Myrthe L. Bartels

Plato's Pragmatic Project

A Reading of Plato's *Laws*

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Erfurt M. L. B.
May 2017

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CHAPTER ONE

INTRODUCTION: LAWS IN DIALECTIC

When we think about Plato's philosophy, *Laws* is usually not the first text that comes to mind. Even at first sight it is apparent that the text exhibits a number of characteristics that are at odds with what we consider typical of Platonic philosophy. Some of the most striking are: the strongly diminished prominence of justice (δικαιοσύνη) and the conspicuous near-omission of philosophy (φιλοσοφία); the absence of the figure of Socrates; the setting of the conversation, which is not Athens but the island of Crete; and the peculiarity of its language and style: the text is written in a contrived and less plain form of Greek that has been criticized for different reasons, as far back as antiquity.

Upon closer inspection, more puzzles emerge. What about the major differences between the beginning of the dialogue (Books I–II) and the rest? The theme of ἀρετή and the four ἀρεταί recalls the so-called early and middle Socratic dialogues, but the topic of the virtues is dropped almost entirely in the rest of the work, including the legislative part itself. This observation becomes even more intriguing as the very end of *Laws* returns to the themes of Books I–II. The strongly Socratic tenor of these parts of *Laws*, which had disappeared from other late dialogues, is in itself equally surprising.

A further question that imposes itself upon the reader is why Plato saw fit to compose a code of laws in the context of a dialectical conversation. Is *Laws* still a dialectical exercise, in which the interlocutors are searching for a higher, metaphysical truth, and seeking to map out parts of that truth via dialectic? The way Plato has composed his text is striking because though it offers laws and preambles, it is often unclear where a law or a preamble to a law starts and where it ends, thus creating the impression of fluidity. Yet another characteristic that defies straightforward understanding is the interlocutors' own ambivalence about their status as lawgivers. While repeatedly asserting that they are making laws, at other times they deny that they are lawgivers and insist that they are merely aspiring to be such.

The major perplexity of *Laws* is therefore its overall composition. Plato's final *opus magnum* presents us with normative texts – laws[1] – embedded in a dialectical

1 For lawgiving as a genre in antiquity: Pl. *Phdr*. 278c3–4: Solon and ὅστις ἐν πολιτικοῖς λόγοις νόμους ὀνομάζων συγγράμματα ἔγραψεν are juxtaposed to Lysias and other speechwriters, and to Homer and other composers of poetry. Cf. Pl. *Symp*. 209d1–e4: Lycurgus and Solon are juxtaposed to Homer and Hesiod as begetters of the finest descendants (laws and poems, respectively) that have produced manifold virtue (παντοίαν ἀρετήν, 209e2–3). In *Leg*. 859e1–4 the writings of Lycurgus and Solon are compared to those of Homer and Tyrtaeus. See Sluiter 2000, 297, n. 47 on lawgiving as genre in antiquity. The title of the work, Νόμοι ἢ περὶ

conversation. The very composition of the text raises the question of the *status* of the laws proposed in the text. Are they *the* just laws, laws based on δικαιοσύνη? Are they the laws made by the moral expert on the basis of his expert knowledge (ἐπιστήμη or τέχνη)?

The question of the status of the laws gains urgency when it is noted that δικαιοσύνη, which had featured so prominently in Plato's *Republic*, is strikingly not prominent in *Laws*. This is hardly what one would expect from a Platonic text on legislation. Following on from Plato's *Republic*, it seems natural to assume that the basis of a Platonic code of laws is absolute justice (δικαιοσύνη). How, then, to account for the fact that in *Laws* Plato hardly appeals to δικαιοσύνη? Who but the moral expert could be qualified to lay down good laws?[2] Is the norm underlying the order of society in *Laws* still δικαιοσύνη, but couched in a different terminological framework – that is, in terms of laws instead of in terms of justice? Or does *Laws* really portray a new and different kind of project, which cannot be understood if it is explained against the background of the metaphysics of *Republic*, and is assuming that the two should be, in some way, consistent unhelpful for understanding it?

For the political philosopher, the question of how one knows that the laws are good is an important one. Laws can be unjust, or misapplied, resulting in unjust decisions. Plato himself had witnessed the havoc that can be caused by unjust laws (the regime of the Thirty) or their unjust application (the accusation and conviction of Socrates). If it makes any sense to read *Republic* as a constitution in which Socrates would not have been convicted, this should remind us that the importance of just laws was at the forefront of Plato's thought. In *Republic*, the authority of the philosopher-king suggested that the laws were good. But how does this work in *Laws*, where both references to δικαιοσύνη and references to a moral expert are almost absent?

The present study approaches the problem of the status of the Platonic laws in *Laws* by analysing the composition of the text as a whole. It explores the complexities that result from the interweaving of lawgiving and dialectic, and traces the implications of the embedding of laws in the dialogue form. This may be called a 'literary', 'rhetorical', or 'formal' approach, for lack of a better term.[3] Yet it should

νομοθεσίας, and the classification of the dialogue as πολιτικός are given by Thrasyllus, see D. L. III.60.

2 The presumably autobiographical *Epistula* VII also testifies to the importance of good laws: 324b2, 325c5–326a5, 332b4–6, 334c6–7, 336a3–5, and 337a2–8. For the issue of its authenticity, see Morrow 1935; Bluck 1947, 1–2; Edelstein 1966 (who dispute its genuineness); Hackforth 1976; Guthrie 1978, 399–401; Trampedach 1994, 255–259 (who leaves the issue open). For literature, see the notes in Edelstein *ibid*., 1–4; also on its history of attestation in antiquity. Morrow 1935, 47–79, considers *Epistula* VII genuine and observes that "in style and diction it has the traits of the *Laws* and other dialogues of Plato's latest period" (47).

3 Nightingale 1993 (and to some extent 1999) is one of the very few modern interpreters who take into account the 'literary' aspects of the dialogue (although the analysis presented here challenges her claim that the laws in *Laws* are to be read as a fixed, sacred text). She is absolutely right to note that Aristotle reads *Laws* like a treatise rather than a dramatic dialogue (*ibid*., 282). I would go so far as to put forward the hypothesis that many readings of *Laws* current in the 'analytical' philosophical tradition go back to the mode of reading initiated by Aristotle. Cf. n. 27 below.

be borne in mind that the formal characteristics of a Platonic text are part and parcel of, and reflect, the philosophical method adopted, with all its dogmatic presuppositions. The present study approaches the text of *Laws* as a meaningful and coherent whole, and focuses on those mechanisms that convey information about the status of the laws, such as the reflections of the interlocutors upon their legislative activity. The analysis offered is guided by the argument of the text itself and traces the articulation of different phases within that argument. It is precisely because the laws are embedded in an overarching dialectical setting that there is a higher level on which comments *about* the laws are made, and in which the interlocutors reflect on what they are doing.

The originality of the approach taken here consists in the attention paid to the composition of the text as a whole and the context of individual passages: interpretations of individual passages are guided by their relative position in the structure of the argument and the gist of the immediate context. Making this the guiding principle in the interpretation of the text is essential because of the complexity of its architecture. The conversation has different phases and different levels: that of the dialogue proper, preliminary considerations leading up to the laws, the legislation itself, in which we can discern explicitly demarcated laws, different kinds of preambles, self-reflective or meta-legislative passages prompted by the exposition of the laws, and qualifying remarks about the status of the project as a whole. Statements therefore have to be weighed and interpreted in their context.

The question that will continuously function as a point of orientation in my argument is: why has Plato composed his text in this way rather than another way? This is not the kind of question that can be settled in any definitive way; I am not claiming that we can ascertain Plato's true intentions. Yet it is helpful as an interpretative tool because it allows us to classify certain interpretations as less plausible. The underlying premise is that the structure of our text is *meaningful*.

The question of the composition of the text is linked to the question of whether *Laws* attributes the laws to a higher authority, because the text itself portrays an attempt to legislate. In *Republic* the moral experts are a class within society, and the city is just in virtue of their ordering it. The moral expert, in the form of the philosopher-king, is a condition for the just society. This means that if the expert himself is absent – which is the question that the composition of *Laws* raises – the notion of δικαιοσύνη cannot remain the same. There is no such thing as the 'replacement' of the philosopher by law.

Existing interpretations of the text range from the position that *Laws* presents the laws of the constitution of *Republic* to the one that *Laws* presents a 'second best' constitution in relation to the 'ideal' one of *Republic*. Yet despite their differences, the two strands of interpretation converge in the *a priori* assumption that *Republic* and *Laws* presuppose the same moral norm (the absolute Idea of the Good) and the same ideal of justice. In the ideal-practice reading, the laws in *Laws* embody the norm of the Good of *Republic* in a less perfect, more practical form; in the second best reading, the 'rule of philosophy' is replaced by 'the rule of law' whereby this difference is considered to be only a difference in the institution that imposes the moral norm on the city rather than a substantial difference in the moral norm itself.

However, a constitution that deviates from the just constitution cannot be based on the *same* idea of δικαιοσύνη as set forth in *Republic*. The question is, then, whether *Laws* presents justice in different terms (in terms of laws rather than justice), or whether it presents a different project altogether. An additional point of criticism to the current readings is that neither the 'practical' nor the 'second best' view pay due attention to the structure of the text, and they wholly ignore the fact that the laws are embedded in a dialectical conversation.

This book argues that the striking textual composition and set-up of Plato's *Laws* reflects a new moral perspective. This moral perspective is pragmatic and therefore at odds with what we consider the core principles of Platonic philosophy, in particular the idea that the norms of society ought to be based on the absolute Idea of the Good. In *Laws*, good laws are ones that are conducive to the internal harmony of society, rather than ones that embody a fixed idea of justice. Yet Plato has couched this new project to some extent in the old and familiar Socratic terminology and dialogue form, thus maintaining the ostensible suggestion that *Laws* is in fact about the same philosophical material as the dialogues that his language and literary strategy recall. If, however, in the absence of justice (δικαιοσύνη) and the Idea of the Good, the laws are not made on the basis of expert knowledge of an absolute norm, the question is what norm they presuppose. We shall see that in place of expert knowledge, *Laws* introduces another source of authority for laws. As a result of the more pragmatic attitude towards virtue and good laws, this authority figure is much more elusive and much less clearly definable than the moral expert of other Platonic texts. In fact, I shall argue that it is part of *Laws*' unique strategy to focus on *polis*-internal, law-*safeguarding* authority figures (the magistrates, the nocturnal council), thereby pushing the ultimate authority (the lawgiver) out of sight.

The approach adopted here requires that some brief background remarks be made about Platonic dialectic and about the relation between dialectic and authority in the Platonic corpus. What becomes clear about dialectic from the Platonic corpus is that the dialectical method presupposes the existence of a truth independent of the person(s) who search(es) for it: an *a priori* or absolute truth.[4] The assumption underlying the dialectical method as the pathway towards the Ideas is that the truth is consistent: contradictory propositions cannot both be true at the same time. Through tracing consistency between propositions, the dialectical method therefore enables

4 Plato's dialectical method and its alleged development have attracted a good deal of controversy, both as regards its form and its object. As Van Ophuijsen 1999*b* has eloquently put the issue, "(…) it is far from clear to what extent either [Plato's] explicit statements, through the speakers of his dialogues, on dialectic and its ultimate object, or his actual practice of dialectic in these dialogues add up to a consistent and constant conception" (293). Stenzel 1931, Robinson 1941, and Ryle 1966 adopted a developmental perspective and sought to "disengage the method of dialectic from its subject matter" (Van Ophuijsen 1999*b*, 296). For an interpretation of Platonic dialectic that stresses its continuity throughout the philosopher's oeuvre, both in its form and in its object (the Form of the Good), see Van Ophuijsen 1999*b*, who observes that the fact that the ancient tradition was not aware of any major changes is reason to question the alleged discontinuities. For studies of the dialectic of the late dialogues, see the articles collected in Gill & McCabe 1996. The articles collected in Fink 2012 target specific dialogues and passages.

the interlocutors to map out parts of the truth. That the dialectician is not in danger of committing himself to consistent but false beliefs is explained by Van Ophuijsen: "We should remember that elenchus by reduction has the power to achieve more than mere consistency. To derive a logical impossibility from any proposition can be a purely negative exercise, but within binary oppositions such as motion/rest, limited/unlimited, and mortal/immortal, disproving one alternative converts into a positive result. In this way elenchus can lead to the formation of conglomerates of consistent beliefs, the truth of some of which has been established by showing that their contradictory leads to absurdity."[5] By continuing his elenctic investigations, the dialectician should be able "to incorporate several of these conglomerates into fewer of wider comprehension".[6]

Yet insight into the source of truth and reality, which is called the Idea of the Good in *Republic*, cannot be reached via the path of dialectic. Dialectic is only preparatory to the vision of the Idea of the Good. A leap to "the desired synoptic view of reality"[7] remains, and this leap cannot be made in a rational way. If we may rely on the *Seventh Letter* as evidence in this respect, the final step towards what *Republic* calls the Idea of the Good is a matter of some kind of inspiration flaring up, 344b1–c1:[8]

> ἅμα γὰρ αὐτὰ ἀνάγκη μανθάνειν καὶ τὸ ψεῦδος ἅμα καὶ ἀληθὲς τῆς ὅλης οὐσίας, μετὰ τριβῆς πάσης καὶ χρόνου πολλοῦ, ὅπερ ἐν ἀρχαῖς εἶπον· μόγις δὲ τριβόμενα πρὸς ἄλληλα αὐτῶν ἕκαστα, ὀνόματα καὶ λόγοι ὄψεις τε καὶ αἰσθήσεις, ἐν εὐμενέσιν ἐλέγχοις ἐλεγχόμενα καὶ ἄνευ φθόνων ἐρωτήσεσιν καὶ ἀποκρίσεσιν χρωμένων, ἐξέλαμψε φρόνησις περὶ ἕκαστον καὶ νοῦς, συντείνων ὅτι μάλιστ᾽ εἰς δύναμιν ἀνθρωπίνην.
>
> The truth about virtue and vices must necessarily be learnt at the same time as what is true and false in Being as a whole. This, as I began by saying, requires intensive practice over a long period. As they are laboriously practised each in relation to the other, all these items – names, accounts, visual and other perceptions – being tested in good-willing, uninvidious tests by persons engaging in question and answer, all at once there blazes up insight and understanding with respect to each of them exerting itself to the utmost of human capability. (Transl. Van Ophuijsen 1999*b*, 301)

That the objective truth cannot be argued also seems evident in *Phaedo* and *Republic*. In *Phaedo* we find a description of dialectic as the method that ascends to higher hypotheses, until one arrives at the point where there is no need to go any further (ἕως ἐπί τι ἱκανὸν ἔλθοις, *Ph*. 101e1). This alludes in non-technical language to the position of what in the language of *Republic* is called the ἀνυπόθετον: that which has no further explanation. In *Republic* we hear that the dialectical hypotheses are used by way of flights (οἷον ἐπιβάσεις τε καὶ ὁρμάς, 511b5) until one arrives at the ἀνυπόθετον, which is the principle of the whole (ἵνα μέχρι τοῦ ἀνυποθέτου ἐπὶ τὴν τοῦ παντὸς ἀρχὴν ἰών, 511b5–6).[9] This unexplained principle functions as

5 Van Ophuijsen 1999*b*, 301.
6 *Ibid*.
7 *Ibid*.
8 Cf. *Epist.* VII, 341c4–d2.
9 In *Republic*, being and truth themselves rest on the foundation of the Idea of the Good, which lies at the basis and is 'unfounded', τὸ ἐπ᾽ ἀρχὴν ἀνυπόθετον (510b6–7). Cf. [Pl.] *Def*. 414b5

a closing piece for the λόγοι, the accounts of the lower things, but does not have a λόγος itself. In Platonic terms, it would be less correct to say that the dialectical method is defective than that the majestic, overwhelming nature of the Good, which is compared to the power of the sun in both *Phaedo* and *Republic*, cannot be given a rational explanation (λόγος) and couched in words.[10]

The results of dialectic do not amount to being the result of a demonstration: they are not proven and require *belief*.[11] As Gadamer notes, "Was die Hauptfrage der Moral und des Lebens betrifft, bleibt die Dialektik unabgeschlossen, und es gibt kein Resultat, das ein Beweis zu sein beansprucht".[12] The Ideas are ultimately assumptions.[13] The fact that Socrates resorts to telling a *myth* in the event that dialectic fails (in *Gorgias*) is likewise indicative of the conviction that the Good is something that cannot be demonstrated and ultimately remains a matter of faith.[14] This is where there is room for authority in Platonic philosophy. It is therefore not surprising that in the only non-dialectical text of the Platonic corpus, *Apology*, Socrates has no problem with appealing to the authority of the *daimonion* as the legitimation for his beliefs and way of life. Statements that cannot be accounted for or proven in dialectic but are nevertheless taken to hold true are often presented as legitimated by some kind of authority.

The next section will offer a *status quaestionis* on *Laws* and reflect on the interpretative principle(s) that govern most modern interpretations. It will then explain the method adopted in this study, and reflect on the reasons for adopting it. From my interpretative perspective, it is undesirable to ascribe obscurities to the allegedly unfinished status of the text, or to Plato's advanced age. The next section will therefore briefly discuss the ancient evidence for the allegedly unfinished state of *Laws*.

σοφία ἐπιστήμη ἀνυπόθετος· ἐπιστήμη τῶν ἀεὶ ὄντων· ἐπιστήμη θεωρητικὴ τῆς τῶν ὄντων αἰτίας.

10 *Ph*. 99d4–e6; *Resp*. 507b1–509c10.

11 For the method of the dialectician not qualifying as demonstration "in an Aristotelian sense", see Van Ophuijsen, 1999*b*, 301. For a similar view of dialectic, cf. Gadamer 1996, 56–57, who notes that Socrates in *Phaedo* explicitly does not claim to have *proven* the immortality of the soul; in full awareness of the recognition that no certainty can be attained, Socrates maintains that it is better to lead a good life. Gadamer sees a parallel in *Phaedo*'s transcendental argument and Kant's transcendental foundation of the existence of freedom (Freiheit): "Auch Platons Begründung hat (…) etwas Transzedentales und zielt auf die Begrenztheit unserer menschlichen Vernunft angesichts des Rätsels des Todes und der Ewigkeit" (57).

12 Gadamer 1996, 57.

13 As such they are introduced by Socrates in *Ph*. 100b5–7. We could also recall the belief in the existence of θεία σοφία of the Socrates of *Apology*, and his firm conviction that this placed him under the obligation of a divine mission.

14 For this interpretation of the myth of *Gorgias*, see Van Raalte 1991. Also Van Raalte 2004, 310–311.

1.1 *STATUS QUAESTIONIS* AND PRINCIPLES OF CHARITY

The relation between Plato's two major works of political philosophy is still a vexing problem. Why write *Laws*, a *second* constitution, after *Republic*? This question seems to have puzzled the ancients as well.[15] However, it is not only the plain fact that Plato wrote a second constitution that is startling.[16] It is also the impression, shared by many scholars, that the Plato of *Laws* is beyond recognition for anyone familiar with *Republic*.[17] This section offers an overview of the main currents in the modern history of the interpretation of *Laws* from the 19th century onwards.[18] Given the sheer quantity of existing scholarship on the subject, which has experienced a renewed impetus since the 1980s and early 1990s, this overview can in no way aspire to completeness. My objective, however, is not to be exhaustive, but to illuminate the principles governing the main interpretative currents, in order to better contextualize the contribution of this study.

In the first half of the 19th century, both the content and language of the work were deemed un-platonic by Ast.[19] He disputed Platonic authorship (and suggested that its writer may have been Xenocrates, one of Plato's pupils) and was followed in this by others, even into the middle of the 20th century.[20] This is an extreme inference to draw from the observation that *Laws* in many ways appears unlike the familiar Plato. A somewhat less extreme view, also put forward in the 19th century, was the idea that the text of *Laws* had been drastically edited after Plato's death, having been left in a state of disorder, or even the result of the amalgamation of two unfinished texts.[21]

15 As may be surmised from an anecdote reported in Stob. 3.13.45 (Hense = Meineke 13, 37): Διογένης ἤρετο Πλάτωνα εἰ νόμους γράφει· ὃ δὲ ἔφη. Τί δαί; πολιτείαν ἔγραψας; Πάνυ μὲν οὖν. Τί οὖν, ἡ πολιτεία νόμους οὐκ εἶχεν; Εἶχεν. Τί οὖν ἔδει σε πάλιν νόμους γράφειν; Unfortunately, no answer is reported. Cf. Jaeger 1945, 213–214: "But it is remarkable that after he finished *The Republic* he still felt the need of composing the same kind of general survey once again, in another form, and of constructing a second state, after once making the perfect state, the ideally just *Republic*."

16 Assuming that this is the correct chronological order. For the relative dating of *Laws* as a late dialogue, see Bobonich 2002, n. 8 on pp. 482–483 and the literature in Zuckert 2009, 51, n. 1. For the question of Platonic chronology in general (initiated by Tennemann in 1792, who first tried to determine the chronological order of the dialogues) see Lutosławski 1983; Brandwood 1976; Bobonich *ibid*.; Klosko 2006, 14–19, with the literature in nn. 5 and 6 on 15–16. See also Nails & Thesleff 2003, 15, n. 3.

17 Cf. Nightingale 1993, 279.

18 See for a compact overview also Lisi 2001*b*. A bibliography on *Laws* until 1975 is provided by Saunders 2000.

19 Ast 1816, 387: "Ist der Inhalt der Gesetze unplatonisch, so ist es noch weit mehr der Geist und Ton des Werkes und die Sprache."

20 Ast 1816, 384–392, and 1818; Zeller 1839; Müller 1968. Zeller 1839, 128–133, claims that Aristotle's attribution of *Laws* to Plato in his *Politics* was mistaken, but considered the work genuine in his *Die Philosophie der Griechen in ihrer geschichtlichen Entwicklung*.

21 This is the view of Ivo Bruns (*Platons Gesetze vor und nach ihrer Herausgabe durch Philippos von Opus*, Weimar 1880), Ernst Praetorius (*De legibus Platonicis a Philippo opuntio retractatis*, diss. Bonn 1884), and Bergk 1893 (references also in Lisi 2001*c*, 279, n. 7); cf. Gigon 1954, 230. Bergk argues that the text of *Laws* as we have it is a compilation of "Bruchstücke"

Once Platonic authorship had become the consensus,[22] the beginning of the 20th century witnessed the emergence of two interpretative trends that today still dominate the debate: the distinction between (1) ideal and practice (implying a version of the 'unitarian' reading of Platonic philosophy) and the distinction between (2) best and second best (implying usually a 'developmentalist' view of Platonic philosophy). They centred primarily on discussing the relation of *Laws* to *Republic* and, to a lesser extent, to *Statesman*.

The scholars who initiated the distinction between ideal and practice did so in reaction to the earlier denial of Platonic authorship of *Laws*. They asserted virtually the opposite thesis, that is, the thesis that *Laws* is complementary to *Republic*,[23] or that they even describe the same city.[24] The modern view makes a distinction between theory and practice. According to this reading, *Republic* depicts a purely theoretical ideal, whereas *Laws* supplies a more realistic design, adapted to the demands of practice.[25] In this view, the differences between Callipolis and Mag-

made by Philippus of Opus of what were in fact two different texts, each already partly lost when Philippus began his work. The one Bergk calls πρότεροι Νόμοι, the other δεύτεροι Νόμοι. Hypothesizing two different texts solves the problem of why we never get the τρίτη πολιτεία mentioned in *Leg*. 739e5 (*ibid*., 48–52). Assuming that the πρώτη πολιτεία is *Republic*, he alleges that the πρότεροι Νόμοι are (somewhat confusingly) the laws for the δευτέρα πολιτεία ("ideale[n] Forderungen", 114), whereas the δεύτεροι Νόμοι are the laws for the τρίτη πολιτεία (the laws for the Cretan colony, "Bedürfnisse[n] des wirklichen Lebens", *ibid*.).

22 For an overview of the arguments for *Laws*' genuineness, see Morrow 1960, 515–518. An overview of the debate about the authenticity of *Laws* until 1974 is presented in Isnardi Parente 1974. The ancient testimonia, in particular the fact that Aristotle (*Pol*. II, 1265a2–1266a28) refers to *Laws* as a work of Plato, give us no reason to doubt Platonic authorship. Other testimonia include that of Plutarch in *Adv. Colotem* 1126c: Plato left behind καλοὺς μὲν ἐν γράμμασι λόγους περὶ νόμων καὶ πολιτείας. Among the books of Aristotle enumerated in D. L. V.22 are three books of extracts from Plato's *Laws* (Τὰ ἐκ τῶν νόμων Πλάτωνος α' β' γ'). Persaeus, a pupil of Zeno, is reported in D. L. VII.36 to have written a reaction to Plato's *Laws* in seven books (Πρὸς τοὺς Πλάτωνος νόμους ζ').

23 This more unitarian approach was initiated by Grote in 1865 and Shorey in 1914. The slight differences between the two dialogues are "outweighed" by "all-pervading correspondences in principle and in detail" (*ibid.*, 347).

24 In antiquity, the two were not systematically kept apart. Aristotle saw only few differences between the two: *Pol.* 1265a4–10: ἔξω γὰρ τῆς τῶν γυναικῶν κοινωνίας καὶ τῆς κτήσεως, τὰ ἄλλα ταὐτὰ ἀποδίδωσιν ἀμφοτέραις ταῖς πολιτείαις· καὶ γὰρ παιδείαν τὴν αὐτήν, καὶ τὸ τῶν ἔργων τῶν ἀναγκαίων ἀπεχομένους ζῆν, καὶ περὶ συσσιτίων ὡσαύτως· πλὴν ἐν ταύτῃ φησὶ δεῖν εἶναι συσσίτια καὶ γυναικῶν, καὶ τὴν μὲν χιλίων τῶν ὅπλα κεκτημένων, ταύτην δὲ πεντακισχιλίων, 'For with the exception of the community of women and property, he supposes everything to be the same in both states; there is to be the same education; the citizens of both are to live free from servile occupations, and there are to be common meals in both. The only difference is that in the *Laws*, the common meals are extended to women, and the warriors number 5000, but in the *Republic* only 1000' (transl. Barnes). Since Cicero had in mind that the laws in *De legibus* "should fit the type of state constructed in *Rep*. (…) he may well have understood Plato's project in a similar sense", Dyck 2004, 280.

25 Already in antiquity, it seems: Apuleius, *De Plat.* II, 26–27 (*civitas ... non ut superior* [the *polis* of *Resp*.] *sine evidentia, sed iam cum aliqua substantia*, c. 26). The most prominent defender of this position today is Laks 1990, 1991, 2000. Similarly: Festugière 1936, 423, 426, 444; Saunders (*Republic* and *Laws* "opposite sides of the same coin", transl. xxxiii); Hentschke

nesia are solely to be explained by Magnesia's practical purpose, and should not be attributed to any change of mind on the part of their author.[26] Underlying this ideal/practice interpretation is the assumption that Plato is consistent throughout his entire oeuvre. This is an interpretative principle of charity in its own right, but a charity grounded on a different basis (*doctrinal* consistency) than the principle of charity that I shall be defending here (*text-internal* consistency), on the grounds that the assumption of doctrinal consistency makes interpreters prone to exaggerate the similarities between Callipolis and Magnesia, and explain away the differences. Another weakness of this interpretation is that it ignores the literary character of the composition of the Platonic texts (especially *Laws*), since it considers this aspect irrelevant for the content of the political proposals.[27]

A somewhat different unitarian explanation holds that the unphilosophical character of *Laws* is to be explained by its internal and/or intended audience. *Laws* was, according to this reading, intended for a 'popular' audience, consisting of non-philosophers.[28] The assumption of such a popular audience would explain the almost total lack of references to philosophy in *Laws* and the prominence of other techniques such as rhetoric and persuasion (πειθώ) dismissed elsewhere in Plato.[29] The interlocutors Cleinias and Megillus are, according to this view, a reflection of the non-philosophical external audience.[30] This position is also compatible with a

1971, especially 233, 252–253, 258–259, 264–265, 284–287; Stalley 1983, 2007; Kamtekar 1997; Lisi 2001*b*; Simpson 2003, drawing on Aristotle as evidence; Brooks 2006; Rowe 2010. See also the literature in Lisi 2001*b*, 14, n. 10. According to Lisi *ibid*., p. 14, this ideal/practice interpretation originated after World War II, as a consequence of the polemic (initiated by Karl Popper in *The Open Society and Its Enemies*, Vol. I) about the "totalitarian character" of Plato's political philosophy.

26 Shiell 1991, 388, has emphasized that this dualism disregards the fact that *Republic* is to a certain extent also practical, and *Laws* to a certain extent also theoretical or ideal. Laks 1990 (taking Cicero as his starting point), 1991, 2000, 2003 has made a similar point; cf. Lisi 1998, 2000.

27 Cf. for similar critique Nightingale 1993, 282: "In treating the *Laws* as a treatise, Aristotle initiates the interpretative approach that is adopted by most of its modern-day defenders. This approach, which proceeds by extracting a political and/or ethical 'system' from the rough surroundings of the rest of the text, all but ignores the fact that the *Laws* contains a good deal more than arguments and proposals."

28 Görgemanns 1960. See Jaeger 1945, 213–214, for the claim that *Laws* is on the level of opinion, not knowledge. Cf. Gill 2003, 44: "Plato seems to have set himself the challenge of trying to carry out a philosophical project in terms that non-philosophers from non-philosophical cultures could understand and agree with." Lisi 2001*b*, 12 notes that the origin of this view can be traced back to Stallbaum 1859–1860, X2, vi–xii. Simpson 2003 argues that *Republic* and *Laws* address audiences of different ages: the former addresses the young, the latter old men.

29 Görgemanns 1960, especially 43–66, 70–110.

30 For the thesis that Cleinias and Megillus are not philosophers or have trouble following the argument, see: Wilamowitz-Moellendorff 1919, 653; Festugière 1936, 437; Zuckert 2009, 66 n. 34, 73–74, 95, 136; Mayhew 2010, 214–215. Bobonich 2002 thinks that the shortcomings of the interlocutors are ethical, because they hold that "goods other than virtue are much more important than virtue itself"; he connects this ethical shortcoming with the failure of the Spartan and Cretan laws "to treat citizens as free people" (122). But cf. *Cri.* 52e5–53a1, where the personified Athenian laws claim that Socrates used to express admiration for the quality of the

unitarian account of Plato's philosophy: on this account, the lesser prominence of the Ideas (or even absence – this is a disputed issue in itself) and the supposedly 'un-philosophical' nature of the discussion are not to be seen as a direct testimony to Plato's personal convictions at the time. This position has recently been defended by Rowe in his unitarian account of Platonic philosophy (2007).[31] Although the thesis that Plato chose to portray a conversation between a philosopher and two non-philosophers cannot be conclusively disproved, it seems a relatively weak explanation. It tries to explain why we find in *Laws* so little of what might be considered typical of Platonic philosophy, rather than building an interpretation on what actually happens in the course of the conversation. This book argues that the peculiarities of *Laws* suggest that the Platonic project in *Laws* diverges from the rest of the Platonic corpus in such a profound way that the unitarian account of *Laws*' peculiarities cannot do justice to its *status aparte* in the corpus.

As an alternative to the ideal/practice dichotomy, another view was put forward. This is the view that *Laws* represents a 'second best' constitution – second best, that is, to Callipolis. The first to advance this view were Zeller and Wilamowitz. The former argued in his history of Greek philosophy that *Laws* depicts a constitution that had to dispense with philosophical rulers.[32] The latter explained this absence of philosopher-rulers in *Laws* as a sign of the resignation of Plato's old age.[33] Whereas *Republic* and *Statesman* express the view that political authority based on objective knowledge should be unconstrained by laws (the situation depicted in *Republic*), *Laws* presents a state in which political authority (the magistrates) is subjected to law.[34] Law is codified reason: the second best 'rule of law' is substituted for the 'rule of philosophy', that is, rule by the reason of a living ruler.[35] Plato's change of attitude towards the relation between a living ruler and law may have resulted from his frustrated hopes that a rule by philosophers could be established, possibly after the Sicilian fiasco. This reading assumes *Laws* to be much more pessimistic about

laws of Crete and Sparta. This warrants a more positive evaluation of the background of these interlocutors. Adkins 1960 asserts that the Cretans and Spartans were admired by "'upper class' and philosophic Athenian opinion" (294).

