

the review of
metaphysics

a philosophical quarterly

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Source: *The Review of Metaphysics*, Sep., 2006, Vol. 60, No. 1 (Sep., 2006), pp. 17-53

Published by: Philosophy Education Society Inc.

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PLATO'S *MINOS*:
THE POLITICAL AND PHILOSOPHICAL CONTEXT
OF THE PROBLEM OF NATURAL RIGHT

V. BRADLEY LEWIS

THE BRIEF DIALOGUE ENTITLED *MINOS* is one of the thirty-five dialogues attributed by the tradition to Plato. It has often been regarded as a foundational document in the history of legal philosophy.¹ It has also usually been thought—despite its place in the Thrasyllian tetrologies and the testimony of Diogenes Laertius—to have been written by someone other than Plato.² This paper does not address the question

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¹ See for instance Werner Jaeger, "Praise of Law: The Origin of Legal Philosophy and the Greeks," in *Interpretations of Modern Legal Philosophy: Essays in Honor of Roscoe Pound*, ed. Paul Sayer (New York: Oxford University Press, 1947), 369–70; Anton-Hermann Chroust, "An Anonymous Treatise on Law: The Pseudo-Platonic *Minos*," *Notre Dame Lawyer* 23 (1947): 48; Huntington Cairnes, *Legal Philosophy From Plato to Hegel* (Baltimore: Johns Hopkins University Press, 1949), 31–2, and "What is Law?" *Washington and Lee Law Review* 27 (1970): 199; Roscoe Pound, *An Introduction to the Philosophy of Law*, rev. ed. (New Haven: Yale University Press, 1954), 6; R. F. Hathaway and L. D. Houlgate, "The Platonic *Minos* and the Classical Theory of Natural Law," *American Journal of Jurisprudence* 14 (1969): 115.

² The case against Platonic authorship of the *Minos* was most clearly stated in August Boeckh, *In Platonis qui vulgo fertur Minoem* (Halle: Hemmerde, 1806) and was later repeated in Friedrich Schleiermacher's 1818 introduction to his translation of the *Minos* (reprinted in *Über die Philosophie Platons*, ed. Peter M. Steiner [Hamburg: Felix Meiner Verlag, 1996], 171–3), W. A. Heidel, *Pseudo-Platonica* (Baltimore: Friedenwald, 1896), 39–43, and Josef Pavlu, *Die Pseudoplatonischen Zwillingssdialoge Minos und Hiparch* (Vienna: Verlag de K. K. Staatsgymnasiums, 1910). The main arguments can be summarized thus: the *Minos* is too stylistically crude, philosophically simplistic, and too full of just plain bad argument to be a work of Plato. Boeckh instead ascribed it to a minor Socratic, Simon the cobbler, mentioned by Diogenes Laertius (2.122–3) as having taken notes on his conversations with the master, which he later used to compose dialogues, one of which was called *Peri nomou*. Margherita Isnardi, "Una Nota al 'Minosse' Pseudoplatonico," *La Parola del Passato: Rivista di Studi Classici* 9 (1954): 45–53, attributed the *Minos* to an author "se non individuabile nella sua identità precisa, almeno da considerarsi gravitante nell'orbita della prima Academia postplatonica" (52), largely on the basis of passages she took to

of authenticity directly.³ It rather concerns the substantive teaching of the *Minos* about its explicit subject, law.⁴ While the *Minos* has been regarded as foundational to legal philosophy, it has, more specifically, been seen by some as foundational in the history of natural law theory.⁵ Conversely, it has also been interpreted as offering a largely procedural theory of law.⁶

It would seem a stumbling block for any natural law reading of the *Minos* that the word “nature” (*phusis*) is never uttered in the dia-

be quotations from the authentic dialogues. Among the other scholars who reject Platonic authorship are Jaeger, “Praise of Law,” 369 and 375 n. 74; Chroust, “An Anonymous Treatise on Law,” 47, and “A Note to the Pseudo-Platonic Dialogue *Minos*,” *American Journal of Jurisprudence* 15 (1970): 171–4; Jerome Hall, “Plato’s Legal Philosophy,” *Indiana Law Journal* 31 (1956): 199; A. E. Taylor, *Plato: The Man and His Work*, 6th ed. (New York: Humanities Press, 1952), 540; Holger Thesleff, *Studies in the Styles of Plato*, *Acta Philosophica Fennica*, vol. 20 (Helsinki: Fennica, 1967), 13. Paul Shorey, *What Plato Said* (Chicago: University of Chicago Press, 1933), 425, suggested that the dialogue might have been partly written by Plato and partly by someone else. Most recently, the critical case has been made in Christopher Rowe, “*Cleitophon* and *Minos*,” in *Cambridge History of Greek and Roman Political Thought*, ed. Christopher Rowe and Malcolm Schofield (Cambridge: Cambridge University Press, 2000), 303–9.

³ While modern scholars are largely opposed to Platonic authorship, the weight of tradition is largely on its side, and, for what it is worth, it seems to me that absent strong evidence to the contrary, the tradition deserves the utmost respect. The most detailed case for Platonic authorship was made by George Grote, *Plato and the Other Companions of Sokrates*, 3d ed., vol. 1 (London: John Murray, 1888): 93–7. Grote shared the view that the *Minos* was inferior, but he argued for Platonic authorship. His main reason for the former judgment was that the reasoning in the dialogue was “confused and unsound” and “illogical” (88, 95). If this standard were sufficient to exclude a dialogue from the corpus Platonicum, however, Grote argued, one would have to cast doubt on the *Phaedo*, since its argument for the immortality of the soul is so bad! Grote has a point here, if one ignores the dialogue form and assesses the arguments offered in the dialogues simply by the canons of logic, as Grote evidently does. For defenses of Platonic authorship see also Glenn R. Morrow, *Plato’s Cretan City: A Historical Interpretation of the “Laws”* (Princeton: Princeton University Press, 1960), 35–9; and William S. Cobb, “Plato’s *Minos*,” *Ancient Philosophy* 8 (1988): 187–207, especially 187–9.

⁴ *Peri nomou* is the second title given the *Minos* in the manuscripts and is reported in Diogenes Laertius’ list of dialogues (3.60). The second titles are attributed by Diogenes to Thrasyllus, who arranged the dialogues into tetralogies, although they may be much older, perhaps even Platonic. See R. G. Hoerber, “Thrasyllus’ Platonic Canon and the Double Titles,” *Phronesis* 2 (1957): 10–20.

logue. Moreover, there are moments when the dialogue does seem to suggest a conventionalist view of law in its late focus on the character of Minos himself, a legislator whom the tradition also describes as a brutal despot. Indeed, one recurrent argument against Platonic authorship of the *Minos* is what seems to be an incoherence between the first part of the dialogue, with its focus on arriving at an adequate definition of law, and the conclusion, which focuses on the legendary Kretan ruler, Minos.⁷ In what follows, I offer an interpretation of the *Minos* that has three goals: first, it shows in what sense the *Minos* can and cannot be read as supporting the theory of natural law; second, and related to the first point, it shows how the dialogue is a coherent whole by relating the discussion of Minos to the discussion of law; third, following these two points, it shows the relevance of the *Minos* to questions that are central to the Western tradition of legal philosophy.

The *Minos* does not, I will argue, offer a full-blown natural law theory. Rather, it displays the context in which reflection on the possibility of natural right occurs. This context is both philosophical and political and suggests the sort of inquiry conducted in Plato's much

⁵ See for instance Grote, *Plato*, 421–5; Shorey, *What Plato Said*, 425; Jaeger, "Praise of Law," 370–1; Chroust, "An Anonymous Treatise on Law," 48–9; Cairnes, *Legal Philosophy from Plato to Hegel*, 33–7; Guido Fassò, *Storia della filosofia del diritto*, vol. 1 (Bologna: Società editrice il Mulino, 1966), 78–9; Hathaway and Houlgate, "The Platonic *Minos*"; and compare Joseph P. Maguire, "Plato's Theory of Natural Law," *Yale Classical Studies* 10 (1947): 153; M. B. Crowe, *The Changing Profile of the Natural Law* (The Hague: Martinus Nijhoff, 1977), xi; Julia Annas, *The Morality of Happiness* (New York: Oxford University Press, 1993), 303 n. 47; Robert P. George, "Natural Law and Civil Rights: From Jefferson's 'Letter to Henry Lee' to Martin Luther King's 'Letter from Birmingham Jail,'" *Catholic University Law Review* 43 (1993): 149–50.

⁶ Judith Best, "What is Law? The *Minos* Reconsidered," *Interpretation* 8 (1980): 102–13.

⁷ Shorey, *What Plato Said*, 425. Jaeger, "Praise of Law," 370–1, takes the introduction of Minos as perfectly coherent, but holds that Minos serves as an allegory, as does Chroust, "An Anonymous Treatise," 52–3. I suggest below that he be taken more literally. Hathaway and Houlgate, 107, are closer to the truth in seeing him as ironic, but even this is not quite right. Best, "What is Law?" 102, also reads the dialogue as a coherent whole, as does Leo Strauss, "On the *Minos*," in *The Roots of Political Philosophy: Ten Forgotten Socratic Dialogues*, ed. Thomas L. Pangle (Ithaca: Cornell University Press, 1987), 67–79.

longer and more constructive dialogue, the *Laws*.⁸ The *Minos* accomplishes these tasks first by showing the aspiration of law to truth, while grappling with the obvious fact of diversity in human laws, often thought to count as evidence against natural law. But the dialogue also suggests how that diversity is compatible with an account of the human good as the object of political life and of legislation. Second, the *Minos* highlights, as the context in which law and legal authority must be understood, the concrete origins of law and political authority. This is the purpose of the discussion of Minos in the dialogue. Finally, in doing these things, the *Minos* suggests the limitations of modern theories of law—both natural law and positivist theories—by stressing the importance of the political context of law and legal authority. At the same time, it points beyond politics to the transcendent good of philosophical inquiry. If this interpretation is correct, the *Minos* is a brief, but nevertheless subtle and penetrating work. This does not prove Platonic authorship, but it does support it by answering those critics who have seen in it an inferior production unworthy of Plato.

My method in approaching the dialogue is that of the interpretive essay. The dialogue form of the *Minos* with its dramatic elements as well as its relatively brief compass make this a manageable approach that takes the whole of the work seriously while still allowing the most important philosophical questions to emerge clearly.⁹ Moreover, many of the judgments against Platonic authorship seem to rest (however consciously or unconsciously) on an abstraction from the dialogue form. That form itself preserves the philosophic and political context, thereby manifesting the greatest problems of law as related to the human good itself.

