconstruct the contents of Epicurus' *On Nature* and relate it to Lucretius' *On the Nature of Things*, see Sedley 1998b. On the relationship between Lucretius and Epicurus, see also Boyance 1963; Clay 1998, 55–74; and Schrijvers 1999, 167–82.

<sup>5</sup> Lucretius, *On the Nature of Things* I.936–50 and IV.1–25.

<sup>6</sup> Fr. 34 Longo Auricchio (= Porphyry, *On Abstinence* I.7–12). Porphyry describes Hermarchus' text, which is generally thought to be an excerpt from his great work *Against Empedocles*, as a “great genealogy [*genealogian makran*]” (ibid., I.7.1; see also Longo Auricchio 1988, 126–7; and Gallo 1985). On Hermarchus, see above all the editions of Krohn and Longo Auricchio as well as the comments in Erler 1994, 227–34; Obbink 1988; and Vander Waerd 1988. For similarities between Lucretius and Hermarchus' account, see the discussions in Müller 1972, 74–7; and Müller 1987.

The following discussion will begin with some observations on the structure of Lucretius' *Kulturentstehungslehre* (I.1). These observations will then structure the following three sections of this chapter, each of which will be devoted to a distinct part or phase of cultural development according to the Epicureans, corresponding to different phases of the development of justice and law (Sections 1.2–1.4). The final section of the chapter will then turn to the question of how Epicurean social contract theory as a whole is to be understood (Section 1.5).

### 1.1 The Structure of Lucretius' Account of the Development of Political Communities

As many scholars have pointed out, Lucretius' *Kulturentstehungslehre* does not proceed in a strict chronological way. Lucretius describes the development of prehistoric communities and then contrasts it with modern society, leaving out certain intermediate steps of this development and jumping back and forth between prehistoric times and the modern age. In addition to the much-discussed remarks on fire, which are out of order,<sup>7</sup> a good example for this is the discussion of the domestication of animals.<sup>8</sup> It precedes Lucretius' prehistory proper and is discussed in the context of the survival of different species instead of being discussed later in the text in the context of human beings first forming communities. These oddities in Lucretius' presentation of events may be due to the circumstances of the work's composition. One of the few things we know about Lucretius' life is that he died before finishing the poem as a whole. Since book V is one of the last books, the oddities in the text could thus be explained by Lucretius' premature death.<sup>9</sup> Some scholars thus argue that certain parts of the text should be transposed to restore the real order of Lucretius' thought or even that the poem contains two separate cultural histories: one that is more developed and one that is a less polished draft included by a conscientious editor.<sup>10</sup>

While some later passages might not fit perfectly into a neat schema, the majority of scholars now agree that the section of the poem that deals with

<sup>7</sup> See Westphalen 1957, 67–74; as well as the reply in Manuwald 1980, 34–7.

<sup>8</sup> Lucretius, *On the Nature of Things* V.855–77.

<sup>9</sup> On this reading, perhaps *On the Nature of Things* could also be the product of an unknown ancient editor. The Church Father Jerome even suggests Cicero. See Eusebius, *Hieronymus' Chronicle* 149 Helm.

<sup>10</sup> This thesis is found in Merlan 1950. For criticism, see Westphalen 1957, 122–3; Perelli 1967, 271–2; and Manuwald 1980, 9–15.

the creation of human communities can be roughly divided into three parts. These parts correspond to three stages of the development of human social life on the Epicurean view.<sup>11</sup> In the first part of his cultural history, Lucretius describes human beings and their primitive nature in their original condition or state (V.925–1010). In the second and third part, he expounds how civilization comes into being, distinguishing between two distinct phases of communal development (V.1011–104 and V.1105–457).

As Bernd Manuwald has suggested, this division is based on an important methodological distinction in Epicurean philosophy, which is most succinctly expressed in the *Letter to Herodotus*. The passage in question is in part corrupt, as the angle brackets in the below translation make clear, but the main point that is emphasized in the text is nonetheless sufficiently clear. According to Epicurus, who does not make an empirical claim here, but presents an inference to the best explanation, any process of cultural development really consisted of two distinct processes:

Ἄλλὰ μὴν ὑποληπτέον καὶ τὴν φύσιν πολλὰ καὶ παντοῖα ὑπὸ αὐτῶν τῶν πραγμάτων διδαχθῆναι τε καὶ ἀναγκασθῆναι· τὸν δὲ λογισμὸν τὰ ὑπὸ ταύτης παρεγγυηθέντα ὕστερον ἐξακριβοῦν καὶ προσεξευρίσκειν ἐν μὲν τισὶ θάπτον, ἐν δὲ τισὶ βραδύτερον καὶ ἐν μὲν τισὶ περιόδοις καὶ χρόνοις [ἀπὸ τῶν ἀπὸ τοῦ ἀπειροῦ] . . . ἐν δὲ τισὶ καὶ ἐλάττους.

Further, one must suppose that [human] nature was taught a large number of different lessons just by the facts themselves, and compelled [by them]; and that reasoning later made more precise what was handed over to it [by nature] and made additional discoveries – more quickly among some peoples, and more slowly among others and in some periods of time <making greater advances> and in others smaller ones.<sup>12</sup>

In other words, the first development is due to nature (*phusis*) and proceeds from the things themselves (*hupo autōn tōn pragmatōn*). The idea here is that things themselves make certain developments possible or indeed necessary while they preclude others. An example of this is the human larynx.<sup>13</sup> Although human beings did not develop a larynx in order to produce sounds and they were not designed to produce sounds, humans, in the course of time, start making more systematic sounds because of certain impressions (*phantasmata*) or feelings (*pathē*) they have. Human beings thus slowly learn to use this organ by a process that is

<sup>11</sup> See the discussion of the structure of Lucretius' *Kulturentstehungslehre* in Manuwald 1980, 8–40, whose proposal is adopted here. For a reply to Manuwald, see Sallmann 1986.

<sup>12</sup> *Letter to Herodotus* 75. Trans. Inwood and Gerson. <sup>13</sup> *Ibid.*, 75–6.

gradual, but not systematic. However, the continual use of the natural capacities kicks off the development of what will later become language. In order for this to happen, though, a process of reasoning (*logismos*) is needed.<sup>14</sup> This second development is distinct from the first.<sup>15</sup> During this process, reasoning perfects what was started by nature – more quickly in some cases, more slowly in others. Reasoning intervenes after nature has already made a beginning. In this case, human reasoning adds linguistic conventions by systematizing the random sounds that were produced during the *phusis* phase. Furthermore, it helps posit (*tethēnai*) and fix meanings to get rid of ambiguities and facilitate communication.<sup>16</sup>

The distinction between a *phusis*-development and a *logismos*-development in any developmental process yields three distinct stages of Lucretius' *Kulturentstehungslehre*:

- (1) *an original state* or condition of humanity, during which no development has yet taken place
- (2) *a phusis phase*, during which the development of natural human capacities takes place as a result of a necessary and natural process (*phusis*-development)
- (3) *a logismos phase*, during which human reasoning perfects the process of development that nature started (*logismos*-development).

This distinction is especially relevant for the questions about justice because the three stages of cultural development correspond to different degrees of knowledge and implementation of justice and the law. As we will see, justice and law do not yet exist, and human beings have no understanding of justice and laws in the original state. In the *phusis* phase, by contrast, human beings gain an understanding of the common good,

<sup>14</sup> Referring to Diogenes Laërtius, *Lives of Eminent Philosophers* X.32 and 39, Detel writes that “[f]ür die logischen Beziehungen zwischen empirischen und theoretischen Sätzen verwendet Epikur selber den Terminus ‘λόγισμος’” (1975, 29, fn. 23).

<sup>15</sup> In accordance with Manuwald (1980, 20–1), the two processes of cultural development are here understood to be successive chronological periods overall, although surely, there might be some overlap between them. For an alternative view, see Furley 1978, 11.

<sup>16</sup> On the Epicurean account of language formation, see Atherton 2009 [2005] as well as Taylor 2020, 15–42. For a discussion of the parallelism between the evolution of language and the evolution of justice, see especially Müller 1972, 93–7. Müller is right that one ought to be careful in drawing connections between the discussions of justice and language in Epicurus (see also Pigeaud 1984, 141; and Alberti 1995, 170–1 and fn. 18); not all readers have been careful enough (see, for instance, Long and Sedley 1987, II.137; Cole 1990 [1967], 73; and Vander Waerdt 1988, 91–2, fn. 21). Likewise, however, Müller may be overemphasizing the difference between the account of language and the account of justice and thereby losing sight of the commonalities in the two accounts.

and they implement this understanding by means of reciprocal agreements, which determine what is just. However, at this point in societal development, there are no laws. Finally, in the *logismos* phase, after some failed attempts to create political and legal states, the understanding of the common good is codified into laws. As a result, a human community at this stage will have not only reciprocal agreements that correspond to moral norms but also political and juridical institutions.<sup>17</sup> In short, then, justice and law come to be in separate, albeit related, processes.

In the next sections, let us turn to each of the three phases of development that were just distinguished and discuss them in detail in light of their significance for justice and law, especially in light of the question of whether justice and law come to be by nature or by convention on the Epicurean view.

## 1.2 The Original State

Book V of *On the Nature of Things* as a whole discusses the creation of the world on the basis of non-teleological principles, without the intervention of the divine. Prior to the discussion of human communities proper, Lucretius describes human beings as they were before they lived in communities. We can call this state of humanity as a whole prior to the emergence of communal life the “original state,” that is, the original condition of humankind in the sense of the state of nature of early modern theories of the social contract, not in the sense of a political or legal state that precedes the present-day political or legal state. The following analysis of the original state will make clear (1) that human beings are originally self-sufficient beings, that is, not social or political beings by nature and (2) that human beings lack the requisite ethical and political knowledge about what is good for everyone to live together with others in the original state and that justice and law do not yet exist at this point in time.