31 Although Rowe is relatively brief about *Laws*: "… in the *Laws*, [Plato] can set up a conversation between a philosopher and two non-philosophers who are specifically identified as incapable of dialectical exchange (it simply goes over their heads); a strategy that has immediate consequences for the level of the conversation. The Athenian visitor to Crete in *Laws* cannot, clearly, carry on a discussion with the philosophically unformed Clinias and Megillus of the sort that Socrates (…), can conduct, in the *Parmenides*, with the great Parmenides of Elea" (14).

32 Zeller 1922, 951: "Wenn die Republik in der Philosophie die Grundlage jedes vernünftigen Staatslebens erkannt, und den Staat unter der Voraussetzung philosophischer Herrscher rein von der Idee aus entworfen hatte, so wollen die Gesetze zeigen, in welchem Mass und durch welche Mittel der Staat seiner Aufgabe ohne diese Voraussetzung genügen könne."

33 Its primary expounder is Wilamowitz-Moellendorff 1919; for more adherents of this interpretation see the literature cited in Lisi 2001*b*. Cf. Hentschke 1971, 163; Trampedach 1994.

34 Adkins 1960, 297–298; Klosko 1984, 2006; Shiell 1991; Schofield 1997; Pierris 1998, 143–145; Wallach 2001; Kraut 2010.

35 The rule of reason embodied in the philosophers is ideal, but law, the νοῦ διανομή, is second best. See Zeller 1922, 952; Morrow 1960, Chapter XI; Yunis 1996, 231; Meyer 2006, 385 "law in its very essence is an expression of reason".

human nature than *Republic*, since it supposes that Plato saw himself compelled to conclude that no human individual can be the sovereign of a state. According to this view, the fact that the constitution of *Laws* relinquishes the idea of the philosopher as the ultimate authority in the state does not mean that Plato's belief in metaphysics as the basis for morality and politics was compromised; Plato only changed his idea about what would be the best constitution, not necessarily his belief in absolute norms for morality.

There is common ground between the ideal/practice and best/second best explanations: they converge in assuming that the metaphysical basis in *Republic* and *Laws* is consistent (in this sense, they are both unitarian). They share the idea that *Laws* presents a modified version of Callipolis (either conceived as the ideal, or as the best constitution). In this view, it is assumed that Plato consistently adhered to his conviction that society and human life ought to be organized on the basis of a metaphysical idea of justice and τὸ καλόν, and both *Republic* and *Laws* offer ways to do this – and it is of secondary importance how that knowledge is imparted in society. The primary difference between the ideal/practice and best/second best interpretative directions lies with their respective assessment of the status of Callipolis (as unrealizable ideal, or as the best possible constitution), which in turn has consequences for their respective assessment of the human condition and the rule of law in *Laws*.

The passage generally adduced to support the idea that *Laws*' city is an adaptation of Callipolis, both by defenders of the ideal/practice and of the best/second best thesis, is *Laws* 739a1–e7. This is one of the source passages for the label 'second best', since in this passage the constitution of *Laws* is said to come into being δευτέρως, 'in a secondary way'.[36] *Laws* 739a1–e7 has often been read as a kind of commentary on the relation between Callipolis and Magnesia.[37] The passage refers to a city, inhabited by gods or children of gods (ἡ μὲν δὴ τοιαύτη πόλις, εἴτε που θεοὶ ἢ παῖδες θεῶν, 739d6). This city has traditionally been identified with Callipolis due to a superficial resemblance: in the 'city of gods', wives, children and possessions are all held in common.[38]

Both Laks and Bobonich have convincingly argued, however, that 'the city of gods' cannot refer to Callipolis.[39] It is obvious that the hierarchy of constitutions in

36 In *Laws* 739e4 the Athenian states that the constitution they (the interlocutors) have now embarked upon (this is in Book V) if it somehow came into being will be "very near to immortality and unity in a secondary way", ἀθανασίας ἐγγύτατα καὶ ἡ μία δευτέρως. In the preamble on woundings it is stated, *Laws* 875d3–4: τὸ δεύτερον αἱρετέον, τάξιν τε καὶ νόμον. Cf. *Plt*. 297e1–6, where the phenomenon of law (νόμος) is called δεύτερον.

37 For the first time, it seems, by Bergk 1883, 48–51. But see also Zeller 1922, 952.

38 *Leg*. 739c4–5: κοινὰς μὲν γυναῖκας, κοινοὺς δὲ εἶναι παῖδας, κοινὰ δὲ χρήματα σύμπαντα.

39 See Laks 2000, 272: "(…) what the *Laws* retreats from in the case of communal institutions is arguably something more extreme than anything we find in the *Republic*, since the *Laws*, in sketching the outlines of the 'first city', specifies that this community should extend, as much as possible, to the 'entirety of the constitution' (739c1), whereas the *Republic* explicitly limits communism to the guardians alone." See also *id*., 2001, 108–110. Bobonich 2002, 11–12: "The *Laws* passage [739a3–740a2] presents as the 'first-best' city, not that of the *Republic*, but one in which there is, throughout the entire city, a community of property and of women and chil-

Laws 739a1–e7 is defined by "a model internal to the *Laws* itself".[40] This internal ideal is cast in the phrase κοινὰ τὰ φίλων (739c2–3). A *polis* must be as much as possible a unity, a city in which τὰ φύσει ἴδια (eyes, ears, hands, etc.) are common 'in some way or other' (ἀμῇ γέ πῃ, 739c7).

The vagueness here is important: in contrast to the constitutional theory of *Republic*, *Laws* assumes that a *polis* can be unified in various ways.[41] Unity (ἡ μία) is a scale, on which the community of families that are dispersed throughout the entire city is one extreme. *Laws*' internal ideal thus suggests a more egalitarian society, whereas the ideal *polis* Callipolis is a class society. In fact, it is this very property of Callipolis (the order among its three classes) that makes it a just *polis* in the first place. The problem with κοινὰ τὰ φίλων (the reason why extreme communism is unattainable) is that human nature is not capable of such a high degree of commonality. The challenge is therefore to design a constitution with the highest degree of unity that *is* possible (εἰς τὸ δύνατον, 738c6–7; cf. κατὰ δύναμιν in 739d3 and μίαν ὅτι μάλιστα πόλιν in d3–4). Unity differs in degrees, and different types of constitutions may exhibit relatively high degrees of unity. The constitution the interlocutors are now designing may, when it comes into being, approximate immortality and constitute a unity 'in a secondary way'.[42]

Some interpreters have seen a confirmation of the second best thesis in a few derogatory remarks about laws in *Statesman*,[43] and in the statement of *Republic* that 'a virtuous person does not need laws'.[44] Negative verdicts about laws in other dialogues than *Laws* have sometimes fostered the view that Plato's attitude to laws is negative in principle, which seems to have influenced scholars' assessment of Plato's project in *Laws*. Yet claims made about a subject X in one dialogue cannot be sufficient grounds for drawing definitive conclusions about X in another dialogue. *Laws* develops its own conception of laws and lawgiving, which need not be liable to the criticism of laws voiced in other dialogues.

dren. (…) What the *Laws* represents as the ideal – that is to be approximated as closely as possible – is a city in which all citizens are subject to the same extremely high ethical demands." Cf. Pierris 1998, 143.

40 Laks 2000, 272.

41 For a study of the unity of Callipolis, see Arends 1988.

42 *Leg*. 739e3–4: ἣν [*sc*. πολιτείαν] δὲ νῦν ἡμεῖς ἐπικεχειρήκαμεν, εἴη τε ἂν γενομένη πως ἀθανασίας ἐγγύτατα καὶ ἡ μία δευτέρως. The fact that the Athenian mentions a 'third constitution' (τρίτην, 739e5) confirms that he has in mind an ordinal ranking in which different constitutions differ from each other in degrees of being a unity.

43 *Plt*. 294a10–297e6, especially 297e1–6; also 300c5–302b3; *Leg*. 875d3–5. Cf. [Pl.] *Epist*. VII, 337d6. On the opposition between the living ruler and written laws as second best, see: Zeller 1839, 28, 39–42; Adkins 1960, 296–298; Guthrie 1978, 178, 186–187; Saunders 1992, 477; Nightingale 1999, 113; Klosko 2006, 211–216; Meyer 2006, 375–380; Brown 2009, 347–348.

44 *Resp*. 425b7–426e7. See e. g. Barker 1918, 271 (*contra* whom see Owen 1953: "*Republic* does not repudiate any 'system of law'; it contends only that continuous piecemeal legislation and litigation will be eliminated ἐὰν γε θεὸς αὐτοῖς διδῷ σωτηρίαν τῶν νόμων ὧν ἔμπροσθεν διήλθομεν (425e), since the Guardians will know ὅσα δεῖ νομοθετήσασθαι", in n. 3 on 90–91); Guthrie 1978, 186–187; Klosko 2006, 178–179.

The present study approaches the text of *Laws* through a *text-immanent* use of the philological 'principle of charity'.[45] This means that I shall apply the principle of charity in a specific way: I shall take a single text as my basic unit of interpretation rather than an oeuvre and regard it as a coherent whole. This assumption puts the interpreter under an initial obligation to maximize the sense and internal coherence of the different statements in the text. The interpreter assumes a benevolent attitude to the text in order to "bring out the best in the source text", and prefers "a favourable reading over one that attributes a mistake to the author".[46] This methodological principle attributes priority to *internal* consistency (consistency within *Laws*) rather than to consistency between the different Platonic texts, as most exegetes have done so far. I will attempt to develop a reading of *Laws* in which the seemingly un-Platonic elements will add up to a coherent narrative.

This Introduction began by listing some of *Laws*' most striking features. The minimal role of justice, the absence of Socrates, the positive attitude towards persuasion, and the formulation of laws without reference to an authority – all of these are surprising in the light of earlier Platonic works. The present study takes these peculiarities as the basic ingredients of its interpretation. It offers a maximizing interpretative approach, in which these elements are interpreted as adding up to an internally coherent and sensible composition. Since I shall at the same time be arguing that the ancient tradition gives us no reason to doubt Platonic authorship (see the next section), my reading of *Laws* as offering a 'pragmatic project' entails that Plato's last work is at odds with a number of core Platonic doctrines.[47] This of

45 See Sluiter 1998, especially 14–15, for an explanation of the principle of charity. The principle of charity relates utterances to other utterances (rather than a meaningful expression to a discrete entity) and in trying to come up with an interpretation that maximizes the sense between them, it is in that sense holistic. Sluiter 1998 sees ancient precursors in the *benigna interpretatio* of Roman law by Roman jurists and in Augustine's *regula caritatis* as a "hermeneutic instrument" (18).

46 Sluiter 1998, 15 on the principle of charity in general. In terms of Rorty 1984, the approach of this study attempts to draw a "historical reconstruction" rather than a "rational reconstruction". The first aims to understand the views of ancient philosophers in their own terms, as do historians of science; the latter treats philosophers "as contemporaries, as colleagues with whom [one] can exchange views" (*ibid*., 49).

47 What I mean by 'pragmatic project' differs from how this term is used in Schofield 2010 (see *ibid*. 22, 24, 26). Taking his cue from a passage in Aristotle's *Politics*, Schofield argues that *Laws* involves two distinct projects. According to him, *Laws*' fundamental enterprise is "idealising" and consists in offering a second best *politeia* that approximates the ideal of *Republic*; this project is manifest in Book I, in "the provisions for social organisation and education" in Books V–VII, and is reaffirmed at the end of Book XII (*ibid*., 26). The other, "subsidiary" and "more pragmatic" project consists in offering the coercion of a law code that can be adopted by different cities, which "needs to encapsulate reflection on human nature as it is" (27). This project is manifest in the historical reflections of Book III, which are "devised with a view to prescribing for the sort of system capable of being generally adopted by political communities" (20), in the rules for the property classes in Book V and the officials in Book VI, and in Books VIII–XII (see *ibid*. 27). Schofield is followed in this reading of *Laws* by Gray 2015 (see 64–65, 70–71, 100). Though it is certainly correct that *Laws* combines both an interest in education in virtue with the coercion of law, these are subsequent 'phases' of the same project: the preambles and the laws come in when education has failed. In contrast to Schofield, I argue that *Laws*

course raises the question of the place of *Laws* in the Platonic corpus as a whole. The Conclusion (Chapter Seven) will suggest a possible way to address the discrepancy between *Laws* and more central works of Platonic philosophy, by viewing the work in its broader intellectual context. In any case, the explanation offered by an interpretation that grasps the text as an internally coherent whole should outweigh the fact that the particular interpretation offered in turn raises, with renewed urgency, the question of why Plato embarked on such a radically different project towards the end of his life.

Several interpreters who have approached *Laws* from a strictly philological point of view have concluded that the work is not authentic. Although I do not think that the results of the analysis offered here lead one to draw such a drastic conclusion, they do agree with those interpreters in finding significant shifts in the philosophy of *Laws* when compared to the rest of Plato's oeuvre. It might seem paradoxical that my approach and a number of my conclusions have more affinity with some of those who contested Platonic authorship.[48] On second thought, however, it seems that the radicalism of Zeller and Müller has an interpretative advantage: it saves them from explaining away differences between *Republic* and *Laws*. Moreover, their analysis of *Laws* on the level of its style and vocabulary saves them from the mistaken assumption that continuity in terminology (where it exists) automatically means continuity in thought – they acknowledge that a large part of the Platonic vocabulary is re-appropriated in *Laws*, but in the service of a different message.

Methodologically, the consequence is that we have to be very careful about our use of terms and always make explicit whether we are talking about, e. g., ἀρετή or τέχνη as Plato uses these terms in *Laws* or as he uses them elsewhere in his oeuvre. This mechanism, Plato's using part of his *own* vocabulary in the service of a message that differs from the one for which this philosophical idiom was coined initially, will play an important role in the argument of this study. Appearances can be deceiving: if in *Laws* Plato is talking about, for instance, φρόνησις, it is not necessarily true that what he means by it, or what he says about it, will be the same as in, say, *Republic*. In fact, it will be argued that Plato not only re-appropriates familiar terms in a new context, he seems even to re-appropriate complete philosophical postulates from his own philosophy. The most important example of this

as a whole, i. e. including its rules for social organization and education, does not presuppose a transcendental moral norm but centres on "human nature as it is". Though my reading to some extent agrees with that of Schofield, it seems to me that he is mistaken in following Aristotle to recognize *both* projects in *Laws*. When Aristotle wonders, in *Pol*. 1265b26–33, which of the two is Plato's real project in *Laws*, he clearly considers these *alternatives*. Aristotle's confusion arises from his apparent awareness that Plato in *Laws* wanted to offer a constitution 'more common' to cities, and failure to see much difference between *Laws* and *Republic* (the two differences he does see are that in *Laws* the women should also participate in the *syssitia*, and that in *Laws* there are 5000 warriors, in *Republic* 1000, *Pol*. 1265a8–10). It is therefore precisely because in his opinion *Laws* does not reflect what Plato wanted to do (that is, Aristotle fails to see in *Laws* what Schofield calls its pragmatic project) that he wonders in *Pol*. 1265b26–33 *in which of the two* Plato in *Laws* engages.

48 Particularly Müller 1968, and, to a lesser extent, Zeller 1839, to which I will refer at the appropriate places in my argument.

recycling of an earlier postulate is that of the unity and plurality of the four virtues. It will be argued that it is significant that this theme occurs only at the beginning and the end of *Laws* (Books I–II, and XII), and has no role in the legislative part proper.

As interpreters, we therefore need to distinguish between the different *uses* that Plato makes of his own philosophical terms. Sensitivity to the author's use of his language can help us to trace the new outlines of the old concepts, and to make sense of those results with the help of the principle of charity explained above. We will see that an important reason why *Laws* keeps eluding our comprehension is that its concepts, familiar though they may seem to us, do not add up to the neat and orderly 'system' from which they were taken and that they served to create. This aspect of *Laws* can be most clearly perceived when *Laws* is compared to the closed system of *Republic*, which is why the investigation of Plato's last work will be preceded by a discussion of *Republic* as well as two other texts that assume that justice is a part of a metaphysical order.

Since the interpretation proposed here assumes that *Laws* is a coherent and well-structured text, we must here briefly address the issue of its supposedly unfinished state. The next section will therefore discuss the ancient reports testifying that Plato died before he could finish his text.

1.2 IS PLATO'S *LAWS* UNFINISHED?

Laws is generally held to be Plato's last work.[49] Two ancient sources inform us about the state in which Plato left *Laws* at his death. The first, which is the source most modern scholars refer to, is a report in Diogenes Laertius: ἔνιοι τέ φασιν ὅτι Φίλιππος ὁ Ὀπούντιος τοὺς νόμους αὐτοῦ μετέγραψεν ὄντας ἐν κηρῷ: 'some claim that Philip of Opus transcribed his [Plato's] *Laws* as they were in wax'.[50]

49 Plutarch believes that Plato wrote *Laws* when he was 'older' than when he wrote *Timaeus*: *De Is. et Os.* 48 (= *Moralia* 370F): ἐν δὲ τοῖς Νόμοις ἤδη πρεσβύτερος ὤν, cf. Tarán 1975, 131, n. 549 and Lisi 2001*c*, 279, who reasons that a work of the magnitude of *Laws* must have taken some years to take shape, and notes that *Epist*. III (316a3) reports that Plato had conceived of new political ideas like the preambles on his second voyage to Sicily in 366/5 B.C. See Tarán *ibid*., 132–133, n. 554 for reasons why it is legitimate to assume that *Laws* is Plato's last work. Aristotle, *Pol*. 1264b26–27, states that *Laws* is a later work than *Republic*. Guthrie 1978, 322, feels that there is "much in the tone of the work to suggest that [Plato] wrote it after the failure of his last visit to Sicily in 360". Admitting in note 3 *ibid*. that this is "largely a matter of general impression", he thinks that *Epist*. III, 316a "may indicate that his work with Dionysius II on that visit provided the 'prototype' for the 'preambles' of the laws". See also Lutosławski 1983, 19, 35, n. 71. Schleiermacher followed Tennemann (references in Lutosławski *ibid*., 36), but Zeller, Hermann and Schleiermacher placed *Sophist* and *Statesman* before *Republic*. See also the literature in note 16 above, on the relative chronology of the dialogues; also Nails & Thesleff 2003, 15, n. 3.

50 D.L. III.37. About this testimonium Tarán 1975, 128–133; Morrow 1960, 515; Schöpsdau 1994, 138–142, who regards this as the most important testimony on this issue (with reference to Jaeger on p. 140, n. 96); also Bergk 1883, 43–44; Zeller 1922, 978–982. Cf. D.L. III.25. Fritz in *RE s.v.* Philippos (2354) connects ἀναγραφεὺς γεγονώς in the *Academicorum Philosophorum Index Herculanensis* Mekler 1902 fr. 13 = Dorandi 1991, III 37 (p. 134) with an

The second testimony, less well known, is Proclus' report in the *Prolegomena Philosophiae Platonicae* (Προλεγόμενα τῆς Πλάτωνος φιλοσοφίας). The anonymous author of the *Prolegomena* reports Proclus' twofold argument for the spuriousness of the *Epinomis*. The first, which is of importance for our purposes, runs as follows: πῶς ὁ τοὺς Νόμους μὴ εὐπόρησας διορθώσασθαι διὰ τὸ μὴ ἔχειν χρόνον ζωῆς τὸ Ἐπινόμιον μετὰ τούτους ὃν εἶχεν γράψαι;[51] 'since death prevented Plato from revising the *Laws*, he cannot possibly have written the *Epinomis* after it'.[52] In both cases, the interpretation hinges on what seem to be technical editorial terms, μεταγράφειν (ὄντας ἐν κηρῷ[53]) in Diogenes, and διόρθωσις in *Anonymous Prolegomena*.

ἀστρολόγος (= Philippus) being Plato's scribe and in this capacity writing down *Laws*; cf. Morrow 1960, 515; Schöpsdau 1994, 140.

51 Trouillard (Budé) translates 'Comment Platon, dit-il, qui n'a pas pu corriger les *Lois*, parce qu'il ne lui est pas resté assez de temps à vivre, aurait-il pu écrire l'*Epinomis*, qui vient après les *Lois*?' (37).

52 *Anon. Proleg*. X, 25, 6–8, text and translation Westerink. See Schöpsdau 1994, 140 for an assessment of the value of this testimony. In *Anon. Prol*. X, 24, 10–16 we find the report: ἐσχάτους δὲ τοὺς Νόμους φασὶν γεγράφθαι, διότι ἀδιορθώτους αὐτοὺς κατέλιπεν καὶ συγκεχυμένους μὴ εὐπορήσας χρόνου διὰ τὴν τελευτὴν πρὸς τὸ συνθεῖναι αὐτούς· εἰ δὲ καὶ νῦν δοκοῦσι συντετάχθαι κατὰ τὸ δέον, οὐκ αὐτοῦ τοῦ Πλάτωνος συνθέντος ἀλλά τινος Φιλίππου Ὀπουντίου, ὃς διάδοχος γέγονε τοῦ Πλατωνικοῦ διδασκαλείου, 'His last work is supposed to be the *Laws*, which he left uncorrected and in disorder, his death leaving him no time to put the finishing touch to it; if it makes a well-edited impression now, this is not Plato's own work, but that of a certain Philippus of Opus, who became Plato's successor in his school' (text and translation Westerink). Modern scholars are sceptical about the truth of this statement. Morrow 1960, assuming that the author of the *Prolegomena* is Olympiodorus: "One suspects that Olympiodorus, apart from his misinformation about Philippus (he was never διάδοχος of the Academy), merely gives an embellishment of what he found in Proclus" (516). I am not sure, however, that the source for this statement, which is introduced by φασίν (X, 24, 11), is Proclus, who is only introduced in X, 25, 6. More convincing to me seems Tarán 1975, who suspects that Olympiodorus' remark "is in all likelihood only an inference based on a conflation of Proclus' first argument against the Platonic authorship of the *E*[*pinomis*] (…), with Diogenes Laertius' statement concerning Philip's editorship of the *Laws*" (128; cf. Schöpsdau 1994, 140–141); "Neither the state of disorder in which Plato is alleged to have left the *Laws* nor the difference between it and the state of the work after publication is to be found in Proclus or any other ancient source" (129). *RE s. v.* Philippos, 2358–2359, notes that it is not necessary to suppose that the report in *Prol*. rests on a tradition but may be a suspicion ("Vermutung"). It subsequently gives four reasons for supposing that our text of *Laws* has essentially the form in which Plato left it.

53 Bergk 1883, 44, n. 1, argues that ἐν κηρῷ is adopted from the visual arts and refers to "den Zustand eines zum Abguss bestimmten Modells, in dem dieses bereits mit Wachs überzogen und somit fertig ist"; Plato has therefore left *Laws* "so gut wie vollendet". Tarán 1975, 130, n. 542, thinks that it may be literally true that at least part of *Laws* was in wax, and doubts Bergk's metaphorical explanation. Schöpsdau 1994, 141, thinks that it is "schwer vorstellbar" that a work as voluminous as *Laws* was entirely written down on wax tablets (see *ibid*., n. 97 for references to those who have assumed that ἐν κηρῷ does mean on wax tablets). Wilamowitz-Moellendorff 1919, 648, n. 1, assumes that ἐν κηρῷ metaphorically means "im Wachs", hence, "im Konzept"; see also Schöpsdau 1994, 141, with n. 98 *ibid*.

There is some dispute about the exact meaning of the term μεταγράφειν.[54] Does it simply mean that Philippus of Opus transcribed the text, or does entail a degree of revision?[55] If we indeed assume (for lack of a better option) that ὄντας ἐν κηρῷ means that the text was left on wax tablets, this clause would rather seem to explain the copying of the text to make it ready for publication[56] than the making of revisions (cf. the view of Lisi 2001*c*, 279). The term διόρθωσις refers to the process of correction: *Laws* "was not corrected for publication because of lack of time. For this Proclus may well have had external evidence; but however this may be, he probably saw evidence for the lack of διόρθωσις in some passages of the *Laws* itself, as do some modern scholars".[57]

The supposedly unfinished state of the work has been believed to be confirmed by the allegedly 'chaotic' state and style of the text itself and its alleged lack of coherence.[58] For Wilamowitz, it was the lack of dialectical exchange that was a sign

54 Tarán 1975, 130, n. 543 notes that although the verb μεταγράφειν can mean "either 'to transcribe, to copy', or 'to rewrite, i. e. to correct', in the present context nothing suggests that Diogenes meant the latter". Another argument he brings forward is that Aristotle refers to *Laws* "as if the work contained the ipsissima verba of Plato" (*ibid.*). For a discussion of the meaning of μεταγράφειν, see also Schöpsdau 1994, 141. Although according to Zeller 1922, 979, n. 2 μετέγραψεν does not mean "Umarbeitung", he indeed assumes that Plato had not been able to give *Laws* "die letzte Vollendung" (978) (on p. 979, n. 2, he notes that the term is used for charges of plagiarism). Stalley 1983, 2–3 thinks that, although it is not clear "whether Philip's contribution to the *Laws* consisted simply in copying out what Plato had written or whether he edited it at all extensively", the former is more likely, since "[t]he text contains errors and discrepancies that could easily have been removed by an editor had he wished to do so. Their presence suggests that Philip generally reproduced Plato's words as he found them" (129). Similarly, in *RE s. v.* Philippos, 2359, we find the argument that the "Unstimmigkeiten" in *Laws* are of such a nature that they can only be ascribed to the author himself; cf. Schöpsdau 1994, 141.

55 For the role of Philippus of Opus, a pupil of Plato, in the editing process, see Morrow 1960, 515–518 (Excursus F), with a brief overview of the question of his possible editorial work on *Laws*; also Nails & Thesleff 2003, 16–17, with references to the debate in n. 17 *ibid*. Philippus is listed in the *Suda* as the author of *Epinomis*: *Suda* 418 *s. v.* Φιλόσοφος: ὃς τοὺς Πλάτωνος Νόμους διεῖλεν εἰς βιβλία ιβ', τὸ γὰρ ιγ' αὐτὸς προσθεῖναι λέγεται. For the identification of φιλόσοφος as Philippus of Opus, see *RE s. v.* Philippos. Tarán 1975, 129–130 assumes that the division of *Laws* into twelve books is at least as early as the second century A. D., but later than the fourth century B. C. and does not go back to Philippus or the early Academy. Also sceptical is Schöpsdau 1994, 140; see n. 92 *ibid*. for references to scholars who have accepted *Suda*'s report.

56 Which is what διόρθωσις would normally mean, see Morrow 1960, 516, noting that this is consistent with what Cicero says "was the custom with regard to the publication of Plato's dialogues", Cic. *Att.* XIII, 21, 5. See also Schöpsdau 1994, 141–142, with n. 102 on p. 142. Pfeiffer 1968, 65–66, with the references in n. 3 *ibid*.: "(…) it is a fair guess that the first generation of [Plato's] pupils tried to collect, to arrange, and to copy the autographs of their master, and that this 'Academy Edition' became the basis of all the later ones". See the lemma 'Publication' in *Neue Pauly* for what publication entailed in antiquity.

57 Tarán 1975, 129.

58 E. g. Barker 1918, 292: "The marks of old age are written large in many features of the *Laws*"; Wilamowitz-Moellendorff 1919, 647: "Was Platon nach seinem Tode der Welt als sein Vermächtnis übermachte (…) ist ein so wunderliches Chaos, daß viele sich gar nicht damit abfin-

of the unfinished state of the text (he thought Plato intended to give the whole text a more dialectical form), and Klosko agreed with him in the first edition of his book (1986). Gigon in his analysis of 624a1–632d7 stumbles over multiple unclarities of reasoning in this part of the text and concludes, "[e]ntweder ist hier ein älterer guter Text ebenso unbeholfen wie anspruchsvoll verkürzt und bearbeitet worden, oder wir haben es mit einer höchst problematischen Kombination von zwei, drei oder mehr Texten bzw. Entwürfen zu tun".[59] More recently, Nails & Thesleff have argued that *Laws* is a case of "Academic accumulation": according to them, Philippus of Opus did more than just "stitching together Platonic texts on hand". They argue on various grounds, from style to philosophical coherence, that *Laws* contains texts from more than one writer, and that it was this "diverse school accumulation" that was then somewhat incompetently edited by Philippus of Opus.[60]

Yet the text-internal reasons adduced in support of the hypothesis that *Laws* is unfinished and lacks coherence seem subjective and impressionistic, guided to an overly large extent by the current conception of Plato and his authorship.[61] Tarán's

den können, (…)". Gigon 1954, 201, "Wir wissen ferner, daß die zwölf Bücher der *Gesetze* kompositorisch von einer kaum zu ertragenden Unübersichtlichkeit sind; mit einer beispiellosen Willkür werden die verschiedensten Theoreme aneinandergehängt, hin un her gewendet, fallen gelassen und wieder aufgenommen". Stalley 1983, 3, lists "long rambling sentences", "inconsistencies of detail", weak characterization, dropping of the dialogue form in Book V, and his impression that Book XI and the early part of XII "read like a connection of disconnected fragments" as "anomalies" that are "most naturally explained on the assumption that Plato died before he could give the *Laws* its final polish. Others may result from a decline in his literary powers. Whichever way one takes it, they support the view that the *Laws* is the product of Plato's old age." Laks 2000, 263: "Certain features of the *Laws*, especially disorder in the last two books, suggest that Plato died before he could put the final touches on his work." Lisi 2001*b*, 11 notes, "Today [*Laws*] is still considered an unfinished and unstructured work, contradictory and written in a heavy and baroque style." Tarrant 2003, 55: "*Laws* feels alien even after other works that we think of as 'late', which are more imaginative, more compact, more consistently lively, and in most respects still look to be the products of the same person who wrote the *Phaedrus* and the *Cratylus*."

59 Gigon 1954, 230.

60 Nails & Thesleff 2003, quotations from p. 29 *ibid*.

61 It is not always clear which textual features are supposed to prove that *Laws* is unfinished. Zeller 1839, 99, gathers *Leg.* 769b-c under "starke Anakoluthieen" (but cf. Müller 1968, 121); Wilamowitz-Moellendorff 1910 sees traces of illogical transitions in Book V; Wilamowitz-Moellendorff 1919 assumes that Plato meant to rework the text in the form of a dialogue: "Offenbar hat Plato einmal einen Anlauf genommen, das was er in seinen Papieren hatte, zu einem Dialoge zu verarbeiten (…)" (648). Klosko claimed that *Laws* "shows signs of having been written in the form of uninterrupted discourse and then later, and mechanically, converted into dialogue, a process that Plato apparently failed to complete before his death" (1986, 17), but abandoned this in the revised edition of 2006. See also Vanhoutte 1953, 15–35 (criticized by Hentschke 1971, 187, 239–240). Nails & Thesleff 2003 discuss a number of features of *Laws* that they take to indicate characteristics of "Academic accumulation". Apart from stylistic features (*Laws*' ὄγκος-style), they list terminological, substantial and philosophical incoherencies. These alleged incoherences are, however, to a large extent due to misreadings of the text and seem rather impressionistic (especially the examples given on pp. 24 (the puppet analogy "is uneasily inserted into the mélange as if from confusing notes") and 26. See also n. 64, p. 29.

criticism of those who have concluded on the basis of "a few unusual expressions" that the whole work was left in a state of disorder is justified, though in defence of the other side, "a few unusual expressions" understates the case, since *Laws* does in many ways use a contrived style.[62] Proving undeniably that a text is incoherent appears to be a bridge too far.[63] Yet apparent inconsistencies in philosophical positions do not necessarily indicate that the text is unfinished, or is compiled from ideas and texts of various contributing authors, when it is recognized that discussing different options and the feasibility of them in the interlocutors' own lawgiving is at the very centre of their project.[64] Moreover, here it will be argued that the problems that Müller[65] and Gigon identify are created by Plato's re-appropriation of his own philosophical terminological apparatus in the service of a message that is at odds with some of the philosophical principles that it served before.