⁸ Aristophanes of Byzantium placed the *Minos* before the *Laws* in his trilogies as did Thrasyllos in his later tetralogical organization of the Platonic corpus. Partly because of this, many have seen the former dialogue as a sort of introduction to the latter. See Taylor, *Plato*, 540 (who opposes this view for reasons related to his rejection of Platonic authorship); Cairnes, "What is Law?" 199; Morrow, *Plato's Cretan City*, 37; Hathaway and Houlgate, 106–7; and Leo Strauss, "On the *Minos*," 67, and *The Argument and the Action of Plato's "Laws"* (Chicago: University of Chicago Press, 1975), 1. Compare Cobb, "Plato's *Minos*," 193.

⁹ On the growing consensus for the centrality of the dramatic element in the Platonic dialogues see the discussion in Gerald A. Press, "The State of the Question in the Study of Plato," *Southern Journal of Philosophy* 34 (1996): 507–32.

I

The dialogue is opened by Socrates. We must assume then that he has some aim in mind in initiating this discussion of law. Since Socrates' interlocutor has no proper name, we may infer that this is not a historical conversation, but rather one made up by Plato. The subject matter is paramount, not the personalities. Of course Socrates had one particularly bad run-in with the law. His interlocutor is an anonymous "companion" (*hetairoς*) and will later evince an understanding of law that is distinctly from the perspective of a citizen.¹⁰ Is this an inquiry into the understanding of law that resulted in Socrates' conviction? Is the companion a cipher for one of the jurymen? He is in any case a "plain person" and, from what we can tell in the rest of the dialogue, one without special or detailed knowledge of Athenian law.¹¹

The question with which Socrates begins is "What is the law for/ among us (*hēmin*)?"¹² "Law" (*nomos*) is the very first word of the dialogue. The ambiguous pronoun could indicate an ambiguity in the relationship of the two interlocutors. "What is law?" *simply* is a philosophical question; "What is our law?" is a factual question. The companion takes the question to be too abstract in any case and asks "what sort" of law Socrates is talking about. Socrates asks on what basis we would differentiate kinds of law. He suggests that insofar as a law is a law, there is something in which all laws partake. Moreover, he compares law to gold and stone, a comparison that seems to

¹⁰ I translate *hetairoς* as "companion" throughout; however, the word can have additional connotations that may be important. Liddell and Scott's *A Greek-English Lexicon*, 9th ed. (Oxford: Clarendon Press, 1940), s.v., lists "comrade," "companion," and even "pupil" or "disciple," suggesting still another possibility. On the ordinary citizen perspective of the companion, compare Grote, *Plato*, 71; Jaeger, "Praise of Law," 370. Chroust, "An Anonymous Treatise on Law," 49, states that the companion is a student. Hathaway and Houlgate, "The Platonic *Minos*," 107, refer to him as an "Everyman." Best, "What is Law?" 103 (see also 107), calls him the "voice of common sense."

¹¹ Best, "What is Law?", 105, 110–11, also suggests that the companion manifests democratic prejudices. Strauss, "On the *Minos*," 72, holds the opposite view.

¹² *Minos* 313a1. I cite the *Minos* throughout by Stephanus page from the text in *Platon: Oeuvres Complètes*, vol. 13, pt. 2, 3d ed., ed. Joseph Souilhé (Paris: Société d'Édition "Les Belles Lettres," 1981). Translations are mine, although I have gained much from Thomas Pangle's translation in *The Roots of Political Philosophy*, 53–66.

abstract from the distinction between nature and art. One doesn't just find laws lying about like stones, and clearly there appears to be a crucial part of law that is related to human attitudes and beliefs. In this respect, laws are instances of collective intentionality rather than brute facts.¹³ A stone is a stone no matter what one thinks about it. Laws are made and can be unmade. Knowing that something is a law suggests some set of necessary and sufficient conditions that relate to human intentions and purposes.¹⁴ Socrates wants to know what law is "as a whole" (*to pan*).¹⁵

The companion replies in a way that confirms one's doubts about Socrates' analogy to gold and stone. He suggests that law is "the things held" or "believed" (*ta nomizomena*).¹⁶ Socrates again offers an odd analogy. If law is the things held, is speech defined as the things spoken or sight as the things seen or hearing as the things heard? Now, in one sense the answer could be yes, since a speech (*logos*) could literally refer to a thing spoken, a sight (*opsis*) to a thing seen, or a sound (*akoe*) to a thing heard. But in a wider sense, one in which speech, sight, and hearing were understood to refer to faculties or powers, one would not simply identify them with particular instances or objects. What happens if one thinks of law and holding-as-law in this way? One immediately sees the problem. If *nomos* is taken to mean "customary belief" or some such thing, one can redefine it as a "thing held or believed." If one takes it simply to mean

¹³ John R. Searle, *The Construction of Social Reality* (New York: The Free Press, 1995), 23–6.

¹⁴ Consider H. L. A. Hart, "Definition and Theory in Jurisprudence," in *Essays in Jurisprudence and Philosophy* (Oxford: Clarendon Press, 1983), 21–47.

¹⁵ *Minos* 313b5.

¹⁶ *Minos* 313b7–8. There is a meaningful ambiguity here and one that resonates throughout the dialogue. The verb, *nomizo*, which is related to the noun for law, *nomos*, can mean "to habitually use," "to recognize as," or "to believe in," as in *theous nomizein*, "to believe in the gods" (for instance, *Apology* 24b9–c1). See Pierre Chantraine, *Dictionnaire étymologique de la langue grecque* (Paris: Klincksiek, 1974), 742–4. Best, "What is Law?" 102, suggests that this answer indicates an accurate recognition by the companion of the "binding" character of law, but given the semantic range of *nomizō* this seems doubtful. Put another way, the companion does not make the distinction Hart suggested against Austin between a custom and a rule. A custom can be described externally, but a rule that justifies can only be understood from an internal perspective. See H. L. A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1961), 50–61.

"law," one can still redefine it as a "thing held as law." But the second sense indicates more difficulties since it seems odd to think of holding-something-as-law as a faculty or power like speaking, seeing, or hearing. On the other hand, it could simply suggest that laws are what we believe them to be; that is, it suggests that laws are a kind of opinion.

Why does Socrates make this move? One thing it does is suggest again the difference between art and nature. First he mentioned stones and gold; now he mentions natural human powers like speech, seeing, and hearing. If the analogy is to hold, we have to say something like this: man has a faculty or power of holding or obeying law. What is odd is that the companion accepts this. He accepts tentatively (*allo moi nun ephanē*) that "law" is other than "things held."¹⁷ This could either indicate belief in a law-holding power or in some distinct ideal or standard of law, "law-as-it-should-be" as distinct from particular laws or the "essence" of law. It is difficult at this point to see how the problem could be resolved. To say that law is simply a thing held seems trivial; to say it is the object of a law-holding faculty seems odd. To suggest an ideal standard seems, at this stage, too abstract. The next exchange reveals the problem: the citizen perspective itself. What Socrates ultimately does is change the companion's perspective on law from that of a law follower to that of a lawmaker. The analogy of law to natural objects retains its plausibility only from the perspective of a typical citizen for whom the origin of law is unknown, and who may hold it to be the product of divine agency or simply the way things have always been. The comparison to other faculties reveals the limits of such a perspective. At this level the problem is insoluble. Only from the perspective of the lawmaker can further traction be gained.¹⁸ There is a complication here too, however, which one can

¹⁷ *Minos* 313c4.

¹⁸ A similar point has been made by H. L. A. Hart in describing the traditional version of legal positivism: "It is the strength of the doctrine which insists that habitual obedience to orders backed by threats is the foundation of a legal system that it forces us to think in realistic terms of the relatively passive aspect of the complex phenomenon which we call the existence of a legal system. The weakness of the doctrine is that it obscures or distorts the other relatively active aspect, which is seen primarily, though not exclusively, in the law-making, law-identifying, and law-applying operations of the officials or experts of the system. Both aspects must be kept in view if we are to see this complex social phenomenon for what it actually is." *The Concept of Law*, 61; compare 112–13.

grasp by recalling the statement attributed to Bismarck that laws are like sausages: it is better for citizens not to see them being made.

How does Socrates effect the transition? First, the example of speech is silently dropped. Of the three examples, speech is surely the most closely related to law since law is literally speech. With respect to sight and hearing, Socrates abstracts from the peculiarities of the faculties to what they have in common, that is, they are both types of perception (*aisthesis*).¹⁹ Is the law-holding power also one that works through a kind of “perception or manifestation” (*aisthesis tini hē dôlésis*)?²⁰ The analogy seems strained, but he goes even further, asking if law could be known in the way that things learned through scientific inquiry are learned (*hôsper ta manthanomena manthane-tai dêlousê tê epistêmê*).²¹ Without pausing, Socrates goes on to ask if the law is a discovery (*ta heuriskomena*) like things discovered by medicine and divination (*mantikê*).²² The complexity of the string of analogies is striking: first there are powers of the soul, then perception, then learning, and finally discovery. Or is it a progress? One begins with native human capacities (powers), passes to more general and developed capacities (perception), then to knowledge (learning), and finally to another (higher) type of knowledge (discovery) equated with the specific arts of medicine and divination. The trajectory, at any rate, is from nature to art (*technê*).²³ Moreover, the two arts mentioned have a particular connection to human happiness: medicine is related to the care of the body; divination to knowing the mind of the gods. The arts are an attempt to manage the world, but they are (however distinct) similarly limited in that they cannot control chance. They must work in accord with chance or have the assistance of the gods. Divination can be a kind of supplement to the arts.²⁴ Is law a similar phenomenon, a kind of art that benefits humans? If so, then the proper analogy is not one we could see best from the perspective

¹⁹ *Minos* 314a2, 5.

²⁰ *Minos* 314a8.

²¹ *Minos* 314b1–2.

²² *Minos* 314b2. Strauss, “On the *Minos*,” 73, notes an indication of doubt on Socrates’ part about divination. However that may be, medicine (such as it was) and divination were certainly regarded as closer in character in antiquity than today. See Ioan P. Culianu, “Iatroi Kai Manteis: Sulle strutture dell’estatismo greco,” *Studi Storico Religiosi* 4 (1980): 287–303.

²³ *Minos* 314b5.

²⁴ Consider *Laws* 709a–d; compare 687e, 688c.

of the patient, but rather from that of the doctor, that is, the lawmaker. The upshot of this is that law has more to do—at the moment—with art than with nature. That means we must turn to the artist.