Inferring to the best explanation, Lucretius reasons that in order to have survived during the phase of pre-political existence, human beings must have been physically enduring. They must have had strong bones and sinews and have been resilient to heat and cold as well as to different kinds

<sup>17</sup> Hermarchus’ account, as it is preserved in Porphyry, seems to be restricted to the second phase of cultural development. It deals only with the laws. However, it follows the same general schema that Lucretius follows, as the discussion of *epilogismos* that is taken to be characteristic of law-giving at *On Abstinence* I.8.2 and I.10.4. shows. The comments in Diogenes of Oenoanda (fr. 12 Smith) are compatible with such a reading as well.

of diseases.<sup>18</sup> They must have lived the life of hunters and gatherers.<sup>19</sup> And they must not have had fixed homes, but slept under the open sky and worn no clothes.<sup>20</sup> In short, human beings must have been very hardy creatures that lived a rather primitive life. At this point in time, humankind as a whole cannot yet have possessed the arts that are an important part of human culture today. Lucretius explicitly names plowing, which is a requisite for farming and characteristic of a sedentary lifestyle.<sup>21</sup> Furthermore, human beings also must have lacked the ethical and political knowledge that is the prerequisite for human communities to come into being. As Lucretius writes, “Nor could they [primitive human beings] look to the common good, nor did they know to make mutual use of any moral norms or laws [*nec commune bonum poterant spectare neque ullis | moribus inter se scibant nec legibus uti*].”<sup>22</sup>

Let us look more closely at these important lines. At 958–9, Lucretius makes an epistemological claim (they “could not look [*nec . . . poterant spectare*]”) about the extent of moral knowledge in the original state. This claim distinguishes between moral norms (*mores*) and laws (*leges*), a distinction that will be mirrored in the separate descriptions of how moral norms and laws come to be later in the account. The most interesting part of the claim is the emphasis on the common good (*commune bonum*). Precisely what this is is not immediately clear. Lucretius does not define the term and does not repeat the expression elsewhere in his work. It could be understood in at least two ways. First, “common good” could merely refer to the good that is common to all. It would then be equivalent to the “natural good” that Epicurus mentions, for instance, at *KD* 7 and *Letter to Menoecus* 128–9. This “natural good” is the Epicurean highest good or end that all agents pursue: pleasure (*hedonē*), understood as freedom from bodily pain (*aponia*) and mental distress (*ataraxia*), which according to the Epicureans in the cradle argument, all beings pursue from birth.<sup>23</sup> Yet such a reading is unsatisfactory. If the common good is the natural good, that is,

<sup>18</sup> Lucretius, *On the Nature of Things* V.925–30.      <sup>19</sup> *Ibid.*, V.937–42 and 966–9.

<sup>20</sup> *Ibid.*, V.953–7.

<sup>21</sup> *Ibid.*, V.933–6. An anonymous referee points to a possible connection between this passage and *Republic* II where Socrates realizes the need to enlarge his originally small community because the farmer depends on someone to manufacture the tools to plow the fields.

<sup>22</sup> *Ibid.*, V.958–9. Trans. mine.

<sup>23</sup> See Cicero, *On Ends* I.30. For different readings of the cradle argument, see Brunschwig 1986 (who argues that the first good is kinetic pleasure) and Held 2007, 58–73 (who argues that the first good is katastematic pleasure). For a reading of the cradle argument that does not assign an important role to it for the understanding of Epicurean ethics, see Mitsis and Piergiacomini 2018. On the distinction between kinetic and katastematic pleasure, see Wolfsdorf 2009.

Epicurean pleasure, it seems that human beings in the original state should also pursue it. But Lucretius claims as well that human beings in the original state cannot look to this good, which would result in a contradiction.

Let us therefore suggest a second, alternative reading. On this reading, the common good refers to the good of the group as a whole as opposed to the good of each individual. In other words, “*commune bonum*” at V.958 means that human beings in the original state have not yet grasped that there is an aspect to the good that pertains to life in community and that this good is a good that is beneficial to everyone. This is true regardless of which particular philosophy an agent ascribes to, although for the Epicureans, it will turn out to mean that for any given agent, being in a state of pleasure is compatible with the pleasure of the larger group as a whole.<sup>24</sup>

In making the epistemological claim that human beings could not look to the common good and could not make use of moral norms and laws, Lucretius leaves open whether the common good, moral norms, and laws already exist at this point in the account. On a first reading, being able to use moral norms and laws seems to presuppose that moral norms and laws must already exist so that they can in fact be used. Alternatively, however, one might take “use moral norms and laws” not to mean “apply moral norms and laws,” but rather to set up moral norms in the first place. The latter reading seems to be the correct reading of Lucretius’ comment insofar as human beings will only later in the account agree on what is just and decide on laws by which to abide (see Sections 1.3 and 1.4). Justice and law are, as we will see in more detail below, historical achievements on the Epicurean view. In regard to the common good, it seems, by contrast, that there is no reason to think that human beings cannot make out the common good because there exists no common good to make out.<sup>25</sup>

The main reason why Lucretius claims that human beings lack an understanding of the common good at this point in the development is that the first human beings, from a psychological perspective, have rather simple needs; what the earth produces is already enough to satisfy whatever human beings desire: “What the sun and rains had given them, what the earth had spontaneously produced, were gifts rich enough to content their hearts [*quod sol atque imbres dederant, quod terra crearat | sponte sua, stais id placabat pectora donum*].”<sup>26</sup> Accordingly, their individual, self-sufficient natures are completely enough to procure these individual needs; other

<sup>24</sup> See Chapter 2 for a more detailed discussion of this point.

<sup>25</sup> This point will become clearer in Chapter 2 when the beneficial will be discussed.

<sup>26</sup> Lucretius, *On the Nature of Things* V.937–8. Trans. Smith.



people are not needed. As Lucretius puts it, in the original state, “Individuals seized whatever prize fortune had offered them, trained as they were to live and use their strength for themselves alone [*quod cuique obtulerat praedae fortuna, ferebat | sponte sua sibi quisque valere et vivere doctus*].”<sup>27</sup>

The family, which is typically taken to be the basic unit of human community,<sup>28</sup> does not yet exist at this point in time. During this stage, men and women meet to have intercourse, but their encounters are fleeting and they do not form more lasting ties.<sup>29</sup> The power dynamic between the sexes seems generally to favor men insofar as Lucretius mentions not only the trade of food for sex and mutual love, but also rape, as the reasons why human beings unite. However, Lucretius does not claim that men establish a patriarchic dominance at this point in the account; this dominance was probably established only once the family comes to be during the next phase of societal development.

The most astonishing fact about this early stage, however, is that one wonders how children are raised and, in fact, *if* there are any children.<sup>30</sup> Lucretius only tells us *at a later stage* that men and women watched their children be born.<sup>31</sup> Do the early encounters between men and women also produce children? If they do, then they cannot be raised in a traditional family setting because, again, the family has not yet come into being. In this context we should recall that the very first human beings are literally children of the earth on the Epicurean view insofar as they, like all other animals, have emerged straight out of the earth.<sup>32</sup> Furthermore, the very first generation of human beings seems to come into existence in a relatively complete way, that is, as adults or – since we do not know anything about their exact age – at least as self-sufficient young beings; there is no description of them growing up. Given this account, one wonders whether human beings existed only in such a state for one generation or whether they were in this state for a longer period of time. This is again unclear since we do not have an indication of how long the original state actually lasted.

<sup>27</sup> Lucretius, *On the Nature of Things* V.960–1. Trans. Smith, modified.

<sup>28</sup> The Epicureans never explicitly call the “family” a community, as Aristotle, for instance, does. However, on the Epicurean view, the emergence of the family precedes the emergence of larger groups in time, and the family is a smaller unit of human group organization than the organization of neighbors that is the next larger unit of group organization (as we will see in more detail in the next section).

<sup>29</sup> Lucretius, *On the Nature of Things* V.962–5.

<sup>30</sup> On the connection between love and political development, see Morel 2019b.

<sup>31</sup> Lucretius, *On the Nature of Things* V.1013. <sup>32</sup> *Ibid.*, V.783–836.

Democritus offers a similar account to the one we find in Lucretius.<sup>33</sup> The spontaneous generation of human beings directly from the earth in Lucretius echoes Democritus' claim that human beings are created out of earth and moisture.<sup>34</sup> Furthermore, Democritus also comments that the first human beings lived an uncivilized and savage life,<sup>35</sup> which mirrors Lucretius' observation that the first human beings "lived their lives in the roving manner of wild animals [*vulgivago vitam tractabant more ferarum*]." <sup>36</sup> Most importantly, however, Democritus also remarks that human beings at this point in time live "*sporadēn*,"<sup>37</sup> that is, "scattered," and there is some debate on what the term means, which incidentally is also used by Protagoras' account of how communities come to be in his Great Speech in Plato's eponymous dialogue.<sup>38</sup> According to one reading, "scattered" means that human beings live completely isolated lives without anyone else. According to an alternative reading, "scattered" must mean that there exist at least some smaller family-sized units. However, if the Democritean and Epicurean accounts are alike, then the testimony in Lucretius supports the former reading: human beings during the first stage of their existence really do live lives that are independent of the lives of other human beings because they really were not in need of others to live their respective lives as they are not able to conceive of the benefit that a cooperative life would provide.

While the Epicurean anthropological observation that human beings live isolated lives without children may seem implausible from a modern perspective, we should remind ourselves that similar claims were likely defended by Democritus and Protagoras.<sup>39</sup> More importantly, we should note that this observation will not refute the Epicurean account as a whole, since one could, from a modern perspective, begin the account once the family has come about and still have a coherent account. Within the context, the claim that human beings are completely self-sufficient beings

<sup>33</sup> On Democritus' account, see Robitzsch forthcoming a (including references to older literature).

<sup>34</sup> See DK 68 B 5.1 (= Diodorus of Sicily, *Library of History* I.7.3–5) and A 139 (= Censorinus, *The Natal Day* 4.9, and Lactantius, *The Divine Institutes* VII.7.9).

<sup>35</sup> DK 68 B 5.1 (= Diodorus of Sicily, *The Library of History* I.8.1).

<sup>36</sup> Lucretius, *On the Nature of Things* V.932. Trans. mine.

<sup>37</sup> DK 68 B 5.1 (= Diodorus of Sicily, *The Library of History* I.8.1).

<sup>38</sup> Plato, *Protagoras* 322b1. On Protagoras' account of how political communities come to be, see Robitzsch 2023. On the debate on what the term "*sporadēn*" could mean, see especially Nicholson and Kerferd 1982. See also Anonymous Iamblichus fr. 6 where human beings are said not to be able to live "*kath' hēnā*" (= DK 89 B 6 = Iamblichus, *Protrepticus* 100.10 Pistelli).