Few scholars have been able to resist the temptation of attributing what they considered less successful characteristics of the work to its allegedly unfinished state or to Plato's advanced age at the time of composition. Yet neither of the terms μεταγράφειν and διόρθωσις warrant the conclusion that Philippus of Opus *revised* the text or that Plato left it drafted in outline when he died.[66] Although they do leave room for supposing that corrections and/or adjustments were made, they do not imply supplementation of the text. We may therefore assume, at least as a working hypothesis, that the dialogue as a composition, *qua* structure, is complete, and that

62 Tarán 1975, 130. See also 131, n. 547 for 19th century literature.

63 Nails & Thesleff 2003 attempt to do so, but acknowledge that "[m]ethodologically speaking, it is impossible to prove Academic accumulation, semi-authentic accretion, one way or another from the text alone" (29). See Lisi 2001*b* for a discussion of the textual transmission.

64 Moreover, the claim that *Laws* is unfinished sometimes rests on flawed examples. For instance, Nails & Thesleff 2003 argue that *Laws* VI, 775b5–778a5 states that no violence should be used against slaves, "[b]ecause history has shown what a vile institution slavery is". In their view, this is contradicted by the later descriptions of the treatment of slaves in *Leg*. 845a1–3, b2–4, 868b5–c5, 914e3–6, which stipulate the whipping, execution, or torture of slaves (on occasion). Thus, they conclude that the laws about slaves in the penal sections of the law code are "bald, unrationalized laws", and argue that these laws have not yet been revised by Philippus of Opus (*ibid*., 22). Yet the statements in Book VI pertain to the daily treatment of slaves by their masters and prohibit the abuse of slaves. By contrast, the later legal stipulations pertain to slave punishments and do not contradict this. If a slave commits an illegal act (the interlocutors hold) he, like every other citizen, is to undergo punishment – provided this punishment is just (κολάζειν γε μὴν ἐν δίκῃ δούλους δεῖ, 777e4–5). For the treatment of slaves in *Laws*, cf. Chapter Two, p. 46, n. 42.

65 Müller 1968, especially 13–21.

66 E. g. Guthrie 1978, 321–322; Stalley 1983, 2, quoting D. L. III.37: "The natural reading of this is that when Plato died in 347 BC he left the *Laws* as a rough draft, presumably written on wax tablets. His pupil, Philip, prepared the draft for publication." Cf. Bobonich 1996, 250, n. 3: D. L. III.37 "suggests, but does not state, that [*Laws*] was unfinished at Plato's death". Laks 2000, 263, n. 9: "It is generally assumed that Plato's pupil Philip of Opus edited the text after his death." Although Zeller 1922 acknowledges that we cannot deduce with certainty from Diogenes' comment the extent of the activity of the "Herausgeber", he thinks that the "Zustand unserer Schrift" (980) confirms that the "Herausgeber" made some more or less incisive changes, inserted previously unplaced notes in the text, and filled in gaps "aus eigenen Mitteln" (979).

no parts are missing – which does not rule out the possibility that some formulations have not received their final touch (cf. for a similarly cautious conclusion on the basis of the testimony of Diogenes Laertius Lisi 2001*c*, 279–280).[67]

The reading of *Laws* presented here views these inconsistencies in a different light. It is part of the argument advanced here that the interlocutors conceptualize lawgiving as an inherently pragmatic endeavour. An initial draft *must* remain incomplete and provisional (Chapter Five). This accounts for the fact why at different points we encounter somewhat different proposals, or why some issues are left open: in the context of an exercise, this is not problematic. The laws are not final, and the interlocutors are exploring possibilities. This may create a semblance of inconsistency, but upon a careful reading of the text, which does justice to the phase and level of the discussion at which the statements are uttered, many of these apparent inconsistencies are perfectly explicable. Moreover, consistency and continuity are often far more pervasive than is commonly assumed. The pragmatic nature of the interlocutors' project does not require strict consistency and completeness (on the contrary, it necessitates incompleteness), and allows the interlocutors to discuss various options, without necessitating any definitive decisions at this stage.[68] Alleged inconsistencies in terminology, such as those noted by Nails & Thesleff, can often be explained by a more detailed consideration of the passage in question in its context and its place in the overall composition of the text. In addition, the stout assumption that *Laws* is unfinished makes some interpreters mistake polysemy for inconsistency: that a term is not used in the exact same sense in two different passages is sometimes seen as a sign of terminological inconsistency, pointing to multiple authorship or to the conclusion that "the text is not one conceptual whole".[69] Terms may be used differently in different contexts, even apart from Plato's rhetorical use of language, which may expand or restrict their lexical or conventional meaning. It is precisely for this reason that it is of the utmost importance to study passages and phrases in their context, taking account of the phase of the argument.[70] All too often it is simply assumed that continuity in terminology means continuity in thought. This book attempts to offer an overall reading of *Laws* that provides a framework for such contextual readings. To assist the exposition of the argument in the ensuing chapters, section 1.3 will present a brief overview of the structure of *Laws*.

67 The presumable reference to *Laws* in Isocr. *Phil*. 12 (published 346 b.c., shortly after Plato's death in 347) is sometimes used to support the argument that any revising Philippus may have done had to be minimal if *Laws* was already published in 346. See the references in *RE s. v.* Philippos, 2359. Cf. Tarán 1975, 131, n. 550, with reference also to Zeller 1922, 443, n. 1.

68 These issues are explored in Chapter Four.

69 Nails & Thesleff 2003, 19.

70 Some of the confusion that surrounds Plato's *Laws* may be the result of its obscure Greek prose style (ὄγκος, see Thesleff 1967), rather than of unclarities in its internal structure.

1.3 THE STRUCTURE OF *LAWS*

Laws is a notoriously difficult text to get a firm grasp on, due to its length and the scope of its topics. Its structure is not immediately obvious. The present section will briefly present an overview of the macro-structure of the text, on the basis of its own internal articulations.[71]

The discussion in 624a1–702e2 (subdivided into Books I–III) forms the opening discourse of the dialogue as a whole: this is the part of the dialogue in which the discussion is not yet centred on the framing of laws. Within this opening discourse, there is a minor caesura between the discussion of Books I–II, which is explicitly concluded at the end of Book II (see Chapter Three), and the historical discussion of the reasons for the success and downfall of different types of constitutions in Book III. In the deliberation on society and laws in the three opening Books, the lawgiving is not yet in sight. As has already been noted, the discussion in Books I–II deviates fundamentally from the rest of the work. This will be discussed in Chapter Three. For the sake of convenience, I shall refer to Books I–II as the 'opening discourse' throughout my argument.

Following the discussion of the constitutions, the Athenian (at the end of Book III) concludes that what they have said so far has been for the purpose of perceiving (τοῦ κατιδεῖν ἕνεκα) in what way a *polis* may best be organized and how the individual may best lead his life (702a7–b1). Cleinias knows of a test that may suit that purpose. He is part of a committee that has been assigned the task of making a law code for a new colony on Crete, to be called Magnesia (702c4–d5). Its commission is to compile a law code on the basis of a selection from both local νόμοι and νόμοι from elsewhere, not taking into account the fact that they are not indigenous laws if they are better.[72] Thus, he proposes to found a *polis* 'in speech' ((τῷ) λόγῳ, 702d1–2, e1): this will provide the test that they have been looking for (a test of the merits and demerits of lawgivers[73]). From Cleinias' revelation that he is part of a committee of lawgivers for a Cretan colony onwards, the thrust of the conversation is to formulate laws.

Yet the interlocutors do not immediately commence their lawgiving. The discussion of the laws only begins at 771a5, in Book VI. The whole section from the end of Book III / beginning of Book IV to the beginning of the lawgiving in Book VI is concerned with the treatment of a number of subjects that *Laws* ap-

71 The artificial division of *Laws* into twelve books is ascribed to Philippus of Opus, *Suda s. v.* φιλόσοφος. Cf. p. 27, n. 55 above. See also the article by Miller 2013 on the structure of *Laws*.

72 *Leg*. 702c5–8: ἅμα δὲ καὶ νόμους τῶν τε αὐτόθι, εἴ τινες ἡμᾶς ἀρέσκουσιν, τίθεσθαι κελεύει, καὶ εἴ τινες ἑτέρωθεν, μηδὲν ὑπολογιζομένους τὸ ξενικὸν αὐτῶν, ἂν βελτίους φαίνωνται, 'Their instructions are to draw laws based on the laws here, if any of those meets with our approval – or on laws anywhere else, taking no account of the fact that they are foreign, if we think they are better' (transl. Schofield & Griffith). This passage will be discussed in detail in Chapter Four.

73 That this is the topic of their investigation is made explicit at *Leg*. 630e7–631a2, 637d1–3. The conversation is a διατρίβη about constitutions and laws: *Leg*. 625a6–7, 683c1, 685b3, 722c9.

parently considers necessary preliminaries for lawgiving.[74] The topics discussed are: the geographical location and local resources of the new colony (Book IV), the need for persuasive preambles (by way of a doctor analogy, Book IV), and an overview of the magistrates of the colony (Book V, first part of VI). The underlying assumption is that framing laws is always a context-specific endeavour; laws must be attuned to the location. From the beginning, the draft in *Laws* is presented as tailor-made to a particular, historical, cultural, and geographical context: the interlocutors only embark on their lawgiving once these topics have been discussed.

The discussion between Cleinias' announcement and the beginning of the legislation will be designated as the 'preliminary' discussion. Not only does this preliminary discussion deal with a number of topics apparently necessary for lawgiving, but it is also the place where the Athenian defines different aspects of legislation via two analogies, the doctor analogy in Book IV and the painter analogy in Book VI. Both introduce conceptions of lawgiving that are subsequently put into practice by the interlocutors themselves.

The discussion of the laws properly begins halfway through Book VI and runs from 771a5 to 960b5. Generally, the order of the topics follows the sequence of events of the human life cycle: it begins with the festivals at which suitable marriage partners are selected (as a prelude for procreation), and ends with regulations concerning burial rituals and bequeathals.[75] The suggestion is that the topics occur in order, as is indicated by the repeated use of ἑξῆς.[76]

The end of the draft legislation (960b5) is followed by the discussion of the so-called 'nocturnal council' (νυκτερινὸς σύλλογος). Although the late introduction of so vital an organ has sometimes been considered unexpected and unanticipated, the reason for its introduction at this stage is made sufficiently clear: as the Athenian remarks, no act of generation has reached its end before a means for its preservation (σωτηρία) has been devised.[77] The nocturnal council is thus the closure of the act of νομοθεσία. Another remarkable aspect of this last section of *Laws* is that it exhibits overt thematic parallels with the opening discussion of Books I and II: for instance, the theme of the unity of ἀρετή and the four ἀρεταί, which had disappeared from the preliminary discussion and the lawgiving itself, is recapitulated in the final section of the work, creating the effect of a ring composition. *Laws* ends on the idea that at

74 Cf. Hentschke 1971, 253: "Die Erörterung dieser Fragen wie Verfassung, Besitz- und Landverteilung, Ämter etc. ist so gestaltet, daß sie als *Vorfragen* zur konkreten Gesetzgebung behandelt werden. Dadurch ergibt sich eine Straffung gegenüber dem Dahintreiben vor der Gründung der Kolonie" (emphasis in original).

75 Cf. below, pp. 127, 190.

76 See below, pp. 126–127, 160, n. 24.

77 *Leg*. 960b5–c1: τῶν πάντων δ' ἑκάστοτε τέλος οὐ τὸ δρᾶσαί τι σχεδὸν οὐδὲ τὸ κτήσασθαι κατοικίσαι τ' ἐστίν, ἀλλὰ τῷ γεννηθέντι σωτηρίαν ἐξευρόντα τελέως ἀεί, τότ' ἤδη νομίζειν πᾶν ὅσον δεῖ πραχθῆναι πεπρᾶχθαι, πρότερον δ' ἀτελὲς εἶναι τὸ ὅλον. 'But whatever the context, completion does not just mean doing a particular thing, or acquiring it and setting it up. No, only when we have found a way of keeping save what has been brought into being can we then think that everything has been done, completely and for all time, which ought to have been done. Up to that point the thing as a whole is incomplete' (transl. Schofield & Griffith).

this point, the interlocutors will found the city *for real* and therefore refers back to the end of Book III.

The structure of *Laws* has, somewhat unfairly, been called 'chaotic' and 'labyrinthine', and the text is certainly not reputed for its streamlined and transparent composition. Yet the apparent lack of a unifying argument is the result more of its genre (laws) than of a compositorial deficiency on the part of its author (even apart from the fact that *Laws* is not the only Platonic dialogue that raises problems of composition; the unity of dialogues as diverse as *Crito*, *Gorgias*, *Phaedrus*, and *Philebus* have all been discussed under this heading). A law code covers a wide range of topics. It not only has to discuss all areas of human life, but also anticipate and formulate rules about possible events (such as crimes, damage, and accidents). A διέξοδος of laws, which is how the interlocutors refer to their project, necessarily covers more or less the same range of topics. Alleged inconsistencies do not warrant the assumption that *Laws* is unfinished, or the product of a philosopher past the prime of his literary faculties, and can often be explained by reading the passages in their proper context. Discovering the anatomy of *Laws* instead of assembling apparently similar passages from different sections of the text without awareness of their context and the framing of the conversation as a whole avoids lumping together material that belongs to different phases of the discussion.

1.4 THE DIMINISHED PROMINENCE OF ΔΙΚΑΙΟΣΥΝΗ IN *LAWS*

At the beginning of this chapter, we noted the remarkable sparsity of references to δικαιοσύνη in a Platonic text on laws. In view of the peculiar treatment of the four virtues in *Laws*, one wonders what role δικαιοσύνη, the central topic of *Republic*, plays in Plato's final work. As noted above, it is natural to expect that in a Platonic text on laws, δικαιοσύνη would be a major presence. Yet we are disturbed not only by that lack of prominence. What heightens our perplexity is that almost all references to δικαιοσύνη are limited to the beginning and end of the work, in other words, to those parts that deviate from the rest. The present section will therefore look more closely at the role of this virtue in particular.

The total number of occurrences of a form of the noun δικαιοσύνη in *Laws* is 11, against 140 in *Republic*. Since *Laws* is a work numbering 345 Stephanus pages and *Republic* numbers 294, this means that the percentage is 0.03188% in *Laws*, versus 0.47619% in *Republic*. In other words, δικαιοσύνη in *Republic* occurs on almost every second Stephanus page. A second thing to note is that, with the exception of three occurrences of δικαιοσύνη,[78] all other eight occurrences of δικαιοσύνη fall outside the legislative section, that is, outside *Laws* 771a5–960b5. More specifically, these eight other instances of the noun all occur in Books I–II and the end of Book XII.[79] This is significant because it is one of the indications that there are strong thematic correspondences between Books I and II and Book XII. The nature

78 *Leg*. 859d3, 859e4, 906a8.

79 *Leg*. 630a8, 630c6, 631c8, 632c7 (Book I); 660e9, 661c3 (Book II); 964b6, 965d2 (Book XII).

and significance of these correspondences will be discussed further in Chapter Six on the nocturnal council. The present section will offer a brief overview of the eleven occurrences of the noun δικαιοσύνη in *Laws*.

The four occurrences of δικαιοσύνη in Book I ((1) – (4)) are all part of the passage in which the notion of the whole of virtue (πᾶσα ἀρετή) is introduced over and above the virtue of courage (ἀνδρεία). (1) The term δικαιοσύνη is introduced for the first time as one of the four virtues possessed by the warrior who is reliable in *stasis*. In an internal war, πιστότης ἐν τοῖς δεινοῖς, reliability in dire circumstances (630b2, c5), is better than ἀνδρεία to the same degree as the virtues δικαιοσύνη, σωφροσύνη and φρόνησις combined with ἀνδρεία surpass ἀνδρεία on its own (630a7–9). Without this, one can never attain the whole of virtue. (2) In a next step, the Athenian equates complete δικαιοσύνη to πιστότης ἐν τοῖς δεινοῖς: ἥν τις δικαιοσύνην ἂν τελέαν ὀνομάσειεν (630c5–6). (3) In 631c8 δικαιοσύνη is the third of the divine goods (τἀγαθὰ θεῖα), in which we recognize more or less the four cardinal virtues. Justice comes third after φρόνησις and μετὰ νοῦ σώφρων ψυχῆς ἕξις, and before the fourth and most inferior part of virtue, ἀνδρεία. (4) When the Athenian expounds what he would have liked Cleinias and Megillus to say when asked about the goal of the Cretan institutions, he states that the original lawgiver must bestow his statutes upon the φύλακες in order that νοῦς may declare 'all of these things' (πάντα ταῦτα) concomitant upon σωφροσύνη and δικαιοσύνη rather than on wealth (πλοῦτος) and ambition (φιλοτιμία) (632c4–d1). Most distinctive about this use of the term δικαιοσύνη as compared to *Republic* is, first, that it is not defined in terms of a hierarchical arrangement (τάξις) of soul-parts; this is clear in the terminology of 631c7–8, where δικαιοσύνη is strikingly said to be a mixture of insight, the moderate condition of the soul, and courage: ἐκ δὲ τούτων [*sc*. φρόνησις and μετὰ νοῦ σώφρων ψυχῆς ἕξις] μετ᾽ ἀνδρείας κραθέντων τρίτον ἂν εἴη δικαιοσύνη. Second, δικαιοσύνη is the quality that emerges as the best one in a *polis* in *stasis*.

In Book II, δικαιοσύνη is mentioned twice ((5) – (6)). These occurrences are part of an argument in which the Athenian states that those things which are commonly deemed good, such as health and possessions, are only good for someone who is just and respectful. Here δικαιοσύνη (5) appears in the context of a quotation from Tyrtaeus, although it is not actually part of it (660e9). The Athenian states that in Cnossus and Sparta, poets are obliged to teach that the virtuous man is happy: he quotes Tyrtaeus as saying that he would never praise the man who does all the things considered good without justice (ὃς μὴ πάντα τὰ λεγόμενα καλὰ μετὰ δικαιοσύνης πράττοι καὶ κτῷτο, 660e8–9). Subsequently, the Athenian claims that the human goods, health, beauty, wealth, and other things are only good for persons who are just and respectful, but bad for persons who lack justice (6) and the whole of virtue (κεκτημένον πάντα τὰ λεγόμενα ἀγαθὰ πλὴν δικαιοσύνης τε καὶ ἀρετῆς ἁπάσης, 661c2–4). This is a familiar train of thought in Plato, in that it tries to establish consistency between those things traditionally called ἀγαθά such as health and wealth, and the virtues: the former are only an ἀγαθόν for the ἀγαθός.

In Book XII, after having not been mentioned altogether since Book II, the four virtues are taken up again in the context of the discussion of the education, constitution and qualification of the nocturnal council ((7) – (8)). The virtues ἀνδρεία,

σωφροσύνη, δικαιοσύνη (7), and φρόνησις (964b4–5) are said to be of major importance for the lawgiver, the lawguard, and the person who has received distinctions for his virtue (μεῖζον δή τι νομοθέτῃ τε καὶ νομοφύλακι, καὶ ὃς ἀρετῇ πάντων διαφέρειν οἴεται καὶ νικητήρια τούτων αὐτῶν εἴληφεν, 964b3–5). The Athenian insists that the members of the nocturnal council must be able to perceive what across all the four virtues (including δικαιοσύνη (8)) is the same (965c9–d3), and may be called ἀρετή.

There are the three occurrences of δικαιοσύνη within the actual διέξοδος τῶν νόμων ((9) – (11)) remaining. Two of them occur together in a phase of the discussion with a clearly Socratic theme. The Athenian confronts a problem that arises from the fact that in the administration of punishment, he wants to hold on to the idea that all wrongdoing is involuntary. This clashes with the common practice in legislation, since so far all lawgivers have distinguished between voluntary and involuntary injustices and laid down punishments on that basis (861b1–c1). Yet the Athenian believes that justice (περὶ δικαιοσύνης ὅλως, 859d3 (9)), just people (τῶν δικαίων ἀνθρώπων), and everything done by just people (πραγμάτων καὶ πράξεων) are by definition καλά on the premiss of consistency: there can be no contradiction between δίκαιον and καλόν. A just person can therefore not be said to be in any way not καλόν, as might be attempted by someone who spoke of a just person being αἰσχρόν in respect of his physique. The same goes for (10) in 859e3–4: all those things are καλά that possess δικαιοσύνη. Hence the Athenian proposes to distinguish between ἀδικία and βλάβη: a harmful act of a person with a just character by definition falls in the category of βλάβη.[80] It is telling that this implies that the quality of one's action depends on one's just character (τὸ δικαιότατον ἦθος, 859d8), thus entailing a departure from Socratic intellectualism, as has recently been argued.[81] It should also be noted that the considerations about the desired consistency between καλόν and δίκαιον are not actually part of the text of the laws, but constitute the rationale behind the distinction between the categories of βλάβη and ἀδικία.[82]

The final occurrence of δικαιοσύνη to be discussed is that in Book X, 906a8 (11). This is part of the refutation of one of the last of the three kinds of atheists or heretics: the person who believes that the gods can be bribed by the unjust (905d3–6). This is an interesting case since it is the only time that δικαιοσύνη is mentioned in the legislative section itself. Yet it should be noted that this argument is part of the refutation in the preamble directed against a particular type of heretic. And in fact, the Athenian explicitly announces that, in view of the difficulties of refuting the atheists, they now have to embark on an unfamiliar line of argument (ἔοικεν τοίνυν ἀηθεστέρων ἁπτέον εἶναι λόγων, 891d6). This means that they have to go *beyond legislation*, as Cleinias responds to the Athenian, 'I understand that you think that we go beyond legislation, if we take on such arguments' (μανθάνω γὰρ ὡς

80 *Leg*. 861e1–862c4. For discussions of this extremely complicated passage in the penology of *Laws* Book IX, see Saunders 1968, Saunders 1992, Schöpsdau 1984, Schofield 2012, Hentschke 2013.

81 Saunders 1968; the same is concluded by Schofield 2012. Cf. Nightingale 1993, 298, n. 50.

82 See also p. 184 below.

νομοθεσίας ἐκτὸς οἰήσῃ βαίνειν, ἐὰν τῶν τοιούτων ἁπτώμεθα λόγων, 891d7–e1).[83] Therefore, the only instance of δικαιοσύνη that seemed to be part of the legal draft is in fact part of a passage that is explicitly said to go beyond legislation. In this context, the virtues are connected with preservation, as in Book I: 'what destroys us is injustice and insolence combined with folly, and what saves us is justice and temperance combined with insight' (φθείρει δὲ ἡμᾶς ἀδικία καὶ ὕβρις μετὰ ἀφροσύνης, σῴζει δὲ δικαιοσύνη καὶ σωφροσύνη μετὰ φρονήσεως, 906a7–b1). The fact that δικαιοσύνη καὶ σωφροσύνη μετὰ φρονήσεως are attributes of the gods themselves should explain why it is out of the question that the gods can be prevailed upon by the unjust.

This brief overview of the occurrences of δικαιοσύνη in *Laws* shows that the term itself does not occur in the text of the laws proper. The only occurrences outside Books I–II and XII in fact all occur in passages that discuss familiar Socratic claims that good things are only good things for those who are just. It is not clear what exactly δικαιοσύνη is:[84] firstly, because it is in most cases mentioned in direct conjunction with the other virtues, without it being made explicit how it is different from the other virtues (something which *Republic* does make clear); secondly, because the term seems to be applied in such vastly different ways: from a label for 'trustworthiness amidst dangers' to 'a mixture of φρόνησις and σωφροσύνη combined with ἀνδρεία'.[85] In any case, δικαιοσύνη is used in what seems to be a much more 'rhetorical' way: to recall an idea that is supposed to be evident for the audience and to appeal to the audience's familiarity with the Socratic claims put forward. By contrast, in *Republic*, the central task in the dialogue is to define δικαιοσύνη in the first place.

1.5 PLAN OF THE BOOK

In order to substantiate the claim that *Laws* in many ways differs significantly from other, more 'prototypical' Platonic texts, I shall start out by sketching the contours of the conceptual framework that I take to be prototypically Platonic (Chapter Two). This framework involves at least two basic assumptions: that justice is an absolute, knowable *a priori* given, and that there is a moral expert (the person with knowledge of this given). Or, more accurately, what is typical of Plato's philosophy is that it allows for the higher perspective of the moral expert or for someone with a privileged epistemic position (as in the case of Socrates). Chapter Two analyses the

83 For the uniqueness of this argument, cf. 892d2–893a7.

84 Schöpsdau 1986, 117, for a similar conclusion about σωφροσύνη: "Während so die gegen die Lust ankämpfende Sophrosyne, pointiert gesagt, auf ein Element der *Furchtlosigkeit* (ἀφοβία) angewiesen ist, wandeln sich ihre Züge in der Beschreibung ihrer Einübung beim Wein (649a ff.): sie erscheint dort durchgehend gerade als *Furcht* (…) und ihr Objekt ist nicht mehr die Lust (…) sondern neben der ἀναισχυντίαν in erster Linie die ἀφοβία und das übertriebene θαρρεῖν (…)" (emphasis in original).

85 Schöpsdau 1986, 122, suggests that the sequence of ἀνδρεία, λογισμός and αἰδώς (as σωφροσύνη) is in the last instance identical to δικαιοσύνη as the description of φρόνησις/νοῦς, σωφροσύνη, and ἀνδρεία in 631c5–8. Cf. below, Chapter Three, p. 95, n. 80.

claims that such a higher perspective on ethics and politics exists in three Platonic texts: *Apology*, *Crito*, and *Republic*. This analysis focuses especially on how these claims take shape in the different genres and settings of each of these three texts. Chapter Two offers two preliminary studies. Part I focuses on the Platonic notion of τέχνη, and traces the assumptions that this objectivist notion as a frame for ἀρετή imports. The conceptual framework of τέχνη is based on the idea that there exists an objective authority that possesses expert knowledge of the absolute norm, which the notion of τέχνη presupposes. This conceptual framework is of fundamental importance for Plato's philosophy – but it will be argued that in *Laws* this basic notion loses its pervasive importance, and that what remains of it undergoes a striking devaluation. Part II analyses how three Platonic texts on justice – *Apology*, *Crito*, and *Republic* – introduce the figure of authority about justice in different contexts and in different genres. These texts make absolute justice the norm for individual action, either as a matter of fact (in *Republic*) or ideally (in the less-than-ideal settings of *Apology* and *Crito*). We will investigate how the claims to authority take shape in the different genres and different settings of these three texts.

After an examination of three Platonic texts on justice, the remaining chapters focus on *Laws*. They follow the structure of the argument, tracing how the legislative project is presented. Chapter Three turns to the opening discussion of *Laws* (Books I–II) and investigates how Plato sets the scene in his final *magnum opus*. Chapter Three argues that Plato in *Laws* Books I–II introduces a radically new moral perspective – however, to some extent he uses his own philosophical idiom in doing so. The *symposion* presents a pragmatic conceptual framework for education, suggesting that virtue is a *skill* that has to be trained, and that this training consists of a process of socialization and an increasing sensitivity to the social norms. This conceptual framework does not reflect a commitment to a metaphysical norm; in fact, metaphysics remains out of sight both in the opening discourse and in the interlocutors' later legislative activity. Rather, the implicit norm is the social nature of humankind and the long-term preservation of society (ideas highly reminiscent of Aristotle): only to that extent can *Laws* be said to presuppose an objective norm for virtue and social organization. The familiar terminology of the four Socratic virtues functions to divide this process of education into phases. Plato can thus get the idea across that there is a standard for virtue by making the oldest people, who possess the skill of virtue to the highest degree, the measure. Yet because the terminology of the virtues is applied to education *within* the *polis*, the external authority – the lawgiver who lays down the laws – remains out of sight.

Following the analysis of the opening discussion, Chapter Four turns to the actual laws (Books IV–XII) and analyses how the legislation carried out by the interlocutors is embedded in the dialogue as a whole. This involves an analysis of the 'formal' aspects of the legislation: how the interlocutors decide to embark upon framing laws, how the laws are intertwined with the dialectical conversation, and how the interlocutors themselves reflect upon their legislative activity. These formal characteristics have not received much attention in the scholarly literature on *Laws*. Contrary to what one would have expected after reading the secondary literature on *Laws*, the text does not present a law code that can easily be extracted from

its surrounding material. Rather, the legislative material is inextricably tied up with the conversation. Chapter Four therefore investigates what the specific dialectical embedding and the shape of the laws suggest about the status of the legislative project. It will be argued that the lawgiving in *Laws* is presented as an exercise, meant to test the utility of the outcomes of the opening discourse, rather than being the objectively good law code for Magnesia. This explains the specific way in which the laws are embedded in the discussion.

Chapter Five focuses on a related and pervasive aspect of the legislation in *Laws*: the admitted lack of accuracy, in order to elucidate what this presupposes about the interlocutors' conception of lawgiving. Right before the interlocutors embark on the framing of the actual laws (in Book VI), the Athenian analogizes lawgiving to painting and thereby conjures an image of legislation as a long-term project by nature that the lawgiver is unable to finish. This chapter investigates the implications of this analogy for the status of the laws, and how the analogy influences the interlocutors' own legislative activities.

Chapter Six confronts the nocturnal council and the Athenian stranger and investigates what kind of authority they represent. It will analyse whether one of them qualifies as a moral expert or the equivalent of the philosopher-king. The discussion of the nocturnal council will take us back to the observed parallels between *Laws* Books I–II and the closing pages of Book XII. How can these correspondences, and the fact that the theme of the four Socratic virtues turns up again in Book XII, be explained? What do we hear about the Athenian stranger, and how are we to understand his role in the dialogue? The final chapter, Chapter Seven, offers a synoptic view of the argument, and its conclusion.

CHAPTER TWO

PLATONIC PRELIMINARIES

The present chapter examines two necessary preliminary issues before turning to Plato's *Laws*. The analyses offered here serve as a comparative framework for the study of *Laws* in the chapters that follow. The first part of the chapter offers a brief study of the Socratic-Platonic notion of τέχνη and its conceptual underpinnings. Τέχνη is a key concept in Plato's oeuvre, bringing together some fundamental claims that lie at the heart of Platonic philosophy. The first one is that there exists a higher moral truth (objective, absolute, metaphysical) independent of human knowledge. The second is that, since it is deemed possible to possess knowledge of that truth, there exists *ex hypothesi* a moral expert who has infallible knowledge of the objective good. This expert is qualified to decide about good and bad. By virtue of this qualification, he should be given free and unconditional reign to organize society. Yet it will be argued that the conceptual framework of τέχνη as expert knowledge and hence the various assumptions that underlie it are relinquished in *Laws*. Neither virtue nor lawgiving is presented as expert knowledge. And for the person who *is* qualified to be in a position of authority, expert knowledge is not enough.

The second part of this chapter examines how three different Platonic texts on justice each reflect the claim that there exists a higher moral truth: *Apology*, *Crito*, and *Republic*. It analyses how this absolute norm takes shape in each of the three communicative settings portrayed. This will provide us with an idea about how justice makes its appearance in what may be called more prototypical Platonic works. The perplexity of *Laws* is that it does precisely the opposite of what one expects on the basis of the rest of Plato's philosophical oeuvre – especially, but not only, the three texts discussed in this chapter: *Laws* assigns justice (δικαιοσύνη) a minor role. The study of absolute justice in its three different contexts is therefore a necessary step of the argument presented in this book. Each of these three texts differs from the others in their genre. *Apology* is the only non-dialectic Platonic work; it is a defence speech given in a court. *Crito* contains a speech (of the personified Athenian laws) embedded in a dialectical setting. *Republic* is a search for the correct definition of justice. The analysis in this chapter serves to show how the claim that metaphysical truth exists crystallizes, and how this higher perspective takes shape in each of the different settings and genres. The texts shape these claims in different ways and appeal to different authorities, but despite these generic differences, they reflect the consistent belief that justice (δικαιοσύνη) is absolute and suggest a higher perspective. Moreover, these three texts together constitute a narrative in themselves: they explore problems and solutions that arise from the belief in the existence of true justice.