The companion is still not clear about this, however, since, when Socrates asks him what it is that law attempts to discover, he replies that it is “opinions and decrees” (*ta dogmata kai psēphismata*), then goes on to define law as the “opinion of cities” (*dogma poleōs*). He also agrees to Socrates’ restatement that law is *doxa politikē*. To “discover” the city’s opinions still looks like a view from the observer/citizen, not from the artist/lawgiver. That Socrates does not agree is indicated by his response: “And perhaps you speak nobly, but we will probably know better by going this way.”²⁵

Socrates asks the companion if the wise are wise through wisdom and the just through justice? The companion agrees in each case, and the point seems to be that through the presence of certain virtues in the soul virtuous action follows. But then he asks if the lawful (*hoi nomimoi*) are such through law (*nomō*), to which the companion also agrees.²⁶ Is *nomos* the name of a virtue? A moment ago we saw it called an opinion (*dogma*). Can a virtue *be* an opinion? Even if the word Socrates had used were different, say “law-abidingness,” it would seem odd since one usually thinks of the virtue by which one is *nomimos* as justice. However, one definition of courage that Socrates gives in the *Republic* is that of preserving opinions inculcated by law about what is truly fearful and what is not.²⁷ Conversely (and more plausibly), the lawless are such through lawlessness (*anomia*). Now Socrates also has the companion agree that “the lawful are just” and the “lawless unjust,” introducing the very virtue that we might reasonably have expected above. Moreover, justice and law are said to be “most noble” (*kallistos*) and their contraries “most shameful” (*aischistos*).²⁸

Now the nobility of justice and lawfulness are clearly related by Socrates to the view that they “save cities” (*sôzei tas poleis*), while their opposites destroy and overturn cities.²⁹ To line up lawfulness, justice, and the preservation of the city with nobility in this way

²⁵ *Minos* 314b7–c5.

²⁶ *Minos* 314c11.

²⁷ *Republic* 429c–430c.

²⁸ *Minos* 314d7–9.

²⁹ *Minos* 314d11.

suggests the discussion of justice and complete virtue in the fifth book of the *Nicomachean Ethics*. There Aristotle presents an account of these things that, at times, seems close to a kind of legal positivism. That it is not positivism is indicated by Aristotle's statement that the law commands and forbids correctly "when framed correctly" and not well if framed hastily,³⁰ as well as by the celebrated discussion of natural right in the seventh chapter of book five. Does Socrates do the same in the *Minos*? Sort of.

One can begin by asking in what sense *laws* "save the city." The phrase *soteria tês poleôs* had a technical meaning in Athenian law, although its more visceral meaning referred to heroic acts of self-sacrifice in defense of a city threatened by an enemy.³¹ The laws are considered in something like this way in both the *Apology* and *Crito*. In both cases they are at odds with the claims of Socrates himself, who describes himself as sent to the city by the gods. Socratic philosophizing is thus a kind of service to the god and to the city, which the citizens take to be a threat to the laws. Considering the claim that the laws save the city is a way of considering their claims against those of some rival. Which rival? Socrates indicates this directly.

The two agree that law is something noble and good, but, Socrates reminds the companion, it was earlier defined as a *dogma* of the city and *dogmata* can be valuable or worthless. Law cannot be worthless, so it is incorrect *simply* to call it a *dogma poleôs*. It must be a valuable *dogma*, but does not the value of an opinion rest in its truth? If so, Socrates suggests, and true opinion is "the discovery of what is" (*tou ontos exeuresis*). "Law," Socrates concludes, "wishes (*bouletai*) to be the discovery of what is."³² One can see two problems with this account immediately. First, does the worth of a political opinion simply reside in its truth? If we consider the immediately preceding discussion of the "saving of cities," it may seem that some falsehoods may serve worthy political purposes.³³ But second, and more striking, to say that law seeks to be the discovery of "what is"

³⁰ *Nicomachean Ethics* 5.1.1129b24–5.

³¹ See Emily Kearns, "Saving the City," in *The Greek City From Homer to Alexander*, ed. Oswyn Murray and Simon Price (Oxford: Clarendon Press, 1990), 323–44 and below, section 2.

³² *Minos* 315a1–3.

³³ That is, from the perspective of cities. Consider *Republic* 382c3–d4 (especially d3), 389b2–8, and *Laws* 663d6–664b2.

seems to identify it with nothing less than philosophy itself.³⁴ How could one reasonably believe that these two things are the same? Philosophy, after all, is a striving for “what is” and an unwillingness to brook opinion that is not true. It is a ceaseless and passionate quest for truth and never settles for anything less.³⁵ Law does not seem to be this sort of thing at all. Where philosophy is unending inquiry, suppleness, and willingness to investigate every possibility, law is fixed and hard: it precludes possibilities and thwarts desire. To have any efficacy, law must be free of great or sudden changes, to which thought must be open.³⁶ Moreover, law is abstract, seeking to be applicable to a wide variety of cases, and thus has a tendency to rigidity.³⁷ To identify law with philosophy seems strange indeed.

But Socrates' statement is also problematic from the perspective of philosophy. Notice first that the discussion is cast in terms not of philosophy explicitly, but of right (*orthôs*) or true opinion;³⁸ and second, that the true opinion in question wishes to be the discovery of “what is” (*tou ontos*).³⁹ The object of philosophy in the Platonic dialogues is usually said to be the “things that are” (*ta onta*),⁴⁰ a seeming recognition on the part of philosophy that being is heterogeneous and that the search for truth must not prematurely impose upon it a unity that is not evident. From this perspective Socrates' statement also seems unphilosophical.

The definition of law as wishing to be the “discovery of what is” thus suggests two things. First, the jarring equation of law with philosophy calls to mind precisely not only the sense in which the two are not equivalent, but also the possibility for conflict between them.

³⁴ Hathaway and Houlgate, “The Platonic *Minos*,” 113, go so far as to say that “for Socrates law is a human activity which in its perfected form is philosophy. Stated in another way, philosophy is what law as an activity ‘wishes’ to be, its fully realized good or *telos*.” It seems more likely, as I state below, that Best, “What is Law?” 111–12, is more correct to suggest that this is Socrates’ way of indicating a contrast between philosophy and law.

³⁵ See especially *Republic* 475b, 490a8–b7, and *Seventh Letter* 340c1–341a1; compare pseudo-Platonic *Definitions* 414b7–9.

³⁶ Compare *Laws* 634e and St. Thomas Aquinas, *Summa theologiae* I–II, q. 97, a. 2.

³⁷ Compare Aristotle *Nicomachean Ethics* 5.10.1137b13–19; *Politics* 3.15.1286a8–b20; Plato *Statesman* 293e8–294c8; *Laws* 875c3–d5.

³⁸ *Minos* 314e17, 315a1.

³⁹ *Minos* 315a1, 3.

⁴⁰ Consider *Republic* 413a, 479e, 500b. I am grateful to Stephen Salkever for calling this difference to my attention.

That it is Socrates who suggests this account reminds one that Socrates' own death was the result of a conflict between philosophy and the city of Athens. While the law may *wish* to be the discovery of what is, it surely *is not* in any simple way. Second, the definition calls to mind law's most unphilosophical characteristic, its rigidity in the face of the great variability of human affairs. Socrates seems to wish to indicate here that, while law is indeed not philosophy, the dogmatic nature of its opinions necessarily tends toward a unified view of truth. In other words, the law wishes to be *the* truth, the final truth, and thus makes a claim that even genuine philosophy could not hope to sustain. Law can represent a kind of image of philosophy, one that is untrue to philosophy's object. Indeed, to suggest that law is a kind of image suggests the shadow images cast on the wall of the cave from *Republic* 7, itself an image of the "public" world constituted by opinion.⁴¹ It is also important to note with Strauss that the companion drops Socrates' qualification "wishes."⁴²

But this is not all. While law is both not philosophy and a blunt instrument (however necessary) for the management of human affairs, its desire to be the discovery of "what is" does reveal something important: that human beings wish their political institutions to reflect something true about the world. A legal or political order that comes to be seen by citizens as a lie, based on falsehoods, cannot sustain itself. This suggests a kind of paradox in the law that reflects a deeper paradox in human nature, one that Socrates formulates in the *Republic* as the notion that it is "the nature of acting to attain to less truth than speaking."⁴³ How the organization of human communal life both does and does not reflect the truth about human being is thus a central, though often invisible, question of legal philosophy.

II

The question of the relationship between the respective claims of law and philosophy is indirectly recognized by the companion. It is indirectly recognized since the specific problem is not mentioned, but

⁴¹ *Republic* 514a–515d.

⁴² Strauss, "On the *Minos*," 70, and compare Hathaway and Houlgate, "The Platonic *Minos*," 109.

⁴³ *Republic* 473a1–3.

this is not surprising given the companion's perspective. Indeed, he does put the right or natural question at this stage of the inquiry. In doing so, he further reveals the problematic claims of law: "How is it then, Socrates, if law is the discovery of what is, that we do not always use the same laws with respect to the same things, if the things that are have really been discovered by us?"⁴⁴ This question leads to the dramatic climax of the dialogue. It is an obvious and perennial objection to the idea of natural right.⁴⁵ Socrates concedes that people in all times and places are "not able to discover what the law wishes."⁴⁶ More striking, however, he does not simply accept that peoples do not always use the same laws.

In giving specific examples, the companion appeals to the shocking phenomenon of human sacrifice: "While among us it is not the law (*ou nomos*) to sacrifice human beings, but rather is impious (*anōsion*), the Carthaginians do so sacrifice as pious (*hosion*) and lawful (*nomimon*) for them."⁴⁷ Not only do they sacrifice human beings, but their own sons in honor of and in imitation of Kronos,⁴⁸ who ate his children in an attempt to prevent the fulfillment of a prophecy that they would overthrow him. Kronos missed one child, of course, through the wiles of his wife, Rhea, and that child, Zeus, went on to fulfill the prophecy.⁴⁹ Moreover, human sacrifice is not confined to barbarians. The Greek peoples of Lycaeae⁵⁰ and the descendants of Athamas also practice such things.⁵¹ The companion adds to his case by pointing out that Athens itself has changed its laws over time: burial customs are different than they were in the past. He concludes emphatically: "Someone could tell of ten thousand such things; for there is much room for a demonstration that neither we ourselves nor humankind always lawfully accept (*nomizomen*) the same things."⁵²

⁴⁴ *Minos* 315a4–6.

⁴⁵ Aristotle, *Nicomachean Ethics* 1.3.1094b14–16; 5.7.1134b24–7; compare Plato, *Republic* 338e6–339a4.

⁴⁶ *Minos* 315b1–2.

⁴⁷ *Minos* 315b8–c1.

⁴⁸ Diodorus of Sicily 20.14.

⁴⁹ Hesiod, *Theogony* 453–721.

⁵⁰ See Plato, *Republic* 565d; Pausanius 8.2.1–2, 6.8.2; and Apollodorus 3.7.1.

⁵¹ Herodotus 7.197; and compare Pausanius 1.44.2, 9.34.4–5 and Apollodorus 1.7.3, 3.4.3.

⁵² *Minos* 315d2–5.