<sup>39</sup> An anonymous reader speculates that the lives of early human beings were similar to those of wild, predatory animals that led predominantly solitary lives, but come together for short periods of time to breed and care for offspring.

by nature also serves a very important argumentative function. It makes clear that the Epicureans do not endorse the Stoic and Aristotelian claim that human beings are social and political animals by nature.<sup>40</sup> This means that the Epicureans deny that human beings are by nature part of some community and that the life together with others is, under all circumstances, a prerequisite to achieve human fulfillment, as Aristotle and the Stoics claim. Such a reading is also supported by the overwhelming majority of other sources insofar as these sources clearly and unambiguously ascribe to the Epicureans the thesis that human beings are *not* social and political beings. In this vein, we read in fourth-century CE philosopher Themistius that Epicurus thinks that “human beings are not by nature sociable and cultivated [μη φύσει εἶναι τὸν ἄνθρωπον κοινωνικόν τε καὶ ἡμερον],”<sup>41</sup> and the Stoic Epictetus (first to second century CE) reports that

ὅταν ἀναιρεῖν θέλῃ τὴν φυσικὴν κοινωνίαν ἀνθρώποις πρὸς ἀλλήλους, αὐτῷ τῷ ἀναιρουμένῳ συγχρηῖται. τί γὰρ λέγει; μὴ ἐξαπατάσθε, ἄνθρωποι, μηδὲ παράγεσθε μηδὲ διαπίπτετε· οὐκ ἔστι φυσικὴ κοινωνία τοῖς λογικοῖς πρὸς ἀλλήλους, πιστεύσατέ μοι· οἱ δὲ τὰ ἕτερα λέγοντες ἐξαπατιῶσιν ὑμᾶς καὶ παραλογίζονται.

when [Epicurus] wishes to get rid of the natural communion of human beings with each other, he makes use of the same thing that is gotten rid of. For what does he say? “Do not be deceived, men, nor led astray or cheated. There is no natural communion among rational beings with each other, believe me. Those who say other things deceive and delude you.”<sup>42</sup>

The only *prima facie* piece of evidence that communal life is natural for the Epicureans is another passage in Epictetus: “Epicurus understands as well that we are by nature sociable [ἐπινοεῖ καὶ Ἐπίκουρος ὅτι φύσει ἐσμὲν κοινωνικοί].”<sup>43</sup> Reimar Müller convincingly argues, however, that this passage does not mean that Epicurus actually endorses the position that

<sup>40</sup> For Aristotle, see *Politics* I.2.1253a2–3 and, for the Stoics, Cicero, *On Ends* III.62–3; Stobaeus, *Anthology* IV.671.7–673.11 (= Long and Sedley 1987, 57G); and Hierocles, *Elements of Ethics*, col. XI. For discussion of the Aristotelian claim, see Horn 2021 and Rapp 2021 (including references to older literature). This is true even if the Epicureans themselves will ultimately concede that families, a type of sociality, precede the existence of the society via social contracts and also that at least in terms of the creation of communities of neighbors, a certain sociality comes before the existence of society. See also the discussion in the next section of this chapter.

<sup>41</sup> Fr. 551 Usener (= Themistius, *Orations* XXVI, 390,21 Dindorf). Trans. mine.

<sup>42</sup> Fr. 523 Usener (= Epictetus, *Dissertations* II.20.6). Trans. mine. See also *ibid.* (= Lactantius, *Divine Institutes* III.17.42): “Epicurus says that there is no human society: everyone takes care of himself [dicit Epicurus . . . nullam esse humanam societatem: sibi quemque consulere].” Trans. mine.

<sup>43</sup> Fr. 525 Usener (= Epictetus, *Dissertations* I.23.1). Trans. mine.

life in human communities is natural, but that he *should* do so (from Epictetus' Stoic perspective), if he were more reasonable.<sup>44</sup> After all, Epictetus continues, "but once having placed our good in the body he cannot say anything different [ἄλλ' ἄπαξ ἐν τῷ κελύφει θεῖς τὸ ἀγαθὸν ἡμῶν οὐκέτι δύναται ἄλλο οὐδὲν εἰπεῖν]." <sup>45</sup> As we will see in more detail below, the Epicureans do not deny that communal life becomes necessary at some point in the cultural development, namely, when human nature changes, but they do deny that it has always been so, and they would insist that the necessity is the result of a calculation of what is most beneficial, not part of an inherent drive to live with others.<sup>46</sup>

In summary, then, communal life does not and cannot develop in the original state because human beings do not have any understanding of the common good and because such an understanding is necessary to form societies. Human beings are completely self-sufficient beings on the Epicurean view. Communities are not required at this point of development. First, they are not required because living in communion is not essential to human nature. And second, they are not required because communities do not provide goods that our primitive ancestors could not provide on their own. Accordingly, should communities come to be at some point, they – just as justice and the laws that accompany their emergence – will be a contingent historical achievement and as such not have been part of a greater design that in some way has always already been part of the human nature (as, for instance, on the Aristotelian and Stoic views).

### 1.3 *The Phusis Phase*

At V.1011, a new stage of development is described, one in which moral norms (*mores*) come to be and feature prominently as the social glue that makes life with other people possible. After all, *mores* are nothing other than the rules and principles that regulate human behavior in the interaction with other human beings, which is characteristic of life in groups. In particular, Lucretius now turns to describe the emergence of two forms

<sup>44</sup> Müller 1972, 36–7. <sup>45</sup> Fr. 525 Usener (= Epictetus, *Dissertations* I.23.1). Trans. mine.

<sup>46</sup> On the question of whether communities are natural or the product of convention, see also Philippson 1910, 294–5; Garbo 1936, 243–6; and Grilli 1953, 77–89. Note also in this context that the paradigm case of communal life for the Epicureans is the community of friends, which ideally will be self-sufficient and independent from mainstream society (at least insofar as it will try to avoid any political turmoil that may seize mainstream society), not the city-state or the cosmopolis, as on the Stoic and Aristotelian views.

of life with others: the life of men and women together in what might be called a family and the relationship of neighbors, that is, the relationship of families to each other in what might be called a community.<sup>47</sup> The moral norms that govern the first type of relationship are not explicitly named by Lucretius; the moral norms that pertain to the second relationship are called “justice.” At this point in the account, we thus see clearly how the Epicurean account of justice involves conventions and that justice is a contingent, historical product on their view. Furthermore, we also see that the emergence of the family precedes the emergence of the social contract, which indicates that even on the Epicurean view certain levels of sociality will precede the sociality that comes about as a result of the social contract. Thus, once the actual social contract comes to be, the Epicurean view does not assume *pace* other contractarian theories that *completely* isolated individuals make agreements with each other. Instead, on their view, individuals who already live in families make agreements with each other. Finally, at this stage of the account, we also get an initial characterization of the scope and contracting agents involved in the Epicurean social contract (which will also be discussed in greater detail in Chapter 2).

Because the circumstances in the original state did not require that human beings live together with other people, let us begin to work out the Epicurean account by looking more closely at what changes compared with the previous phase of development so that human beings now decide to live with others. After the relatively stable original condition has become unstable, human beings will decide to change their ways of life. (Here, it is important to emphasize that every new phase of development will in a sense be an improvement vis-à-vis the previous phase, but will also have shortcomings of its own. For instance, while the change to life in community will take care of certain needs human beings develop, it will also itself be accompanied by the deficiency, which in turn will lead to an unstable state that the *logismos* phase of development will address.)

Recall that the main hindrance to life together with other people in the original state is that human beings, as self-sufficient beings, are able to satisfy their needs by themselves. Consequently, human beings must have new needs and/or no longer be self-sufficient in regard to all their needs, and, likewise, the life with other human beings needs to be able to make up for the new needs and the loss of self-sufficiency in some way.

<sup>47</sup> Neither term (that is, “family” or “community”) is explicitly used in this text. For “*koinonia*” in Epicurus, see, for instance, *KD* 36–8.

In line with these considerations, Lucretius opens the section that deals with the development of communal life with a comment related to human self-sufficiency. As we saw above, human beings in the original state are described as tough and enduring and they live the life of hunters and gatherers. Now, by contrast, human beings settle down and consequently their nature changes:

Inde casas postquam ac pellis ignemque pararunt  
 et mulier coniuncta viro concessit in unum  
 [lacuna?]  
 cognita sunt, prolemque ex se videre creatam,  
 tum genus humanum primum mollescere coepit.  
 ignis enim curavit, ut alsia corpora frigus  
 non ita iam possent caeli sub tegmine ferre,  
 et Venus inminuit viris puerique parentum  
 blanditiis facile ingenium fregere superbum

Next they provided themselves with huts and skins and fire, and woman, united to man, went to live in one <place with him. The advantages of cohabitation> were learned, and they saw the birth of their offspring. It was then that human beings first began to become gentle: The use of fire rendered their shivering bodies less able to endure the cold beneath the pavilion of the sky; Venus tamed their strength; and children with their charming ways easily broke down the stern disposition of their parents.<sup>48</sup>

The change from isolated hunters and gatherers to a sedentary family mode of life is surprising because Lucretius does not explain precisely what caused the change from one mode of life to the other. What suddenly made human beings build huts, wear clothing, establish more lasting unions between the sexes, and have children that led to the formation of families? It seems that the transition is missing here; nothing in the description of the state of nature gives us readers the answer to this question.

However, it is possible to fill in Lucretius' account. We merely need to assume that small changes ultimately can aggregate and so lead to a bigger and more significant change: the formation of a habit. Take an everyday case first. One might imagine that Scott the couch potato decides to become more active by taking a daily stroll through the park. After a while, he then expands the routine further by power walking. Furthermore, we might imagine him after another while to start running and to be out longer and, in the process, to change his dietary habits in order to accommodate his body's increased need for calories. Ultimately, Scott might even compete

<sup>48</sup> Lucretius, *On the Nature of Things* V.1011–18. Trans. Smith, modified.

in a 5k race. At that point at the latest, we would probably no longer refer to him as a couch potato.