Each of these three Platonic texts has attracted considerable scholarly controversy in its own right. Their concise discussion within the scope of this chapter cannot in any way pretend to do justice to the debate in all its ramifications. Even though the analysis of *Apology*, *Crito*, and *Republic* in conjunction, as texts revolving around a common dilemma, may offer some new insights, the main contribution of this chapter will be to provide us with a suitable foil for the subsequent study of *Laws*.

2.1 PART I: TEXNH AND AUTHORITY

The Platonic notion of τέχνη is of central importance to our investigation into the status of the interlocutors' legislative activity in *Laws*. In the dialogues other than *Laws*, τέχνη (as the analogue for virtue) reveals the contours of a systematic worldview in which moral action is based upon objective, expert knowledge. Although we do find the analogies of τεχνικός and τέχνη in Plato's final work, their internal structure and logic have changed. In section 2.1.1 we shall briefly look into the Platonic notion of τέχνη and its implications for the idea of authority. This overview is followed in section 2.1.2 by a discussion of a different, 'stochastic' notion of τέχνη, which exhibits parallels with contemporary non-Academic philosophical trends (Isocrates, the sophists) and which, I shall submit, the τέχνη notion of *Laws* resembles.

2.1.1 Structuring principles of the τέχνη analogy in Plato

The fact that Socrates postulates an analogy between virtue (ἀρετή) and τέχνη in a number of Platonic dialogues makes τέχνη a very prominent notion in Plato's oeuvre.[1] This prominence increases further as a result of Socrates' claim in defiance of the sophists that there exists a true πολιτικὴ τέχνη that is a form of expert knowledge.[2] Although the Platonic notion of τέχνη has some general characteristics

1 See for this analogy the study of Kube 1969. In the scholarship there has been some controversy over the question of the exact notion of τέχνη (or ἐπιστήμη) to which ἀρετή is supposed to be analogous. Gould 1955 argues, against what he takes to be an excessively intellectualist reading of the analogy, that ἀρετή is a form of "knowing how" to be moral rather than "knowing that" (knowledge of the nature of good and evil). Bambrough 1956 criticizes the analogy for over-assimilating questions about ends (politics) to questions about means (navigation or other specialisms). Sprague 1976 argues that the philosopher-king possesses a second-order craft (of using the products fabricated by the productive crafts) directed by the Idea of the Good. Irwin 1977, 1995 argues that virtue is analogous to a productive τέχνη – criticized by Nussbaum 1986, 74. Brumbaugh 1976 sees a "literary development" between the use of the analogy in the early and in the late dialogues (cf. Klosko 1981*b*; Warren 1989). The upshot of the argument of Roochnik 1996 is, somewhat surprisingly, that morality *cannot* be analogous to τέχνη in the Platonic dialogues, see his Conclusion.

2 Kube 1969 shows how Plato's notion of τέχνη throughout his dialogues (omitting, however, *Timaeus*, *Critias* and *Laws*) reflects his dispute with sophistic thought on τέχνη. For some ways

in common with its sophistic counterpart (in aiming at a goal, having its own set task and result), Plato's ethical objectivism has implications for the assumptions underlying his notion of τέχνη. The claim that morality is analogous to τέχνη understood as expert *knowledge* renders plausible the claim that it is possible to make *objective* distinctions between good and bad, correct and incorrect. Characteristic of the Socratic-Platonic view of morality is its 'intellectualism'.[3] In the dialogues, τέχνη and ἐπιστήμη are often juxtaposed[4] and in some contexts practically identical.[5] Τέχνη entails the capacity to 'offer an account' (λόγον διδόναι) of one's goals and the procedure to reach them.[6] This intellectualist attitude is particularly explicit and systematic in *Gorgias*, where Socrates forges a conceptual divide between a series of τέχναι and pseudo-τέχναι: the τέχναι are ἐπιστῆμαι, while experience (ἐμπειρία) is the basis of the mode of proceeding of the pseudo-τέχναι.[7] Whereas τέχνη is directed towards the objective good, the pseudo-τέχναι *profess* to be directed at the true good, but in fact secure a counterfeit good. Sophistry (σοφιστική) and cake-baking (ὀψοποιική) are, for example, dismissed as the deceptive counterparts – they are ἐμπειρίαι, 'knacks'[8] – of the τέχναι of lawgiving (νομοθετική) and medicine (ἰατρική), respectively. Such a pseudo-τέχνη may seem identical to the τέχνη itself, but it must not be confused with it given the risk of moral corruption. These pseudo-τέχναι do not aim at virtue (ἀρετή) but at the listeners' gratification

in which the analogy determines *Laws*' concept of ἀρετή, see Hentschke 1971, 265, 272 (who, it should be noted, sees a much closer correspondence between *Republic* and *Laws* than the present book). For discussions of nuances of the different τέχναι in Plato: Bumbraugh 1976; Roochnik 1992; especially 185–189, 1996, Balansard 2003. Graham 1991 provides an analysis of the τέχναι on the basis of their distinct ends.

3 Heinimann 1961, 105–106; Kube 1969; Stalley 2007, 118. On Socratic-Platonic moral intellectualism: Nehamas 1986; Lorenz 2008; Sedley 2013 on Socratic intellectualism in *Republic* V–VII.

4 E. g. *Phlb*. 66b9.

5 E. g. *Plt*. 300e7–9, *Charm*. 165d4–166a2, 174d8–e7. Practical equivalence is also implied by the use of the adjective ἄλλος in some contexts: e. g. *Tht*. 146c8–d1, 147b7–8; *Charm*. 165d4–6, 174e4. Cf. ἐπιστήμων τέχνης *Gorg*. 448b5–6, c2, e3, 449a4–5, c9; [*Amat*.] 137a9; *Charm*. 171c4–9. Lyons 1963, 139–228, on the Platonic vocabulary of τέχνη, ἐπιστήμη and σοφία.

6 Giving a λόγος ('account') as part of what it means to possess a τέχνη: *Gorg*. 465a2–5; cf. 501a1–7. On giving an account, see: Kube 1969, 123, 193, 195, 207; Irwin 1977, 71–77; Woodruff 1992; Roochnik 1996; Balansard 2003, 47–51, 141–142, 146–147.

7 For example: *Gorg*. 506d5–8: Ἀλλὰ μὲν δὴ ἥ γε ἀρετὴ ἑκάστου, καὶ σκεύους καὶ σώματος καί ψυχῆς αὖ καὶ ζῴου παντός, οὐχ οὕτως εἰκῇ κάλλιστα παραγίγνεται, ἀλλὰ τάξει καὶ ὀρθότητι καὶ τέχνῃ, ἥτις ἑκάστῳ ἀποδέδοται αὐτῶν, 'But the best way in which the excellence of each thing comes to be present in it, whether it's that of an artifact or of a body or a soul as well, or of any animal, is not just any old way, but is due to whatever organization, correctness, and craftsmanship is bestowed on each of them' (transl. Zeyl in Cooper, *CW*).

8 In contrast to τέχνη, ἐμπειρία 'aims at the pleasant without taking into consideration the best' (τοῦ ἡδέος στοχάζεται ἄνευ τοῦ βελτίστου); it is not capable of rendering an account of its procedure (οὐκ ἔχει λόγον οὐδένα), so that it cannot say what the cause of something is (ὥστε τὴν αἰτίαν ἑκάστου μὴ ἔχειν εἶπειν), and therefore it is an irrational activity (ἄλογον πρᾶγμα), *Gorg*. 456a1–6, cf. 464c6–d2. Τέχνη has an objective criterion and is distinct from pseudo-crafts: Cherniss 1944, 251, n. 157; Irwin 1977, 71–77; Woodruff 1992; Balansard 2003, 47–51, 141–142, 146–147.

(χαρίζεσθαι) and pleasure (ἡδονή), without making their 'patients' morally better.[9] Dismissing experience and expectations about an audience's preferences as irrelevant for the true πολιτικός is part of the extremely intellectualist interpretation of the πολιτικὴ τέχνη that seems to have been characteristic of a large part of Plato's philosophy. Within this outlook, a δημιουργός is a convincing authority: the moral expert knows the truth about good and bad.[10]

The underlying assumption is what Stalley has called the "strong conception of knowledge as expertise" combined with "a correspondingly broad conception of ignorance as embracing anyone who lacks complete understanding".[11] The thought seems to be that if a person fails to successfully perform his τέχνη, he does not possess the τέχνη in the first place. Second, the object of knowledge is objectively good: the person who has knowledge of the Idea of the Good or justice will always act correctly, because true knowledge is knowledge of the good and therefore cannot be misapplied or misused.[12]

The Platonic notion of τέχνη serves as a conceptual *frame* for virtue. This frame consists of several elements, which can be activated once one of them is agreed upon in the discussion:

1. The object of knowledge (τὸ ἀγαθόν (αὐτό),[13] εἶδος,[14] ἰδέα,[15] αὐτὸ καθ' ἑαυτό[16]) (for example the Idea of the Good or Beauty, τὸ καλόν);

9 E. g. *Gorg*. 462c8–9, 501b5–503a1. Τέχνη and ἐμπειρία are demarcated in the context of attacks on a rhapsode and an orator: *Ion* 537c1–538b6, 539d5–541c2; *Gorg*. 451a3–d6, 455a8–456a6 (with Irwin 1977, 74); *Gorg*. 462d10, 463b4, 465a3, 500b4, 500e5 (with Balansard 2003, 139).

10 Cf. Irwin 1977, 75: "A craftsman is recognized as an authority in his field, as someone who knows, and is agreed to know, the right method for producing a particular product." The use of τέχνη analogy to get the point across that there is a moral expert is also clear in *Crito*, 47a13–48b2 (on this passage see Lloyd 1966, 390–391; Irwin 1977, 71). If it is accepted (as Crito does) that the subject of the just and unjust (περὶ τῶν δικαίων καὶ ἀδίκων), ugly and beautiful (καὶ αἰσχρῶν καὶ καλῶν) and good and evil (καὶ ἀγαθῶν καὶ κακῶν, 47c9–10) is analogous to gymnastics, the conclusion must be that one ought not to have regard for what the many say, but solely for the expert on justice and injustice (ὁ ἐπαΐων περὶ τῶν δικαίων καὶ ἀδίκων, 48d6–7) – to have regard for this one man and the truth (ὁ εἷς καὶ αὐτὴ ἡ ἀλήθεια); εἷς, opposed to οἱ πολλοί, suggests that it is not based on democratic principles, with which οἱ πολλοί are generally associated.

11 Stalley 2007, 118. Stalley argues for the strong concept of knowledge in *Gorgias* as part of his argument (against Euben 1994) for *Gorgias*' anti-democratic political stance. In *Resp*. 340e1–341a4 Thrasymachus calls Socrates' black-and-white use of terms ἀκριβολογεῖσθαι ('to be precise in language'). In Socrates' terminology, no δημιουργός ever fails (ἁμαρτάνει). In *Resp*. 341b4–6 it has to be determined what Thrasymachus means by 'ruler' and 'stronger' (τὸν ἄρχοντά τε καὶ τὸν κρείττονα): τὸν ὡς ἔπος εἰπεῖν ἢ τὸν ἀκριβεῖ λόγῳ. He answers: τὸν τῷ ἀκριβεστάτῳ (…) λόγῳ ἄρχοντα ὄντα. Cf. *Resp*. 341c5–6: ὁ τῷ ἀκριβεῖ λόγῳ ἰατρός; 342b6–7: σκόπει ἐκείνῳ τῷ ἀκριβεῖ λόγῳ.

12 On the (im)possibility of misuse of a τέχνη: Irwin 1977, 76–77; Woodruff 1992, 93–96.

13 E. g. *Resp*. 507b4, 532b1, 540a8–9.

14 E. g. *Resp*. 435b1–2, 445c5–6, 511a4.

15 E. g. *Resp*. 505a2: ἡ τοῦ ἀγαθοῦ ἰδέα.

16 E. g. *Ph*. 78d5–6.

2. The expert knowledge (τέχνη,[17] ἐπιστήμη,[18] (ἡ) …–ική,[19], σοφία[20]);[21] furthermore a number of verbs are characteristically deployed in technical contexts to denote the exercise of an expertise, such as ἐπίστασθαι, ἐπιτηδεύειν or ἐργάζεσθαι;[22]
3. The expert (δημιουργός,[23] τεχνικός, ἐπιστήμων,[24] ἐπαΐων,[25] ἄρχων[26]);
4. A patient (θεραπευόμενος,[27] ἀρχόμενος[28]) or beneficiary (expressed in the dative) who experiences the effects of the expert's activities and benefits from them;
5. The goal (the ἐφ' ᾧ τέτακται[29]) of the expertise, that which it is meant to establish: a 'product' (ἔργον)[30] if the subject matter is material, or the optimal con-

17 E. g. *Gorg.* 465a5; *Resp*. 341d4, d8, 342a2–b5, c7–8.
18 E. g. *Resp*. 342c10.
19 In the cases of the feminine adjective ending in –ική the category is "essentially open", Lyons 1963, 141; one is "supposed to supply mentally the lexeme τέχνη whenever he reads or hears a sentence containing ἀστρονομική, αὐλητική, etc. It is that the form in -ική may be used indifferently with or without τέχνη and in either case it will be picked up by τέχνη with equal readiness" (*ibid.,* 143). The frequency of forms with the suffix –ική increased rapidly in the classical period under the influence of the sophists and made its way into the scholarly vocabulary of, among others, Plato, Aristotle, Hippocrates, and Xenophon's *Oeconomicus*, see Debrunner 1917 § 392, 197. On the possibility to extend the class of τέχναι infinitely, see Lyons 1963, 141–144, 160–164. The "semantic motivation" (163) is contained in Greek idiom: "Plato constantly draws upon the possibility of generating from sentences of the form Np / ἐπίστασθαι // Vinf. other hyponyms of τέχνη than those that are 'institutionalized' in the society and its language" (*ibid*., 194–195). In *Gorg*. 464b2–465d7, for example, Socrates talks about κολακευτική and ὀψοποιική parallel to γυμναστική and ἰατρική; in *Resp*. we find ποιμενική (345d1, d5), and μισθαρνητική (346d3, d4).
20 E. g. *Resp*. 350d5, 351a3, 354b6; in the just *polis*: 428b2, 429a2, 431e10, 433d6, 443e7.
21 For an analysis of the relations between the lexemes of τέχνη and ἐπιστήμη (and ἐπίστασθαι) as "lexical subsystems" of the field of τέχνη, see Lyons 1963, Chapter VII, especially 159–184.
22 See for a more comprehensive list, together with examples Lyons 1963, 152–155.
23 E. g., *Charm*. 173c2, 174e9, 175a7; *Euthyd.* 280c4, 291c8, 292d2, 301c3, 312b3; *Gorg*. 453a2, e5, 454a3, a5, 455a1, 503e1; *Resp*. 340e4–5, 346c5–6, c10, d7.
24 E. g. *Gorg*. 449c9, 459b3.
25 E. g. *Cri*. 47b11, c3, d2, 48a6.
26 E. g. *Resp*. 342d7, d10, e3.
27 E. g. *Resp*. 345e1.
28 E. g. *Resp*. 342d1, e5, e9, 345d7, 347d6.
29 *Resp*. 346d6.
30 The product of τέχνη: *Charm*. 163a10–d8, 165e3–166b6, cf. 174e8–175a7; *Gorg*. 503e1–4 (with εἶδος), *Ion* 537c7–e1 (one ἔργον is the preserve of one τέχνη); *Resp*. 346d3–6 (Irwin 1977, 75, 76 in case of ruling science (superordinate): happiness, see also passages *ibid*.); πειθοῦς δημιουργός ἐστιν ἡ ῥητορική: *Gorg*. 453a2; cf. *Phdr*. 260d4–8; *Plt*. 310e5–311a2: the ἔργον of πολιτικὴ τέχνη is ὕφασμα; cf. *Soph*. 265b4–266c6; ἔργον as divine fabrication: *Resp*. 530a4–8; *Tim*. 30b1–3, 41a7.

dition to which the expert 'looks' (σκοπεῖν, (ἀπο)βλέπειν εἰς or πρός[31]), that is, τὸ βέλτιστον[32] or τὸ συμφέρον[33] (in the case of medicine, for instance, ὑγίεια).

The items listed above make up the conceptual framework of the τέχνη analogy in its most complete form; not all elements are always explicitly present in the text. The dialogues often investigate one or more particular *implications* of the τέχνη analogy. In *Charmides*, for example, the interlocutors implicitly assume an analogy between τέχνη and the virtue of σωφροσύνη and inquire after the 'product' of self-restraint. It may also be noted that the terms of the framework are often attuned to the interlocutor in question. In the discussion with Thrasymachus in *Republic* Book I, for instance, Socrates initially claims that each τέχνη is directed at τὸ σύμφερον ('what is in the interest of X'). This is a temporary stand-in for τὸ βέλτιστον, inserted here because Thrasymachus, who has just defined justice as 'the interest of the stronger', is only interested in matters of advantage. The introduction of τέχνη into the discussion enables Socrates to exploit its implications of correctness and work towards the notion of a 'true interest'.[34]

To understand the philosophical effects of the analogy between morality and τέχνη, it should be borne in mind that in the conceptual system of Platonic τέχνη, expert knowledge (the theory or a body of knowledge) and its practical *application* are inseparable. It is an automatism that knowing the good means doing it, and the expert's actions are always guided by his knowledge (the *locus classicus* is *Prot*. 352b3–c7).[35] Τέχνη is by definition the *correct* application of knowledge.[36]

31 βλέπειν: e. g. *Gorg*. 507d6–7 (ὁ σκόπος … πρὸς ὃν βλέποντα δεῖ ζῆν), *Resp*. 342e10 (πρὸς ἐκεῖνο [*sc*. τὸ τῷ ἀρχομένῳ συμφέρον] βλέπων), 343b3 (πρὸς ἄλλο τι βλέποντας), 345c5–6 (οὐ πρὸς τὸ τῶν προβάτων βέλτιστον βλέποντα). ἀποβλέπειν: e. g. *Resp*. 421b7 (εἰς τὴν πόλιν ὅλην), 466a5–6 (οὐκ εἰς ἓν ἔθνος ἀποβλέποντες ἐν αὐτῇ [*sc*. πόλει]); σκέπτεσθαι/σκοπεῖν: e. g. *Resp*. 342a7 (αὐτῇ [*sc*. τῇ τέχνῃ] τὸ συμφέρον σκέψεται), 342b2 (τὸ συμφέρον σκοπεῖν), 342c1–2 (οὐκ … ἰατρικὴ ἰατρικῇ τὸ συμφέρον σκοπεῖ ἀλλὰ σώματι), 342d5–6 (οὐδὲ ἰατρὸς οὐδείς, καθ' ὅσον ἰατρός, τὸ τῷ ἰατρῷ συμφέρον σκοπεῖ οὐδ' ἐπιτάττει, ἀλλὰ τὸ τῷ κάμνοντι), 342e3–5 (οὐκ … ὅ … κυβερνήτης τε καὶ ἄρχων τὸ τῷ κυβερνήτῃ συμφέρον σκέψεταί τε καὶ προστάξει, ἀλλὰ τὸ τῷ ναύτῃ τε καὶ ἀρχομένῳ).

32 E. g. *Gorg*. 464c4, d1, 465a2; *Resp*. 345c5–6, d2–3, d7, 347a2.

33 E. g. *Resp*. 342a7, b1, c1, c10, d5–6, e3–4, e8, e10, 347d5.

34 As soon as τέχνη is introduced, the notion of correctness (ὀρθότης) comes into play, see e. g. *Resp*. Book I. For τέχνη and objectivity, see Irwin 1977, 75.

35 Cf. Allen 1960, 257–258: "The knowledge which is virtue is not merely an abstract or theoretical understanding of value, but the capacity or practical ability to exhibit understanding in action. If this is true, the Socratic Paradox is much less paradoxical". For a different explanation of the relation between knowledge and conduct, see Santas 1964, who attributes a pivotal role to desire (for good things) in his attack on the traditional view.

36 Of course Lloyd 1966 is correct when he observes that the analogy in *Crito* 48a5 ff. "in one important respect (…) does not hold. In gymnastics there is general agreement about ends (namely health) and the trainer's decisions relate to the means towards those ends, not to the ends themselves. But in questions of right and wrong, on the other hand, the ends themselves are often in dispute, and the politician's decisions concern *both* means *and ends* (both how the ship of state should be sailed, and in which direction it should point)" (390, emphasis in original). Yet the mismatch is part and parcel of the *persuasive* nature of these analogies: it is Plato's Socrates' *claim* that the domains of gymnastics and morality are analogous.

The τέχνη-ἀρετή analogy is therefore congruous with the claim that *akrasia*, acting against one's knowledge of what is objectively best, is impossible.[37]

The consequence of assuming the existence of a moral expert is that questions of *method* or *procedure* are unproblematic within this framework. Questions of means, procedure, and application do not come into focus because they are the expert's prerogative. He will not make mistakes (that is, he will not perform acts that fail to contribute to the realization of the purpose of his τέχνη).[38] Τέχνη therefore proves an especially convenient concept for a philosopher who turns to the realm of metaphysics in search of the principles of politics. That the object of knowledge and the product of knowledge exist on different ontological levels does not cause any practical problems because the claim is that these levels relate to each other as the model and product of a craftsman.

A final implication of the τέχνη-ἀρετή analogy remains to be discussed. This is an implication on the social rather than the conceptual level. Within the logic of the τέχνη frame, ends have absolute priority over means. Means are legitimated by their objectively good ends, in relation to which all other considerations are negligible. There are no evaluative criteria other than the goodness of the goal itself, and the true expert need not justify or motivate his procedure – after all, he is the expert. The expert's capacity to 'give an account' (λόγον διδόναι) of his procedure does not demonstrate the goodness of his goal (which is presupposed), but gives an account of the means *in terms of* their capacity to attain the end. The goodness of the goal itself is a given within the conceptual frame of τέχνη. If the expert therefore concludes that the realization of the good (e. g. the best *polis*) requires violence, this is not principally rejected.[39]

Applied to the social domain, the πολιτικὴ τέχνη has radical implications for the question of how far an authority may go in imposing what is good on others. Even though the dialogues at times admit that some measures will be harsh and unpleasant, they do not consider this in itself a reason to refrain from them.[40] Presenting the just *polis* as analogous to a healthy bodily condition (the argument of *Republic*) corroborates these radical implications, for the option of painful surgery is kept open.[41] This seems less the case in *Laws*, where ideas about the well-de-

37 The Socratic paradoxes arise from the analogy between ἀρετή and τέχνη: *akrasia* (acting against what one *knows* to be truly good) is impossible (knowledge is sovereign); the other side of the coin being that no one willingly commits a moral mistake (οὐδεὶς ἑκὼν ἐξαμαρτάνει, *Prot*. 345d9–e4, *Gorg*. 488a3–4 – or, conversely, the proposition that μηδένα βουλόμενον ἀδικεῖν, ἀλλ' ἄκοντας τοὺς ἀδικοῦντας πάντας ἀδικεῖν, *Gorg*. 509e5–7). For *akrasia* in Platonic philosophy, see Bobonich & Destrée 2007.

38 Cf. Adam *ad Resp*. 488d: "The true pilot, according to Plato, is one who knows *how* to steer" (emphasis in original).

39 Made explicit in *Statesman* 293d4–e2, 296c8–d4, 308e8–309a3. Cf. Laks 1991, 423.

40 Cf. Adkins 1960, 296–297.

41 The fastest and easiest way to realize the constitution they have been describing is to send all people above 10 years of age abroad, *Resp*. 540e4–541a7. Both ἰατρική (and to some extent γυμναστική) are pre-eminently τέχναι of which realizing the good involves putting up with pain: see *Ph*. 94c9–d6 (ἰατρική and γυμναστική opposed to a 'gentler' (πρᾳότερον) rule by threats, exhortations and internal dialogue); *Resp*. 406c10–d2 (burning or cutting); *Phdr.* 248d6

signed society take into account citizens' *sense of* well-being (i. e. feeling well).[42] *Laws* spells out a more commonsense notion of εὐδαιμονία. *Republic* claims that εὐδαιμονία consists in fulfilling one's social role (πράττειν τὰ αὑτοῦ). Yet the social roles in all cases seem to deviate to some degree, to put it euphemistically, from what humans would in general consider pleasant. In *Republic* there is a relatively large cleft between what a person intuitively considers pleasant on the one hand and what *Republic* claims is *truly* pleasant on the other. In contrast, *Laws*' notion of εὐδαιμονία taps into the more intuitive notions of musical harmony and consonance, and appeals to the senses for justification (the pleasantness of harmonious music is an important part of the argument).[43] *Laws*' 'anthropological' approach to pleasure as something humanly recognizable and a generally powerful motivation correlates with abandoning the idea of an expert authority on the correctness of emotions.

2.1.2 'Stochastic' τέχνη

The concept of τέχνη is not a Platonic invention. We find clear references to professionals in Homer and Pindar.[44] The earliest examples are the seer, doctor, carpenter and poet.[45] The term for professional is usually δημιουργός, a name that reflects

(γυμναστική is φιλόπονος); *Plt*. 293a6–c4 (in political context). Cf. for gymnastic training *Leg*. 646b9–d1. Ἰατρική is often associated with purification, e. g. *Crat*. 405a6–b4, *Soph*. 226e8–227a1, *Tim*. 89a8–b3. Cf. Brock 2013, 72.

42 See Chapter Three, pp. 102–103; cf. *Laws*' concern with friendliness, Chapter Three and Morrow 1960, 562, n. 40. It should be noted that this does not mean that there are no harsh measures in *Laws*. Some stipulations of punishments in *Laws* (especially punishments of slaves) are very grim by our standards, although it should be recalled that historical evidence shows that whipping was the most common punishment for slaves in the ancient Greek world, whereas free people were not whipped in public, see Hunter 1994, 154–184; Kamen 2010; Lewis forthc. In *Laws* in general, punishments are emphatically treated as a last remedy, when both *paideia* and the preambles have failed. See Hunter 1994, 160–162 for the argument that *Laws* is unusual for also legislating corporeal punishment for citizens (often in cases relating to lack of due respect towards parents or gods). It should be noted, however, that in the case of sacrilege, the Athenian thinks such a law is predominantly necessary for strangers, slaves or the slaves of strangers, as they obviously lack the state *paideia* (see *Leg*. 853d6–854a3 and cf. the text of the law, 854d1–2). The citizen who commits sacrilege is to be punished by death because he is considered incurable, given the amount of education he has received (*Leg*. 854e1–6). In *Republic*, the suppression of producer class by the military class of the φύλακες makes violence and the threat of violence a more constitutive ingredient of the just society.

43 See Chapter Three, especially pp. 103, 107.

44 For the earliest history of τέχνη, see Kube 1969, 9–47.

45 Hom. *Od*. 17.383–385: the seer (μάντις), healer of evils (ἰητὴρ κακῶν), woodworker (τέκτων δούρων), and the divine singer (θέσπις ἀοιδός); the herald (κῆρυξ) is added in 19.135. For other early examples of specialists in Greek literature: Heinimann 1961, 109 and n. 20 on pp. 109–110. Within the Platonic collection of τέχναι, μαντική is somewhat atypical because it has its source in the divine. Plato's depiction of inspired μαντική deviates from the more down-to-earth practices of contemporary μάντεις. In Athenian daily life the μαντικὴ τέχνη consists in the reading of signs, in particular those of the entrails of a sacrificial animal, see Van Straten 1995, 156, cf. 121–122. The μάντις is a specialist like any other, with practical skills like piling fire-

the idea that an expert possesses the sort of skill(s) that benefit the populace.[46] The τέχναι become a particularly prominent subject in the sophistic movement of the 5th century B.C.,[47] when they are seen as the primary causes of man's cultural development beyond the state of animals, the most notable example being the sophist Protagoras.[48] Τέχνη acquires various connotations of civilization: an orderly, non-threatened life in opposition to φύσις (the state of nature), and a self-governed, more or less predictable and hence more secure way of life in opposition to τύχη (which entails being 'governed' by whatever may befall one).[49] In virtue of the τέχναι, humankind is capable of determining its own mode of living. The τέχναι offer humankind the means to ensure its own survival (σωτηρία) by providing humans with the basic means of subsistence.[50]

We also encounter a different type of τέχνη in texts from sophistic circles: not an opposition between τέχνη and τύχη or τέχνη and φύσις, but a bifurcation within

wood on altars, as is suggested by a remark in Ar. *Pax* 1026, where Trygaios proudly draws attention to the fact that he has piled the firewood on the altar μαντικῶς, 'like a real μάντις'. In Plato's *Phaedrus* (and in some other authors) we find a distinction between a rational μαντική, that could be learned from books, and an inspired μαντική, see Heinimann *ibid*., 110 with n. 108, and 127–129; also Ziehen in *RE s. v.* Mantis, 1347 ff.

46 Etymology "*δήμιο-ϝεργός, in turn from δήμια ἔργα with verbal reinterpretation of the second member after the types ψυχο-πομπός; partly from -ϝοργός", Beekes 2010, 325; cf. Chantraine 1968, 273: "On a l'habitude d'interpréter le mot pour le sens d'artisan 'faisant des choses qui concernent l'ensemble du peuple', ce qui convient à des spécialistes qui travaillent pour autrui". Many laymen profit from the skills of one δημιουργός – a doctor, for example: *Prot*. 322c6–7.

47 The notion of τέχνη in sophistic theories comes with a set of assumptions about the goals, results, precise content, and learnability of τέχναι, see Heinimann 1961, especially 105–106 and 117–130; Kube 1969, 9–47. On sophistic theories about the (in)teachability of virtue, see: Kerferd 1981, 131–138. The idea that τέχνη confers a benefit is a standard assumption and omnipresent in the Platonic corpus, e.g.: *Charm*. 165c10–d2 (ὠφελίαν), *Gorg*. 502d4–504a7 (τὸ βέλτιστον), 464c4–5, 501b4 (τὸ βέλτιστον), *Resp*. 341d8–9.

48 On sophistic theorizing about the development of human culture and society, see Kahn 1981 (sophists as ancient precursors of social contract theory); Kerferd 1981, 111–130, 139–162. For a reconstruction of Protagoras' ethical naturalism, see Beresford 2013. On the pre-Platonic notion of τέχνη, see Heinimann 1961; Kube 1969, 9–47; Roochnik 1996 Chapter 1, with literature on τέχνη, especially as it applies to Plato, in n. 1, p. 18. On pre-Platonic notions of knowledge, see Snell 1924.

49 E.g. Pl. *Prot*. 321e1–2, 322a5–8 with Nussbaum 1986, 89–121; cf. Aesch. *Prom*. 226–236, 442–506 and Soph. *Ant*. 332–375. These passages are generally thought to echo contemporary sophistic thought. On the νόμος/φύσις-debate, see Heinimann 1945; Adkins 1972, 106–112; Kerferd 1981, 111–130. Literature on the τέχνη/τύχη antithesis in Nussbaum 1986, 442–443, n. 2.