What do these examples mean? Human sacrifice always seems a reminder of the extremes of human savagery and superstition and is usually shrouded in the misty past by most cultures that have practiced it. It is often put forward as evidence of moral relativity.⁵³ When the companion says that the Athenian laws have changed over time, he does not mention the fact that Athenians themselves, according to well-known legends, practiced human sacrifice—on at least one occasion. No less a figure than the legendary king, Erechtheus, said to be a son of Athena, and honored with her as a hero of Athens,⁵⁴ was reputed to have sacrificed his youngest daughter after the Delphic Oracle indicated that this was the only way that Athens could fend off an attack by the Eleusinians.⁵⁵ The sacrifice was celebrated in Euripides' lost play, *Erechtheus*, and perhaps on the frieze of the Parthenon itself.⁵⁶ One of the extant fragments of Euripides' play is from a speech by Erechtheus' wife, Praxithea, who willingly yields up her daughter to the sacrifice. She does this because the loss of a daughter seems a just price to pay for the preservation of the city. Her speech is filled with references to the priority of the city and the common over her own things. She says that she would willingly send a son into battle to defend the city, so why not see a daughter sacrificed to the same end? "I hate those women who prefer the lives of their sons to their glory, and so advise cowardice."⁵⁷ The theme is essentially that of Euripides' surviving play, *Iphigeneia at Aulis*. There, Agamemnon, in command of the Achaian host, is unable to launch the great invasion of Troy for want of wind to propel his armada. The seer, Kalchas, has

⁵³ See for instance Aristotle, *Nicomachean Ethics* 7.5.1148b19–24; Locke, *Essay Concerning Human Understanding*, ed. Peter H. Nidditch (1960; Oxford: Clarendon Press, 1975), bk. 1, chap. 3, sec. 9.

⁵⁴ See Homer *Iliad* 2.547–9 and discussion in Robert Parker, "Myths of early Athens" in *Interpretations of Greek Mythology*, ed. Jan Bremmer (Tottowa, N.J.: Barnes and Noble, 1986), 187–214. The importance of this myth in Athenian civic identity is attested in Lycurgus, *Against Leocrates*, 101 and Demosthenes 60.27.

⁵⁵ Apollodorus 3.15.4.

⁵⁶ Joan Breton Connelly, "Parthenon and *Parthenoi*: A Mythological Interpretation of the Parthenon Frieze," *American Journal of Archaeology* 100 (1996): 53–80. Connelly's hypothesis is not shared by most classicists, who support the traditional view that the frieze depicts the procession of the annual Panathenaic Festival. See Jenifer Neils, *The Parthenon Frieze* (Cambridge: Cambridge University Press, 2001), especially 178–80.

⁵⁷ Euripides, *Erechtheus*, frag. 50, ll. 30–1, in *Nova Fragmenta Euripidea*, ed. Colin Austin (Berlin: Walter de Gruyter, 1968), 27.

told him that the fleet will only have proper sailing weather if Agamemnon's daughter, Iphigeneia, is sacrificed to Artemis. Iphigeneia resolves to die willingly for the glory of Hellas. In her principal speech, she tells her grief-stricken mother, Clytemnestra, "You bore me for the community of all Hellenes, not for yourself alone."⁵⁸

In both cases a child is sacrificed for the common good, indeed, the very preservation of the city. Most importantly, explicit comparison is also made to the analogous sacrifice of those men who go willingly into battle in defense of the city, a theme which is clear in the *epitaphios logos*, the legally required speech given each year over those Athenians who had died in battle.⁵⁹ The most famous example is that of Pericles as reported by Thucydides.⁶⁰ Pericles appeals to the Athenians willingly to sacrifice for the common good (*koinê*) and urges the grieving mothers to find solace in the possibility of having yet more children and in the honor due to the parents of brave children fallen in defense of the city.⁶¹ The theme of the free choice of death in defense of the common good appears in all of the other *epitaphioi* which have been preserved.⁶² One of those speeches, that of Demosthenes, actually refers to the Athenians as "children of Erechtheus" and celebrates the "deathless glory" won by Erechtheus' daughters after their voluntary self-sacrifice.⁶³ It is of the essence of the city that it demands sacrifice of the personal to the common, even unto death, even unto the death of one's own children. In this respect at least, all cities resemble one another more than they differ. It is also worth noting that the customs related to sacrifice, as well as those related to burial, are religious in nature. In the *polis*, religion is inseparable from the city itself.⁶⁴ The city is a religious unit and the preservation of the city is not

⁵⁸ Euripides, *Iphigeneia at Aulis* 1386.

⁵⁹ On the nature and place of the *epitaphios logos* in Athenian political culture see Nicole Loraux, *The Invention of Athens: The Funeral Oration in the Classical City*, trans. Alan Sheridan (Cambridge: Harvard University Press, 1986).

⁶⁰ Thucydides 2.35–46.

⁶¹ Thucydides 2.43, 44.

⁶² Plato, *Menexenus* 246d2–3; Lysias 2.24, 79; Hyperides 6.40; Demosthenes 60.27; Gorgias, frag. 6 (Diels and Kranz); and compare Isocrates 6.109. This element of the speech is discussed in Loraux, *The Invention of Athens*, chap. 2, especially 98–118.

⁶³ Demosthenes 60.27.

⁶⁴ See for instance Christiane Sourvinou-Inwood, "What is Polis Religion," in Murray and Price, *The Greek City*, 295–322; Louise Brigitte Zaidman and Pauline Schmitt Pantel, *La religion grecque* (Paris: Armand Colin, 1989), 47–79; Jean-Pierre Vernant, *Religion en grèce ancienne* (Paris: Éditions du Seuil, 1990), 55 and following.

only a secular, but also a religious necessity. In all of the cases mentioned above, the human sacrifices, both the explicit sacrifices of young women and the analogous sacrifices of many more young men conscripted into the city's arms, are required to save the city.⁶⁵

The appearance of human sacrifice in the discussion reminds us of just what is at stake in politics. It is a theme that will occur again later. For the moment it is important to notice that even given the importance of the considerations just suggested, Socrates declines to offer an alternative account. Indeed, his response to the companion is limited to a request that he stop making long speeches and pursue an inquiry in common which itself may produce agreement. This suggests that Socrates is not so much interested in arguing the impossible thesis that laws are all the same, as in changing the terms of the discussion. Or, more precisely, he wishes to succeed in leading the companion to where he has failed to lead him thus far, that is, from the passive perspective of a citizen to the active perspective of a legislator. He begins to do this by offering a striking analogy illustrative of the art of lawgiving.

Socrates begins by inducing the companion's assent to the proposition that the just things are just and the unjust things unjust and that this is believed/accepted (*nomizetai*)⁶⁶ everywhere, even among the Persians, and at all times. This is so in the same way that people believe heavier objects weigh more than light ones in all places and times, including in Carthage and Lycaeum. Now, and this is somewhat more substantive, it is also the case that the noble things are accepted (*nomizetai*) as noble (*kala*) and the shameful things as shameful (*aischra*). Finally, only things that *are* are accepted (*nomizetai*) as being, not those that are not. One who errs about "what is" errs also about the legal. The companion accepts all of this but still cannot see how it answers the fundamental problem that laws are different in different places and times. The problem is that "we never stop changing laws" (*metatithemenoi tous nomous*).⁶⁷ The great reality of the legal/conventional/belief-driven world is change.

Socrates responds: "Perhaps . . . you do not reflect that these things, being moved about like pieces on a game board (*meta-*

⁶⁵ See, generally, Kearns, "Saving the City."

⁶⁶ See above, n. 16.

⁶⁷ *Minos* 316c3–4.

petteuomena), are the same.”⁶⁸ The verb *metapetteuô* is derived from *petteia* (or *pesseia*), the generic name for a number of Greek games played with a board and game pieces (*pettoi*). We do not know the rules of such games, though references in Greek literature suggest versions not unlike checkers, chess, or backgammon.⁶⁹ The game is a metaphor that occurs in other important discussions of Plato and Aristotle. In several places *petteia* is mentioned simply as an example of games of skill, though it is sometimes also numbered among the arts (*technai*).⁷⁰ More revealing are those references to it as a kind of analogue of dialectic or rational argument more generally. The point of the analogy seems to be that pieces (*pettoi* or *psêphoi*) can be deployed or removed in the way that arguments (*logoi*) can in conversation.⁷¹

In the present context, the most relevant references are those in the *Laws* and *Statesman* that seem to analogize law to *petteia* in its specifically architechtionic aspect. At one point in the *Statesman*, *pesseia* is referred to as an art and compared to the political art. Later reference is made to learning how to play the game through writings, an indication that there were manuals of some kind.⁷² In the fifth book of the *Laws*, *petteia* is mentioned in one of the most important passages in the dialogue. The Athenian stranger is discussing the aims of the city in speech that he is constructing with his two interlocutors, Megillos, a Spartan, and Kleinias, a Kretan from the city of Knossos. The Athenian has been discussing the size and citizenry of the proposed city. After stating that there is no greater good for the city than that the citizens be well known to one another, he abruptly says:

The next move in establishing laws is like that made by one playing *petteia*, who abandons his “sacred line,” and because it is unexpected, it may seem amazing to the one who hears it at first. But anyone who uses his reason and experience will recognize that a second-best city is to be constructed. Perhaps someone would not accept this because he is unfamiliar with a lawgiver who is not a tyrant. But the most correct procedure is to state what the best regime is, and the second, and the third,

⁶⁸ *Minos* 316c1–2.

⁶⁹ R. G. Austin, “Greek Board-Games,” *Antiquity* 14 (1940): 257–71.

⁷⁰ For examples of the former type see *Republic* 333b, *Statesman* 292e, *Charmides* 174b, and *Alcibiades I* 110e. For examples of the latter, see *Statesman* 299e, *Gorgias* 450d, *Phaedrus* 274d.

⁷¹ See *Republic* 487b, *Hipparchus* 229e, and compare *Gorgias* 450d.

⁷² *Statesman* 292e, 299e.

and after stating this to give the choice among them to whoever is to be in charge of the founding.⁷³

Here the founding of the city through legislation is compared to the game. The object of lawgiving is guided by the laws of the best regime simply. As the Athenian goes on to explain, the best regime is the one in which everything is common to the citizens, particularly property, since in this way the city can achieve maximum unity. The ideal seems quite like that of the *Republic*.⁷⁴ But here the Athenian seems to urge the founder to aim for something lower, to abandon his “sacred line” by devising a second and even third best regime. This is a kind of strategic move, a compromise intended to secure the object of the game more surely. Lawmaking is like moving the pieces in a game. The choices and changes one makes occur within a context that is stable. Lawmaking is not like creation; or rather, it is not like creation *ex nihilo*. This image is reinforced by a passage in the tenth book of the *Laws* in which a god is compared to one playing *petteia*. He exercises a certain choice in his supervision of human beings, but that choice is bounded by matters that are fixed.⁷⁵ Indeed, the entire conversation between the Athenian stranger and his two companions is referred to as a game (*paidia*).⁷⁶

To recapitulate: Socrates’ definition of law as “wishing to be the discovery of that which is” seems to fly in the face of the obvious fact that people use different laws in different places and change their own laws. This is just as true of Athens as it is of any other city. The companion’s major piece of evidence for his objection is the striking case of human sacrifice. While one might see the presence or absence of human sacrifice as a major index of civilization, the purpose behind it—saving the city—is never abandoned or repudiated. Indeed, if one sees human sacrifice for the purpose of saving cities in a wider context (and Attic tragedy did just that), one soon confronts the perennial human fact of war, itself a kind of human sacrifice. Where human sacrifice seems at first to separate some cities from others, it really highlights a way in which all cities are alike: they are a limit, a horizon for human moral life. The city is ultimate, and its defense is the defense

⁷³ *Laws* 739a1–b1.