Now, Lucretius may imagine a similar process happened to humankind as a whole, albeit in reverse. Human beings, chancing upon fire and skins and inventing huts, quickly see the advantages such innovations – and others similar to them – afford. Gradually, they begin to adopt these innovations and make them part of their daily lives. These innovations and changes may initially be independent of one another and not necessitated by each other. They may emerge one after the other and be small and insignificant at first. The pace of the development can thus appear to be rather slow. Eventually, a tipping point is reached; taken together, certain innovations, which individually altered the state of human beings only insignificantly, lead to bigger changes and ultimately result in a significant transformation of human nature. Human beings thus lose the nature they had in the original state and become gentle, having become accustomed to innovations that make their lives easier.<sup>49</sup> Constant dripping wears away a stone; this is the meaning of “*tum . . . primum . . . coepit.*”

Human nature, then, changes and human beings become gentle and softer according to Lucretius’ account. As a consequence, human beings are also no longer as self-sufficient as they originally were. This means that there are new needs that arise as a result of their changed nature, and the presence of children probably contributes to these needs as well insofar as it occasions the need to create a safe environment, in which these children can grow up.<sup>50</sup> The family comes to be and with it the requisite knowledge required to live with one’s family members. Note that “advantages of cohabitation” in the passage quoted above is Martin Smith’s addition, as the angle brackets make clear; the corresponding line in Lucretius’ text is missing. However, there are good reasons in favor of Smith’s suggestion or one similar in kind. Once relationships between the sexes are no longer casual, human beings need to acquire some understanding of how to live with a partner and, as a result, relationships become sustainable. As “*cognita sunt*” at V.1013 indicates, some intellectual act, some act of

<sup>49</sup> “*Mollescere*” at V.1014 does not mean “to become weak,” but rather “to become soft/gentle,” as Manuwald convincingly argues (1980, 56, fn. 212). We should note, however, that there is a rhetoric contrast between “*mollescere*” at V.1014 and the “*durius*” humankind of V.926.

<sup>50</sup> On the Epicurean view, the love for one’s children is not natural. See fr. 525, 527–9 Usener (= Epicetetus, *Dissertationes* I.23.1, 5, and 7; III.7.19; IV.11.1.; Plutarch, *On Affection for Offspring* 495a, *Against Colotes* 1123a; and Lacantius, *Divine Institutes* III.17.6) as well as *PHerc.* 1012, cols. LXVI–LXVIII Puglia) along with McConnell 2017a (including references to older literature).

learning, takes place at this point of the development.<sup>51</sup> It seems very likely that this act pertains to some aspect of human interaction. Given the context of the passage that describes the first longer lasting relationships that are being formed, which probably amounts to the creation of the family, the lacuna probably contained the poem's first instance of human beings developing moral norms in regard to these relationships.

The family on its own, however, either is not enough to take care of all newly arisen needs or also creates new needs that need to be addressed. This is especially true for the need for protection. As a result, Lucretius turns to a second new kind of relationship that emerges at this stage: that between neighbors or family units, whose purpose it will be to make everyone safer. These new relationships are accompanied by the historical emergence of moral norms, which brings us to the most important passage in Lucretius' account of cultural development when it comes to justice:

tunc et amicitiam coeperunt iungere aventes  
 finitimi inter se nec laedere nec violari,  
 et pueros commendarunt muliebrequae saeculum,  
 vocibus et gestu cum balbe significarent  
 imbecillorum esse aequum misererier omnis.  
 nec tamen omnimodis poterat concordia gigni,  
 sed bona magnaue pars servabat foedera caste;  
 aut genus humanum iam tum foret omne preemptum  
 nec potuisset adhuc perducere saecula propago.

It was then, too, that neighbors eagerly began to make *amicitia*<sup>52</sup> one with another, not to hurt or to be harmed, and claimed protection for their children and womenfolk, indicating by means of inarticulate cries and gestures that it is fair [*aequum*] that the weak [*imbecillorum*] are pitied [*misererier*] by everyone. Although it was not possible for concord [*concordia*] to be achieved universally, the great majority kept their agreements [*foedera*] loyally. Otherwise, the human race would have been entirely extinguished at that early stage and could not have propagated and preserved itself to the present day.<sup>53</sup>

<sup>51</sup> Pace Lachmann's and Bernays' suggestions to emend "*cognita sunt*" to "*conubium*" and "*coniugium*," respectively. Bailey fills the lacuna with "laws of marriage." This proposal seems less convincing than Smith's, however, insofar as laws (*leges*) come to be only at a much later stage of development, as we will see in more detail below. There is no need to introduce an anachronistic notion at this point.

<sup>52</sup> This key term is left untranslated for now so as not to bias the reader, but its meaning will be discussed in detail shortly.

<sup>53</sup> Lucretius, *On the Nature of Things* V.1019–27. Trans. Smith, modified.



It is possible that the “*et . . . et . . .*” at V.1019–27 indicates that the formation of ties between neighbors happens at the same time as the family comes into being; that is, men and women form more lasting ties with each other. This would indicate that the developmental process for Lucretius includes parallel developments. However, such a reading is not necessary insofar as the “*et . . . et . . .*” is still compatible with the idea that one relationship comes into being before the other; the sociality of the family precedes the sociality of the wider community and so in contrast to other contractarian theories, the Epicurean social contract is not the product of completely isolated individuals, but recognizes a preexisting form of sociality (the family).

The rich passage just quoted is the first to describe the *historical emergence* of justice (*aequum*) (1) in the full sense as (2) a kind of agreement. Both of these points can be or, in fact, have been challenged, though, and so it is worth defending both of them in more detail, starting with the second point.

Some commentators have objected that the contingently and historically arising ties between neighbors are forms of *amicitia*, that is, friendships, and not agreements.<sup>54</sup> According to such a reading, friendship rather than social agreements would thus stand at the beginning of the communal life for the Epicureans. This would be especially interesting because social contract theorists typically do not accord much significance to the notion of friendship, which, by contrast, is a feature of virtue-based approaches to the political, such as the one by Aristotle that even features a specific kind of political friendship. The reading just proposed would thus highlight the political importance of Epicurean friendship. The suggestion also gains additional plausibility insofar as Protagoras, in his account of how political communities come to be in Plato, claims that the move from an original condition to a state of society is characterized by the emergence of “bonds of friendship [*desmoi philias*]”<sup>55</sup> rather than more straightforwardly agreements of any kind. As is well known, Protagoras is from Abdera and his account of how political community comes to be shares some features with the account of his fellow Abderite Democritus, from whom, in turn, Epicurus is typically taken to have borrowed many ideas. In stressing the idea of friendship at this point, Lucretius could emphasize

<sup>54</sup> See, for instance, Long 1985, 310; as well as Aoz and Boeri 2023, 25–32. Note that Smith translates *amicitia* twice as pacts and friendship: “Neighbors . . . began to make *pacts of friendship*.” Emphasis added. And Aoz and Boeri, based on Smith’s translation, even interpolate “*foedera*” into the translation, although the word is not found in line 1019.

<sup>55</sup> Plato, *Protagoras* 322c3.

features of the Epicurean account that have an Abderite origin, but that are elsewhere not highlighted in extant Epicurean texts. Furthermore, there is evidence in Cicero's *On Ends* that there were different accounts of friendship advanced by different Epicurean authors. Supposedly, "[t]here are also those [Epicureans]," of whom we do not know the identity, "who say that, among the wise, there is a kind of pact that they do not love friends less than themselves [*sunt autem, qui dicant foedus esse quoddam sapientium ut ne minus amicos quam se ipsos diligant*]." <sup>56</sup> This testimony does not allow us to infer that all types of friendship are indeed agreements, and it is an open question whether the friendship between sages that the Epicurean spokesperson Torquatus mentions in the passage is identical to the friendship we find in Lucretius. Nevertheless, Torquatus' comment would support the idea that at least in some circumstances some Epicurean philosophers understood friendship as a kind of agreement.

Despite these considerations, there is no need for an "Abderite" reading of lines 1019–27. As some commentators point out, "*amicitia*" need not be translated or in fact be understood as "friendship." <sup>57</sup> "*Amicitia*" can also mean "alliance" and so be a synonym for "*foedus*," which is used in the same passage quoted above and is a Latin equivalent of the Greek term "*sunthēkē*," which, as we shall see in more detail in Chapter 2, plays a prominent role in Epicurus' writings on justice and law. In addition, as we have seen already, what complicates matters is the fact that some Epicureans themselves seem to have understood friendship as kinds of agreement, and it may also be possible that the Epicureans understand friendship as "fellowship" rather than intimate bonds between people, that is, take them to come with only very minimal obligations. <sup>58</sup> As a result, the passage may not be asserting anything grandiose about friendship that would be unusual in any way. Lucretius' claim, by contrast, that the first alliance between neighbors concerns not harming and not being harmed (*nec laedere nec violari*) strongly echoes Epicurus' claim in the *Principal Doctrines* that agreements that are the basis for justice are over "not harming and not being harmed" (*mē blaptēin mēde blaptēsthai*). <sup>59</sup>

This brings us to the other point, the one regarding the use of the term "*aequum*." At line 1023, Lucretius for the very first time in the account of development claims that human beings make use of moral vocabulary or,

<sup>56</sup> Cicero, *On Ends* 1.70. Trans. mine.

<sup>57</sup> See, for instance, Mitsis 1988, 106, fn. 14; Müller 1991, 118–19; and Konstan 2008, 89–93.

<sup>58</sup> See O'Connor 1989, 168.

<sup>59</sup> *KD* 35. See also *KD* 31–3. Chapter 2 will discuss this idea in more detail.

more specifically, communicate that something is “*aequum*.” In doing so, human beings communicate that one given course of behavior is preferable to another – in this case, pitying the weak is preferable to not doing so – or to other courses of behavior. However, it is unclear what Greek word the Latin term “*aequum*” translates. It could translate either “*dikaion*” (just) or “*ison*” (equal or fair). In the latter case, justice might have its beginnings in the idea of weighing and determining equal shares. The development of the notion of justice would thus begin with the equal, that is, with situations in which human beings apportion shares. According to this reading, the act of apportioning would be conveyed by simple language, perhaps even exclusively by pointing. In support of this suggestion, Lucretius claims that human beings at this point in the process of cultural development only communicate “by means of inarticulate cries and gestures.”<sup>60</sup> One could then argue that the understanding of justice that the first human beings have (and that is captured in their preconception)<sup>61</sup> gradually evolves over time, and that it is not simple insofar as it presupposes the concept of equality.