50 Heinimann 1961, 118: "In der Sophistischen Kulturgeschichte erscheinen die τέχναι als Mittel, der Menschheit zu helfen, ihre bedrohte Existenz zu retten. (…) immer wieder dienen die τέχναι der σωτηρία der Menschheit, die ohne sie dem Untergang geweiht wäre." Cf. Graham 1991, 10; O'Brien 1967, Chapter 2. Judging from the Protagoras myth in Plato's *Protagoras*, the sophist Protagoras seems to have gone further than other sophistic evolutionary theories in making the preservation (σωτηρία) of humankind not only depend upon the τέχναι providing livelihood (the σοφία περὶ τὸν βίον (321d4), for the elements of which see 322a3–8), but also upon basic notions of *morality* (the πολιτικὴ τέχνη, in the form of αἰδώς and δίκη).

the notion of τέχνη itself. Several texts from the Hippocratic corpus are contributions to an apparently existing polemic about the status of medicine as a τέχνη (e. g. Περὶ ἀρχαίης ἰητρικῆς (*De vetera medicina, VM*), Περὶ Τέχνης (*De arte*), and Νόμος (*Lex*)).[51]

VM defends an empirical form of medicine against a novel form that proceeds on the basis of a hypothesis (ἐξ ὑποθέσεως, XIII).[52] From the attempt to justify medicine's lack of precision in *VM*[53] and from the defence of medicine's fallibility, we may reconstruct two grounds on which the status of medicine as a τέχνη came to be disputed: (a) lack of precision, and (b) the fact that it often fails to cure, or that τύχη instead of τέχνη has caused a patient to regain his health. By defending the technical status of medicine against these lines of attack, the Hippocratic authors widen the parameters of what can claim to be a τέχνη, and "open the possibility of (…) a stochastic techne".[54] The more precise τέχναι are, for example, mathematics and the productive τέχναι.[55] By contrast, medicine, "in which a gap exists between knowledge and use", cannot be very precise. The doctor can only 'aim' (στοχάζεσθαι) at his goal.[56]

51 That Heinimann 1961, 106–107 aligns himself with a scholarly tradition (see p. 106, n. 9) according to which Plato's notion of τέχνη corresponds to that of *De arte* and *VM* is due to his relatively 'sophistic' representation of Platonic τέχνη. However, his position is distinct from this tradition in that he ascribes the correspondence between Plato and these writings from the Hippocratic corpus to a common third source.

52 *VM*, especially caput I, XIII–XV, XX. In matters that are unclear (τὰ ἀφανέα τε καὶ ἀπορεόμενα), like those things in the sky or below the earth, one is forced to use a postulate (ὑποθέσει χρῆσθαι) if one wants to state anything about them; but it would not be clear whether his statements were true or not, since there is no test in virtue through which one can attain certainty (caput I). See also Demont 2013.

53 *VM*, caput IX, XII. In caput IX we encounter the paradoxical claim that in medicine, sense perception is the sole measure of accuracy (μέτρον δὲ, οὐδὲ σταθμὸν, οὐδὲ ἀριθμὸν οὐδένα ἄλλον, πρὸς ὃ ἀναφέρων εἴσῃ τὸ ἀκριβὲς, οὐκ ἂν εὑροίης ἄλλ' ἢ τοῦ σώματος τὴν αἴσθησιν).

54 Roochnik 1996, 61. 'Stochastic' τέχνη is demarcated from other τέχναι by Alexander of Aphrodisias and Philodemus in their discussion of rhetoric. On Philodemus, see Heinimann 1961, 123 and Roochnik 1996, 82–83; on Alexander of Aphrodisias Roochnik 1996, 53–55. Heinimann 1961, 123, n. 86: "Zur Scheidung zwischen τέχναι στοχαστικαί, die ihre Ziel nicht immer, sondern bloß meistens (κατὰ τὸ πλεῖστον, ὡς ἐπὶ τὸ πολύ) erreichen, und solchen, die immer Erfolg haben, vgl. Sext. *Math*. 1, 72; Cic. *Div*. 1, 24 f." and *ibid.*, n. 92.

55 In *Phlb*. 55d1–56c11, we find a bifurcation between two types of τέχναι on similar grounds. Those that make use of number (arithmetic, measurement, weighing) have great accuracy (ἀκρίβεια, cf. ἀκριβεστάται τέχναι, 56c8), which makes them τεχνικωτέρα (56b6): these are τεκτονική, ναυπηγία, οἰκοδομία and ξυλουργική in general, because they use the largest number of measuring instruments (56b4–c2). The other kind of τέχναι lack accuracy and 'drill the perceptions by experience and some practice, making in addition use of the powers of conjecture, which many call arts, and which get their force from care and effort' (τὰς αἰσθήσεις καταμελετᾶν ἐμπειρίᾳ καί τινι τριβῇ, ταῖς τῆς στοχαστικῆς προσχρωμένους δυνάμεσιν ἃς πολλοὶ τέχνας ἐπονομάζουσι, μελέτῃ καὶ πόνῳ τὴν ῥωμὴν ἀπειργασμένας, 55e5–56a1). Music is an example of such a τέχνη (especially pipe-playing, αὐλητική): it contains a great deal of τὸ μὴ σαφές (uncertainty), and little of certainty (τὸ βέβαιον). Other τέχναι of this kind are ἰατρική, γεωργία, κυβερνητική and στρατηγική. Cf. Roochnik 1996, 53–54.

56 Roochnik 1996, 107 (he calls this "techne$_2$"). It should be noted that the focus of this debate about the status of ἰατρική differs from the Platonic approach to medicine. On the basis of its

Characteristic of the stochastic τέχνη is the recognition on the part of the τεχνικός that success is never guaranteed.[57] As Heinimann concludes, "[f]ür die Folgezeit gehört solches Wissen um die Grenzen der Kunst jedenfalls zu den Kennzeichen des vollkommenen Arztes".[58] But the recognition of the expert's fallibility does not pertain to medicine alone. Similar limits are formulated with respect to rhetoric by Isocrates, Plato's rival as the head of the more popular philosophical school at Athens. Educating a perfect orator may not always work out, since there are more variables at play.[59] Isocrates' conception of philosophy puts much more of the burden of success on the pupil. The μαθητής has to practice (μελετᾶν), gain experience (ἐμπειρία), and have a certain natural aptitude (φύσις) in order to become a good orator. In the stochastic conception of τέχνη that prevails outside the Platonic corpus, the capacities of the authority figure are much more limited and problematic. The whole notion of authority is much more problematic because it largely depends on success and social recognition. The un-Platonic character of *Laws* partly lies in the substitution of such dissimilar and imprecise factors as experience and worldly wisdom for expert knowledge.

We have lingered on the assumptions that underlie the analogizing of morality to τέχνη because the fact that this analogy is relinquished in *Laws* is part of the reason why the Plato of *Laws* seems so hard to recognize. On the one hand, the automatic link between knowing the good and acting in accordance with it is severed. On the other, the sufficiency of expert knowledge as a ground for action (moral intellectualism) is cast into doubt and becomes an insufficient basis for action.[60]

The discussion of *Republic* below will attempt to demonstrate how the success of Callipolis depends on the assumptions operative in his construal of τέχνη as expert knowledge. The notion of τέχνη as expert knowledge will serve as a foil for my argument for a recalibration of ἀρετή and lawgiving in *Laws* (Chapters Three to Six). *Laws* itself is concerned with an activity – legislation – to which the status of τέχνη is assigned in other Platonic texts. This raises the question of whether legislation in *Laws* – both as discussed by the interlocutors and their own legislative activity – is portrayed as proceeding along the lines of a τέχνη.

stochastic interpretation elsewhere, one might have supposed that ἰατρική is unsuitable for Plato's purposes. The Platonic focus, however, is different. Plato uses the analogy of medicine to get the point across that there exists such a thing as the *objectively* and naturally best condition of the soul (and *polis*), analogous to health for the body. This is idea is especially prominent in *Republic* and *Gorgias*.

57 Cf. Heinimann 1961, 122.

58 Heinimann 1961, 122. His reference to *Resp*. 360e6–361a1 in note 83 *ibid*. is misleading because it fails to take account of the negative import of that context: knowing what one's craft is and is not capable of (τά τε ἀδύνατα ἐν τῇ τέχνῃ καὶ τὰ δυνατὰ διαισθάνεται) is equated to *scheming*: the steersman and doctor are called οἱ δεινοὶ δημιουργοί, and are analogues of the unjust person (ὁ ἄδικος). The unjust person knows what acts of injustice can credibly have a reputation for justice. If something goes wrong, he can fix it (ἐὰν ἄρα πῃ σφαλῇ, ἱκανὸς ἐπανορθοῦσθαι, 361a2; τὸν ἁλισκόμενον δὲ φαῦλον ἡγητέον, 361a4). The qualification of the ἄδικος thus works along the same lines as that of the moral expert.

59 Isocrates' notion of rhetoric and φιλοσοφία (ἡ τῶν λόγων παιδεία) is therefore very unlike Plato's conception of philosophy as σοφία or ἐπιστήμη. See especially Isocr. *Antid*. 180–220.

60 See Chapter Three, pp. 84–85; also Chapter Five.

2.2 PART II: THREE TEXTS ON PLATONIC JUSTICE

The second part of this chapter will discuss three Platonic texts that precede *Laws*: the presumably early *Apology* and *Crito* and middle dialogue *Republic*. All three texts address questions of justice (τὸ δίκαιον, δικαιοσύνη), but each of them does so in its own way. Despite their differences, they are connected by an underlying theme: exploring the consequences of the existence of an absolute moral norm for the individual and for society. *Apology* and *Crito* portray the dilemmas that Socrates is facing. Both texts are set in the Athens of 399 B.C. – a society that, in Socrates' eyes, fails to live up to the norms of true justice. Conversely, Socrates' way of life is considered inappropriate from the perspective of conventional justice, and *Apology* and *Crito* stage the dramatic lowest ebb – from the perspective of true justice – of that inevitable friction. In *Apology*, Socrates is forced to defend himself before the Athenians at large (section 2.2.1); in *Crito*, he is faced with the consequences of his failure to convince them (section 2.2.2).

The third text that will be discussed in this chapter, *Republic*, is of a somewhat different nature (section 2.2.3). It involves the attempt to construct, in its most persuasive form, a *polis* – called Callipolis – with justice as its defining characteristic. *Republic* therefore adopts the same belief in an absolute moral norm as *Apology* and *Crito*, but offers a solution to the dilemmas laid out in the earlier works. In the just society of *Republic*, the problems affecting a just individual in *Apology* (the truth about justice is not convincing) and *Crito* (the just individual has to submit to the unjust application of the laws) cannot arise, and Socrates would not have been convicted.

2.2.1 *Apology*: Socrates unjustly accused

2.2.1.1 Socrates' philosophical rhetoric

Apology is the only Platonic text that is not a dialectical conversation.[61] The text reports a sustained defense speech (ἀπολογία) addressed to a mass audience, the court of Athens.[62] This setting forces Socrates to adopt a mode of discourse at variance with his usual, dialectical mode of speech.[63] Yet although Socrates formally conforms to the proper way of addressing a court, his speech is a defence speech in a typically Socratic fashion. The argument and attitude displayed by the Socrates

61 With the exception of those *Epistulae* that may be genuine.

62 On the question of whether *Apology* is a philosophical work, see Slings 1994, 36: *Apology* is "a philosophical work, and that implies that it is concerned with the right conduct of life, not only in general, but also with respect to the special activity with which the work is concerned, namely, rhetoric" (cf. *ibid.* Ch. 1 § 2c).

63 *Ap*. 17d1–18a3. In *Ap*. 37a5–b2, especially the reference to Socrates' own mode of speech in ὀλίγον γὰρ χρόνον ἀλλήλοις διειλέγμεθα, "there is some irony present, and perhaps a hint that in a dialectical discussion [Socrates] would have convinced the putative jurors", Stokes *ad loc*. For the difficulty to persuade his audience, see *Ap*. 38a7–8.

of *Apology* are hardly those expected from someone in his position. Normally, the sole purpose of a defence speech is to secure acquittal – in Athens a whole genre (forensic oratory) and industry (the professional speech-writers, λογογράφοι) had arisen for the sake of securing success in lawsuits. Hence the normal procedure would be to try to secure the jury's benevolence and present oneself in the most favourable way possible.[64]

Yet this is not what Socrates does in *Apology* – in fact, he makes clear that winning the multitude's favour might well be his least concern. His care is for something else. *Apology* can be read as what Feaver & Hare have called an "inverted parody of rhetoric".[65] First, Socrates claims that in this trial he is not the defendant but the accuser; the real person on trial, he suggests, are the Athenians. Second, Socrates is in a way accusing himself.[66] He does not attempt to take the sting out of the philosophical activities at which people have taken offence. On the contrary, he confesses to being guilty of the activities that have been the reason for his prosecution. His speech is a grand attempt to isolate himself from his fellow Athenians and from their conventional values. Socrates' overt contempt for death as a triviality in the light of his own concern for τὰ μέγιστα emphasizes this dissociation.[67] On the whole, *Apology*'s inversion of the usual arguments of a defence speech – appealing to shared values between city and defendant, the previously impeccable reputation of the defendant, the need to spare the defendant's life – forces its audience to recalibrate its moral orientation. Part of *Apology*'s purpose is to encourage its audience to adopt a perspective from which these positions (that the Athenians at large stand accused, that conviction and the prospect of death are in fact a triumph, and Socrates' self-accusation) lead to a coherent perspective.

Besides isolating himself from the conventions of his fellow citizens, in the *exordium* Socrates substitutes his own definition of rhetoric, 'speaking the truth',[68] for

64 Especially since jurors "were prone to decide a case more on the basis of a general assessment of a person's moral character than on an informed understanding of legal arguments", Slings 1994, 90. "Possible scruples [on the part of the jury] about doing this could be dismissed if the moral offence had been explicitly mentioned in the indictment; in that case a discussion of the defendant's general behaviour could not be considered 'irrelevant to the case' (ἔξω τοῦ πράγματος)" (Slings *ibid*., 90–91, see also his note *ad* 18a7). Cf. Feaver & Hare 1981, 210, 212.

65 Feaver & Hare 1981, 210. Rhetorical *topoi* are used to effectuate the opposite of what rhetoric aims to do ("success is not winning the case but telling the truth", 205) and to give expression to a "higher authority" (209).

66 Feaver & Hare 1981, 211: "What [Socrates] is doing in this section of the speech [the reply to the unnamed prosecutors] is uncovering the real charge, admitting that he is guilty and claiming the utmost credit for being so." The real accusation he claims to be facing is "just that he is a philosopher. In particular, the real reason for the hatred in which he is held is his habit of consistently exposing powerful figures to the ridicule of the young and rich group that surrounds him. The *Meno* shows the connection between this habit and the trial" (210–211).

67 See *Ap*. 30c6–d5.

68 τὸν τἀληθῆ λέγοντα, 17b4–5; ὑμεῖς δέ μου ἀκούσεσθε πᾶσαν τὴν ἀλήθειαν, 17b7–8; ῥήτορος δὲ (ἀρετή) τἀληθῆ λέγειν, 18a5–6. See Slings 1994, 32–34, 36–40, for an explanation of *Apology*'s correspondences with the familiar rhetoric of the orators and its use of rhetorical *topoi* within the context of this agenda of truth-speaking. "Socratic speech as a rule aims at suggest-

the conventional definition of being δεινὸς λέγειν ('a formidable speaker').[69] The λόγος he is about to give is the only speech he can give; he simply *cannot* defend himself in a different way.[70] Knowing the truth means that one must speak the truth – the rhetorical counterpart of the Socratic automatism that knowing the good is doing the good.[71] The philosophical rhetoric of *Apology*, although it is a mode of speech determined by different rules than dialectic and although it has different effects, thus shares with dialectic the concern for, and belief in, truth.[72]

In *Apology* we witness a radical and, in his overt disdain for conventional norms and values, arrogant Socrates. He launches an attempt to create a gulf between himself and his fellow Athenians. How does he justify his claim to speak the truth? How does the radical Socrates of *Apology* justify his past activities and motivate his present indifference? The next two subsections will attempt to offer a reconstruction of the divine mission from Socrates' perspective.

2.2.1.2 The oracle and ὁ θεός: Socrates' 'mission'

Socrates claims that the real charge he faces is that of his 'old accusers': he has the 'reputation' (ὄνομα) of being 'wise' (σοφός), and he reportedly 'educated' (παιδεύειν, διδάσκειν) his younger fellow citizens.[73] Socrates' tactic is to refute

ing rather than at asserting the truth. For truth is discovered by insight (σοφία, φρόνησις), and this cannot be siphoned from one mind into another like water from a full vessel into an empty one" (*ibid*., 33, with ref. to *Symp*. 175d3–7). This is similar to how Socrates represents the procedure of the god of Delphi, who revealed the truth by suggestions (*ibid*., 34).

69 *Ap*. 17b8–c2: the claim that he will speak εἰκῇ and τοῖς ἐπιτυχοῦσιν ὀνόμασιν therefore does not mean that he will not give a very sophisticated speech and use rhetorical *topoi*, but is part of his claim that he will not distort the truth (cf. Slings 1994, 37). For the use of rhetorical idiom, *topoi* and structure of *Apology*, see Slings 1994, 32, with literature. The correspondences with Gorgias' *Defense of Palamedes* are especially striking, see Feaver & Hare 1981, 207–209 and 215, n. 11; also Reeve 1989, 7–8. On the other hand, Socrates' disclaimers have prompted Brickhouse & Smith 1989 to deny the rhetorical parallels, 48–59.

70 Cf. the notion of Socratic παρρησία. On παρρησία in *Apology*, see Van Raalte 2004, 296–305: "Although in Plato's *Apology of Socrates* the term *parrhêsia* does not occur, the *Apology* can be seen as one big exercise in Socratic *parrhêsia*" (296); Socrates is not afraid to speak the truth when it flies in the face of what is conventionally acceptable.

71 Cf. Slings 1994, 325, *ad* 29a3: "Socrates cannot admit to a separation of theory and practice, of convictions and actions. When someone honestly acknowledges the existence of true gods, endowed with perfect insight (cf. 23a5–6), he cannot even think of disobeying him." The idea that Socrates has a mission can only take root because the idea of having received the order to remain at one's post has just been mentioned in the context of a military mission. It is in this context that Socrates really speaks of having received an "order" from the god. Parallel to Socrates' current position before the court, the military context also involves a contempt for death.

72 Cf. Slings 1994, 33: "Socratic speech always aims at truth, which is the highest good (…)."

73 *Ap*. 19a8–20c3. *Apology* 26b2–6 "reflects Plato's treatment of the corruption of the young as *de facto* the main charge", Slings 1994, 90, n. 35. Cf. also *ibid*., 51: "(…) by acting as he does, Socrates is guilty not of breaking the law but of going beyond the normal bounds within which a reasonable and well-behaved citizen would keep himself". Cf. Taylor 1954, 90: Socrates was

this charge by explaining the real nature of his σοφία. At the same time, he denies the charge that he educated his fellow Athenians (he could not have done so, for he denies to be σοφός in that sense) and *reframes* the activities that underlie his present prosecution: over the years, he has not been educating his fellow citizens but, in his own way, fighting for justice (τὸ δίκαιον). Still, Socrates goes even further than that: not only does he take full responsibility for his offensive activities; he even claims that these activities were commanded by 'the god' and that he has been entrusted, solely among his fellow Athenians, with a mission to serve the god.

Socrates traces the origin of his mission, that is, his life of elenctic examination of his fellow citizens, to an oracle from Delphi. He refers to the god as his 'witness' (μαρτύς), as if the Delphic god himself were giving testimony in his favour.[74] The Pythia reportedly answered the question of whether anyone was 'wiser' (σοφώτερος) than Socrates in the negative. Knowing that he knows nothing about τὰ μέγιστα[75] and that therefore the oracle cannot be correct, Socrates sets out on a quest for someone who *is* σοφός.[76] His encounters with politicians, poets and craftsmen lead to the conclusion that all, even craftsmen, who do know many fine things (πολλὰ καὶ καλὰ ἐπισταμένους) are liable to the same error (ἁμάρτημα, πλημμέλεια): they believe that they possess a σοφία that they in fact do not have. From these disillusioning encounters, Socrates infers that there must be two kinds of σοφία: on the one hand, ἀνθρωπίνη σοφία, that is, *not* being ignorant of one's own ignorance about τὰ μέγιστα; on the other hand, a divine σοφία, that is, knowledge about what is truly good.[77] Thus, ἀνθρωπίνη σοφία is merely an informed awareness of the existence of divine σοφία, yet without having the knowledge of

condemned "on what was really a charge of *incivisme*, disloyalty to the spirit of Athenian life" which appeared vulnerable in the tense political climate at the time of the charge (89–115).

74 *Ap*. 20e6–8: τῆς γὰρ ἐμῆς, εἰ δή τίς ἐστιν σοφία καὶ οἵα, μάρτυρα ὑμῖν παρέξομαι τὸν θεὸν ἐν τοῖς Δελφοῖς.

75 The ἐπιστήμων or ἐπιστάτης knows the human and political virtue, ἡ ἀνθρωπίνη τε καὶ πολιτικὴ ἀρετή, which enables him to *make others* καλὸς κἀγαθός, *Ap*. 20a5–b5.

76 Some commentators have found Socrates' doubts about the god's veracity worrying, either because in their eyes these doubts would make him guilty of impiety after all, or because they consider disbelief hard to reconcile with Socrates' later recognition of the god's authority. Therefore, there is some controversy about the exact meaning of the phrase ἐλέγξων τὸ μαντεῖον (*Ap*. 21c1): does it mean disprove, or merely interpret? For 'disprove' or 'refute' is argued by Burnet *ad* 21b8 ("tries to prove the god a liar"); Hackforth 1933, 88–104; Taylor 1954, 80; Ryle 1966, 17; West 1979, 106; Nehamas 1986, 305; Teloh 1986, 111. Others, emphasizing the oracle's habitual answering in riddles, have argued for an 'interpretative' reading: Guthrie 1971, 86–88 ("What [Socrates] set out to refute was the obvious meaning of the oracle, its words taken at their face value, in order to discover the answer to its riddle", 87); Reeve 1989, 21–23 ("Hence his strategy of refutation is interpretative only", 23, *contra* West 1979); Brickhouse & Smith 1989, 96 ("[…] Socrates' attempt to refute the apparent meaning of the oracle only reinforces the view that he sees piety as requiring that he always make 'the god's business' his first priority", *contra* Nehamas); Stokes 1997, 117; McPherran 2002, 129 ("attempting to refute (ἐλέγξων), to show *false*, the *apparent meaning* of the oracular pronouncement taken at face value, not (…) the oracle of the god", emphasis in original).

77 The outcome of *Apology* shows us the *social* implications of recognizing one's own ignorance about τὰ μέγιστα: it spares innocent lives.

τὰ μέγιστα. By thus casting both the accusation and the oracle in terms of σοφία,[78] Socrates can claim that he is indeed σοφός (which explains his ὄνομα) in a way that no-one else is, and at the same time maintain the claim that he has not been educating anyone.

Since the testing of the oracle showed him that he was the only one who had ἀνθρωπίνη σοφία, Socrates felt that he had received a command to enlighten others about their own ignorance as well. This he sees as 'searching in accordance with the god' and 'the service to the god'.[79] From his perspective, it is a task that has been *imposed upon* him by a higher norm over which he has no control and into which he has only a limited insight. Truth, because it is the *truth*, entails commitment and requires to be made known. Some interpreters have wondered how Socrates could have concluded on the basis of the oracle (as he reports it in *Apology*) that he had a mission and, moreover, that his mission consisted in testing his fellow citizens. Yet considerations of modern deductive logic are not the kind of thing that would worry someone who *believes* (or at least presents himself as believing) that his activities have been divinely commanded.[80] From Socrates' point of view, *this* is what the

78 Xenophon in his *Apology*, 14, reports the oracle in a different version: Χαιρεφῶντος γάρ ποτε ἐπερωτῶντος ἐν Δελφοῖς περὶ ἐμοῦ πολλῶν παρόντων ἀνεῖλεν ὁ Ἀπόλλων μηδένα εἶναι ἀνθρώπων ἐμοῦ μήτε ἐλευθεριώτερον μήτε δικαιότερον μήτε σωφρονέστερον, 'Once, when Chaerephon asked in Delphi about me in the presence of many, Apollo responded that no human being was more free, more just, or more moderate than I' (transl. Bartlett). The difference between Plato's version and Xenophon's has fuelled a discussion about the oracle's historical form. Diogenes Laertius (II.37–38) supports Plato's version. Slings 1994 thinks (*contra* Burnet *ad* 21a5) "[i]t is reasonable to assume that § 14 of the Xenophontic *Apology* is a correction of the Platonic formulation" (76). Yet, in § 16 Socrates asks the jury, echoing Chaerephon's question to the oracle, who they know that is more σώφρων, ἐλευθεριώτερος, δικαιότερος, and includes σοφός. It therefore seems equally reasonable that Plato singled out σοφία for his own purposes, simply omitting the other virtues. For literature on the issue: McPherran 2002, 122–123, n. 25; Brickhouse & Smith 1989, 89, n. 71. A list of ancient sources on the oracle is given in Fontenrose 1978, 245; see also McPherran 2002, 115, n. 5. For the reconstructed historical date of the oracle, see Reeve 1989, 21, and the literature in n. 21 *ibid*.

79 *Ap*. 22a4: ζητοῦντι κατὰ τὸν θεόν; 23b4–7: ἐγὼ μὲν ἔτι καὶ νῦν περιὼν ζητῶ καὶ ἐρευνῶ κατὰ τὸν θεὸν καὶ τῶν ἀστῶν καὶ ξένων ἄν τινα οἴωμαι σοφὸν εἶναι· καὶ ἐπειδάν μοι μὴ δοκῇ, τῷ θεῷ βοηθῶν ἐνδείκνυμαι ὅτι οὐκ ἔστι σοφός; 23c1: τὴν τοῦ θεοῦ λατρείαν; 28e4–29a4: τοῦ δὲ θεοῦ τάττοντος (…) δεινὸν τἂν εἴη, (…) ἀπειθῶν τῇ μαντείᾳ; 29d3–4: πείσομαι μᾶλλον τῷ θεῷ ἢ ὑμῖν; 30a5 κελεύει ὁ θεός; furthermore 30e3–31a1 (Socrates has been placed by the god on the cumbrous horse of the *polis*), and 33c4–7: προστέτακται ὑπὸ τοῦ θεοῦ πράττειν καὶ ἐκ μαντείων καὶ ἐξ ἐνυπνίων καὶ παντὶ τρόπῳ ᾧπέρ τις ποτε καὶ ἄλλη θεία μοῖρα ἀνθρώπῳ καὶ ὁτιοῦν προσέταξε πράττειν.

80 No belief in having been given a divine command would survive the scrutiny of logical consistency. Socrates' elenctic activities cannot be logically deduced from the oracle. Some commentators have tried to reconstruct – naturally, in vain – how Socrates could have concluded from the wording of the oracle that he had a mission, see e. g. Brickhouse & Smith 1983, Kraut 1984, 270–274, Brickhouse & Smith 1989, 88, n. 67; Reeve 1989, 22–28; Stokes 1992, especially 29–42; McPherran 2002; Doyle 2004. An overview of the discussion and literature is given by Brickhouse & Smith 1983, 657–658, nn. 1–4; also by McPherran 2002, 118–120, nn. 11 and 12. McPherran 2002 readdresses the problem of "how exactly Socrates derived from the Pythia's report a command to do philosophy" (120) by providing a logical analysis. He argues that Socrates had a pious commitment to philosophy prior to the oracle, which is the rea-

oracle means. It means that the god is truly wise (τὸ δὲ κινδυνεύει (…) τῷ ὄντι ὁ θεὸς σοφὸς εἶναι) and that his life-long assignment is to 'assist the god' (βοηθῶν τῷ θεῷ, 23b7).[81] Thereby, the god becomes the ultimate authority that supports Socrates' announcement to speak the truth. His claim in the *exordium* that his λόγος will be the whole truth (πᾶσα ἀλήθεια) now appears to be sanctioned by the god.[82] It is worth noting that Socrates never makes explicit who this god is. The natural inference, which is left to his audience to draw, is that ὁ θεός is 'the god of Delphi' (τὸν θεὸν τὸν ἐν Δελφοῖς, 20e8); for that is the only god identified.

The oracle narrative underpins the claim that Socrates' loyalty rests with a different party than the Athenians and that there exist interests other than those that they recognize; even though, at the same time, his mission ultimately serves the interest of the *polis*. It is from the perspective of his belief in a divine assignment that Socrates' conviction feels to him like a triumph: if the jury will prohibit him from performing the service of the god, death is the best prospect, under the given circumstances.

2.2.1.3 Socrates' daimonion

Socrates' private conduct is yet another inversion of conventions, this time of what would normally be expected from an Athenian citizen. On the one hand, Socrates tests the individual convictions of his fellow citizens (thus making himself guilty of πολυπραγμοσύνη in their eyes); on the other, he does not engage in political affairs (which is incompatible with the Athenian ideal of active citizenship).[83] It is in the context of his aloofness from politics that Socrates introduces another deity: his divine sign. He describes this divine sign as 'something divine and supernatural' (θεῖόν τι καὶ δαιμόνιον) that arose in his childhood (ἐκ παιδὸς ἀρξάμενον). He

son why "he is being used by the god as a paradigm" (139); cf. Doyle 2004 for a similar reading of Socrates being used by the god as paradigm. Others have argued that Socrates had already started to examine people prior to the oracle, and in fact had more rational motivations as well; see in particular Vlastos 1991, Chapter 4, and cf. Nussbaum's 1985 ironical reading of the *daimonion*. Slings 1994, 80–81, is concerned with the historical origins of Socrates' philosophical activity and argues that, although Plato's literary narrative "creates the impression" that the oracle is its starting point, Plato "never *asserts*" that it was (81, emphasis in original). McPherran 1996 addresses worries about how "Socrates' acceptance of extrarational indicators" can be reconciled with his "profound respect for rational justification" (quotations from 2002, 119). Slings 1994 rightly notes that the effect of the combination is cumulative: "Socrates corroborates divine instructions or suggestions with motivations based on his own reasoning" (186, see also 81–82, 153, 197). That Socrates juxtaposes reason and divinity should not surprise us: for association of reason to the divine, we may compare numerous instances in the Platonic corpus, e. g. *Resp*. 500d1–2, 518d11–e2, 590d1–4. Compare also the end of *Crito*, where, after the speech of the Athenian laws, instead of ὁ θεός we would have expected ὁ λόγος.

81 *Ap*. 23a5–7.

82 *Ap*. 20e5–6: οὐ γὰρ ἐμὸν ἐρῶ τὸν λόγον ὃν ἂν λέγω, ἀλλ᾽ εἰς ἀξιόχρεων ὑμῖν τὸν λέγοντα ἀνοίσω.

83 *Ap*. 31c4–7. Cf. Slings 1994, 151 for the idea of refraining from πολυπραγμοσύνη.

goes on to speak about it as 'a kind of voice' (φωνή τις γιγνομένη),[84] which, when it occurs, always dissuades him from what he is about to do but never induces him to something (ἢ ὅταν γένηται ἀεὶ ἀποτρέπει με τοῦτο ὃ ἂν μέλλω πράττειν, προτρέπει δὲ οὔποτε).[85] Socrates never knows in advance when it will occur, it simply keeps him from doing what he is about to do. It is this divine sign that has opposed Socrates' engaging in politics (ἐναντιοῦται τὰ πολιτικὰ πράττειν). We hear why it was a good thing that it did so, *Apology* 31e1–32a3:

> οὐ γὰρ ἔστιν ὅστις ἀνθρώπων σωθήσεται οὔτε ὑμῖν οὔτε ἄλλῳ πλήθει οὐδενὶ γνησίως ἐναντιούμενος καὶ διακωλύων πολλὰ ἄδικα καὶ παράνομα ἐν τῇ πόλει γίγνεσθαι, ἀλλ' ἀναγκαῖόν ἐστι τὸν τῷ ὄντι μαχούμενον ὑπὲρ τοῦ δικαίου, καὶ εἰ μέλλει ὀλίγον χρόνον σωθήσεσθαι, ἰδιωτεύειν ἀλλὰ μὴ δημοσιεύειν.
>
> 'It is impossible for any man to be spared if he truly opposes you or any other democratic majority, and prevents many unjust and illegal things from occurring in his city. He who intends to truly fight for what is just, if he is to be spared even for a little time, must of necessity live a private rather than a public life.' (Transl. Allen, modified)

Here the looming conflict between society and true justice becomes apparent. The idea of justice (τὸ δίκαιον), for which he has been fighting, sets him apart from the rest of society.[86] Once more Socrates emphasizes that he speaks the truth (λέγοντι τἀληθῆ, 31e1): anyone who is a champion of justice like himself will be forced to oppose the masses on many occasions, if he wants to prevent 'many unjust and illegal things' (πολλὰ ἄδικα καὶ παράνομα, 31e4).[87] The masses eliminate anyone who dares to oppose their wishes.[88] To avoid the risk of a premature death, his alternative campaign for justice is to practise dialectics.