⁷⁴ *Republic* 423e, 462a–d, 464c–e.

⁷⁵ *Laws* 903d.

⁷⁶ See *Laws* 685a, 769a, and compare 723e.

of humanity itself. We may recall Aristotle's famous statement that outside of the city, man is either beast or god.⁷⁷ Apropos of the image of lawmaking as a board game, we may also recall Aristotle's image of a man without a city as an "isolated piece in a game of *petteia*."⁷⁸ The city is, from a human perspective, terrifically valuable and thus can demand the ultimate sacrifice, since it is the necessary condition for human flourishing. Within the order of the city, however, a variety of choices are possible. Laws can be organized in different ways to achieve the goods proper to the city. But there are limits. Those limits are imposed by nature, by the human situation in its fullness. Law is a tool, an art, with which human beings create a world within the world that they do not create, the world given by nature. As such, it is bounded by nature and related to it in such a way that one might plausibly conclude that it can be called the discovery of what is, a nesis, as it were, of fact and value.

III

Having established this point, Socrates begins a series of questions that leads the discussion to its source in the person of the law-giver or founder. He asks if the companion has ever encountered a "writing" (*suggramma*) about the healing of the sick.⁷⁹ Such a writing belongs to the art (*technē*) of medicine, and doctors have knowledge (*epistêmê*) of such things. Moreover, Socrates continues, all those who have knowledge of a thing accept (*nomizô*) the same things about it, and this is just as true between Greeks and barbarians as it is among Greeks and at all times, provided that there really is knowledge.⁸⁰ When doctors write about healing, they write what they accept as being so (*nomizousin einai*). Such writings are "medical and medical laws" (*iatrika kai iatrikoi nomoi*).⁸¹ Here then laws are a kind of

⁷⁷ *Politics* 1.2.1253a3–4, 27–9.

⁷⁸ *Politics* 1.2.1253a6–7. There was evidently a version of *petteia* called "polis." See *Republic* 422e, and note in James Adam, *The Republic of Plato*, 2d ed., vol. 2 (Cambridge: Cambridge University Press, 1963), ad loc. On the specifically political aspects of the game see Leslie Kurke, "Ancient Greek Board Games and How to Play Them," *Classical Philology* 94 (1999): 247–67.

⁷⁹ *Minos* 316c5.

⁸⁰ *Minos* 316c3–d8.

⁸¹ *Minos* 316e1–3.

“writing” that communicates knowledge of an art. Law is thus understood quite broadly here, although not at all inconsistently with Socrates’ definition of it as “wishing to be the discovery of what is.” But there is no necessary connection to the city. Nor is there any distinction here between law understood in the usual sense and what one might call counsel.⁸² That is, Socrates seems to abstract from the coercive character of much law. Here again law looks a lot like philosophy.⁸³

Socrates goes on to extend this idea into several other areas beyond the art of medicine. There are also agricultural laws, gardening laws, and cooking laws. In each case he has in mind writings that communicate knowledge of an art. In the last two cases, those of gardening and cooking, he refers to the artist as one who “rules” (*archein*)⁸⁴ the object of the art: gardeners rule over gardens and cooks rule over the preparation of food. Such rulers, when they record their knowledge of ruling, produce writings that can also be called laws. Finally, this analogy is extended to the city: the writings and customs concerning the organization of cities (*peri poleôs diokêseôs suggrammata te kai nomima*) belong to those who know how to rule a city (*tôn epistamenôn poleôn archein*).⁸⁵ Such knowledge is possessed by politicians (*politikoi*) and kings (*basilikoi*); thus, “those things that human beings call laws are political writings, writings of kings and good men (*basileôn te kai andrôn agathôn sugrammata*).⁸⁶

There is a subtle shift here between the writings of politicians and kings to that of kings and good men. There are arts of medicine, agriculture, gardening, and cooking, and one who possesses the art is qualified to give “laws” on the subject. While politics appears to be like this initially—the politicians and kings are practitioners—the addition of “good men” muddies the waters a bit. One could see good men as constituting a subcategory of politicians and kings or as

⁸² Consider, for example, Aristotle *Nicomachean Ethics* 10.9.1179b4–1180b28; St. Thomas Aquinas, *Summa theologiae* I–II, q. 90, a. 3, ad 2 and q. 92, a. 2, ad 2; Thomas Hobbes, *Leviathan*, ed. Richard Tuck (1651; Cambridge: Cambridge University Press, 1991), chap. 26; John Austin, *The Province of Jurisprudence Determined*, ed. H. L. A. Hart (1832; London: Weidenfeld and Nicholson, 1954), 257.

⁸³ Compare Hathaway and Houlgate, “The Platonic *Minos*,” 110–11.

⁸⁴ *Minos* 316e14, 24.

⁸⁵ *Minos* 317a4–6.

⁸⁶ *Minos* 317a11–13. Compare *Republic* 347a–d.

broadening the category of lawgiver to include good men who do not directly participate in rule. In either case, Socrates introduces into the discussion a certain ambiguity about who is qualified to legislate. Such men, he adds, who have knowledge will agree with one another and will not change their laws. If they do change laws, they will be seen as not really having knowledge. But more importantly, correct (*orthos*) laws will be recognized as legal/customary (*nomimos*) in a given case, and, *mutatis mutandis*, incorrect laws “we will no longer declare to be legal.”⁸⁷ Socrates concludes:

Therefore in those writings concerning the just and the unjust things and in general about the ordering (*diakosmēsōs*) of the city and about how a city should be administered (*dioikein*), what is correct is kingly law, while what is not correct—what seems to be law to those who do not know—is not, for it is lawless (*anomon*).⁸⁸

The companion agrees and Socrates responds that they were then correct in agreeing that law is the discovery of “what is.” Here we arrive at the strongest reason to see in the *Minos* the origins of natural law theory. In Socrates’ formulation, laws that are incorrect with respect to the just and unjust things, that is, laws at variance with “what is,” are held not to be “kings law,” but rather “lawless.” *Lex iniusta non est lex?* The claim would seem to be pretty close to that traditional formulation, so long as one takes it to mean that unjust laws lack what Aquinas called the “force” or “reason” of law (*virtus legis, vis et rationis legis*), and by which he means that unjust laws, lacking a rational relationship to the common good, loose their claim on our obedience (*virtutem obligandi non habet*).⁸⁹ It does not imply what the traditional formulation has sometimes been taken to imply, namely, that

⁸⁷ *Minos* 317c1–2.

⁸⁸ *Minos* 317c6–10.

⁸⁹ The phrase *lex iniusta non est lex* is a canonical one in legal philosophy. While often attributed to Augustine and/or Aquinas, this formulation is found nowhere in their works, as pointed out by Norman Kretzmann, “*Lex Iniusta Non Est Lex: Laws on Trial in Aquinas’ Court of Conscience*,” *American Journal of Jurisprudence* 33 (1988): 102–7. The closest statements are in Augustine’s *On Free Choice of the Will* 1.5.11, and Aquinas, *Summa theologiae* I–II, q. 95, a. 2, and q. 96, aa. 4, 6, to which the references to Aquinas in the text accompanying this note refer. There are similar earlier formulations in Xenophon, *Memorabilia* 4.4.12, Plato, *Hippias Major* 284e, *Laws* 715b, and Cicero, *On Laws* 2.5.11.

unjust laws either do not exist or have no political relevance.⁹⁰ Nor does Socrates' statement in the *Minos* mean this.

By comparing law to other "writings" that aim to instruct one in an art, Socrates suggests that laws are the product of one who knows, one who could rule human beings because of his knowledge of cities and, ultimately, of the soul. We will see more about this below. For now, suffice it to say that law, like other technical writings, is vitiated to the extent that it is based on what is false or mistaken. Law aims to produce happiness for cities. To the extent it does not do this, but produces the opposite, it is lawless, *anomos*: it literally lacks the character of law as a writing designed to bring about the happiness or flourishing of a city. Aristotle later stated this in a different way: laws command one to perform the acts of a brave, moderate, and good-tempered man "and likewise with respect to the other virtues . . . commanding some acts and forbidding others; and when rightly (*orthôs*) framed does this rightly, and when hastily framed does it less well."⁹¹

Socrates asks who has knowledge (*epistêmôn*) of distributing (*dianeimai*) seeds on the earth.⁹² The answer is the farmer, who distributes worthy seeds on all parts of the earth. Since the farmer is a good distributor (*nomeus*) of seeds, the laws and distributions he makes are correct. The same is true for the good distributor of musical notes for the aulos and the one who distributes food to the bodies of humans, the trainer. Such a man is good at "pasturing" (*nemein*) the human herd with respect to the body as the shepherd is the law-giver for sheep and the cowherd for cattle. Socrates then abruptly asks: "And whose laws are best for the souls of humans? Are they not

⁹⁰ For instance, Austin, *The Province of Jurisprudence Determined*, 184–5; Grote, *Plato*, 88, 91–2; Hall, "Plato's Legal Philosophy," 199; Arthur C. Danto, "Human Nature and Natural Law," in *Law and Philosophy*, ed. Sidney Hook (New York: New York University Press, 1964), 187. On the whole issue see John Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980), 351–68, which is much the best account. Hathaway and Houlgate, 111–12, have a more subtle interpretation.

⁹¹ *Nicomachean Ethics* 5.1.1129b19–25.

⁹² Thomas Pangle points out in his translation of the *Minos* that the roots of both *nomos*, "law," and *dianeimai*, "distributing" is the same (*nem-*) and originally referred to assigning pasture to herds. The notion of distribution generally seems central to law. See *Roots of Political Philosophy*, 60 n. 12, citing Emmanuel Laroche, *Histoire de la racine NEM en Grec ancien* (Paris: Klincksiek, 1949). Laroche's discussion of *nomos* is on pp. 184–97.

those of the king? Say it.”⁹³ The companion concedes that this is indeed so.