While such a reading has some appeal *prima facie*, it ultimately fails to convince. First, in Epicurus and other Epicureans writing in Greek, we do not find the term “*ison*” in connection with justice. Of course, it is possible that we merely lack the relevant texts. However, it seems unlikely that such a key distinction is extant only in Lucretius. Second, Lucretius uses “*iustum*” once in its technical sense as “just” at III.950.<sup>62</sup> And so it is all the more surprising that book V, which contains a discussion of justice and the law, does not again use “*iustum*,” but “*aequum*” instead. It thus seems more likely that Lucretius is using “just” and “equal,” “*iustum*” and “*aequum*,” as synonyms. This is also confirmed by looking at V.1149 where “*aequum*” is used to describe the laws (“*legibus aequis*”). The context is the final stage of communal development: here, it does not make sense to say that the laws are merely “fair” in the sense of a precursor to the full-fledged notion of justice (that is, the *iustum* or *dikaion*). At this point, the

<sup>60</sup> For Campbell (2003, 279), “*balbe* here indicates that the setting is that of the origins of language, with the formation of justice made possible by the development of the first efficient communication system which, although primitive and still relying heavily on gesture, is advanced enough to transmit ethical concepts.” Lucretius is thus very optimistic about what can be achieved with only rudimentary language skills. It seems especially daunting that arrangements in regard to the weaker members of the community can be made without advanced, that is, fully developed, linguistic capabilities. Surely, human beings can apportion shares without language, but it is rather difficult, if not impossible, to convey the concept of equal shares without language.

<sup>61</sup> For a more detailed discussion of preconceptions, see Chapter 6.

<sup>62</sup> The other occurrence is at IV.1241.

laws are just in the full sense precisely because they are in accordance with the preconception of justice, that is, the practical understanding of justice available to agents at the time. In short, then, “*aequum*” must translate “*dikaion*” at V.1023; for the Epicureans, human beings first make agreements about what is just during the first phase of development, and not merely think about apportioning shares.<sup>63</sup> Indeed, that justice, on their view, is more robust can also be seen by the fact that it includes provisions for the weak, who although not equal to contracting agents, are equally protected by the agreements. It is to these provisions that we turn to next, since they are quite revealing of the nature of the agreement that comes to be at this point in the account.

The historical agreements over harming and not being harmed are made by the heads of the families, according to Lucretius at line 1021; they include an additional provision to care for women and children, that is, household dependents, which is at odds with the idea that women generally are contracting partners.<sup>64</sup> Although this is not explicitly stated, this setup seems to imply that the political head of the household, the one who can negotiate with the neighbors, is likely male and, as a result, that a patriarchic hierarchy is established at this point in the account. That there is no mention of women making agreements here (or in fact in any other Epicurean text that is extant) might be considered a bit surprising insofar as the Garden had women as members and, thus, in contrast to other philosophical schools in antiquity, is often seen as having relatively progressive views on women.<sup>65</sup> For example, Leontion is supposed to have written a treatise against Theophrastus, which is unfortunately not extant.<sup>66</sup> Even if the treatise did not actually exist, the very mention of the treatise is predicated on the plausibility that on the Epicurean view, a woman could have been the author of such a treatise; otherwise, the polemic would not hit its mark. Accordingly, it seems possible that at least some women had the requisite mental capacities to make agreements on the Epicurean view. Yet we should also note in this context that the second- to first- century BCE Epicurean Zeno of Sidon is supposed to

<sup>63</sup> On the potentially problematic preexisting standard of *aequitas* at this point in the account, see Mitsis 1988, 106, fn. 15.

<sup>64</sup> Pace Aoiz and Boeri 2023, 24, who claim that parents more generally are the contracting parties.

<sup>65</sup> For discussions of women in Epicureanism, see, for instance, Erler 1994, 287–8; Gordon 2012, 72–108; and Arenson 2023. On the role of women and other members of the Greek and Roman household as well as their legal relationship to men more generally, see, for instance, Pomeroy 1975; Reinsberg 1989; and Dixon 1992.

<sup>66</sup> Fr. 28 Usener (= Cicero, *On the Nature of the Gods* I.93; and Pliny, *Natural History* Preface 29).

have categorically asserted the imperfection of the female sex.<sup>67</sup> As a result, there is no indication of (1) whether the Epicureans thought that the capability to make agreements extended to all women (if they in fact believed that women are able to make agreements) or (2) whether the Epicureans also thought that given the reality of gender dynamics in the ancient world and the dominance of men in general, women (or at least most women) would ever be in social situations – outside perhaps the communities of friends – that would enable them to make agreements

At 1023, Lucretius furthermore observes in regard to the dependents to whom protection is extended that it is part of the agreement that “it is just [*aequum*] that the weak [*imbecillorum*] are pitied [*misererier*] by everyone.” This comment pertains to the question of what is agreed upon. Who the weak are who are mentioned in this passage is not clearly defined, and “*imbecillus*” is a word used only here in Lucretius. On a first reading, Lucretius could also make the more sophisticated point that the weaker members of the community more generally, perhaps first and foremost the elderly but also those with bodily and mental disabilities, ought to be the object of pity. On this reading, the social contract would be very quickly extended to needy relatives and perhaps even all members of society rather than being limited only to the core family members. However, “*imbecillus*” on a more restricted and perhaps safer reading could also merely refer to the women and children who were mentioned previously, not the infirm more generally. Put differently, although it seems theoretically possible that the Epicurean social contract can very quickly be extended to all, whether it actually will be extended in such a way will depend on whether the weak are (1) a threat to members of the community in terms of harm and (2) associated with a family in some way. If they are not (which is likely given their designation as “weak”) and no one has an interest in them qua dependent, it seems that there is no requirement to include them in the agreements of justice on the Epicurean view.

Whoever the weak may exactly be, it is especially striking that Lucretius comments at 1023 that the weak are to be *pitied*. At this point, some commentators argue that this *emotional reaction* is wholly distinct from the *benefit* of not harming and not being harmed that is also mentioned as the

<sup>67</sup> Zeno of Sidon, fr. 28 Angeli and Colaizzo (= Soranus, *Gynecology* III.3 Ilberg): “By nature the female sex differs from the male to the point that both Aristotle and Zeno the Epicurean say that the female sex is imperfect, but the male sex is perfect [φύσει τε τὸ θῆλυ τοῦ ἀρρενος διαφέρει μέχρι τοῦ καὶ Ἀριστοτέλην καὶ Ζήνωνα τὸν Ἐπικουρείον εἰπεῖν ἀτελὲς μὲν εἶναι τὸ θῆλυ, τέλειον δὲ εἶναι τὸ ἄρρεν].” Trans. mine.

content of the agreements that are being formed at this point.<sup>68</sup> Accordingly, the Epicurean account of how communities come to be would not only be a result of a calculation of what is beneficial, but also be driven by an independent feeling of compassion. However, this reading seems dubious. After all, line 1023 does not have to be taken as giving the *reason why* human beings act in a certain way in regard to the weak, but rather can be taken as an alternate description of the *course of action that is decreed by the agreement*. In other words, it is not the case that everyone is compassionate with the weak *because* they feel pity for them, but rather the agreement recognizes that compassionate behavior toward the weaker members of the community is the right or just (*aequum*) course of action. On this alternative reading, the *reason why* human beings behave benevolently toward the weak would still be wholly dictated by what is beneficial: it may be significantly better for human beings to live in a community in which the weak in general are not harmed, since such a community might be more stable overall and therefore safer than a community that antagonizes its weaker members, and human beings might prefer to live in a community in which they know that should they become injured or infirm, they will also not be harmed in any way.<sup>69</sup> In short, any kind of pity would still be grounded on what is beneficial, which, as we will see in more detail in the next chapter, functions as the natural ground of the Epicurean account.<sup>70</sup>

Finally, *On the Nature of Things* V.1019–27 makes clear that the situation that is created as a result of the agreements is not stable. Agreements are kept most of the time, but – as we will see in light of Lucretius’ later account of the development of civilization<sup>71</sup> – there is no way to sanction infringements at this stage. Here, we see once again Lucretius’ nuanced appreciation of the cultural achievements of this stage: although it is a deficit of this stage that concord (*concordia*) is not universal, it must – as Lucretius points out – at least be widespread, for otherwise, humankind as a whole would have died out. Put again differently, the

<sup>68</sup> Westphalen 1957, 34 and 78; and Boyancé 1963, 243 (*pace* Müller 1972, 42 and fn. 71). See also Diogenes of Oenoanda fr. 3 Smith, in which Diogenes appeals to his love of humanity (*philanthrōpon*) to aid (*epikourein*) foreigners (*zenoi*).

<sup>69</sup> Such a process of thinking would of course speak in favor of the second, more expansive reading of who is included among the weak that was distinguished above. Again, though, whether the social contract will be actually extended to all will likely depend on the particular circumstances.

<sup>70</sup> There is also some discussion of whether the Epicureans are engaging with the Stoic doctrine of *oikeiōsis* at this point. See Appendix A.

<sup>71</sup> See Lucretius, *On the Nature of Things* V.1151–60.

historical process of the establishment of justice must therefore move into a last, final phase.

In his commentary on *The Nature of Things* V, Gordon Campbell points out that the observation that human beings almost died out at this point in the account is surprising because the description of the original state was not at all violent.<sup>72</sup> It therefore seems odd that suddenly violence is so widespread (even if not ubiquitous). Campbell explains this by referring to rational choice theory and changing evolutionary strategies among human beings:<sup>73</sup> what worked for primitive human beings no longer works for human beings in the first phase of cultural development. Human beings undergo a change in their nature, and as a result, there is more violence among them. And this violence needs to be kept at bay, which is the purpose of the newly made agreements.<sup>74</sup> However, these agreements are – as we saw – not always kept, and remedying or at least attenuating these injustices will thus be a major task for the next phase of development.