84 *Ap*. 31c7–d3. The *daimonion* is referred to in other Platonic texts as well (*Phdr*. 242b8–9; *Tht*. 151a4), but always to explain Socrates' personal motivation, never in order to advance the dialectical argument. In *Phdr*. 242c1–3, Socrates reports that, when he was just about to cross the river, his habitual divine sign happened to him: τὸ δαιμόνιόν τε καὶ τὸ εἰωθὸς σημεῖον, which ἀεὶ δέ με ἐπίσχει ὃ ἂν μέλλω πράττειν. Here, as in *Apology*, he describes it as a voice: τινα φωνὴν ἔδοξα αὐτόθεν ἀκοῦσαι, ἥ με οὐκ ἐᾷ ἀπιέναι πρὶν ἂν ἀφοσιώσωμαι, ὥς δή τι ἡμαρτήκοτα εἰς τὸ θεῖον, 'I thought I heard a voice coming from this very spot, forbidding me to leave until I made atonement for some offense against the gods' (transl. Nehamas & Woodruff in Cooper, *CW*). In *Tht*. 151a2–5 the sign sometimes prevents Socrates from associating with those who have, after previous association with him, left his company sooner than they ought to have and returned to wicked company (πονηρὰν συνουσίαν), yet now wish to renew their association with him: οὓς, ὅταν πάλιν ἔλθωσι δεόμενοι τῆς ἐμῆς συνουσίας καὶ θαυμαστὰ δρῶντες, ἐνίοις μὲν τὸ γιγνόμενόν μοι δαιμόνιον ἀποκωλύει συνεῖναι, ἐνίοις δὲ ἐᾷ (…).

85 *Ap*. 31d4–5; also 31d6 and 31e3; cf. ἀποτρέπει, 31d1–2.

86 *Ap*. 19a6, 35c2–4; cf. *Cri*. 47c9–11, d4–5, 47e6–48a1, 48a7–10, b8–9, c6–d5.

87 Some commentators have argued that the *daimonion* is not a moral force: Burnet *ad* 40a5; Taylor 1954, 46 ("It had nothing to do with right and wrong, and is never appealed to, in any of the accounts of it, on points of moral conduct, but amounts to a sort of 'uncanny' *flair* for bad luck"); Slings 1994, 154 (see for more references n. 7 *ibid*.); Stokes 1997, 8. Such evaluations seem hard to justify in the light of statements to the effect that the *daimonion* withheld Socrates when on the verge of doing something wrong (εἴ τι μέλλοιμι μὴ ὀρθῶς πράξειν, 40a6).

88 Slings 1994 concludes from Socrates' addition of παράνομα (i. e. Athenian law) to ἄδικα that the δῆμος "was intolerant of any restriction on its freedom to act as it pleased, even of self-im-

We further hear that Socrates' *daimonion* (this time called ἡ εἰωθυῖά μοι μαντικὴ ἡ τοῦ δαιμονίου) has always appeared rather frequently (πάνυ πυκνή) and obstructed him in quite trivial matters (καὶ πάνυ ἐπὶ σμικροῖς).[89] Yet in this matter, it did not: it did not obstruct him when he left his house in the morning, nor when he appeared before the court, nor did it oppose him in some part of his speech, on the brink of a particular statement he was about to make.[90] This implies a discrepancy between what may *seem* important (but what in fact is not – one's life) and what, from a conventional perspective, may seem trivial, but in fact is not.

On comparison, the oracle and the *daimonion* serve the same rhetorical purpose: they act formally as the authorities to which Socrates attributes his unconventional – truly just – mode of life. Yet though the *daimonion* and oracle point in the same direction, their rhetorical effects on the audience are presumably somewhat different. Whereas the *daimonion* is an internal and indeterminate moral intuition on an *ad hoc* basis, the oracle is an external authority. The oracle and θεός represent a less ambiguous and contestable source of authority than the *daimonion*: they give Socrates' elenctic behaviour an aura of inevitability. Moreover, the fact that Socrates was charged with a failure to honour the gods may contribute to the piquancy of Socrates' appeal to the oracle and ὁ θεός. To the Athenian audience, an appeal to the *daimonion* would probably have been less effective to justify his conduct than referring to the more conventional authority of the oracle of Delphi, which moreover can be *proved* right by critical examination (according to Socrates).[91] The oracle/θεός justifies the elenctic examinations and his conduct towards his fellow citizens. The *daimonion* is a (φωνὴ) μαντική, a voice of divine inspiration, not an articulate proposition: this explains why, in contrast to the oracle, Socrates does not subject the *daimonion* to an elenctic procedure.

The accumulation of signs – of the god (ὑπὸ τοῦ θεοῦ), from oracles (ἐκ μαντείων[92]), from dreams (ἐξ ἐνυπνίων), and especially their explicit presentation

posed restrictions" (157); see the references in Slings *ibid*., n. 12. The readiness to recall even its own decrees implicitly emphasizes the fickleness of the δῆμος.

89 *Ap*. 40a4–5. Cf. 40b1: τὸ τοῦ θεοῦ σημεῖον, 'the sign of the god'.

90 *Ap*. 40a8–b3: ἐμοὶ δὲ οὔτε ἐξιόντι ἔωθεν οἴκοθεν ἠναντιώθη τὸ τοῦ θεοῦ σημεῖον, οὔτε ἡνίκα ἀνέβαινον ἐνταυθοῖ ἐπὶ τὸ δικαστήριον, οὔτε ἐν τῷ λόγῳ οὐδαμοῦ μέλλοντί τι ἐρεῖν. For the interpretation of ἀνέβαινον, see Slings 1994 *ad loc*.

91 I do not see how Slings 1994, 154 can conclude: "the 'sign' has nothing to do (…) with the mission which is entrusted to Socrates by the god". McPherran 1991 distinguishes between "elenctic testing" and "extrarational signification" and takes Xenophon as an hypothesis for a reconciliation between these two "sources of conviction" (348): "Xenophon (…) suggests that Socrates thought that these were two distinct avenues of inquiry, each appropriate to somewhat disparate subject matters (*Mem*. 1.1.6–9)". The *daimonion* is a species of μαντική: "reasonable prediction lies beyond the power of human reason" (354), McPherran refers to *Ap*. 31d and Xen. *Mem*. 1.1.6–9, 4.3.12: "how or why it is that the result of his obedience will be good-producing is, like many future events, opaque to reasoned calculation" (356). See for literature on the *daimonion ibid*., n. 22, 353–354.

92 Schanz *ad loc*. attributes the accumulation of divine signals to the strength of Socrates' conviction "von seinem Beruf", but considers the plural μαντείων a rhetorical exaggeration: "Rhetorisch übertreibend sagt Sokrates, dass alle nur denkbaren Arten der Offenbarung ihm seinen

as specific instances of the more general category of divine communication[93] (the way in which its will may be communicated to a human being θεία μοῖρα[94]) – is a token of Socrates' belief in his divine mission. To someone thus convinced, the *exact* form in which the divine communication manifests itself is of secondary importance.

2.2.1.4 Conclusion

In this section, we have analysed how the Socrates of *Apology* presents his loyalty to a norm different from the conventional one in a forensic context. The circumstances force him to adopt a mode of speech unlike his habitual one. His interpretation of rhetoric as 'truthful speech' aligns it with dialectic's hypothesis that there exists a moral truth. The goal of this true rhetoric is completely detached from the interests and safety of his person, in contrast to the usual forensic oratory. His own speech effectively isolates him from his fellow Athenians and their misdirected concerns. The Athenian court and citizens are not those to whom he claims he is answerable, even though his philosophical ἔλεγχος has ultimately been in the service of the city. He is only answerable to 'the god' in whose service he has tried to live his life, as well as he could under the circumstances. This higher cause has been imposed upon him via several divine channels. Whereas the god is presented as the origin of his conduct, the *daimonion* is its legitimation in terms of Socrates' own intuition: it has shown him the only way open to him to fight for justice in the context of a society with a radically different moral orientation than his own.

Beruf vorgezeichnet haben." Stokes *ad loc*. supposes that Plato "is here piling fiction on fiction in the interests of rhetorical force".

93 *Ap*. 33c6–7: καὶ παντὶ τρόπῳ ᾧπέρ τίς ποτε καὶ ἄλλη θεία μοῖρα ἀνθρώπῳ καὶ ὁτιοῦν προσέταξε πράττειν. Some interpreters have considered Socrates' appeals to divinity examples of Socratic irony, e. g. Nussbaum 1985; Vlastos 1991, ch. 4; more recently Leibowitz 2010. But this is of course what Socrates himself *fears* that the jury will think when he motivates why it is not an option to live a quiet life by saying that he will in that case "disobey the god" (τῷ θεῷ ἀπείθειν, 37e6). As Slings 1994 explains, this is the view of those who think that Socrates spoke about the oracle ὡς εἰρωνευόμενος (*Ap.* 38a1): "the jurors will not accept this motivation and think it a mere pretext: as they see it, Socrates had made this choice [make philosophy his calling] because it suited him, and he should not now try to avoid his responsibility by invoking a divine command" (197). But, as I argue here, Socrates' reference to ὁ θεός serves the opposite goal: to claim full responsibility for his philosophical activities.

94 Stokes *ad loc*. notes that a "divine dispensation, θεία μοῖρα, does not normally give orders; orders come from a god (…[ref. to 33c5]); (…) Pl. sometimes uses the phrase 'divine dispensation' to denote the means whereby poets and prophets arrive at the truths they utter without knowledge." In the *Meno*, the course of the argument points to the conclusion that virtue does not come to one by nature or teaching but by divine dispensation, without insight, *Men*. 99e5–100a1: ἀρετὴ ἂν εἴη οὔτε φύσει οὔτε διδακτόν, ἀλλὰ θείᾳ μοῖρᾳ παραγιγνομένη ἄνευ νοῦ οἷς ἂν παραγίγνεται; cf. *Men*. 100b2–4. The phrase θεία μοῖρα supports Socrates' impression that his mission was imposed upon him by an agency beyond his control. On θεία μοῖρα see also Chapter Six, pp. 200 and 201, n. 46.

In *Crito*, the second Platonic text on justice to which we will now turn, the circumstances are very different. Here Socrates is not forced to isolate himself. The Socrates we encounter in *Crito* is a convicted Socrates, who has triumphed in one sense (because he has secured for himself what he saw as the only justified option under the circumstances, namely death); yet, in a different way, it is also a Socrates who has failed, since in the end he was unable to convince his fellow citizens of the truth. *Crito* portrays a Socrates who has to face the practical consequences of his failure to unmask the political system as unjust.

2.2.2 *Crito*: Socrates unjustly convicted

2.2.2.1 The relation between Apology *and* Crito

The Socrates of *Crito* displays a very different attitude towards the Athenian court and laws than the Socrates of *Apology*. Whereas the latter announced that he would disobey the court if ordered to terminate his philosophical activities,[95] the former submits to the court's verdict. Moreover, instead of asserting that his loyalty lies elsewhere, in *Crito* Socrates impersonates a speech by the Athenian laws insisting on his obligation to remain loyal to the Athenian city and its laws. His obedience to the very same court and society which he defied in *Apology* raises problems of consistency: how can one explain Socrates' apparent change of attitude and his loyalty to different authorities?[96] Why does Plato have him impersonate *the Athenian laws* as the authority to which Socrates owes obedience – why does Plato not, for instance, have Socrates attribute his refusal to escape to the *daimonion*, in which case the inconsistency would have been avoided?

The present section will investigate how Socrates motivates his conduct in *Crito* and offers a fresh reading of the Athenian laws' speech in its dramatic context. Since inconsistency is not to be expected of Socrates in the light of what we hear about him both in *Crito* and elsewhere (where he is repeatedly made to emphasize consistency between words and deeds, and between deeds as a characteristic of a virtuous person), and since we have every reason to expect that Plato envisaged presenting Socrates' attitude to his conviction as consistent, a reading that makes the figure of Socrates in both texts mutually consistent is to be preferred.

The first aspect that is worth noting is that the composition and communicative setting of *Crito* are more complex than those of *Apology*: *Crito* is a dialogue between Socrates and his friend Crito, who speaks on behalf of all of his φίλοι.

95 *Ap*. 29d2–6.

96 There is a substantial body of literature on this issue. One explanation put forward distinguishes between the Athenian court on the one hand and the laws on the other, and argues that Socrates' profession of disobedience in *Apology* concerns only the former. See e. g. Kraut 1984, Ober 2005, 406. Slings 1994 argues that Socrates in *Apology* merely refuses to agree to a proposed compromise that is not "provided for by the law nor suggested by a legal authority acting within the limits of its competence" and does "not question the state's authority, whether manifested in the provisions of the law or the injunctions of a magistrate" (158).

Socrates in *Crito* is engaged in a discussion with people who wish him well. It is therefore a friendly rather than a hostile audience that Socrates addresses in *Crito*. As good φίλοι ought, at least according to public expectations,[97] Socrates' friends have repeatedly urged Socrates to accept their offer to help him escape from prison. His refusal to accept this offer compromises their good reputation, since those who do not know what happened will assume that Socrates' friends, including Crito, have failed to live up to the expectations of good φίλοι and have valued the money needed to bribe the guards more than their friend; no sensible person will actually believe that Socrates himself was unwilling to escape, and that he ignored the arrangements that were made to smuggle him out of prison and the repeated injunctions of his friends.[98] The speech of the Athenian laws impersonated in the conversation with Crito may therefore be read as an apology for Socrates' *friends*. Socrates has to explain to his friends in the person of Crito that to save him does not constitute helping a friend, contrary to popular morality.

Second, in *Crito* Socrates engages in his usual, dialectic mode of speech. Within this dialectical setting, Socrates impersonates the Athenian laws in a speech that is designed to persuade Crito. The fact that Socrates does not appeal to his *daimonion* should be understood as the result of the setting: in *Crito* it is not Socrates' purpose to isolate himself from his audience, and Crito does not have access to Socrates' personal divine voice. Though the function of the Athenian laws is comparable to that of the *daimonion* in *Apology*, within this dialectical framework the authority of the *daimonion* cannot be appealed to. After the speech of the Athenian laws, Socrates, in his own person, adds that the sound (αὕτη ἡ ἠχή) of these λόγοι 'buzzes' (βομβεῖ) in his ears and makes it impossible for him to hear anything else – he is just as unable to ignore the arguments marshalled by the Athenian laws as his *daimonion* in *Apology*.[99] In the setting of *Crito*, Socrates appeals to the laws of Athens as his authority. How does he motivate that appeal?

2.2.2.2 The speech of the Athenian laws

It is at a critical point in the dialogue that Socrates brings in the Athenian laws as speakers: when Crito is unable to answer when confronted with the logical outcome of the discussion so far.[100] The laws' speech consists, essentially, of two arguments. The first is the importance of refraining from doing injustice (μὴ ἀδικεῖν), including doing injustice by way of requiting injustice (μὴ ἀνταδικεῖν).[101] The second

97 On the popular moral creed of 'helping friends, harming enemies' in classical Athens, see Dover 1974, 180; Blundell 1989.

98 *Cri*. 44b9–c5; 45d8–46a2.

99 *Cri*. 54d2–6.

100 *Cri*. 49e9–50a3: Ἐκ τούτων δὴ ἄθρει. ἀπιόντες ἐνθένδε ἡμεῖς μὴ πείσαντες τὴν πόλιν πότερον κακῶς τινας ποιοῦμεν, καὶ ταῦτα οὓς ἥκιστα δεῖ, ἢ οὔ; καὶ ἐμμένομεν οἷς ὡμολογήσαμεν δικαίοις οὖσιν ἢ οὔ; 'See what follows from this: if we leave here without having convinced the city, are we harming those whom we should least do harm to? And are we sticking to a just agreement, or not?' (Transl. Grube, modified).

101 *Cri*. 50a8–51c5.

argument is rooted in the dialectical notion of 'agreement' (ὁμολογία).[102] Both arguments are anticipated in the first, dialogic half of *Crito*. In the first part of the dialogue, Crito has given his assent (as he often did in the past[103]) to the proposition δεῖ μὴ ἀδικεῖν (including μὴ ἀνταδικεῖν)[104] and to the proposition that it is just to meet one's commitments (or, conversely, that dishonouring one's commitments is ἀδικεῖν).[105] Since in *Crito* it is Crito who has to be persuaded (this is the immediate rhetorical purpose of the Athenian laws' speech),[106] it is understandable that the Laws' arguments are in line with the outcome of the first half of *Crito*.

The strategy of the Laws (and hence of Socrates in his attempt to persuade Crito) is to present themselves as Socrates' φίλοι *par excellence* – friends to whom he owes a previous, greater loyalty than to his human friends: they have given him life, an upbringing, an education.[107] The Athenian laws appeal to φιλία on the macro-level, to the interest of the *polis* and τὸ κοινόν: what is at stake is not the obligation to one's personal friends to guarantee each other's preservation (σωτηρία), but to preserve and contribute to the σωτηρία of society, to which every citizen owes a much stronger obligation of loyalty.[108] To disobey the laws would, according to this scenario, mean to harm the friends that one ought to harm the least. The Athenian laws refer to the harmful consequences for themselves, and thus to the common interest, and the fatherland (πατρίς[109]): to disobey the δίκη of the jury will

102 *Cri*. 51c6–54b2.

103 *Cri*. 49a6–7.

104 *Cri*. 49a4–e4.

105 *Cri*. 49e5–7. Some interpreters have found a notion of justice in the speech of the Athenian laws not subscribed to by Socrates. Schofield 2007, 157 sees a parallel between the argument of the laws in *Crito* and Socrates' argument in *Republic* to make the philosophers go back into the cave: both concern "how to *persuade* the individual to do something required by the good of the city. In each case the considerations put forward in favor are drawn not from the deeper resources of Socratic or Platonic philosophy but from more popular discourse" (158, emphasis in original); cf. "[t]he laws [in *Crito*] appeal for the most part to Simonidean justice" (157).

106 *Cri*. 48e3–5.

107 *Cri*. 50d1–e4. He owes to the Laws his γένεσις (50d1–5), his τροφή and παιδεία (50d5–e1). The Laws conclude: ἐπειδὴ δὲ ἐγένου τε καὶ ἐξετράφης καὶ ἐπαιδεύθης, ἔχοις ἂν εἰπεῖν πρῶτον μὲν ὡς οὐχὶ ἡμέτερος ἦσθα καὶ ἔκγονος καὶ δοῦλος, αὐτός τε καὶ οἱ σοὶ πρόγονοι; For one's parents as one's φίλοι *par excellence*, see *Leg*. 717b4–c6: children must pay back to their parents the 'first and greatest debts' (τὰ πρῶτά τε καὶ μέγιστα ὀφειλήματα) they owe them for the years of care (ἐπιμελεία) and pain (ὠδῖναι παλαιαί) parents have suffered for their sake.

108 The analogy between court and war substantiates the Athenian laws' claim that one single act of disobedience would destroy them. The functional comparison between war (πόλεμος) and the courtroom (δικαστήριον) makes sense *from the Laws' perspective*. A courtroom is for laws what a battlefield is for the fatherland: a situation in which its preservation is at stake. For *laws*, becoming ἄκυροι equals death. This analogy is often read in the context of the debate of whether or not the Laws allow for disobedience or not, e. g., Emlyn-Jones *ad* 51a7–c3 (p. 80), and Kraut 1984, 21. Such a reading obscures its function, witness Emlyn-Jones' remark (*loc. cit*.) that "Plato here allows Socrates to slide over obvious differences between obeying military orders on campaign and obeying the decision of a court".

109 The fatherland (ἡ πατρίς, 51c1) seems to be an emotionally grounded representation of the common interest (τὸ κοινόν) in terms of patriotism.

be tantamount to overturning the entire *polis*.[110] The references to Socrates' agreement (ὁμολογία) to obey them are part and parcel of their self-presentation as his friends and add force to the obligation to obey them: not only would Socrates harm the city, but he has consciously committed himself to obey the laws.[111]

In *Crito* Socrates is made to present himself as upholding φιλία *as a principle* of loyalty to an entity whose interests transcend his own, rather than φιλία as the bond between individuals. His argument is in line with that of Crito in drawing on φιλία; yet he declares his loyalty to a higher principle that makes the interest of the *polis* superior to his own. The city as a whole was of course also the beneficiary of his mission in *Apology*. Both texts are hence consistent in portraying Socrates as adhering to the principle of loyalty to the true interests of the city. By appealing to the strong belief that one must refrain from committing injustice, Socrates can both maintain that his conviction was unjust and legitimize his refusal to accept his friends' offer.

The famous 'convince or obey' (ἢ πείθειν ἢ ποιεῖν ἃ ἂν κελεύῃ, 51b3–4; 52a2–3) argument of the Athenian laws is part of the argument from φιλία. The laws offer Socrates two alternatives: 'both in war and in court and in all situations to do what the city and the fatherland command or to persuade her [πόλις or πατρίς] wherein the just lies by nature' (ᾗ τὸ δίκαιον πέφυκε).[112] Persuading the Athenian court of what is just is of course precisely what Socrates had attempted to do in *Apology* (τὸ δίκαιον would, for example, have been to give him the rewards of an Olympic victor), but unsuccessfully.[113] In terms of *Crito*, *Apology* therefore represents the

110 *Cri*. 50b1–4: ἢ δοκεῖ σοι οἷόν τε ἔτι ἐκείνην τὴν πόλιν εἶναι καὶ μὴ ἀνατετράφθαι, ἐν ᾗ ἂν αἱ γενόμεναι δίκαι μηδὲν ἰσχύωσιν ἀλλὰ ὑπὸ ἰδιωτῶν ἄκυροί τε γίγνωνται καὶ διαφθείρωνται; Some interpreters consider this an exaggeration. Kraut's distinction between "vital and peripheral laws" (1984, 124; cf. 141–142) seems to spring from such an assumption, but misses the point; from the Laws' perspective, any act of disobedience would be tantamount to destruction, at least for his part (τὸ σὸν μέρος) (this is the rationale of the comparison between the court and war, see note 108 above).

111 Drawing on the notion of 'agreement', ὁμολογία, the Athenian laws claim that Socrates' famous refusal to leave Athens is a token of his loyalty to them: he approved of the laws and of the way they regulate society (a ὁμολογία 'in deed' (ἔργῳ) to abide by them, ὡμολογήσας ἡμῖν πείσεσθαι, 51e6). For the argument on agreement see *Cri*. 51d1–53a7, especially 51e1–4: ὃς δ' ἂν ὑμῶν παραμείνῃ, ὁρῶν ὃν τρόπον ἡμεῖς τάς τε δίκας δικάζομεν καὶ τἆλλα τὴν πόλιν διοικοῦμεν, ἤδη φαμὲν τοῦτον ὡμολογηκέναι ἔργῳ ἡμῖν ἃ ἂν ἡμεῖς κελεύωμεν ποιήσειν ταῦτα, (…). 'But we say that whoever of you stays here, seeing how we administer justice and how we govern the state in other respects, has thereby entered into an agreement with us to do what we command; (…)' (transl. Fowler). Had Socrates found the laws not to his liking, he has had ample opportunity (ἐξουσία) to move to any other city of his choice, *Cri*. 51c9–e1. It is especially interesting that the Athenian laws here are made to mention Crete and Sparta – the island of Cleinias and city of Megillus in *Laws* – as those cities Socrates was always saying had good laws (ἃς δὴ ἑκάστοτε φῄς εὐνομεῖσθαι), *Cri*. 52e5–53a1.

112 *Cri*. 51b8–c1: ἀλλὰ καὶ ἐν πολέμῳ καὶ ἐν δικαστηρίῳ καὶ πανταχοῦ ποιητέον ἃ ἂν κελεύῃ ἡ πόλις καὶ ἡ πατρίς, ἢ πείθειν αὐτὴν ᾗ τὸ δίκαιον πέφυκε. Cf. *Cri*. 51c1 and 51e7–52a3.

113 In *Ap*. 37a5–b2, he attributes his failure to convince to a lack of time: had the law given him more time for his defense, he would surely have convinced them, cf. n. 63 above. The implication seems to be that, had he been given the opportunity to engage with members of the jury in a dialectical conversation, he would have persuaded them. But under Athenian law this is not

stage of πείθειν. The 'convince or obey' principle in retrospect incorporates the ἀπολογία of which *Apology* presents itself as the reflection: if one cannot convince one's society of what is truly just, one has no other option than to abide by that society's sentence. Having done what he could to persuade the Athenians, his failure to unmask the political system as incorrect commits him to submission to the laws – at least insofar as the laws and court do not demand of him something that he considers to be an act of injustice.[114] In a non-ideal society, being compelled to submit to the unjust application of the laws is the risk that a just individual faces.[115]

Socrates does not explicitly state why one ought to obey the laws, now that he has failed to re-direct politics to a better course by persuasion. He presents himself as being under a moral obligation of the kind that a child has to his parents, and of someone who has made a contract. He feels morally compelled to submit to the laws as long as he has not convincingly unmasked the political system as unjust. The Athenian laws' appeals to the relation between parent and children, masters and slaves, and agreements all represent aspects of the kind of obligation by which Socrates feels himself bound. In order to meet Crito's bidding, he frames this sense of his obligation as arising from φιλία. The laws' arguments are a reaction to Crito's arguments in the sphere of φιλία (namely, that Socrates' choice compromises their reputation as φίλοι). This is his way of defending himself *vis-à-vis* his friends, thereby indicating that his primary obligations are not a matter of personal relationships, but of general principles. In *Apology* Socrates emphasized that he had no choice but to act as he did; he had a divine mission. *Crito* stages another problem that confronts a just individual in a non-ideal society, where unjust application of

possible. This is yet another problem for the just individual, who may have to be forced to defend himself under circumstances that force him to adopt a less than ideal defence strategy. His speech in *Apology* is, by implication, the best Socrates could do in his situation.

114 Any reading of *Crito* ought to accommodate the fact that Socrates himself presents the Athenian laws as authoritative and is persuaded. White 1996 argues that neither the Athenian laws nor dialectic have authority (the only authority is, paradoxically, the recognition that "our own desires for certainty in argument, for authority in the laws – or in reason, or in persuasion – are self-misleading" (127). The text of *Crito* itself is "a set of pieces that do not fit together" (125) that "offers us a mode of thought that is inherently inconclusive and puzzling" (127). This reading seems hard to reconcile with the persuasive purpose of the Laws' speech.

115 At the end of their speech, the Laws themselves claim that Socrates has in fact not been treated unjustly by them, but by human agents, i. e. the plaintiffs and judges: *Cri*. 54b8–c1: ἀλλὰ νῦν μὲν ἠδικημένος ἄπει, ἐὰν ἀπίῃς, οὐχ ὑφ' ἡμῶν τῶν νόμων ἀλλὰ ὑπ' ἀνθρώπων. That Socrates at this point in the speech holds the Athenians rather than the laws themselves responsible for his conviction is in line with the Laws' 'self'-presentation as Socrates' φίλοι. The Laws suggest that they were *applied* in an unjust way. At *Cri*. 54b4–5 the Laws urge Socrates to obey him, 'so that when you have come to Hades you will have all these things to say in your defense to those that govern over there' (ἵνα εἰς Ἅιδου ἐλθὼν ἔχῃς πάντα ταῦτα ἀπολογήσασθαι τοῖς ἐκεῖ ἄρχουσιν). In the Underworld the truth is convincing (recall οἱ ὡς ἀληθῶς δικασταί in the Underworld, *Ap*. 41a2). The Laws' reference to the laws of the Underworld (οἱ ἡμέτεροι ἀδελφοὶ οἱ ἐν Ἅιδου νόμοι, 54c5–6) implies that these laws represent a different justice than the Laws of Athens. The Underworld scenario therefore confirms that submitting to the verdict falls in with the broader (large-scale) justice scenario. In that final tribunal, Socrates will be acquitted.

the laws is a real possibility. If one has not been able to persuade the city, one has to submit to the laws.[116]

2.2.2.3 Conclusion

The speech of the Athenian laws is embedded in a conversation between Socrates and his friend Crito. As this is a conversation between friends, Socrates is addressing someone who wishes him well; it is not a speech addressed to enemies. The laws' speech can thus be read as an apology for Socrates' friends, in reaction to Crito's arguments in the sphere of φιλία. In this speech, Socrates explains to his φίλοι (represented by Crito) why freeing him from prison and helping him escape (as friends would do) would not actually help him. It is not the case that he does not share their concerns – there is a greater interest at stake. Responding to Crito's own argument from φιλία, the Athenian laws introduce the idea of φιλία and loyalty in a more principled sense: not the preservation of the individual and the bonds between individuals, but the preservation of society, which takes absolute precedence over the interest of the individual. This in an important sense foreshadows *Republic*, where the same mechanism – the true interest of the *polis* takes precedence over the interest of the individual – is introduced as the essence of justice itself. (Whereby it should be kept in mind that, of course, ultimately the two coincide: under the circumstances depicted in *Crito*, to die *is* in Socrates' best interest, but his true one.) Both the Socrates of *Apology* and the Socrates of *Crito* ultimately act in the interest of the city. The discrepancy between Socrates' allegiance to different authorities in *Apology* and *Crito* is therefore to be explained by the difference in their communicative setting and the need to convince Crito.

The dilemma cast in the 'convince or obey' principle also points to its solution: a *polis* with truly just laws. In such a society, one will never be forced to attempt to persuade the system and submit to the unjust application of the laws if one fails. The dilemmas that a just individual faces in *Apology* and *Crito* could not arise in the ideally just society. This ideal society is the just *polis* of *Republic*, to which we will now turn.

116 On *Crito*'s arguments for legal obligation, see e. g. Woozley 1979, especially 5, 23–26, 76–110; Kraut 1984; White 1996; Brown 2006. On the issue of whether the Socrates of *Crito* allows for disobedience, see Kraut 1984, 60–65, 73–76, 125–126, 146. He thinks that "persuade or obey" means that "one may disobey, as long as one persuades" (60). Yet there is only one case in which Socrates admits that one must disobey the laws: if they force one to do something one believes to be unjust, like ceasing to philosophize. For civil disobedience in antiquity, see Daube 1972.

2.2.3 *Republic*: the just *polis*

2.2.3.1 The solution to the dilemma

Republic does not address problems that a just individual in a non-ideal society has to face. Instead, it pits Socrates' ideal of 'the true city' or 'the just city' (ἡ ἀληθίνη πόλις,[117] ἡ δίκαια πόλις[118]) against other 'ideals', most importantly that of Thrasymachus. In terms of the analysis offered here, there is more overlap between *Republic* and *Apology* than between *Republic* and *Crito*. In both *Republic* and *Apology* we encounter individuals through whom we acquire an idea about a higher form of justice – the philosopher-kings and Socrates, respectively – whereas in *Crito*, the obligation to act in the best interest of society as a whole takes a form directly related to the communicative context. In *Apology*, we hear Socrates' own account; in *Republic*, the philosopher-king is a hypothesis within a dialectical framework: this is the moral expert in the most convincing account of a just society. The present section will be concerned with the question of how *Republic* presents the idea that the order of society is dictated by a higher norm.

2.2.3.2 Republic*'s analytical toolbox: ζῷον, ἰατρικὴ τέχνη*

One of the notions that have a strong bearing on the conceptual framework of *Republic* is that of ζῷον ('living being', 'animal' or, in a more technical philosophical discourse, 'organic whole'). The just *polis* as a class society is likened to a ζῷον in order to illustrate and elucidate some of its fundamental characteristics. To understand the implications of this representation of the just *polis* and to be able to compare its representation to the society depicted in *Laws*, I shall first give a brief analysis of the term ζῷον as a technical term.