Rather than simply continue to discuss kingly law, Socrates steps back and asks the companion if he knows who among the ancients became a good lawgiver (*nomothetēs*) with respect to the art of playing the aulos. Without waiting for an answer he reminds the companion that it was Marsyas, a satyr. Having become expert at playing the aulos, Marsyas is said to have challenged Apollo to a musical duel, in which the victor could do anything he wished to the vanquished. Marsyas lost and was flayed alive by the god.⁹⁴ Marsyas' tunes were, Socrates says, “most divine” (*theiotata*), and “they alone move and reveal those who are in the thrall of the gods and they alone remain as being divine.”⁹⁵

Socrates himself was compared not only to a silenus or satyr, but specifically to Marsyas, by Alcibiades in the *Symposium*. After barging into the party at Agathon's house, Alcibiades compares Socrates to a statue of a Silenus split down the middle and filled with beautiful statues of gods. He draws a contrast between Socrates' external silenus or satyrlike appearance (ugly, mischievous, and lustful) and his divine inside. Then, suggesting that Socrates's similarity to a satyr is more than just appearance, he says that Socrates is hubristic like Marsyas, but even more extraordinary since his “spells” and “songs” require no instruments, as those of Marsyas did: “they alone can possess and make manifest those who have need of the gods and initiation through their being divine.”⁹⁶ When Socrates speaks “we are all possessed” (*katechometha*).⁹⁷ When Alcibiades hears Socrates he feels ashamed about the way he lives, but he does not change. His attempt to seduce Socrates proves that the latter's satyrlike image is not the truth about Socrates: inside him are the “figures of excellence” (*agalmat aretēs*).⁹⁸ The point of the comparison is in fact a point of contrast in many respects. Why is Marsyas offered as an example by Socrates in the *Minos*?

⁹³ *Minos* 318a12–13.

⁹⁴ *Republic* 399e; Apollodorus 1.24; Pausanias 1.24.1.

⁹⁵ *Minos* 318b8–10.

⁹⁶ *Symposium* 215c5–6.

⁹⁷ *Symposium* 215d2–6.

⁹⁸ *Symposium* 222a4.

Satyrs are beastlike creatures frequently portrayed as part horse or goat and giving free reign to prodigious sexual appetites. They seem, on reflection, to be the very picture of lawlessness. What Marsyas did have, we learn from both Socrates and Alcibiades, was a power to enchant through music. Socrates had this power through words alone. His power came from the beautiful images or statues of virtue within him, images that occasionally show themselves directly.⁹⁹ Could such a power affect an entire city? Socrates, of course, does not engage in political activity, or, at least, not in the conventional way, as Alcibiades does.¹⁰⁰ Socrates' introduction of Marsyas into the dialogue can be seen as a kind of ironic self-reference. He uses Marsyas to make a point about philosophy as a kind of measure, but one whose effect is limited.

The companion does not seem to be an ironic man and does not know much about satyrs: he cannot answer Socrates' question about the lawgiver for aulos-playing and must be told that it is Marsyas.¹⁰¹ Marsyas' enchanting songs remain as do Socrates' enchanting *logoi*, through the medium of Plato's dialogues, the latter a possible initiation into philosophy.¹⁰²

But why introduce this comparison in a discussion of lawgiving? There is perhaps a less felicitous similarity between Socrates and Marsyas. The satyr was flayed alive for mounting an unsuccessful challenge to Apollo. Socrates suffered a similar fate at the hands of the Athenians after having been convicted of violating Athenian law. That violation, of course, consisted in using his powers of enchantment to make the weaker *logos* the stronger, to corrupt the young. Moreover, he was accused of not believing in the gods that the city believed in.¹⁰³ Marsyas and Socrates could both be seen as hubristic in their challenge to a god. Marsyas is held up as an exemplary lawgiver, and his untoward end is politely ignored.

⁹⁹ *Symposium* 216e7–217a2.

¹⁰⁰ See *Gorgias* 521d6–8 and *Apology* 29d–31b.

¹⁰¹ *Minos* 318b1–4.

¹⁰² Compare Elizabeth Belfiore, "Elenchus, Epode, and Magic: Socrates as Silenus," *Phoenix* 34 (1980): 128–37, especially 134, 136–7.

¹⁰³ *Apology* 24b8–c1, and compare Diogenes Laertius 2.40; Xenophon, *Memorabilia* 1.1.1; Plato, *Euthyphro* 2c2–8; *Apology* 18b7–c3, 19b4–c1.

IV

Socrates now returns to the king as pasturer of the human herd. Having made his point about Marsyas, he asks who among the ancient kings is said to have become a good lawgiver “whose legal customs (*nomima*) remain even now, as being divine.”¹⁰⁴ The companion, again, does not know the answer to Socrates’ question. He offers that it is the Lacedaimonian laws attributed to Lykourgos, but Socrates reminds him that these laws are barely three hundred years old and that, moreover, they are derivative of an earlier legal order. The companion does recognize this claim that the Lacedaimonian laws are based on those of Krete.¹⁰⁵ The Kretans use the “most ancient laws among the Greeks.”¹⁰⁶ Marsyas made *nomoi* (notes) into *nomoi* (laws). Socrates never was able to translate his *logoi* into *nomoi*. He is made to suggest, however, how this might happen in the *Republic*, and a detailed scenario for how this might be done is presented in Plato’s *Laws*, a dialogue in which Socrates is not present.

Socrates tells the companion that those laws were authored by Minos and Rhadamanthus, the sons of Zeus and Europa.¹⁰⁷ The companion responds that, while “they say” that Rhadamanthus was a just man, Minos was savage (*agrios*), harsh (*chalepos*), and unjust (*adi-kos*).¹⁰⁸ Socrates answers that the companion is telling a myth from Attic tragedy. He holds that Homer and Hesiod are more trustworthy than all the tragic poets, and those epic poets report that Minos was educated directly by Zeus and legislated for Krete on the basis of this

¹⁰⁴ *Minos* 318c3–4.

¹⁰⁵ The Kretans and Spartans were certainly both descendants of the Dorian invaders who swept through Hellas during the Greek dark ages, as reported by Thucydides 1.12.3–4, 18.1. For a modern discussion see N. G. L. Hammond’s article in *The Cambridge Ancient History*, 3d ed., vol. 2, pt. 2 (Cambridge: Cambridge University Press, 1975), 681–712. Several ancient sources also hold that Sparta’s lawgiver, Lycurgus, traveled to Krete and studied their laws and institutions, bringing some back to Sparta. See Herodotus 1.65; Strabo, *Geography* 10.4.17, 19; and Plutarch, *Lycurgus* 4.1–2. Moreover, other sources testify to a widespread belief that Spartan and Kretan institutions were related to one another. For example, at *Laws* 683a1–2, Plato has the Athenian stranger remark that Sparta and Krete were founded correctly “by laws that were as brothers.” Compare also *Crito* 52e, *Protagoras* 342d, *Republic* 544c, and Aristotle, *Politics* 2.10.1271b20–32.

¹⁰⁶ *Minos* 318d3–4.

¹⁰⁷ See *Iliad* 13.449, 14.321; *Odyssey* 11.568.

¹⁰⁸ *Minos* 318d10.

divine education.¹⁰⁹ Socrates opposes an epic tradition about Minos to the companion's Athenian tragic tradition. In fact, the story of Minos is even more complicated than this.

The companion's view of Minos is based on Attic tragedy. The source is most likely Euripides. In an extant fragment of the lost play, *Cretans*, Minos is said to have been a cannibal and practitioner of human sacrifice.¹¹⁰ Human sacrifice has, of course already been mentioned. The companion offered it as evidence that everyone does not always use the same laws and thus as evidence against Socrates' thesis that the law "wishes to be the discovery of what is." Here it leads the companion to resist Socrates' statement that Minos was the greatest of lawgivers. Socrates rejects the tragic picture of Minos in favor of the epic picture. Socrates' invocation of epic against tragedy may seem odd here, given his critique of Homer in the tenth book of the *Republic*. However, the premise of Socrates' advocacy of the Kretan laws is his acceptance of an identification (for the moment) of the good with the old, and epic is older than tragedy.¹¹¹ What do the epic poets say about Minos?

Socrates quotes two lines from the *Odyssey* that refer to "Minos/ [who] was king for nine-year periods, and conversed with great Zeus."¹¹² Socrates' quotation and discussion of this phrase is remarkable for its interpretation of the word rendered above as "conversed" (*oaristēs*, from the verb, *oarizō*). The word usually means to "converse" or "chat" with, and thus carries an informal connotation. This is so much the case that Socrates reports that some interpret the word to mean that Minos was Zeus' "drinking companion" (*sumpotēs*) or "playmate" (*sumpaistēs*).¹¹³ Socrates, however, holds that "conversed with" actually indicates that Minos was a student of Zeus and thus that Zeus was a sophist (*sophistēs*) to Minos.¹¹⁴ He also describes the relationship of Minos and Zeus as *sunousia*, which could

¹⁰⁹ *Minos* 318e2–4.

¹¹⁰ See Austin, *Nova Fragmenta Euripidea*, frag. 82, p. 57.

¹¹¹ See *Laws* 658d.

¹¹² *Odyssey* 19.178–9. In reading *enneōros* as "for nine-year periods," I follow Richmond Lattimore's translation, *The Odyssey of Homer* (New York: Harper, 1975). The phrase is difficult. See H. L. Jones's discussion in *The Geography of Strabo* (Cambridge: Harvard University Press/Loeb Classical Library, 1928), 5:130–1 n. 3; compare Cairnes, "What is Law?" 207.

¹¹³ *Minos* 319e6–7.

¹¹⁴ *Minos* 319c3, 6.

be translated as “intimate association.” This rendering connotes a closeness that can even be erotic.¹¹⁵

There is yet a third tradition about Minos that is instructive. The historians, Thucydides and Diodorus of Sicily, the geographer, Strabo, and the biographer, Plutarch, all present a different view of Minos. They see him as the founder of a maritime empire that pacified the Mediterranean and allowed civilization to flourish there. Thucydides writes that tradition tells that Minos was the first to acquire a navy, and that he used it to establish a colonial empire. He specifically mentions efforts by Minos to clear the Hellenic Sea of pirates. This made navigation safer, spurred the creation of wealth, and settled life on the surrounding coasts.¹¹⁶ Diodorus of Sicily (first century B.C.) reports that the ground of the charge that Minos was a harsh enemy and a practitioner of human sacrifice was a war with Athens waged by Minos as revenge for the death of his son, Androgeos, in Attica. After the war, Minos demanded tribute of seven youths and maidens from the Athenians, which were fed to the Minotaur.¹¹⁷ Diodorus, however, also writes that Minos was the oldest of three sons born to Zeus and Europé, the others being Rhadamanthus and Sarpedon. As oldest, Minos was given kingship over Crete and brought down laws from Zeus and forged a naval empire that subdued the neighboring islands.¹¹⁸ The waters are somewhat muddied in Diodorus' account, as they are in Strabo's as well, since he also reports a different tradition about Minos that has him as the son of Lycastus and Idê, Lycastus having been the son of an earlier Minos, the son of Zeus and Itone.¹¹⁹

Strabo (c. 64 B.C.–22 A.D.) also reports two conflicting traditions about Minos. He writes that Minos was the first master of the sea (*prôtos thalattokratêsai*) and a good or zealous lawgiver (*spoudaios nomothetês*), and that he emulated his uncle Rhadamanthus, who gave laws based on meetings with Zeus and thus civilized (*exêmerôsai*)

¹¹⁵ See the discussion of the relationship between education and pederasty in Kevin Robb, *Literacy and Paideia in Ancient Greece* (New York: Oxford University Press, 1994), 197–213. The term is used in a number of ways in Plato's *Laws*. Among the most interesting occur in the discussion of the nightly meeting (951e, 968c).