In reply to Campbell, one may remark that his criticism presupposes that agreements are made only to keep human beings from harming *each other*. But as we will see in more detail in the next chapter, this would mean to unduly restrict the content of the agreements. After all, there is much evidence for violence committed by animals and that wild animals are a huge threat to human beings during the early phase of cultural development.<sup>75</sup> A better reading of lines 1025–7 is thus that mankind would die out because some human beings do not always wholeheartedly participate in communal measures designed to ward off any kind of attack, which indeed would pose a great danger to human beings who are now weakened in their natures and thus even more vulnerable to such threats.

In summary, in this section, we have seen that both the family and the first human communities as aggregations of families arise at some point in history, and that the first human communities arise via agreements, which in turn decree which behaviors are just and which are not. It is thus clear

<sup>72</sup> Campbell 2003, 254. <sup>73</sup> *Ibid.*, 258–61; see also the alternative solutions discussed at 282–3.

<sup>74</sup> This passage might also be seen as evidence for the fact that Lucretius tries to cover up the violence of the original state (see also Blickman 1989, 166, who makes the same claim in regard to a different passage). Lucretius needs to reintroduce violent elements in order to justify the necessity of introducing laws and sanction mechanisms, which are a key feature not only of the Epicurean account but also of the phenomenal reality. Alternatively, one could also understand Lucretius' comment as a rhetorical overstatement. The comment that concord was not pervasive during the first phase of cultural development would then merely stress that this state was not complete and that this state of development was not a Golden Age either.

<sup>75</sup> See also V.988–98.

that some sociality precedes the social contract, on the Epicurean view, and that the origin of Epicurean justice is conventional, even if we also already saw in the previous section that the *commune bonum*, which itself is not conventional, will also be important in making Epicurean agreements of justice. In the next section, we will see how the account is extended to the laws.<sup>76</sup>

#### 1.4 The *Logismos* Phase

During the third stage of development, justice is set on a more solid footing. It becomes codified into laws, which for the Epicureans are an extension of justice, bringing the developmental process that started in the original state to completion. Just like justice, the laws, on the Epicurean view, are thus a *historical* achievement. As a result, the Epicureans will also defend a kind of conventionalism in regard to the law, even if, just as in the case of justice, the conventional nature of the laws will ultimately be grounded in what is beneficial. By institutionalizing what is just and ultimately beneficial and putting in place enforcement mechanisms and punishments, the original agreements become binding in legal communities. While the deficit of the last phase (that agreements are often violated) is somewhat remedied, the resulting situation will not be perfect.

The development that leads to the establishment of the rule of law is not linear. In fact, it begins with the failure of the first attempts to set up government in the form of kingships:

Inque dies magis hi victum vitamque priorem  
 commutare novis monstrabant rebus et igni,  
 ingenio qui praestabant et corde vigebant.  
 condere coeperunt urbis arcemque locare

<sup>76</sup> One may note that it is quite striking how similar the Epicurean account of this stage of development is to what H. L. A. Hart observes in regard to “primitive” societies in *The Concept of Law* (2012 [1961], 91–2). Hart contends that for there to be a society without courts and legislature, one that lives only according to “primary rules of obligation,” certain conditions need to be fulfilled. First, the rules themselves must contain provisions according to which members of society do not harm each other. Second, if there is a tension in society between those who obey the rules and those who free ride, the free riders cannot be in the majority. And third, such a model is only applicable to small groups of people, not large-scale societies. The first two points are explicitly addressed by the Epicureans, as should be clear from the above discussion. The third point is not addressed by them, which perhaps is unsurprising, since exponential population growth is a modern, not an ancient phenomenon. An anonymous referee, however, points out that Lucretius’ account in *On the Nature of Things*, like the account of *Republic II*, does “associate the growth of the political community with the increase in the possibility of forms of deceit and a lack of direct interpersonal knowledge and affection.”



praesidium reges ipsi sibi perfugiumque,  
et pecudes et agros divisere atque dedere  
pro facie cuiusque et viribus ingenioque.

And more and more every day those who excelled in intellect and were strong in mind showed the others how to exchange their former way of life for new practices and, in particular, for the use of fire. Kings began to build cities and to choose sites for citadels to be strongholds and places of refuge for themselves; and they distributed gifts of flocks and fields to individuals according to their beauty, strength, and intellect.<sup>77</sup>

A problem in regard to this passage is whether “those who excelled in intellect and were strong in mind” of line 1107 are identical to the first kings of line 1109. This seems to be very likely, since a change in subject between the lines would be quite odd.<sup>78</sup> Understood in this way, then, the passage implies that the preeminent men/first kings use their superior capabilities to serve their own interest, not that of the public (see the pronouns *ipsi . . . sibi*). The preeminent men thus try to use their pre-eminence to circumvent the terms of the original contract. They try to create special privileges for themselves: They order cities and citadels to be built so they can have a safe residence. And this place of refuge is then used as a power basis in order to amass other privileges.

The attempt of the first kings to usurp power does not succeed. According to Lucretius, the initial kingships fail because the interests of all are not sufficiently taken into account.<sup>79</sup> In the process of accruing power, the kings use their wealth to persuade and deceive the many. As Lucretius writes, “no matter how much physical strength and beauty people possess, they follow in the train of the rich [*divitioris enim sectam plerumque sequuntur | quamlibet et fortes et pulchro corpore creti*].”<sup>80</sup> However, such a deception of the many is not successful for long. Strife

<sup>77</sup> Lucretius, *On the Nature of Things* V.1105–10. Trans. Smith, modified.

<sup>78</sup> See also Hermarchus, fr. 34 Longo Auricchio (= Porphyry, *On Abstinence* I.10 [quoted below]).

<sup>79</sup> A parallel passage in Epicurus is *KD* 7: “Some wanted to become reputed and admired, thinking that they acquire security from other human beings in this way. And so, if the life of those [human beings] is secure, then they have received Nature’s good. However, if it is not secure, they do not possess that which they desired from the beginning according to what is naturally appropriate [Ἐνδοξοὶ καὶ περίβλεπτοὶ τινες ἐβουλήθησαν γενέσθαι, τὴν ἐξ ἀνθρώπων ἀσφάλειαν οὕτω νομίζοντες περιποιήσεσθαι ὥστε, εἰ μὲν ἀσφαλὴς ὁ τῶν τοιοῦτων βίος, ἀπέλαβον τὸ τῆς φύσεως ἀγαθόν· εἰ δὲ μὴ ἀσφαλὴς, οὐκ ἔχουσιν οὐ ἔνεκα ἐξ ἀρχῆς κατὰ τὸ τῆς φύσεως οἰκείον ὠρέχθησαν].” Trans. mine. See also *KD* 6: “In order not to fear <other> human beings, there is the natural good of rule and kingship, with which one is possibly able to procure this <fearlessness> [Ἐνεκα τοῦ θαρρεῖν ἐξ ἀνθρώπων ἦν κατὰ φύσιν ἀρχῆς καὶ βασιλείας ἀγαθόν, ἐξ ὧν ἂν ποτε τοῦτο οἶός τ’ ἢ παρασκευάζεσθαι].” Trans. mine.

<sup>80</sup> Lucretius, *On the Nature of Things* V.1115–16. Trans. Smith.

and power struggles very soon result. These lead to the dethronement of the first kings.<sup>81</sup> This experience makes people aware of the necessity of introducing the rule of law:

inde magistratum partim docuere creare  
iuraque constituere, ut vellent legibus uti.  
nam genus humanum, defessum vi colere aevum,  
ex inimicitiis languerat; quo magis ipsum  
sponte sua cecidit sub leges artaque iura.  
acrius ex ira quod enim se quisque parabat  
ulcisci quam nunc concessumst legibus aequis,  
hanc ob rem est homines pertaesum vi colere aevum.

At length some of them taught the others to create magistracies and established ordinances, so that [the others] might want to use laws.<sup>82</sup> The human race, utterly weary as it was of leading a life of violence and worn out with feuds, was the more ready to submit voluntarily to the restraint of laws and stringent ordinances. The reason why people were sick and tired of a life of violence was that each individual was prompted by anger to exact revenge more cruelly than is now allowed by just laws.<sup>83</sup>

The passage above mentions both “laws” (*leges*) and “ordinances” (*iura*). According to standard Latin legal vocabulary, “*ius*” is a broader term, encompassing all kinds of moral norms, written and unwritten, while “*lex*” is narrower and refers to written law. However, both terms can also be used as synonyms. If Lucretius used the terms as distinct in meaning, he would claim that the new sanction mechanisms helped codify both written laws as well as the (unwritten) moral norms in human communities, which would make the latter more pervasive. This would be difficult to make sense of. In the case of norms, societal reprimanding can be effective to enforce them. In this vein, it might be effective to reprimand agents in regard to certain behavior, for instance, to shout at them to enforce a social norm. But it seems surprising that such a way of reprimanding agents was not available in the previous stage of societal development. After all, the problem of the previous phase is that there are no sanction mechanisms in place to create pervasive adherence to norms and that such pervasiveness can only come

<sup>81</sup> *Ibid.*, V.1136–42.

<sup>82</sup> The Latin text is not clear whether the preeminent men teach others to establish ordinances (as on Bailey’s translation) or whether the preeminent men establish the ordinances themselves (as on Smith’s translation quoted here). However, the parallel passage in Hermarchus, fr. 34 Longo Auricchio (= Porphyry, *On Abstinence* 1.7–12) notes that not everyone will become a law-giver, which makes the latter reading of the Lucretius passage more likely than the former.

<sup>83</sup> Lucretius, *On the Nature of Things* V.1143–50. Trans. Smith, modified.

about by the punishments that are set down in conjunction with the law. It seems more likely, then, that Lucretius is using “*lex*” and “*ius*” as a hendiadys to express the same idea: codified law. This would also fit better with the Greek heritage of Epicurean thought. Epicurus, writing in Greek, had no way of distinguishing “*lex*” and “*ius*.” In Greek, the word “*nomos*” covers the meaning of both moral convention and law, both written and unwritten.