The usual renderings, 'living being' or 'animal', do not convey the significance of ζῷον. As a technical term, ζῷον is the third element in the triad ἕν – ὅλον – ζῷον, each of which denotes a different form of unity, with increasing complexity. What determines this most complex notion of unity in ζῷον is not so much the idea of completeness (unity in the sense that no part is missing, which is already expressed

117 *Resp*. 372e6.

118 *Resp*. 434c7–10: χρηματιστικοῦ, ἐπικουρικοῦ, φυλακικοῦ γένους οἰκειοπραγία, ἑκάστου τούτων τὸ αὑτοῦ πράττοντος ἐν πόλει, τοὐναντίον ἐκείνου δικαιοσύνη τ᾽ ἂν εἴη καὶ τὴν πόλιν δικαίαν παρέχοι; 'For the money-making, auxiliary, and guardian classes each to do its own work in the city, is the opposite. That's justice, isn't it, and makes the city just?' *Resp*. 435b4–7: ἀλλὰ μέντοι πόλις γε ἔδοξεν εἶναι δικαία ὅτι ἐν αὐτῇ τριττὰ γένη φύσεων ἐνόντα τὸ αὑτῶν ἕκαστον ἔπραττεν, σώφρων δὲ αὖ καὶ ἀνδρεία καὶ σοφὴ διὰ τῶν αὐτῶν τούτων γενῶν ἄλλ᾽ ἄττα πάθη τε καὶ ἕξεις. 'But a city was thought to be just when each of the three natural classes within it did its own work, and it was thought to be moderate, courageous, and wise because of certain other conditions and states of theirs' (both translations Grube, rev. Reeve in Cooper, *CW*).

by the term ὅλον[119]), but the internal and functional *order* of its parts: an organic whole stands or falls with the functional order of *all of* its constituent parts. From the analogy of the just *polis* to ζῷον, it follows that the just *polis* is a unity in all three senses: it is (1) one (μία πόλις);[120] it is (2) a complete whole (ὅλη πόλις); and it is (3) an *organic* whole, i. e., a whole in which all parts have their natural function (ζῷον).[121] The unity of the just *polis* is therefore a unity with an internal hierarchy (τάξις referring to the order in its respect of being a hierarchy, κόσμος referring to its being self-contained as a whole).[122] It is not a unity because its individual citizens have more or less uniform ways of life (this aspect also plays a role, but only within the class of the φύλακες[123]), but it is a unity due to the internal order of its classes.[124]

It is this notion of the correct cooperation of the parts in the just *polis* that is presented as the essence of justice (δικαιοσύνη). In this organic, just whole, every part (and person) is δίκαιος: being just consists in performing one's own social function (*suum cuique*, τὰ αὑτοῦ πράττειν[125]). Τὰ αὑτοῦ is determined and imposed upon the individual by what the whole is by nature. Part and whole are mutually dependent upon each other. Each part depends on the whole for its identity; conversely, the whole can only function (be a whole) if each part performs its proper role. The notion of ζῷον thus implies a *norm* for the internal organization: this is how a constitution *ought* to be, since only this constitution is just.[126]

119 In Arist. *Meta*. 1023b26–27 we find the following definition of ὅλον: ὅλον λέγεται οὗ τε μηθὲν ἄπεστι μέρος ἐξ ὧν λέγεται ὅλον φύσει, 'We call a whole (…) that from which is absent none of the parts of which it is said to be naturally a whole' (transl. Barnes); cf. *Meta*. 1016b12–16: a whole (ὅλον) is called 'one' in virtue of the unity of its substance (ἡ οὐσία μία).

120 Callipolis as μία πόλις, e. g.: *Resp*. 422d8, 423c4, d5–6, 462a9–b2.

121 A ζῷον is a unity of such a kind that what can be predicated of the whole can also be predicated of each of its constituent parts. This is of course precisely what is the case with the virtue of justice in *Republic*: the whole is δίκαιον, and so is each of the classes. For ζῷον as an organic whole in the context of speeches, of which the parts must fit both each other and the whole: *Phdr*. 264c2–5, with Yunis 2011 *ad loc*.: "(…) the parts that must be properly disposed are not formal elements such as introduction, narrative, and conclusion, which [Socrates] disparages (266d7–c4, 267d2–4), but the steps of the argument that move the listener from his initial position to the position which the speaker ultimately wants him to hold."

122 κόσμος: *Resp*. 443d4, 506a9 (*polis*) and 500c4 (soul); τάξις is mostly used in the sphere of the individual, to refer to the order of his soul parts: 462c12, 618b3.

123 *Resp*. 451d4 ff., 461e5, 462b4, c11. Aristotle in *Pol*. II.2 criticizes precisely Socrates' idea that a *polis* should be a unity as much as possible, arguing that a *polis* naturally consists of different elements and, when unified too much, ceases to be a *polis*.

124 The idea that a *polis* consists of social classes is an everyday given in ancient Greek *poleis*, and therefore much easier to accept than the idea that the soul has parts. The interlocutors aim to discover δικαιοσύνη by searching for it in an entity that possesses it on larger scale, on the level of the πόλις, *Resp*. 368c5–369a4; cf. *Resp*. 441d4–5. It is therefore *via* the *polis* that the parts of the soul are introduced.

125 *Resp*. 433a8; cf. 434a1: ἡ τοῦ οἰκείου τε καὶ ἑαυτοῦ ἕξις τε καὶ πρᾶξις.

126 This notion of justice is developed on the scale of the *polis* and subsequently propelled back on the individual, creating a kind of boomerang effect: *Resp*. 591e1, τὴν ἐν αὐτῷ πολιτείαν (about the soul).

Another pervasive idea in *Republic* is the analogy between political expertise and medicine. The τέχνη that helps to maintain the organism of a *polis*, that is, the *polis* in its natural condition, is analogous to medicine (ἡ ἰατρικὴ τέχνη). Medicine is distinctive as the status of its ἔργον, when it concerns the functioning of a ζῷον, is the optimal condition (τὸ βέλτιστον):[127] 'health' (ὑγίεια). In *Republic*, medicine is the *analogon* for the kind of activities that will establish justice in a *polis* (corresponding to health in a σῶμα). This objectively best condition is, by definition, the *natural* condition. Analogously, the product of the political expertise is δικαιοσύνη, the objectively best condition for the *polis*.[128] Medicine works the same way: it is the condition that is best *by nature* (φύσει), given the nature of the body and its parts.

The analogy with medicine assigns the responsibility for, and knowledge of, the natural condition to an authority (a doctor). In the analogy that associates ruling with ἰατρική, the happiness of the individual becomes subservient to the εὐδαιμονία of the whole. To the extent that ἡδονή features in this discussion, it is a true ἡδονή, the pleasure deriving from the activity designated as just.[129] Yet Plato is careful to design his system so that the real interest of each of the three classes coincides with its social function. The analogy between ἰατρική and rule in the just city raises the question of how far the expert ruler may go in imposing the good upon society. Ἰατρική, at least in principle, leaves open the possibility of harsh measures, defendable in terms of the absolute good.[130]

This brings us to another important implication of the medical analogy. The ζῷον analogy implies that the just *polis* is a *polis* in its most natural condition, that is, a *healthy* city. One might have expected that medicine is not the most obvious candidate to serve as an analogy for political expertise in *Republic*, since it is concerned with administering remedies. Notably in *Gorgias*, ἰατρική is on a par with corrective δικαιοσύνη,[131] while the regulative τέχναι are γυμναστική (for the body) and νομοθετική (for the soul).[132] Yet in *Republic* these more intuitive,

127 Depending on the context, τὸ βέλτιστον can be understood in different ways: epistemologically (ἡ ἀληθινὴ πόλις, τὸ ἀληθέστατον, 484c7), ethically (ἡ δίκαια πόλις), or in terms of utility (τὸ συμφέρον).

128 *Resp*. 444d3–10 ὑγίεια for the body is what δικαιοσύνη is for the soul; cf. 444d12–e1: Ἀρετὴ μὲν ἄρα, ὡς ἔοικεν, ὑγίειά τέ τις ἂν εἴη καὶ κάλλος καὶ εὐεξία ψυχῆς, κακία δὲ νόσος τε καὶ αἶσχος καὶ ἀσθένεια. Cf. 591b3–4: τὴν βελτίστην φύσιν.

129 *Resp*. 419a1–421c6; 586d4–587a6 (with Adam *ad* 586d).

130 On the question of whether *Republic* warrants the use of violence, Klosko 2006, 187–191, 205.

131 In the analogical scheme of *Gorgias*, δικαιοσύνη is a "Fremdkörper", and δικαστική would have been the more regular variant (δικαστική is in fact the reading of F), Van Raalte 1991, 315, n. 40. Van Raalte *ibid*. argues that δικαστική is disqualified because of its association with (imperfect) Athenian jurisdiction (cf. Dodds *ad loc*., 228), and because δικαιοσύνη is precisely what Socrates wants to substitute for ῥητορική as the counterpart of ἰατρική.

132 *Gorg*. 463e5–466a3, with Dodds' note *ad loc*., 226–227. *Gorgias* makes γυμναστική the regulative, ἰατρική the corrective τέχνη for the human body. Dodds *ad loc*. explains that the reason why medicine is corrective may be prompted by the fact that the historical Gorgias "claimed that rhetoric was to the mind what medicine was to the body (*Hel*. 14)", and that ῥητορική is the spurious τέχνη used to evade punishment, i. e. is the 'τέχνη' for a soul that has fallen ill. It seems a reasonable supposition that Plato did not use the analogy of γυμναστική in *Republic*

everyday connotations give way to medicine's inextricable association with health (ὑγίεια). Medicine becomes *regulative*: it establishes and maintains the naturally good condition of the *polis* (for instance by the eugenic mechanisms that serve to keep the classes pure).[133] This regulative understanding of ἰατρική, as opposed to its corrective interpretation in *Gorgias*, is derived from its *analogon* in the political domain, ruling the *polis*. A clear indication of medicine's regulative interpretation in *Republic* is the conspicuous omission of punitive mechanisms from Callipolis. In terms of the ζῷον analogy, this is perfectly understandable: in a just *polis*, *paideia* does not fail. Hence in the best condition (health), there is no need for punishment.

2.2.3.3 The εὐδαιμονία of the whole polis *as the natural norm*

A ζῷον as an analogy for society raises the question of the relation between the whole and its parts. Framing a class society as an organic whole has an important implication: the interest of the whole takes precedence over, and determines, the interest of its constituent parts. In the case of a real ζῷον – an animal – of which the parts lack independent existence, that is evident.[134] But in the case of a society consisting of individuals, one may think that this analogy can have disturbing consequences. The εὐδαιμονία of each class is ultimately determined by the εὐδαιμονία of the whole.[135]

because γυμναστική would have brought us in the domain of *training* with suggestions that virtue can be attained by exercise, in a gradual process, taught, etc. Training would have brought us in the sphere of *Laws:* γυμναστική, practised in the Spartan and Cretan *syssitia* (see Chapter Three, p. 79, p. 83), presents the good condition as something that can be brought about rather than, absolutely, as the natural condition that is a given. That is why in Callipolis even bodily excellence (eugenetics) becomes the product of φάρμακα, not γυμναστική (see also note 133 below).

133 The term φάρμακα does not signify 'remedies', but 'drugs', i. e., means to *bring* a certain condition *about*. The herd of citizens must be of top quality (εἰ μέλλει τὸ ποίμνιον ὅτι ἀκρότατον εἶναι, *Resp*. 459e1), which requires many drugs (φαρμάκοις πολλοῖς χρῆσθαι, namely the artifical ways of setting up marriages and procreation of the elite), and an even more courageous doctor than if no drugs would have been necessary (ἀνδρειοτέρου δεῖ τοῦ ἰατροῦ), *Resp*. 459c3–7.

134 Another problematic consequence (from our modern perspective) is that conceiving of the *polis* as a ζῷον prevents the individual as such from coming into focus. Individuals are only considered in terms of their class, and as such are interchangeable; *Republic* does not imply that there exist relevant differences among the members of each class. Cf. Taylor 1999, 288.

135 Cf. Neu 1971, 248: "The state's interest *is* the individual's interest – but his *real* one." Therefore Plato does not, as Annas contends, "undeniably subordinate individual interests to the common good" (1981, 179). Taylor 1999 surprisingly argues (with Vlastos 1977) that of the three kinds of totalitarianism (282–283), Callipolis is a totalitarian community of the "paternalistic" kind (see especially 295–296) instead of in the second sense ("an organic social unity", 283). His concluding statement that "at least in intention [Plato] subordinates the perfectly organized state to the happy community" (296) *de facto* subordinates justice to εὐδαιμονία and hence defies *Republic*'s thesis that the perfectly organized *polis* is the only εὐδαίμων community. See Popper 2006, 81–83, on these *Republic* passages as evidence of "political holism". See Kamtekar 2001 for an attempt to reconcile Socrates' definition of social justice as doing one's

Plato does not shy away from recognizing and addressing directly the problematic nature of this aspect of the just *polis*. Indeed, he has Socrates' interlocutors twice express reservations about precisely this aspect of the just society: the εὐδαιμονία (or lack of it) of the three classes on their own. The interventions of the interlocutors force the figure of Socrates to offer a justification of the social order. This justification is thereby represented as an account that goes beyond Socrates' original intentions. It is in the context of these interruptions, if anywhere in *Republic*, that we may get a glimpse of the kind of norm that determines why this particular social order constitutes *the* just society.

The guards and producers

Doubts about the kind of individual life that the well-being of the whole imposes are raised for the first time at the beginning of Book IV, where the ways of life of guards and producers are discussed at greater length. Adeimantus asks what Socrates would have to say in his defence in case someone objected to his description of the guards' way of life by saying that this would not make these men particularly happy;[136] they are in truth the rulers of the city, but do not derive any good from it.[137] Socrates replies that in establishing their state, they did not aim to make one of its classes happy on its own, but the *polis* as a whole (ὅλη ἡ πόλις, 420b7–8). For their governing principle in founding their *polis* was that justice was most likely to be found in such a state (ᾠήθημεν γὰρ ἐν τῇ τοιαύτῃ μάλιστα ἂν εὑρεῖν δικαιοσύνην, 420b8–9).[138] This is why Callipolis is the just *polis* in its most appealing form.

Socrates goes on to liken their project of founding a just *polis* to a painter painting a statue of a man (ἀνδριάς, see 420c5 ff.). The objection voiced by Adeimantus would be like charging him with not using the most beautiful colour for the most beautiful part of the body, the eyes.[139] Against that charge they could reasonably defend themselves by saying that had they used purple for the eyes instead of black, the eyes would not appear as eyes (μηδὲ ὀφθαλμοὺς φαίνεσθαι, 420d3–4). It is only

own (one's social duty) with the idea that justice is concerned with the allocation or distribution of benefits via what she calls Plato's "happiness principle".

136 *Resp*. 419a1–4: Καὶ ὁ Ἀδείμαντος ὑπολαβών, Τί οὖν, ἔφη, ὦ Σώκρατες, ἀπολογήσῃ, ἐάν τίς σε φῇ μὴ πάνυ τι εὐδαίμονας ποιεῖν τούτους τοὺς ἄνδρας, καὶ ταῦτα δι' ἑαυτούς, ὧν ἔστι μὲν ἡ πόλις τῇ ἀληθείᾳ, οἱ δὲ μηδὲν ἀπολαύουσιν ἀγαθὸν τῆς πόλεως, (…); 'And Adeimantus interrupted: How would you defend yourself, Socrates, he said, if someone told you that you aren't making these men very happy and that it's their own fault? The city really belongs to them, yet they derive no good from it' (transl. Grube, rev. Reeve in Cooper, *CW*).

137 Adam *ad loc*.: "Adimantus' objection is the dying echo of the view already advocated by Thrasymachus, that a ruler should rule for his own profit" (at 342c7–9, 343b1–d1).

138 *Resp*. 420b5–9: οὐ μὴν πρὸς τοῦτο βλέποντες τὴν πόλιν οἰκίζομεν, ὅπως ἕν τι ἡμῖν ἔθνος ἔσται διαφερόντως εὔδαιμον, ἀλλ' ὅπως ὅτι μάλιστα ὅλη ἡ πόλις. ᾠήθημεν γὰρ ἐν τῇ τοιαύτῃ μάλιστα ἂν εὑρεῖν δικαιοσύνην (…). Popper 2006 claimed on the basis of this passage (ch. 5, 264, n. 35) that the *polis* of *Republic* is of the extreme totalitarian kind (the first kind of three kinds of totalitarian states in Taylor 1999, where the interest of the state is distinct from the individuals who compose it).

139 *Resp*. 420c5–d5.

by assigning to each part what is appropriate to it that the whole becomes beautiful (εἰ τὰ προσήκοντα ἑκάστοις ἀποδιδόντες τὸ ὅλον καλὸν ποιοῦμεν, 420d4–5).[140] Thus, what is καλόν is what is appropriate, and what is appropriate is the *natural* condition. Eyes ought to be black (not purple) because they are eyes, and they are eyes because they are *that* particular part of a man. Similarly (the thought runs), the social role of each class is determined by what each part *is*, which depends on the whole of which it is a part. This explains why the whole *polis* cannot be made εὐδαίμων simply by leaving it up to each class to decide what will make them most happy: in that case, the guards would be anything but guards, a farmer would not be a farmer, nor a potter a potter.[141] The identity of the *polis* as a whole (what a *polis* truly *is*) is what determines the roles of its parts. In the analogy, this is the form of the statue (what the statue is or represents), which determines which colours the painter has to use. The norm is the painter's model: man himself.

The philosophers

The relation between the εὐδαιμονία of one class and the εὐδαιμονία of the whole is subjected to critical scrutiny for a second time in Book VII. At this point, the class of the philosophers has been separated from the rest of the guards. At the end of the cave simile, the poignant demand that the philosophers descend back into the cave prompts Glaucon to raise again the question of whether they (i. e., the interlocutors) will not be treating them unjustly by giving them a life that is worse than possible (ἔπειτ', ἔφη, ἀδικήσομεν αὐτούς, καὶ ποιήσομεν χεῖρον ζῆν, δυνατὸν αὐτοῖς ὂν ἀμεῖνον; 519d8–9).[142] Socrates replies, 519e1–520a4:

140 This is why it is misleading to call the just *polis* 'ideal': it is the natural and therefore best condition of a *polis*; only from the perspective of *Apology* and *Crito* could Callipolis be said to be 'ideal'.

141 *Resp*. 420d6–421a3: καὶ δὴ καὶ νῦν μὴ ἀνάγκαζε ἡμᾶς τοιαύτην εὐδαιμονίαν τοῖς φύλαξι προσάπτειν, ἣ ἐκείνους πᾶν μᾶλλον ἀπεργάσεται ἢ φύλακας. ἐπιστάμεθα γὰρ καὶ τοὺς γεωργοὺς ξυστίδας ἀμφιέσαντες καὶ χρυσὸν περιθέντες πρὸς ἡδονὴν ἐργάζεσθαι κελεύειν τὴν γῆν, καὶ τοὺς κεραμέας κατακλίναντες ἐπὶ δεξιὰ πρὸς τὸ πῦρ διαπίνοντάς τε καὶ εὐωχουμένους, τὸν τροχὸν παραθεμένους, ὅσον ἂν ἐπιθυμῶσι κεραμεύειν, καὶ τοὺς ἄλλους πάντας τοιούτῳ τρόπῳ μακαρίους ποιεῖν, ἵνα δὴ ὅλη ἡ πόλις εὐδαιμονῇ. ἀλλ' ἡμᾶς μὴ οὕτω νουθέτει· ὡς, ἄν σοι πειθώμεθα, οὔτε ὁ γεωργὸς γεωργὸς ἔσται οὔτε ὁ κεραμεὺς κεραμεὺς οὔτε ἄλλος οὐδεὶς οὐδὲν ἔχων σχῆμα ἐξ ὧν πόλις γίγνεται. 'Similarly, you mustn't force us to give our guardians the kind of happiness that would make them something other than guardians. We know how to clothe the farmers in purple robes, festoon them with gold jewelry, and tell them to work the land whenever they please. We know how to settle our potters on couches by the fire, feasting and passing the wine around, with their wheel beside them for whenever they want to make pots. And we can make all the others happy in the same way, so that the whole city is happy. Don't urge us to do this, however, for if we do, a farmer wouldn't be a farmer, nor a potter a potter, and none of the others would keep to the patterns of work that give rise to a city' (Transl. Grube, rev. Reeve in Cooper, *CW*)

142 This worry has been shared by some modern commentators, either because they consider ruling contrary to the philosophers' own interest (so Annas 1981, 267–269), or because they think Plato fails to justify why the philosophers themselves consider it in their interest to rule (so Adkins 1960, 290–292; Schofield 2007, 152). Annas' way out (and cf. Sedley 2007, 277, n. 32 for commentators holding similar views), that the Good is an "impersonal Good" and that the

> Ἐπελάθου, ἦν δ' ἐγώ, πάλιν, ὦ φίλε, ὅτι νόμῳ οὐ τοῦτο μέλει, ὅπως ἔν τι γένος ἐν πόλει διαφερόντως εὖ πράξει, ἀλλ' ἐν ὅλῃ τῇ πόλει τοῦτο μηχανᾶται ἐγγενέσθαι, συναρμόττων τοὺς πολίτας πειθοῖ τε καὶ ἀνάγκῃ, ποιῶν μεταδιδόναι ἀλλήλοις τῆς ὠφελίας ἣν ἂν ἕκαστοι τὸ κοινὸν δυνατοὶ ὦσιν ὠφελεῖν καὶ αὐτὸς ἐμποιῶν τοιούτους ἄνδρας ἐν τῇ πόλει, οὐχ ἵνα ἀφιῇ τρέπεσθαι ὅπῃ ἕκαστος βούλεται, ἀλλ' ἵνα καταχρῆται αὐτὸς αὐτοῖς ἐπὶ τὸν σύνδεσμον τῆς πόλεως.
>
> 'You are forgetting again that it isn't the law's concern to make any one class in the city outstandingly happy but to contrive to spread happiness throughout the city by bringing the citizens into harmony with each other through persuasion or compulsion and by making them share with each other the benefits that each class can confer on the community. The law produces such people in the city, not in order to allow them to turn in whatever direction they want, but to make use of them to bind the city together.' (Transl. Grube, rev. Reeve in Cooper, *CW*)

This is the same kind of objection as the one raised at the beginning of Book IV, to which Socrates refers in his answer (ἐπελάθου, πάλιν, 519e1). Here, in responding to the objection raised in the case of the philosophers, his strategy is a different one. Indeed, the objection in this case rests on firmer ground. In the case of the guards and producers, Socrates' claim was that the life he described for them was truly the most εὐδαίμων life possible, even though one may have assumed otherwise (and Adeimantus voices this reasonable objection). But in the case of the philosophers, Socrates has in fact admitted (and this is corroborated by the purport of the cave simile) that the life of pure philosophy (θεωρία) *is* more εὐδαίμων for the philosophers than ruling the city. In other words, for them, there is a life possible that is more εὐδαίμων than the life demanded by the εὐδαιμονία of the whole *polis*.[143]

> philosophers learn to conceive of their "personal loss" of happiness (1981, 268) in an impersonal way, misinterprets the fact that the philosophers have an evident interest in ruling: the absence of 'punishment' for not ruling (ζημία ἐὰν μὴ ἀρχῇ, 347a5, cf. b6–c3 in Book I), the 'punishment' meaning being ruled by an inferior. The ruler's own interest in ruling is reintroduced as a matter of concern in *Republic* I (after its previous dismissal in the refutation of Thrasymachus' 'interest of the stronger') via the additional craft of 'wage-earning' (μισθαρνητικὴ or μισθωτικὴ τέχνη). Cf. below, n. 149. Sedley 2007 has shown that *Republic* I "showcases" (272) the developments and terminology of compulsion common in the later Books; see also Lycos 1987, 110: "Socrates is not, of course, arguing that the only thing which motivates practitioners of a craft is to benefit the 'object' of their craft. He is concerned to establish whether, and how, the knowledge which constitutes a craft introduces the idea of an interest that is specific to the craft. The question is whether any such 'knowledge-interest' can be a self-interest." Moreover, any worries about the absence of a positive reward for the philosophers (such as χρήματα or τιμή) should be alleviated by the Socratic-Platonic stock idea that it is the hallmark of the ἀγαθός *not* to be paid for the exercise of his πολιτικὴ τέχνη, something which distinguishes him from the sophist, see, e. g., *Gorg*. 520c2–e10; for sophists receiving wages: *Gorg*. 519c5–d4; *Prot*. 328b1–c2, 349a2–4.

143 Cf. Adkins 1960, 291: "To philosophize is an absolute good. The philosophers would be more *eudaimon* if they remained aloof from politics: accordingly, Plato can offer no real reason why they should go back. Admittedly the city would be better governed, and hence more *eudaimon*, if they went back; but Plato cannot explain why, if one's own *eudaimonia* is the end of life, one should prefer the city's – or anyone else's – *eudaimonia* to one's own." Adkins here ignores (*ibid*., 290–291) Socrates' first answer in *Resp*. 519e1–520a4 and jumps straight to Socrates' second response, in 520b5–c1. He raises the question (*ibid*., 291–292) of why Plato did not simply assert that the life combining ruling and philosophy was most *eudaimon*, which would have removed the problem. He gives two reasons. The first is systemic: "Plato presents this as

In answering this objection, Socrates does not put forward another analogy but appeals to 'law' (νόμος).[144] Law 'attends to' (μέλει) the εὐδαιμονία of the city as a whole, not to that of one of its classes.[145] The philosophers are emphatically viewed here as part of the *polis*, as a class submitted to this law.[146] Νόμος therefore introduces a perspective on the *polis from the outside*. The philosopher is in a sense outside the *polis* (as depicted in the cave simile); yet as the ruler, he is also part of it. This νόμος emphatically views the philosopher in his capacity as *part of* the whole.

Conceptualising the just society's order as imposed upon it by νόμος, however, begs the question of what sort of law this is, and who made it – it is a question that this passage poses, yet *Republic* as such does not provide an explicit answer to it.[147] Within the system of *Republic*, with its analogy between the just *polis* and a ζῷον, justice and ὑγίεια, and ruling and ἰατρική, the most reasonable hypothesis would be to think of this as a 'law of nature' (νόμος τῆς φύσεως), since it is nature that determines the constitution of a ζῷον.[148] Recalling the analogy of the statue discussed

an advantage of his system: since the philosophers have a better life to return to 'outside the cave' of the affairs of this world, they will not be tempted to set any value on political power as an end in itself, and hence will be just and disinterested rulers" (290). The second is social: "Such an assertion would of course be a solution; but to suppose that it is a solution open to Plato is to forget the nature of the movement of which both Thrasymachus and Plato form a part. It is an intellectual, not a moral, movement, and the intellect must always take precedence" (292). It may be worth adding that on the conception of the philosopher as the moral expert (practitioner of a τέχνη) no separation between contemplation and ruling is possible, cf. above, pp. 44–45. Cf. for this point Silverman 2010, 83: "the Aristotelian separation of theoretical reason from practical reason and the flight interpretation seems totally belied by what philosophers actually do in the *Republic*".

144 Cf. *Resp*. 590e1–591a3: Δηλοῖ δέ γε, ἦν δ' ἐγώ, καὶ ὁ νόμος ὅτι τοιοῦτον βούλεται, πᾶσι τοῖς ἐν τῇ πόλει σύμμαχος ὤν, (…). τοιοῦτον refers back to the imposition of rule by a divine and sensible element (from ὡς ἄμεινον ὂν παντὶ ὑπὸ θείου καὶ φρονίμου ἄρχεσθαι, 590d3–4).

145 In *Resp*. 420b6–8, e6–7, 421b7–8 (εἰς τὴν πόλιν ὅλην βλέποντες), 519e3, and 576d9–e1, the well-being of one of its classes is opposed to the well-being of the whole. The terminology employed here (μέλει) is reminiscent of that used in the context of τέχνη. Cf. *Resp*. 345d1–3: τῇ δὲ ποιμενικῇ οὐ δήπου ἄλλου του μέλει ἢ ἐφ' ᾧ τέτακται, ὅπως τούτῳ τὸ βέλτιστον ἐκποριεῖ· 'Shepherding is concerned only to provide what is best for that which it is set over' (transl. Grube, rev. Reeve).

146 This νόμος is therefore *not* on a par with the *polis*-internal νόμοι that govern the life of the class of the guards, mentioned in e. g. *Resp*. 380c5–6 (on poets), 453d1, 456c2, 457b8, c8, 465a1, 471b9–10 (on family life), 534d8–10 (on the place of dialectic in the philosophers' education) and by implication the laws that will be laid down by the final authority in the city, the philosophers. On these, see Lane 2013, 110–112; Rossetti 2013, 356. The term τύπος is used more often than νόμος: Lane 2013, 109; on the τύποι περὶ θεολογίας, Bordt 2003, especially 70–73.

147 This is *not* a law made by the interlocutors-as-founders of Callipolis, *contra* Lane 2013, 111 (and 113), and Sedley 2007, 280, n. 37. Lane and Sedley suggest that philosophers are required to rule by "law" because in the context of Book VII, the interlocutors call themselves legislators and say that "we" shall compel the philosophers to rule. For the role of lawgivers and laws in *Republic*, see Annas 2010; Lane 2013, 105, n. 4 with further references. For the interlocutors as lawgivers, see *ibid*., 109, 110–111, and their relation to the philosopher-rulers *ibid*., 112–113.

148 The likening of the parts of the just soul to a ἁρμονία points to the same conclusion, *Resp*. 443d3–e2: (…) καὶ συναρμόσαντα τρία ὄντα, ὥσπερ ὅρους τρεῖς ἁρμονίας ἀτεχνῶς, νεάτης τε καὶ ὑπάτης καὶ μέσης, καὶ εἰ ἄλλα ἄττα μεταξὺ τυγχάνει ὄντα, πάντα ταῦτα συνδήσαντα καὶ

above, the nature of the statue (what a man really *is*) determines what colours are appropriate for each part. The νόμος can thus be seen as a law inherent in what a *polis* is by nature: that law, like the man that serves as a model for the statue, determines the function (or, in the case of the statue, the colour) of the parts. Δικαιοσύνη designates the internal structure of the best society; νόμος represents this as necessitated by a higher norm. The νόμος referred to in *Republic* 519e1–520a4 is thus co-extensive with δικαιοσύνη.

Philosophy without ruling is excluded by the conditions of the system, because the rule of philosophy is the necessary precondition for realizing τὸ βέλτιστον. Ruling is in the philosopher's interest, because a philosopher cannot exist outside Callipolis.[149] The fact that several times the philosophers are said to be 'compelled' to rule indicates that this is conceptualized as a norm that is imposed upon them from the outside.[150]

2.2.3.4 The philosopher-kings: inside and outside the polis

The ζῷον analogy makes the well-being of the *polis* as a whole the cardinal interest. That this may seem to compromise the interest of the classes taken individually ignores that the true interest of the classes is simply and solely realized in the just *polis*. In the previous section we saw that when this point enters the discussion, *Republic* refers to the idea of a *natural* norm for the good of a *polis*. But the question remains, of course, of how this claim about the natural good of a *polis* is justified: why are we to believe that this is the natural form for a human society? The philosopher-king has a double occupation: he contemplates the Ideas (θεωρία) *and* he has a social role: to rule the *polis* (ἄρχειν).[151] The two sides of the philosophers'

παντάπασιν ἕνα γενόμενον ἐκ πολλῶν, σώφρονα καὶ ἡρμοσμένον, (…), '(…) [the just man] harmonizes the three parts of himself like three limiting notes in a musical scale – high, low, and middle. He binds together those parts and any others there may be in between, and from having been many things he becomes entirely one, moderate and harmonious' (transl. Grube, rev. Reeve in Cooper, *CW*). These are the "immovable notes" (West 1992, 162, also 219–222): if the intervals are altered, the ἁρμονία will no longer be a ἁρμονία: the proportions between the three notes designated as ὅροι are determined by nature (irrespective of the pitch of the system as a whole, which is determined by the shifts in position of the notes inside the tetrachord). Νεάτη and ὑπάτη form the boundaries of an octave (2:1). The note μέση lies between these two boundary notes, the interval between νεάτη and μέση being a fifth (3:2), the interval between ὑπάτη and μέση being a fourth (4:3).