¹¹⁶ Thucydides 1.4, 8; compare Herodotus 3.122.

¹¹⁷ Diodorus of Sicily 4.61.

¹¹⁸ Diodorus of Sicily 5.78.

¹¹⁹ Diodorus of Sicily 4.60.

Crete. Strabo also reports that “old ones” (*hoi archaioi*) say that Minos was “tyrannical, violent, and an exactor of tribute.”¹²⁰ Which of these we should accept, Strabo writes, is “hard to say.”¹²¹ Later, however, he writes that *both* Rhadamanthus and Minos brought forth laws to men “as if from Zeus” (*hôs para tou Dios*).¹²² There is, then, a certain confusion about which Minos was which, but one of them, at any rate, was the Minos for whom Plato’s dialogue is named, and there are two views of him: one as a savage tyrant, and one as a great lawgiver, perhaps a founder of civilization in the Mediterranean basin.

Finally, Plutarch, the latest of all (first century A.D.), also records two traditions. First there is the tragic picture, attributed to Euripides, of Minos as sacrificer of youths to the Minotaur.¹²³ However, Plutarch also cites the demythologizing Attic historian, Philochorus (fourth–third century B.C.), to the effect that the Labyrinth was no more than a dungeon and that the Athenian youths were not sacrificed, but enslaved, and furthermore, that there was no Minotaur, but a general named Tauros, who won these slaves in the funeral games that Minos offered in honor of Androgeos.¹²⁴

We have, then, three different strains in the Minos legend. One, associated with Attic tragedy, holds Minos to have been a harsh and tyrannical ruler who exacted a tribute from Athenians so terrible that it was never forgotten. We have another, associated with epic, that heaps on Minos the “amazing” and “hyperbolic”¹²⁵ praise that he was a student of great Zeus. Finally, we have a mixed picture of Minos associated with the historians. It draws on the tragic and epic elements but adds a third that is, one could say, distinctly historical. This concerns Minos’s establishment of naval power and consequent pacification or civilization of Crete and its surrounding islands. None of these elements need conflict with one another. They can all be seen to reveal truths not just about Minos, but about law and politics more generally. Minos was a founder of Knossos, and of a larger culture that

¹²⁰ Strabo, *Geography* 10.4.8.

¹²¹ Strabo, *Geography* 10.4.9.

¹²² Strabo, *Geography* 10.5.19.

¹²³ Plutarch, *Theseus* 15.

¹²⁴ Plutarch, *Theseus* 16. Plutarch also cites Aristotle’s lost *Constitution of Bottiaeae* in support of this view.

¹²⁵ *Minos* 319d1, 8.

we still associate with him: Minoan. He established the political pre-conditions of a civilization. Such an establishment is often harsh and perhaps even tyrannical. Moreover, it is often one that seems to occur in a moral vacuum, a vacuum perhaps made tolerable or intelligible by the tradition of divine inspiration.¹²⁶

This moral vacuum was an important theme of early modern political philosophy. Indeed, it is perhaps the principal theme of Machiavelli's *The Prince*. One can see it in Hobbes's *Leviathan* as well. While Hobbes's account is largely devoted to a discussion of "commonwealth by institution," he makes it clear that the same consequences follow from "commonwealth by acquisition," which includes the same substantive rights of sovereignty and has the merit of historical plausibility.¹²⁷ Having laid out an essentially liberal justification of public and private law, Kant adds that no one should inquire into the origins of the supreme political authority with any practical aim.¹²⁸ This is a necessary caveat, since otherwise, the cleavage that immediately becomes clear when one compares Kant's account of the justification of political authority with actual historical examples would be a political scandal, much as early modern natural law theory was to European monarchies.¹²⁹ The typical modern strategy has been to ignore such questions as irrelevant, to subsume them under an abstract doctrine of sovereignty,¹³⁰ or to dispatch them with formal notions like Kelsen's "basic norm," which serves as a sort of moral place-

¹²⁶ See *Republic* 383c10–d3, 415a2–b6 with *Laws* 634d7–e4; compare 645b6–8 with 835c1–3.

¹²⁷ Hobbes, *Leviathan*, chap. 17.

¹²⁸ Immanuel Kant, *The Metaphysics of Morals*, trans. and ed. Mary J. Gregor, in *The Cambridge Edition of the Works of Immanuel Kant: Practical Philosophy* (Cambridge: Cambridge University Press, 1996), 461–3 (Ak. 6:318–19).

¹²⁹ Compare Hans Kelsen, *Reine Rechtslehre* (Vienna: Franz Deuticke, 1934), §8; Heinrich Rommen, *The Natural Law*, trans. T. R. Hanley (St. Louis: Herder, 1947), 8–9, 75–109; Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1953), 13–14.

¹³⁰ As in John Austin, *The Province of Jurisprudence Determined*, lect. 6. On the issue of sovereignty in modern political philosophy more generally see Francis Slade, "Rule as Sovereignty: The Universal and Homogeneous State," in *The Truthful and the Good: Essays in Honor of Robert Sokolowski*, ed. John J. Drummond and James G. Hart (Dordrecht: Kluwer, 1996), 159–80.

holder for questions concerning the justification of original political authority simply by preventing a *regressus ad infinitum*.¹³¹

Reflection on the Minos traditions reveals this liminal dimension of political morality, but notice how it is also immediately occluded. There are first the imitation of Minos' laws by the Lacedaimonians, the judgment that under these laws both Crete and Sparta are "made happy for all time" (*panta chronon eudaimonei*), and the reaffirmation of their divinity.¹³² Minos' laws are not only those of Zeus, but they are recognized as sufficiently good as to be imitated by the Lacedaimonians, and they have made those who use them happy for all time. The emphasis here is on the divinity of the laws and their manifest success. This is supplemented by the addition of testimony from another epic poet, Hesiod, again subject to an unusual interpretation. Socrates quotes Hesiod describing Minos as one "who came to be the most kingly of mortal kings / and over the most human beings who dwelt around him / having the scepter of Zeus, by which he was king of cities."¹³³ Socrates then says that "when he speaks of the Scepter of

¹³¹ Hans Kelsen, *General Theory of Law and State*, trans. Anders Wedberg (Cambridge: Harvard University Press, 1946), 115: "To the question why a certain act of coercion—e.g., the fact that one individual deprives another individual of his freedom by putting him in jail—is a legal act, the answer is: because it has been prescribed by an individual norm, a judicial decision. To the question why this individual norm is valid as part of a definite legal order, the answer is: because it has been created in conformity with a criminal statute. This statute, finally, receives its validity from the constitution, since it has been established by the competent organ in the way the constitution prescribes.

"If we ask why the constitution is valid, perhaps we come upon an older constitution. Ultimately we reach some constitution that is first historically and that was laid down by an individual usurper or by some kind of assembly. The validity of the first constitution is the last presupposition, the final postulate, upon which the validity of all the norms of our legal order depends. It is *postulated* that one ought to behave as the individual, or the individuals, who laid down the first constitution have ordained. This is the basic norm of the legal order under consideration. The document which embodies the first constitution is a real constitution, a binding norm, only on the condition that *the basic norm is presupposed to be valid*" (emphasis added). One modern account that faces these issues squarely is Finnis, *Natural Law and Natural Rights*, 248–52.

¹³² *Minos* 320b5–7.

¹³³ This quotation from Hesiod is otherwise unattributed. Souilhé, *Platon*, 101 n. 1, notes that it seems to be alluded to in Plutarch, *Theseus* 16; however, the *Minos* itself seems to me the most likely source of Plutarch's allusion.

Zeus this is nothing other than the education (*paideia*) from Zeus by which he governed Krete.”¹³⁴ The scepter is a traditional symbol of royal authority, and the epithet “sceptered king” is a common one in Homer. The scepter is passed down from father to son and often said to be originally from the gods. So it clearly indicates a kind of divine mandate for kingship.¹³⁵ That mandate itself, however, is never related to education. It could be related to something like divine will or to a principle of legitimate succession of kingly authority or even to force. At an important point in the *Iliad*, Odysseus uses his own scepter to beat the complaining Thersites into silence. Indeed, Odysseus is said to use the scepter to silence common men who speak out of turn before kings.¹³⁶ There are, then, any number of plausible interpretations of the scepter as a symbol of royal authority. Education is not a traditional one.¹³⁷ The explanation for Minos’ importance is not his strength or even his lineage: it is in his divine mandate and in his wisdom. The kind of happiness that laws make possible is the result of knowledge. Socrates concludes that the best evidence of the goodness of Minos’ laws is the fact that they remain unchanged (*akinētoi*), “since they belong to one who discovered well the truth about what is concerning the organization of cities.”¹³⁸

Thus, Socrates concludes, the Cretans have the oldest laws and their authors were, accordingly, the best lawgivers among the ancients. Minos’ bad reputation is a result of his having made war on the Athenians, a city rich in poetry, especially tragedy, which Socrates refers to as the “most soul-leading” (*psuchagôgikôtaton*).¹³⁹ The perspective of tragedy is political and represents the perspective of the city. Its categories are often those of friend and enemy, rather than good and bad as such. Such categories were transcended by the founder of a regime like Minos, who “discovered well the truth of what is with respect to the organization of a city.”¹⁴⁰ He had this in common with philosophy, and the recovery of that perspective is a task of the philosopher. It is not, however, an easy task or one that has a great

¹³⁴ *Minos* 320d5–6.

¹³⁵ M. I. Finley, *The World of Odysseus* (New York: Viking, 1954), 118–20.

¹³⁶ *Iliad* 2.199–271.

¹³⁷ Although there is additional evidence that this was Socrates’s interpretation: Xenophon, *Memorabilia* 3.9.10.

¹³⁸ *Minos* 321b3–4.

¹³⁹ *Minos* 321a4.