The passage thus makes it clear that for Lucretius, the rule of law (“codified law”) emerges as the result of a process that heavily involves trial and error and the recognition of what is best *faute de mieux*. Furthermore, as has been argued, Lucretius at this point draws on what seems like a theory of political change, according to which one form of government devolves into the next.<sup>84</sup> The original kingship deteriorates into a tyranny, the tyranny degrades into an oligarchy, and ultimately a form of government emerges that in virtue of its magistrate (*magistratus*) has some resemblance with the republican political order of Lucretius’ day. Such a description is notably different from one that would capture the political realities of Athens in Epicurus’ time, which lost at least some autonomy by becoming part of the empire of Alexander the Great. Therefore, Lucretius’ account at this point is very unlikely a direct adoption of Epicurus’ ideas, if indeed Epicurus himself dealt with this topic. (Unfortunately, no discussion is extant.) However, this is not to say that the idea of a change in forms of political order that is described in Lucretius is entirely novel, either. As is well known, other thinkers such as Plato, Aristotle, and – most systematically – the second-century BCE historian Polybius discuss the idea that certain forms of political order will decline into other forms, and it would be a desideratum of future scholarship to find out to what extent Lucretius may – either directly or indirectly – have found inspiration in these writers.

In this context, we should also note that it is even unclear which form of political order is truly the best on the Epicurean view and so which one Epicurus himself would have endorsed. While Abderite accounts of how political communities come to be, like those of Democritus and Protagoras, are often taken to be defenses of democratic ideology,<sup>85</sup> it is

<sup>84</sup> Schrijvers 1996 distinguishes six distinct phases in Lucretius. However, this distinction does not seem quite so clear, even if it is certain that Lucretius gives an account of how different forms of political order develop into others.

<sup>85</sup> Farrar 1988 discusses both authors as proponents of democratic thinking. For Democritus as a defender of democracy, see, for instance, Paneris 1977, 88–9 (including an overview of the literature up to 1977); Spinelli 1991; Mejer 2004; and Rechenauer 2019. The claim that Protagoras is in favor of democracy is defended in Moore 1988; Beresford 2013; and Manuwald 2014; among

not clear that this is also true of the Epicureans. There is, for instance, some evidence that the Epicureans endorsed monarchical kingships at least on some occasions, namely, on the condition that these kingships further Epicurean ends,<sup>86</sup> even if generally Epicureans were advised to avoid contact with kings.<sup>87</sup> The basic idea here is very simple: if a king is able to free Epicurean agents to live the good life without having to worry about political matters, then such an arrangement seems very favorable. In the same vein, Philodemus wrote a treatise *On the Good King According to Homer*, which in part is a work of literary criticism. More importantly, however, the work can be seen as an outline of the characteristics of a good ruler, with the intention of providing a model that real-life rulers can follow, a kind of mirror of princes like Xenophon's *Education of Cyrus*.<sup>88</sup> Moreover, Philodemus' work was dedicated to the Roman senator Piso, who was Philodemus' patron.<sup>89</sup> And, in the same vein, Plutarch also claims that the Epicurean Colotes (fourth to third century BCE) dedicated the treatise, in which he systematically refuted the doctrines of other philosophers, to Ptolemy II Philadelphus.<sup>90</sup> This again seems to indicate that the Epicureans at least in some instances had direct relationships with rulers and were favorable toward kingships. Nevertheless, as we will see in more detail in the course of this book, the Epicurean attitude toward the political is often dependent on particular circumstances. It therefore seems most prudent not to single out a given form of political organization as the preferred one, but rather to ascribe to the Epicureans a conditional attitude in regard to the question of which form of political order is best as well.

Having discussed the form of political order that is to be established, let us next turn to *how* the rule of law is established in Lucretius' account. For the Roman author, even those who have intellect are prone to errors and thus to "forgetfulness" when it comes to what is best for society as a whole. As a result, different preeminent men are needed, who give the laws after the first kingships fail. These men are more mindful of what is beneficial to all than the first kings were, and so we see clearly at this point – more clearly than when the agreements of justice emerged – that Epicurean legal agreements are not purely conventional but importantly need to take into consideration what is beneficial for everyone.

others. However, this claim is more controversial than the one about Democritus. For instance, see the critical discussion in Hoffmann 1997, 41 and 63–4.

<sup>86</sup> For a more detailed discussion, see McConnell 2010 as well as Fish 2011.

<sup>87</sup> Plutarch, *Against Colotes* 1127a. <sup>88</sup> On Philodemus' work, see Asmis 1991 and Fish 2018.

<sup>89</sup> Philodemus, *On the Good King According to Homer*, col. XLIII.16–20.

<sup>90</sup> Plutarch, *Against Colotes* 1107e.

Furthermore, in stark contrast to the previous phase of societal development when all human beings directly agreed on what was to be just, this phase is no longer characterized by a joint effort of all. Instead, the hallmark of this phase of development is that distinct individuals are the driving force behind development, namely, those who have superior intellectual capacities. The majority of the population is left out. Although *all* human beings have some capabilities to grasp the basic moral vocabulary in the first cultural phase (after all, this capability is part of their nature and a prerequisite for society to function), not all have the ability to teach others and lead the way to introduce new ways of life.<sup>91</sup> In order to do this, different, superior intellectual capabilities are required. These, Lucretius seems to assume, are not distributed in the same way as the basic ability to get along with each other and form basic alliances. Therefore, during this phase of the development of civilization, some preeminent individuals are the principal agents of change.

Yet it would be wrong to think that the many play no role whatsoever in establishing the rule of law. The many concur with the laws that are given by their own will (*sponte sua*), likely because they have instrumental reasons to do so.<sup>92</sup> The process of law-giving nevertheless involves a form of consent, namely, insofar as the many decide that it is right to adhere to certain laws; the laws are not merely imposed on them.<sup>93</sup> This observation is confirmed by Hermarchus, who uses the verb “assent [*sugchōreoō*]” to describe what the many do: “From the outset, no force was used to establish any of the laws, written or unwritten, which are still in use and are suited for handing on: the people who would use them also assented to them [Οὐδὲν γὰρ ἐξ ἀρχῆς βιαίως κατέστη νόμιμον οὔτε μετὰ γραφῆς οὔτε ἄνευ γραφῆς τῶν διαμενόντων νῦν καὶ διαδίδοσθαι πεφυκότων, ἀλλὰ συγχωρησάντων αὐτῶ καὶ τῶν χρησαμένων].”<sup>94</sup>

At this point, again, a comparison with Abderite theories of how the political communities come to be is interesting, even if these theories do not explicitly mention agreements as a means to move from the original state to a state of society.<sup>95</sup> Democritus very much stresses the idea of

<sup>91</sup> After all, not everyone in Epicureanism has the capability of becoming a sage. See fr. 226 Usener (= Clement of Alexandria, *Stromata* I.15, 130.37 Sylburg and Diogenes Laërtius, *Lives of Eminent Philosophers* X.117).

<sup>92</sup> Lucretius, *On the Nature of Things* V.1147. <sup>93</sup> Pace Farrington 1953, 334 and passim.

<sup>94</sup> Hermarchus, fr. 34 Longo Auricchio (= Porphyry, *On Abstinence* I.8.1.). Trans. Clark, modified.

<sup>95</sup> Note that the distinction between the formation of communities and the formation of the state is not clear in these theories.

concord (*homonoia*) as an important principle of political unity in his philosophy, even if this term is not used in the account of cultural development.<sup>96</sup> Accordingly, one might understand the willingness of the people to come together and express their support for the new rulers that is described in Lucretius and Hermarchus as comparable to the concord that Democritus takes to be instrumental for the coming to be and functioning of the political communities.<sup>97</sup>

It would be rash to conclude that the newly introduced laws are a hands-down triumph of justice for the Epicureans. During the *phusis* phase, human beings develop a notion of the *aequum*, but justice cannot triumph because it is not pervasive enough; there are many free-riders, which imperils the existence of human communities. During the *logismos* phase, the sanction mechanisms that accompany the law help establish the pervasiveness of justice. From now on, infringements against moral norms are prosecuted more effectively. This limits feuds and makes sure that there are clear ways of deescalating conflicts. But this positive aspect of the law is accompanied by the following downside according to Lucretius:

inde metus maculat poenarum praemia vitae.  
circumretit enim vis atque iniuria quemque  
atque, unde exortast, ad eum plerumque revertit,  
nec facilest placidam ac pacatam degere vitam  
qui violat factis communia foedera pacis.  
etsi fallit enim divum genus humanumque,  
perpetuo tamen id fore clam diffidere debet;  
quippe ubi se multi per somnia saepe loquentes  
aut morbo delirantes protraxe ferantur  
et celata <diu> in medium et peccata dedisse.

Ever since that time [when laws were introduced] fear of punishment has poisoned the blessings of life. Violence and hurt<sup>98</sup> enmesh all those who practice them: they generally recoil on the wrongdoers, and it is not easy for those who by their actions violate mutual pacts of peace to pass a placid and peaceful life; for even if their crime goes undetected in heaven and on earth, they are bound to fear that it will not remain hidden forever. And indeed many people, so it is said, by talking in their sleep or in the delirium of

<sup>96</sup> DK 68 B 250 and 255 (= Stobaeus, *Anthology* IV.1.40 and IV.1.46).

<sup>97</sup> Lucretius explicitly mentions *concordia* at V.1024. See also above.

<sup>98</sup> The word that is translated as hurt here is "*inuria*," which could also mean "injustice." The point of the passage, however, is not that justice and its opposite came to be when the laws were introduced. We already saw that justice came to be at an earlier stage in the process of development of communal life.

disease, have betrayed their own guilt and disclosed long hidden matters and their misdeeds.<sup>99</sup>

In other words, a new kind of fear makes its appearance at this point of the process of societal development. It is true that the laws can first be said to offer advantages. For instance, those who abide by the law are surely better off than they would be in a society without laws, for it must be better for them to live in a society free from random violence. Likewise, those whose “blessings are poisoned by the laws” seem to be precisely those who do not abide by the law; those who abide, by contrast, can be thought to have nothing to fear. Yet laws introduce fear into the world, and if the goal of Epicurean philosophy is to remove fear overall, the laws, on the Epicurean view, cannot, as David Konstan rightly observes, be an unequivocally good thing, even if they yield certain advantages.<sup>100</sup> Most importantly, the introduction of the laws is linked with the coming to be of new irrational fears that were completely absent from the human life of the original condition. Recall here that the discussion of gods and religion immediately follows the discussion of the fear that results from punishments associated with the laws, and the fear connected with the laws is importantly linked with the fear of the gods.<sup>101</sup> Philodemus observes that there were different ways in which stories of the gods were introduced into the world.<sup>102</sup> One of these is that individuals tell stories about the gods to procure their own security. While this description is not explicitly linked to phases in human development and it is in fact unclear whether Philodemus is making a developmental claim at all, this description is reminiscent of the first kings in Lucretius who usurped power to be safe and of what the law-givers could have done in order to make sure that their laws are more widely obeyed.

In the same vein, Diogenes of Oenoanda discusses the connection between laws and divine punishments in what is today referred to as the “Theological Physics Sequence” of his inscription. He makes the related point that instilling the fear of the gods is not an effective means to prevent

<sup>99</sup> Lucretius, *On the Nature of Things* V.1151–60. Trans. Smith, modified.

<sup>100</sup> Konstan 2008, 119–20. See also Müller 1972, 72–3; and Blickman 1989, 175. *Pace* Manuwald 1980, 59, fn. 219, who denies that there is anything negative about the law. On the role of fear in regard to obeying the law, see also Chapter 5.

<sup>101</sup> See Lucretius, *On the Nature of Things* V.1161–240; Konstan 2008, 112–19; and Perelli 1967, 222.

<sup>102</sup> Philodemus, *On Piety* I.2150–81 Obbink. A similar account is also found in Hermarchus: The first law-givers first try to frighten those who do not obey with punishments (fr. 34 Longo Auricchio = Porphyry, *On Abstinence* I.8.2). Later, they also add a religious dimension to keep the many from breaking the law (ibid. I.9.4).

people from doing wrong. And this comment seems to be aimed at individuals who have attempted to do this or think that it is necessary:

φασί γάρ τινες μή συμφέρειν τῷ βίῳ τὸ δόγμα τοῦτο. τοὺς γὰρ ἀνθρώπους καὶ ἐπὶ τοῦ παρόντος μὲν ἀδικοπραγεῖν ἐφ' ὅσον δὴ ποτε· ἂν μέντοι καὶ τῶν ἐκ θεῶν φόβων ἀπολυθῶσι, τελέως ἀδικοπραγήσειν, ἐγ δὲ τούτου συνχυθῆσθεσθαι τὸν ὄλον [βίον. τοιοῦτοι] μὲν καὶ ν[ῦν πε]φ[ύ]κασι[ν] οἱ μὴ [δ]ε[δ]οίκατες τοὺς θεοὺς ([συ]νκεχωρημένον [εἴ]η τ[οῦ]το· εἰ γὰρ ἔδεδοίκεσαν, οὐκ ἂν ἡδίκουν). [τ]ῶν δ' ἄλλων ἀποφαινομαι τοὺς μὲν φυσικῶν ἀπτομένου<ς> λόγων μὴ διὰ τοὺς θεοὺς εἶναι δίκαιους, διὰ δὲ τὸ βλέπειν [δ]ρθῶς τὰς τε ἐπιθυμίας τίν' ἔχουσιν φύσιν κα[ί] τὰς ἀλγηδόνας καὶ τὸν θάνατον (πάντη τε γὰρ πάντως ἢ διὰ φόβον ἢ διὰ ἡδονὰς ἀδικοῦσιν ἀνθρώποι), τοὺς δ' αὖ χυδαίους διὰ τοὺς νόμους εἶναι δίκαιους, ἐφ' ὅσον γέ εἰσιν δίκαιοι, καὶ τὰς ἀπὸ τούτων ἐπικρεμαμένας αὐτοῖς ζημίας. ἀλλὰ κἂν ὧσιν τινες ἐν αὐτοῖς διὰ τοὺς θεοὺς εὐγνώμονες, οὐ διὰ τοὺς νόμους, ὀλιγοὶ δὲ οὔτοι· καὶ δυ' ἢ τρεῖς μόλις κατὰ μεγάλας πληθῶν ἀπτομας εὐρισκόμενοι, βεβαίως οὐδὲ οὔτοι διακαιπραγοῦσιν.

For some say that this doctrine [that is, that the gods are not to be feared] does not benefit our life, for human beings even in the present situation act wrongly so far as they possibly can; that if, however, they are also released from their fears derived from the gods, they will act completely wrongly, and in consequence the whole [of life] will be confounded. However, [people of such behavior] are even now those who do not fear the gods ([let] this [be] agreed; for if they feared the gods, they would not do wrong). But, as for the others, I declare that those of them who grasp the arguments based on nature are not just on account of the gods, but on account of their having a correct view of the nature of desires and pains and death (for indeed invariably and without exception human beings do wrong either on account of fear or on account of pleasures), and that ordinary people on the other hand are just, insofar as they are just, on account of the laws and the penalties, imposed by the laws, hanging over them. But even if some of their number are conscientious on account of the gods, rather than on account of the laws, they are few; only just two or three individuals are to be found among great segments of multitudes, and not even these are steadfast in acting justly.<sup>103</sup>

<sup>103</sup> Diogenes of Oenoanda, fr. 167 II.4–III.14 + 126.I.1–III.4 Smith. Trans. Hammerstaedt and Smith, modified. In contrast to Diogenes' skepticism regarding the efficiency of the fear of the gods as an instrument to compel people to be just, Philodemus seems to be more optimistic in regard to what the fear of the gods may accomplish. See *PHerc.* 1251 (= Philodemus, *On Choices and Avoidances?*), col. XII.4–19 Indelli and Tsouna-McKirahan. As Hammerstaedt and Smith observe, the Epicureans' unnamed opponents (*tines*) may be the Stoics here (since the Stoics are also Diogenes' target a little later in the text).



Accordingly, one may say that, on the Epicurean view, the fear of the gods, which is one of the worst fears that Epicureanism combats (as the Fourfold Remedy makes clear),<sup>104</sup> is at least in part connected to the introduction of the law, since the latter seems to have precipitated the necessity of the former. Again, then, this should make clear that the introduction of the law on the Epicurean view cannot be all positive.

In summary, we have seen that the laws, just like the agreements of justice, come to be by conventional means during a second phase of communal development. Likewise, the laws are a historical product on the Epicurean view. However, they are also established in light of what is beneficial to all, hinting at the natural side of Epicurean justice (that will be more fully explored in the next chapter).

### 1.5 Epicurean Social Contract Theory

This chapter showed that the Epicurean theory of the social contract clearly distinguishes between (1) an original state; (2) a *phusis* phase of development, during which human beings unite for the first time; and (3) a *logismos* phase, during which human beings create legal and political states. Accordingly, these three different stages of development correspond to different degrees of historical establishment and human knowledge of justice and the law, which according to the Epicureans do not exist by nature. While neither justice nor laws exist in the original state, the *phusis* phase features justice without laws. Finally, the *logismos* phase features both justice and laws.

The chapter also showed that for the Epicureans, human beings at the beginning of the account are not “by nature” social beings (as they are, for instance, for Aristotle or the Stoics), but rather self-sufficient beings who do not need to live with others. The transition from the original state of human beings to the life with others (during the *phusis* phase) is caused by a change in human nature and needs; a sedentary lifestyle, family ties, and technological achievements affect their nature gradually, but importantly, and this change is accompanied by new desires, for instance, of protecting both the agents themselves as well as their loved ones. Moral norms such as the just (*aequum*) first come into being at this stage of development, as a historical achievement, by means of an agreement, once the family as a more basic form of sociality has already emerged. As was emphasized above, while agreements do play a key role in the account, the agreement

<sup>104</sup> Philodemus, *To the ...*, col. V. 8–13 Angeli. See also *KD* 1.

are made with an eye toward what is beneficial, which itself is not a conventional feature (as will be argued in more detail in the next chapter).

After the coming to be of justice, life in community is still fraught with difficulties, on the Epicurean view: preeminent men usurp political power in order to use it for their own ends, leading to a state of strife. As a response, laws are introduced as a check to those in power, but they are a mixed blessing: they introduce a new kind of fear into the world.

While more needs to be said about the natural feature of Epicurean justice to see how exactly the Epicureans argue for a middle position in the *nomos-phusis* debate, the Epicurean multistage developmental account of how justice and law come to be certainly invites comparisons to early modern conceptions of the social contract. Accordingly, the chapter will close with a few remarks on some commentators' attempts to assimilate the Epicurean contractarianism to that of Thomas Hobbes, primarily on the strength of the idea that the original state in Epicurus is a violent or potentially violent state: a war of all against all.<sup>105</sup>

On the basis of the close investigation of the textual evidence, one can easily show that such an assimilation to Hobbes' theory of the social contract is unwarranted. First, Lucretius recognizes advantages and disadvantages of the original state, which is a wholly negative condition in Hobbes. In addition, the reference to Hobbes is misleading insofar as the latter does not discuss the creation of the society at all in his theory, but rather exclusively focuses on the creation of the state. Put differently, there is no separate discussion of a *pactum unionis* and a *pactum subjectionis* in Hobbes as there is in Epicurean authors, since the former does not at all discuss the emergence of the sociality prior to the social contract (as the Epicureans do). Furthermore, according to Hobbes, human nature is constant throughout his account: dominated by fear, man is a wolf to man. Yet this is not true according to the Epicureans: they stress that human beings undergo a change in human nature (prior to entering society) and only this change makes it necessary that societies come to be. Likewise, Epicurean agents are not motivated principally by fear. In fact, it is only the creation of the state and the connected emergence of religion that really instills human beings' anxieties (especially in regard to the gods).

If one had to relate the Epicurean account of the social contract to a schema of an early modern account of the social contract, Jean-Jacques

<sup>105</sup> For references and discussion, see Robitzsch 2017 (*pace* Spinelli 2019, 389–90; and Perelli 1967, 166–71). See now also Aoiz and Boeri 2023, 6, 16, 33, and 160.

Rousseau's version would be a much better fit than Hobbes'.<sup>106</sup> Rousseau endorses the key Epicurean idea that human beings undergo a change prior to entering society. And in addition to this, he not only assumes that the original state is an overall peaceful state of existence but he also distinguishes between the bad process of the formation of society (described in the *Second Discourse*) and the more positive and later project of creating a better society in *On the Social Contract*, which in some ways might be said to correspond to the Epicurean *logismos* phase that features the emergence of the rule of law.

<sup>106</sup> For a detailed discussion of the similarities between the Epicurean and the Rousseauian account, see Müller 1997.