¹⁴⁰ *Minos* 321b3–4.

chance of success. Socrates challenged the men of Athens not to care so much for wealth or power or honor, but rather to care that their souls be in as good a condition as possible.¹⁴¹ His activities in this regard transcended the political and even more natural categories, since he behaved thus toward any man, whether citizen or foreigner, rich or poor, not even discriminating in favor of his own family.¹⁴²

In the end, Socrates' activities remained a mystery to most of the Athenians. Perhaps they shared the perspective of the companion in the *Minos*. The dialogue's enigmatic conclusion sees Socrates ask the companion what things are distributed by a good lawgiver and pasturer of the body and answers his own question by proposing food and physical exertion. He then asks what things the good lawgiver and pasturer distributes to the soul to make it better. This time he lets the companion answer, but the answer is a confession of ignorance. Socrates responds that it is shameful (*aischron*) for either of them to be ignorant "of those things in [the soul] in which good and worthless inhere, while having investigated the things that pertain to the body and the rest."¹⁴³ While the companion declines to answer that final question, our consideration of Socrates in the *Apology* suggests two possibilities.

V

In answering the charge that he is a corruptor of youth, Socrates asks Meletus, who makes young men better? Meletus' first answer, one about which he hesitates not a bit, is "the laws."¹⁴⁴ Socrates does not accept the answer and asks, who among human beings improves the young? Meletus then answers that it is the jurors, the men of Athens. This is the answer that Meletus' coprosecutor, Anytus, gave to Socrates when asked in the *Meno* to whom young men should be sent to learn virtue.¹⁴⁵ Socrates' elenctic critique of this statement led the exasperated Anytas to leave the discussion angry.¹⁴⁶ This may have

¹⁴¹ *Apology* 31b, 36c–e, 38a.

¹⁴² *Apology* 23b, 30a, 31b–c, 33b, 41e.

¹⁴³ *Minos* 321d7.

¹⁴⁴ *Apology* 24d11.

¹⁴⁵ *Meno* 92e3–6.

¹⁴⁶ *Meno* 94e–95a.

been the proximate origin of the charge that Socrates was a corruptor of the young, the charge that led him to his courtroom encounter with Meletus.¹⁴⁷ This suggests one possible answer to the question Socrates poses to his companion in the *Minos*: the good lawgiver distributes to souls those goods that are most efficacious for souls, the virtues. But, of course, the central problem of the *Meno* concerns whether or not the virtues can be taught. While we cannot embark on a detailed discussion of the *Meno* here, it suffices to recall that Socrates suggests that if virtue is knowledge, it cannot simply be taught. In the aftermath of this realization, Socrates suggests, as a kind of second best alternative, true opinion (*aléthés doxa*). Since it is opinion, it is less stable and dependable than knowledge (*epistêmê*), but it can be more easily taught. Of course, if virtue is knowledge and true opinion is less than knowledge, it is less than true or complete virtue. This suggests a large thesis about the limits of education, but it also suggests a second possibility, that is, a connection among limited virtue, true opinion, and law. This complex is explored at length in Plato's great dialogue, the *Laws*.

In the *Laws*, a nameless Athenian philosopher engages two old men, a Spartan and a Kretan, in a conversation about "the regime and the laws."¹⁴⁸ Since he is a stranger, his interlocutors have no knowledge of his past and, perhaps, no experience at all of philosophy. All they know about him is that he is an Athenian, and, since they are well disposed toward Athens, they have no prejudice against the stranger or philosophy.¹⁴⁹ He engages them dialectically and offers to be of use when the Kretan, Kleinias, reveals that he is a member of a commission charged with drawing up a legal code for a new colony. He adroitly moves them to a position just philosophical enough that they are willing to speak freely about their regimes, to entertain the possibility that their laws could be better, and to consider the possible superiority of foreign institutions and practices. He even succeeds in

¹⁴⁷ Compare *Statesman* 299b–c; Xenophon, *Apology* 29–31; Diogenes Laertius 2.38 with discussion in John Burnet, *Plato's Euthyphro, Apology of Socrates and Crito* (Oxford: Clarendon Press, 1924), 103–4; Reginald Hackforth, *The Composition of Plato's "Apology"* (Cambridge: Cambridge University Press, 1933), 76–9; Richard A. Bauman, *Political Trials in Ancient Greece* (London: Routledge, 1990), 107–15.

¹⁴⁸ *Laws* 625a6–7, 641d9; compare 686b8–c1.

¹⁴⁹ *Laws* 642b–643a.

securing their consent to a scheme which amounts to the institutionalization of philosophy in the proposed city.¹⁵⁰

For present purposes, it suffices to point out just a few features of the political regime constructed in the *Laws*. First, that regime has as its purpose the inculcation of the virtues, indeed, of the “whole of virtue.” Nevertheless, as the account develops, this goal is tempered in two ways. First, it is diluted by the conclusion that the city actually has three goals: freedom, friendship, and prudence (which becomes a symbol of the virtues).¹⁵¹ Second, in a discussion of the nature of education, the Athenian stranger distinguishes between prudence (*phronêsis*) and true opinion (*aléthês doxas*), suggesting the possibility that more people might possess the latter than the former.¹⁵² In the same place, he distinguishes between virtue (*aretê*), which he describes as complete consonance between one’s feelings and reason, and the mere training of one’s passions so that one behaves rationally (that is, something less than complete consonance), which is called education (*paideia*). We have here two standards: virtue is the higher and education the lower. Both involve the correct ordering of the passions.¹⁵³ The city aims to produce education/true opinion (at least) and virtue/prudence (where it can), through the law’s distribution of praise and blame.¹⁵⁴ So one might say that the thing distributed by the lawgiver is law aiming for virtue, although what is literally being distributed is praise and blame, that is, the law distributes opinion about what is praiseworthy and blameworthy. Knowing that most people are motivated by pleasure and pain, the laws distribute praise and blame initially and, failing this, punishment.

The second large point to be made concerns the prospects for the sort of scheme described in the *Laws* (and it is a matter of great complexity, subtlety, and detail that we cannot treat here). The Athenian

¹⁵⁰ I refer to the establishment of the nightly meeting (*nukterinos sullagos*) in the twelfth book of the *Laws*. See V. B. Lewis, “The Nocturnal Council and Platonic Political Philosophy,” *History of Political Thought* 19 (1998): 1–20.

¹⁵¹ *Laws* 693b, c, e; 694b; 701d.

¹⁵² *Laws* 653a.

¹⁵³ The distinction is not unlike Aristotle’s distinction between the virtuous man and the continent man in *Nicomachean Ethics* 7.1. While virtue is superior to continence, political order is possible with more continence than virtue, and the normal distribution of human types tends to yield more of the former than the latter.

¹⁵⁴ *Laws* 631d–632b.

stranger describes what the three interlocutors are doing in designing the city as a game or as play.¹⁵⁵ He also suggests, in what constitutes a kind of dramatic climax of the dialogue, that the kind of political activity they are discussing is not fully serious, that genuine seriousness is ordered to a kind of contemplation that the stranger associates with the gods.¹⁵⁶ Finally, at the end of the dialogue, the stranger describes any attempt to implement the plans discussed as a gamble, perhaps one whose success requires divine intervention.¹⁵⁷ The cumulative force of such passages is to suggest the uncertainty and precariousness of the founding enterprise, indeed, of any political project. Legislation is, the stranger suggests, a kind of art (*technē*), and like the other arts, it requires the artist to recognize and seize the “right moment” (*kairos*). But there is no guarantee of this. Chance (*tuchē*) is ineliminable.

Perhaps this is why the Athenian describes the city's regime as “the truest tragedy.”¹⁵⁸ There is, however, another reason. The conversation among the three interlocutors is itself supposed to serve as an educational device in the city.¹⁵⁹ It is indeed a replacement for traditional educational texts like epic and tragedy. The founders of the city are themselves poets, literally “makers” of citizens. One of the most important vehicles for this education is the great novelty introduced into the legislative art by the *Laws*: the preludes (*prooimia*) that precede each law and aim to persuade and instruct citizens before simply punishing them.¹⁶⁰ My point is that the unanswered questions of the *Minos* are best approached from the perspective of the *Laws*. However, that perspective itself presupposes a consideration of the issues treated in the brief dialogue we have examined here.

VI

I have tried to show that the *Minos* does not offer a theory of natural law, but neither does it argue against natural law. The *Minos*

¹⁵⁵ *Laws* 685a, 769a.

¹⁵⁶ *Laws* 804b–c.

¹⁵⁷ *Laws* 968e–969a, compare 708d–709c, 752b.

¹⁵⁸ *Laws* 817b–c.

¹⁵⁹ *Laws* 811c–e, 957d–e.

¹⁶⁰ *Laws* 722c–723e.

rather contextualizes the philosophical question, “What is law?” in a complex web of problems, some of which are philosophical in the ordinary sense and some of which are more directly political. It does this in both its form and content. The form is that of the Socratic dialogue. The dialogue form has too often been overlooked by interpreters of the *Minos*. It provides a mechanism for showing the tensions and complexities surrounding the inquiry into the nature and purpose of law, by including the perspective of a citizen as well as that of the lawgiver and the philosopher. We not only have a philosophical inquiry but are reminded of the consequences of such inquiry practically by being reminded of the problematic relationship of philosophy and politics, and of law to its own origins.

I have made three large interpretive claims about the *Minos* that illuminate its purpose. First, the dialogue shows that law aims to reflect the truth but is limited in its ability to do this. The limitation is subtly suggested through the proposal that we compare it to philosophic inquiry itself. At the same time, the law, in order to be effective, must be seen to reflect some element of the truth about man. Second, one piece of evidence that is often submitted in opposition to the model of law as related to truth, the diversity of laws, is seen (a) to be a precondition of inquiry into natural right, and (b) ultimately to reveal what cities have in common and thus their relationship to the truth about human nature. Third, the entire inquiry is contextualized through the character of Minos, the lawgiver. This element manifests the origin of law in lawlessness. While this too is sometimes taken as evidence that justice and law are entirely conventional, it suggests here that law and political order are works of reason that aspire to truth, despite their limitations. The dialogue ends with the encouragement for the reader to inquire more deeply into the nature of law, justice, and the soul.

If the interpretation offered above is correct, we must conclude that the *Minos* is indeed an extraordinary document. It is a brief but subtle and complex work that points back to the *Apology* and the problem of Socrates, as well as forward to the *Laws*. Another way of stating this is to suggest that the *Minos* indicates the trajectory of Plato’s political philosophy from an adequate understanding of the problem of Socrates (namely, the problem of the relationship of the philosopher and the city), to its solution. Moreover, it is this issue that constitutes the context in which the problem of natural right

must be understood. None of this proves decisively that the *Minos* was written by Plato. It does, however, suffice to show that the dialogue is a product of no small intellect. At a minimum, it is a work in the Socratic tradition, and not at all unworthy of that tradition's greatest exponent.

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