149 This is anticipated in Book I, where the ruler, if he rules, receives absence of punishment as a reward (οὐ ζημία). The 'punishment' for not ruling is to be ruled by inferior rulers, which *de facto* means that neither the philosopher nor Callipolis would exist. Ἀνάκγη and the threat of ζημία are juxtaposed.

150 Which some scholars have have taken to mean that ruling is not in the philosophers' own interest. See e. g. Adkins 1960, 290; White 1986; Brown 2000; Sedley 2007, 272–281.

151 By taking turns: *Resp*. 540a9–b5: (…) καὶ πόλιν καὶ ἰδιώτας καὶ ἑαυτοὺς κοσμεῖν τὸν ἐπίλοιπον βίον ἐν μέρει ἑκάστους, τὸ μὲν πολὺ πρὸς φιλοσοφίᾳ διατρίβοντας, ὅταν δὲ τὸ μέρος ἥκῃ, πρὸς πολιτικοῖς ἐπιταλαιπωροῦντας καὶ ἄρχοντας ἑκάστους τῆς πόλεως ἕνεκα, οὐχ ὡς καλόν τι ἀλλ' ὡς ἀναγκαῖον πράττοντας, (…). Cf. 520d7–9: the philosophers will descend back into the cave

expert knowledge put them in an ambiguous position: viewed from within the *polis*, they are its ἄρχοντες; from the external perspective of the νόμος, they are at the same time ἀρχόμενοι. The ἐπιστήμων is concurrently the *external* legitimation for the ἔργον and *part of* the ἔργον itself.[152] That the philosophers have knowledge of this norm does not mean that they are not subject to it; it merely means that they understand *why* their social function is necessary.[153] Knowledge of the good of the whole is located in the ruling part. The just *polis* stands or falls with the philosophers' governance.

The philosopher-king outside the *polis* resembles a painter, who 'looks at' (ἀποβλέπει) τὸ φύσει δίκαιον καὶ καλὸν καὶ σῶφρον καὶ πάντα τὰ τοιαῦτα and paints a just *polis* on a clean *pinax*.[154] The natural condition of the *polis* (i. e., the just *polis*) is claimed to be an imitation of its model (παράδειγμα).[155] The philosopher differs from other lawgivers because he works on a *tabula rasa*:[156] where a divine paradigm (τὸ θεῖον παράδειγμα, 500e2; τὸ φύσει δίκαιον καὶ καλὸν καὶ σῶφρον, 501b2) exists, there is no need to draw on existing laws or customs, or to adopt a more dynamic, cooperative procedure of lawgiving. The good in *Republic* is determined by the Idea of the Good and not up for discussion. The Good (τὸ καλόν) exists *a priori*: it is there to be known by every philosopher.[157] The painter

ἐν μέρει. According to Aristotle, this alternation (τὸ ἀνὰ μέρος, τάξις) of rulers results in law, *Pol*. 1287a14–18. There is insufficient evidence for a more extreme 'flight interpretation' (the idea that the philosophers eschew the ruling part of their task, as defended by, e. g., Kraut 2003). See on these issues and a comparison with Aristotle, Silverman 2010.

152 The same concern is addressed in *Republic* I: the introduction of the additional μισθαρνητικὴ or μισθωτικὴ τέχνη, the τέχνη of producing wages (*Resp*. 346b1 ff.), when the notion of the ruler's self-interest has been discarded already in the discussion with Thrasymachus, shows that it is not entirely unproblematic whether or how the δημιουργός benefits from his τέχνη himself, and can thus be seen to anticipate the famous reservation of *Resp*. 519d8–9. Cf. above, n. 142. Likewise, the substitution of τὸ συμφέρον for τὸ βέλτιστον or τὸ ἀγαθόν as the object of the τέχναι in Book I raises the question of *whose* benefit it is and makes it possible to construct the notion of a common interest.

153 Cf. ἀνάγκη as that which motivates the philosophers to rule: *Resp*. 347c1–d6, 519e4, 520e1–3, 521b7, 539e4, 540a4–b5. See Sedley 2007, 276–281.

154 This is a *polis* in which, in contrast to the Athens of *Crito*, the laws are based on τὸ φύσει δίκαιον, cf. ᾗ τὸ δίκαιον πέφυκε (*Cri*. 51c1), and Socrates by implication would not have been convicted. These laws are not the product of human agreement but made after the image of metaphysical, absolute standards.

155 *Resp*. 500d11–501c4.

156 The designers of the *polis* who use a divine παράδειγμα 'take a *polis* and the characters of human beings like a pinax' (λάβοντες … ὥσπερ πίνακα πόλιν τε καὶ ἤθη ἀνθρώπων): first they clean it, which is not easy to do (πρῶτον μὲν καθαρὰν ποιήσειαν ἄν, ὃ οὐ πάνυ ῥᾴδιον), *Resp*. 501a2–7. A possible purification is proposed in 540e4–541a7: sending all citizens over the age of ten to the countryside (εἰς τοὺς ἀγρούς), and taking the children 'out of the characters of today' (ἐκτὸς τῶν νῦν ἠθῶν) to raise them in the ways of life and laws stipulated by the philosophers (ἐν τοῖς σφετέροις τρόποις καὶ νόμοις), i. e. those which the interlocutors have expounded. *Contra* Morrow 1960, 580 and Annas 2010, 72, there is a fundamental difference in the original position between the project of *Republic* and *Laws*.

157 The combination of a substantivated adjective (τὸ ἀγαθόν, τὸ καλόν) in conjunction with αὐτό is a characteristic way of referring to the absolute Good, see *Resp*. 507a3: τὸν τόκον καὶ ἔκγονον αὐτοῦ τοῦ ἀγαθοῦ; 532b1: αὐτὸ ὃ ἔστον ἀγαθόν; 534c4: αὐτὸ τὸ ἀγαθόν; 540a8–9: τὸ

analogy portrays the philosopher as standing outside, instead of being part of, the whole.

Republic explains the σοφία of the philosopher-king (what *Apology* called divine σοφία) in psychological terms: the dominance of the λογιστικόν over the soul as a whole. He has a 'divine ruling principle' (ἔχοντος ἐν αὐτῷ τὸ θεῖον ἄρχον, 592d1) within himself. Little is said about how he comes to be qualified, or where his qualification comes from. Whereas the qualifications of the philosopher class are explicitly stipulated in the context of the description of their education, what qualifies the individual philosopher is that the parts of his soul are in the correct order; in terms of the myth of the metals, he has the right kind of soul. In Callipolis it is by and large a matter of genetic reproduction: in most cases, couples will produce children of the same soul-type as they are themselves. It is, however, possible that a silver child will be born from golden parents, or *vice versa*, or more generally that a couple from one class will beget a child whose soul belongs to another class.[158] In such cases, the rulers have to transfer the soul of the child to its appropriate class.[159] This implies that, in the ideal city, the quality of souls is not exclusively a matter of the type of soul of the parents.

2.2.3.5 Conclusion

In this section, we have examined *Republic*, the last of the three Platonic texts on justice discussed. *Republic* differs from *Apology* and *Crito* in outlining a truly just *polis*. We have attempted to get a clearer view of what it is that determines the identity of the just *polis* and the qualification of the moral expert in this setting. Section 2.2.3.2 highlighted the implications of *Republic*'s strategy to analogize the just *polis* to a ζῷον, justice (δικαιοσύνη) to its internal best condition (ὑγίεια), and the rule of this whole to the ἰατρικὴ τέχνη. Section 2.2.3.3 started out by discussing the most fundamental objection to this system, and examined Socrates' justification of it. It appeared that in the final instance, the objectively good status of the just *polis* is natural objectivity, grounded in nature, φύσις. This of course agrees with the *polis*' representation as a ζῷον. It was then investigated how this natural norm is imparted in the best society (section 2.2.3.4). The philosopher-king knows the interest of the whole in virtue of his knowledge of the Good. He therefore imposes this on society and upon himself, as part of that society. The just city is therefore a closed system: the philosophers know the good of the whole of which they themselves are a part. Finally, *Republic* makes ἀρετή dependent upon the fixed, natural quality of one's soul; this is yet another way in which its system is founded in φύσις.

ἀγαθὸν αὐτό. Sometimes simply τὸ ἀγαθόν: 509b7. Also: 517c1: ἡ τοῦ ἀγαθοῦ ἰδέα; 526e1: τὴν τοῦ ἀγαθοῦ ἰδέαν.

158 *Resp*. 415b1–3: ἔστι δ' ὅτε ἐκ χρυσοῦ γεννηθείη ἂν ἀργυροῦν καὶ ἐξ ἀργυροῦ χρυσοῦν ἔκγονον καὶ τἆλλα πάντα οὕτως ἐξ ἀλλήλων.

159 *Resp*. 415a7–c7.

2.3 CONCLUDING REMARKS

The two parts of this chapter, about the Platonic notion of τέχνη and the three Platonic texts on justice, have addressed two key components of what I take to be more 'prototypical' constitutive assumptions of Plato's thought: that virtue is analogous to expert knowledge and that the norm determining the true interest of the individual and society is the objective natural norm of true justice. My argument in this book required showing how these key claims take shape in the texts as a necessary first step, because in *Laws*, to which we will now turn, these two ideas do not resurface. This is remarkable, as it would have seemed natural to assume that they would have been both dominant and crucial in a Platonic text on laws. However, it turns out that the notion of τέχνη, to the extent that it still plays a role, loses much of its importance when it comes to the question of what qualifies a person to rule, and moreover resurfaces in *Laws* only in a form that is more reminiscent of what has here been called 'stochastic τέχνη'. The analysis of the texts on justice singled out in this chapter showed that these three highly different works are nevertheless consistent in their claim that there exists a higher, natural norm of justice. In *Laws*, by contrast, no such appeal to a higher norm of justice is made, or so it will be argued. To the extent that the interlocutors in *Laws* appeal to an objective natural norm, this is a form of ethical naturalism rather than transcendentalism. Much of this new moral framework is set out in the opening discourse of *Laws*. We will therefore now turn to an examination of *Laws* I–II in order to see how Plato sets the scene for his new project.

CHAPTER THREE

SETTING THE SCENE: ἈΡΕΤΗ IN *LAWS* I–II

After an examination of the absolute norm of justice in different Platonic genres and contexts, we now turn to *Laws*, the primary focus of this study. The present chapter concentrates on the opening discourse of *Laws* I and II. It is remarkable that Books I and II differ considerably from the rest of the work, both in their main theme and in their dialectical form.[1] It should immediately be added that the very end of Book XII exhibits some striking correspondences to the discourse of the two opening Books. The beginning and end of *Laws* thus seem to frame the conversation and the legislative material that is formulated in it. The present chapter focuses on the opening Books of *Laws*.[2] It argues that Plato here introduces a novel conception of virtue for a Platonic text. Guided by the structure of the argument, we shall investigate how this conception develops and spell out the argument's implications for the nature of virtue along the way.

The conversation of *Laws* starts with the question of the goal of the Cretan laws. This creates the context for the introduction and discussion of virtue (ἀρετή). The nature of ἀρετή is elucidated through the conceptual framework of the *symposion*. It is remarkable that the *symposion* gets such a good press in a Platonic text,[3] but we will also see that it profoundly influences the conceptual structure of ἀρετή.

1 Cf. Tecuşan 1990: "What to my judgement is most surprising about the first two books is the fact that there is a total gap between these and the following ones: no place could be found in Plato's City for the *symposion* as it is described here" (246). See also Chapter One, p. 11. See Zeller 1839, 59–60 on the internal cohesion of Books I–II. Bruns 1880 considers the combination of wine and music reason to reject the two first books, cf. p. 17 n. 21. Rutherford 1995, 305 suspects "that some connecting material [between I–II and the rest] had still to be written, for a promised discussion of gymnastics is lacking". Cf. Gigon 1954, 229–230; Nightingale 1993, 294, n. 45 (with reff.); Murray 2013, 111.

2 The end of Book XII, and its correspondences with Books I–II, will be discussed in Chapter Six.

3 This defence of *symposia* and even of drunkenness (μέθη) is hardly what one would have expected to find in a Platonic text. Cf. Belfiore 1986, 421, 424. Tecuşan 1990, 239–244, shows that outside *Laws*, *symposia* in Plato are often adduced in a negative way since they have a "tendency to corrupt" (239), have a link with the lowest soul-part (241, 244) and are a source of pleasure for ordinary people, fundamentally at odds with the *paideia* of the philosopher (239–241). Socrates is constantly "stopping at the frontier of actual *symposia*, which do not belong to the Sokratic – or to the Platonic-Sokratic – world" (243). "But it was with the first two books of the *Laws* that the real change in Plato's attitude towards *symposia* occurred; and it was most spectacular. These books strive at a complete restoration of the sympotic custom" (244); cf. 246 and n. 19 *ibid*.

The bewildering effect of Books I–II is created by a tension between the familiar Socratic-Platonic terminology of the ἀρεταί and what is *de facto* suggested about what ἀρετή consists in. The theme of the *symposion* plays a key role in establishing this new perspective, and the present chapter will therefore discuss the argument of Books I–II with a special focus on the role of the *symposion* and the use of the terminology of ἀρετή.[4] It will be argued that the *symposion* serves as a convincing (in the dialogue) illustration of the well-regulated society and constitutes one phase in the larger scenario of virtue understood as a process of socialization. The present chapter will also explore the implications of this argument for the norm that underlies *Laws*' notion of virtue.

3.1 SETTING THE SCENE I

3.1.1 The Cretan notion of virtue: ἀνδρεία

The dialogue is set on the island of Crete.[5] Three elderly men are on their way from Cnossos to the cave of Zeus (625b1–2).[6] An anonymous Athenian has the leading role in the conversation.[7] His interlocutors are a Cretan from Cnossus[8] and a Spartan,[9] called Cleinias and Megillus, respectively.[10] Both Cnossus and Sparta belong to the Doric Greek cultural tradition, which is unique among the different Greek traditions for its *gymnasia* and *syssitia*.[11] The Athenian raises the question of the purpose for which the Cretan law has instituted them (κατὰ τί τὰ συσσίτιά τε ὑμῖν συντέταχεν ὁ νόμος καὶ τὰ γυμνάσια καὶ τὴν τῶν ὅπλων ἕξιν; *Leg.* 625c6–8). Since mythical lawgivers like Minos and Lycurgus, to whom Cleinias and Megillus attribute their law codes, cannot be consulted about the purpose of their laws, it has to

4 *Contra* those interpreters who have stressed the lack of cohesion of Books I–II, e. g. Frede 2010, 112, with further references in n. 11 *ibid*., 114.

5 *Laws* is therefore the only Platonic text that is not set in Athens.

6 See Schöpsdau 1994 *ad loc*. for Minos as a lawgiver and his connection with Zeus. The road from Cnossos to the cave of Zeus is 'sufficient' (ἱκανή) for a topic of such length as the current state of constitutions and laws, and will provide ample opportunity for taking rests under high trees, which is necessary given the age of the interlocutors, *Leg*. 625b1–c2; cf. 722c7–d2.

7 *Leg*. 626d3–5, 634c9, 642b2.

8 See *Leg*. 625a1, 629c3, 633d7.

9 See *Leg*. 624a4–5, 626c4–5, 635e5, 637b7.

10 Both interlocutors come from cities that were highly regarded in the Greek world for their laws, see *Leg*. 631b3–4. Socrates in *Crito* 52e5–6 adduces Crete and Sparta as *the* two examples of εὐνομία. For Crete's reputation of εὐνομία, see Willetts 1977, 170; on εὐνομία in Sparta, Finley 1975, 331 in Christ 1986*a*.

11 In *Laws*, the *poleis* of Sparta and Cnossus are treated as sharing the same organizational structure. Ancient evidence for their close interrelation is given by Gigon 1954, 204.

be inferred from the laws themselves.[12] Right from the beginning, it is assumed that good laws are made with a particular 'intention' or 'purpose' (διάνοια) in view.[13]

Cleinias claims that this issue is simple:[14] the Cretan lawgiver instituted the *gymnasia* and *syssitia* in order to ensure victory in war (ταῦτ᾽ οὖν πρὸς τὸν πόλεμον ἡμῖν ἅπαντα ἐξήρτυται, καὶ πάνθ᾽ ὁ νομοθέτης, ὥς γ᾽ ἐμοὶ φαίνεται, πρὸς τοῦτο βλέπων συνετάττετο, 625d7–e2).[15] Cleinias' claim about warfare is traced back to a naturally given condition (κατὰ φύσιν, 626a4–5), according to which every *polis* is in a perpetual state of war with other *poleis*.[16] Since the circumstances of war demand that the soldiers mess in common (συσσιτεῖν),[17] this military order must also dictate the lifestyle of the citizens in times of peace (εἰρήνη)[18] – which is, Cleinias adds, only a name (ὄνομα, 626a3); in truth, there is no such thing as peace. The reality is that there is a constant war of all cities against all others (τῷ δ᾽ ἔργῳ πάσαις πρὸς πάσας τὰς πόλεις ἀεὶ πόλεμον ἀκήρυκτον κατὰ φύσιν εἶναι, 626a3–5). Cnossus' strategy to preserve itself is to prevail over the other cities in this war (πολέμῳ νικᾶν τὰς ἄλλας πόλεις, 626c2). This reveals a deeper underlying goal: the self-preservation of the *polis*. In the Cretan worldview of continuous war

12 For the laws of Lycurgus, see the references in the index in Kiechle 1963; see also the famous essay of Schiller 1790 (in Christ 1986*a*, 73–86).

13 *Leg*. 635a1; cf. the phrase (ἀπο)βλέπων εἰς or πρός or with object that expresses the purpose (e. g. 625e1–2, 626a7, 628a9–10, 630e1–4); cf. also γνώμη λαβεῖν (951b3). Keeping alive the γνώμη underlying the law code is one of the aspects of τοὺς νόμους διαφυλάττειν (*Leg*. 951b3–4), and hence one of the functions of the νομοφύλακες and the nocturnal council. Keeping alive the 'spirit' of the laws contributes to the σωτηρία of *polis* and laws. Cf. Chapter Six, section 6.1.

14 In this naïveté of the interlocutor, Gigon 154, 208 (reff. in n. 3 *ibid*.) notes a resemblance to the Socratic dialogue: "Wer die Typik des sokratischen Dialogs gegenwärtig hat, wird hier schon aufmerksam. Die Sicherheit, mit der ein ῥᾴδιον behauptet wird, ist meist verdächtig; sie verrät eine Selbsttaüschung und ein Scheinwissen des Redenden, der ein Problem für leicht hält, das in Wahrheit schwierig, wenn nicht unlösbar ist". He also registers a parallel between the Athenian's request for clarification and Socrates' "ironische Auftakt zur Widerlegung" (212). Cf. also n. 19 below.

15 Cf. *Leg*. 626a5–b4. The Athenian later corrects Cleinias' initial interpretation, *Leg*. 628c9–629a3. Cf. 630d2–7 and 632d1–7: it was the *interlocutors*' mistake to come up with ἀνδρεία as the purpose of the Cretan and Spartan laws, not that of the lawgivers. This mistake prompts the interlocutors to go back to the beginning of their investigation, 632d9–e7. See Chapter Six, pp. 200–201, for the role of the Athenian as a gifted interpreter of law codes, repeatedly praised by his interlocutors for his insight into the intention of the original lawgiver.

16 *Leg*. 625e5–626a5.

17 *Leg*. 625e2–5 (Cleinias speaks): ἐπεὶ καὶ τὰ συσσίτια κινδυνεύει συναγαγεῖν, ὁρῶν ὡς πάντες ὁπόταν στρατεύωνται, τόθ᾽ ὑπ᾽ αὐτοῦ τοῦ πράγματος ἀναγκάζονται φυλακῆς αὑτῶν ἕνεκα συσσιτεῖν τοῦτον τὸν χρόνον, 'Take the communal meals – he [the Cretan lawgiver] probably instituted those because he saw that for all those who go on military campaigns, the situation of itself demands that they eat together during this period, for their own safety' (Transl. Schofield & Griffith).

18 *Leg*. 625e7–626a2. For Cretan *syssitia*, including parallels with Spartan *syssitia* see Willetts 1955, 16, 21–22, 25–27 (Aristotle's comparison of the Cretan and Spartan *syssitia*), 139–140, 156–158 (the literary evidence), 193, 243; cf. *id.* 1969, 106–107; 1977, 184. For the Spartan *syssitia*: Kiechle 1963, especially 203–220. For the Doric cultural background and the constitution of Sparta, see Kiechle 1963; for a number of influential contributions on Sparta, see the essays collected in Christ 1986*a* (and his Introduction).

between cities, the way to ensure one's survival is to defeat one's enemies. The road to self-preservation is therefore the cultivation of ἀνδρεία, 'courage'.

The very first phase of the opening discussion thus introduces two important premises that guide the rest of the discussion until the end of Book II. The first premiss is that laws aim at virtue, ἀρετή. The second one is that virtue is inextricably linked to the self-preservation of the *polis*: it is the kind of behaviour that allows the *polis* to continue to exist that is labelled virtuous (in the Cretan case: courage).

The Athenian now explores the implications of this Cretan view. He reasons that if there is a continuous state of war between *poleis*, then it must be admitted that the same applies to the individual – that is, each person is also *his own* greatest enemy. This receives approval from Cleinias, who affirms that the victory over oneself (τὸ νικᾶν αὐτὸν αὑτόν, 626e2) is in fact the best victory of all (626e2–4). Then the argument takes a strikingly 'Socratic' turn.[19] The Athenian, according to good Socratic usage, infers from this that, if in each one of us 'one element is stronger than himself' (ὁ μὲν κρείττων αὑτοῦ, 626e7) and 'another weaker than himself' (ὁ δὲ ἥττων [αὑτοῦ], 626e7), the same must apply to the house, village and *polis*, which can also be either κρείττων or ἥττων αὑτοῦ.[20] He illustrates this by the example of a family feud between brothers, some of whom are better and some of whom are worse. Cleinias and Megillus agree that the best judge is the one who reconciles the brothers by laying down laws and restoring φιλία among them. If it is admitted that the best judge is the one who reconciles the parties, then the same must be admitted about the *polis*. This results in the conclusion that the lawgiver lays down his laws aiming at *the opposite* of war.[21] Not war, but peace (εἰρήνη) and goodwill (φιλοφροσύνη) are the greatest good (τό … ἄριστον) for human beings.[22] No one will ever become a fine politician (οὔτ' ἄν ποτε πολιτικὸς γένοιτο ὀρθῶς, 628d6) if he directs his attention solely and primarily to military threats from the outside (πρὸς τὰ ἔξωθεν πολεμικὰ ἀποβλέπων μόνον καὶ πρῶτον, 628d6–7); nor will he ever become a top-notch lawgiver (νομοθέτης ἀκριβής, 628d7–8) if his laws about peace are made for the sake of war, instead of his laws about war being made for the sake of peace.[23] Cleinias' initial interpretation of virtue as ἀνδρεία can therefore not be maintained.

19 I here agree with the argument of Rowe 2012, about the 'presence' of Socrates in *Laws*; see especially *ibid*., 331: "Socrates is also present in the *Laws* insofar as the *Laws* frequently presupposes and/or refers to ideas that Plato typically associates with his Socrates rather than with anyone else, and especially by treating them as things that either he, or he and his close associates, currently believe."

20 As Cleinias explains, when a city is κρείττων ἑαυτῆς, 'the better people' (οἱ ἀμείνονες) have conquered 'the mass and the inferior people' (τὸ πλῆθος καὶ τοὺς χείρους). If it were the other way around (the χείρονες who besieged the ἀμείνονες), the city would be ἥττων ἑαυτῆς (627a6–10). The Athenian for the moment leaves aside the definitional problem, which he says would require a long discussion in its own right, of whether τὸ χεῖρον can ever be 'stronger than the better part', κρεῖττον τοῦ ἀμείνονος (627b1–2).

21 *Leg*. 628a6–b5.

22 *Leg*. 628c9–d1.

23 *Leg*. 628d4–e1. There is a striking difference between the νομοθέτης ἀκριβής in *Laws* Book I (628d7–8) on the one hand, and ὁ ἀκριβὴς ἰατρός (*Resp*. 342d7), ὁ κυβερνήτης ὁ ἀκριβής

The substitution of internal peace for war as the goal of societies in general opens the way for ἀρετή to be reinterpreted in light of this new insight. In its wake, the Athenian can now claim that the soldier who remains steadfast in στάσις (internal war), and who is praised by the poet Theognis,[24] is superior to the soldier who proves steadfast in a foreign war, who is praised by the Spartan poet Tyrtaeus.[25] The latter only has ἀνδρεία, whereas the former besides ἀνδρεία also possesses δικαιοσύνη, σωφροσύνη, and φρόνησις.[26] The familiar four virtues are called the 'divine goods' (θεῖα ἀγαθά) and as such receive extensive praise from the Athenian.[27] That ἀνδρεία is explicitly presented as one of the four virtues is itself not surprising for the reader who is familiar with the works of Plato. These are the four standard ἀρεταί that Socrates repeatedly identified in the early and middle dialogues. That the Athenian leads the discussion to the four virtues raises the expectation that the conversation will turn to the familiar topic of the unity of the virtues.[28]

This impression is furthered by the Athenian's tendency to speak of the 'kinds', εἴδη (630e3, 632e2), and 'parts', μόρια, of virtue. This language follows easily from the introduction of the other ἀρεταί besides ἀνδρεία: ἀνδρεία can thus be regarded as a 'part' (μόριον) of virtue.[29] The laws of Crete and Sparta, with their

(*Resp*. 342d10), and the rulers in cities who rule in a true way (τοὺς ἐν ταῖς πόλεσιν ἄρχοντας, οἳ ὡς ἀληθῶς ἄρχουσιν, 343b4–5) in *Republic* Book I on the other. In *Laws* the accurate lawgiver is distinguished from his faulty counterpart by the fact that the former legislates for the sake of peace. In *Republic*, the accurate doctor or steersman or political ruler is the *expert* doctor, steersman, or political ruler, who possesses the relevant ἐπιστήμη: this follows from the remonstration against Thrasymachus that rulers can be mistaken (διαμαρτάνειν, 339d7) about their own interest (*Resp*. 339c1–340d1; cf. *Resp*. 342c10–d2). The expert ἄρχων is infallible (ἀναμάρτητος); on this aspect of expert knowledge, see Chapter Two, p. 45. The comparison between *Republic* I and *Laws* I is also invited by the fact that *Laws* uses the language of the τέχναι (πρὸς τὰ ἔξωθεν πολεμικὰ ἀποβλέπων μόνον καὶ πρῶτον, 628d6–7). Yet in *Laws* this language is used more loosely, partly because it expressly refers to the faulty politician and only by implication refers to the good lawgiver. The ἀκριβής lawgiver in *Laws may* be ἀκριβής and aim at the right goal because he possesses expert knowledge. Yet what is significant is that this is left open: we are told what the right goal for lawgiving is, but we are not told anything about the qualification on the basis of which he is able to identify the correct goal. See also below, p. 92.

24 *Leg*. 630a3–6.

25 *Leg*. 629a4–b3; cf. 629c6–d5 (Tyrtaeus has to admit that there are two kinds of war and that the foreign war is milder (πρᾳότερον) than what they have called στάσις, which is πάντων πολέμων χαλεπώτατος).

26 *Leg*. 630a8–b1.

27 *Leg*. 631b6–d6.

28 Cf. Müller 1968, 16: "Es wird festgestellt, daß die Gesetze nicht nur auf den niedersten Teil der Tugend, die Tapferkeit, ausgerichtet sein dürfen, die als Verwegenheit wüster Söldner erscheint, sondern auf volle Tugend (σύμπασα ἀρετή 630b): 'Gerechtigkeit, Besonnenheit und Weisheit, sich vereinend mit Tapferkeit' (630b). Einheit der Tugend im höchsten Wissen scheint sich anzukündigen, doch könnte der Söldner mut keinen Platz in ihr finden, der ja nicht einmal den Rang der bürgerlichen Tugend verdient". Cf. Gigon 1954, 220–222.

29 In *Leg*. 630d9–631b1, the Athenian speaks about the εἴδη of virtue, and about ἀνδρεία as one μόριον. In 631b3–d6, he distinguishes the virtues as θεῖα ἀγαθά from the ἀνθρώπινα ἀγαθά, and ranks them hierarchically, ἀνδρεία being the lowest virtue, φρόνησις and νοῦς the highest, or ἡγέμων of all the virtues. For an explanation of the logic behind the unity of virtue (especially

exclusive focus on ἀνδρεία, are now criticized for cultivating only a part of virtue, and that the 'most trifling' (τὸ φαυλότατον [μόριον], 630e2) or 'slightest' part (τὸ σμικρότατον [μόριον], 631a5). Viewing ἀνδρεία as a *part* of virtue leaves the door ajar for the introduction of 'complete virtue', ἡ (συμ)πᾶσα ἀρετή (630b3, e2–3), and 'the greatest virtue', ἡ μεγίστη ἀρετή (630c3–4).

Though the language of the four ἀρεταί and the 'parts' and 'whole' of virtue recall the Socratic theme of the unity and plurality of ἀρετή, it will soon become apparent that a new notion of ἀρετή is taking shape within this familiar cocoon of Socratic language.[30] The distinction between a 'part' of ἀρετή (ἀνδρεία) and ἡ πᾶσα ἀρετή is here used to widen the scope of ἀρετή beyond courage. Virtue is the disposition that ensures self-preservation in times of peace rather than war. What is this disposition?

3.1.2 The weak spot of Spartan law

Returning to the Cretan and Spartan point of departure, the Athenian inquires about the nature of ἀνδρεία. Is courage a battle (διαμάχη) against one's fears and pains, or also against pleasures and temptations that are hard to resist?[31] The Athenian here substitutes the Socratic-Platonic interpretation of ἀνδρεία as control over one's fears for the Spartan conception of ἀνδρεία as courage in the face of the enemy. The person who is in the most shamefully self-inferior position (τὸν ἐπονειδίστως ἥττονα ἑαυτοῦ, 633e5) is the one overcome by pleasures. The person who is κρείττων ἑαυτοῦ must therefore be able to resist them. The Athenian wants to know from his interlocutors whether Cretan-Spartan ἀνδρεία can resist both. Ascribing their laws to Zeus and Apollo and at the same time holding that ἀνδρεία only resists pain would be tantamount to saying that these gods codified a 'lame courage' (χωλὴν τὴν ἀνδρείαν νενομοθετήκατον, 634a2), only capable of resisting fears on the left

in *Laches*, *Charmides* and *Protagoras*), see Rademaker 2005, 295–299. As Rademaker explains, "if the quality of σωφροσύνη overlaps with that of ἀνδρεία in one of its manifestations, it should follow that the qualities overlap throughout their manifestations: for it is a 'Socratic' axiom that it is *one-and-the-same* state of soul that explains all different types of behaviour that are called by the same virtue term" (*ibid*., 297). See also further bibliographical references *ibid*. n. 1 on 295. See further Müller 1968, 16–21 (on the theme of the four virtues in *Laws*); Stalley 1983, 56–58; Kahn 1996, 216–224, for an explanation of the unity of the virtues in *Protagoras*; Erler 2007, 438–439 for an overview of the discussion.

30 To speak of the 'parts' or εἴδη of virtue is a recurring way of framing the relation between the four virtues in the dialogues: e. g. *Prot.* 330e5, 349c2–5. For the discussion of the four virtues, cf. *Resp.* 427c6–435a4.

31 *Leg*. 633c8–d3 (Budé text): τὴν ἀνδρείαν δέ, φέρε, τί θῶμεν; πότερον ἁπλῶς οὕτως εἶναι πρὸς φόβους καὶ λύπας διαμάχην μόνον, ἢ καὶ πρὸς πόθους τε καὶ ἡδονὰς καί τινας δεινὰς θωπείας κολακικάς, αἳ καὶ τῶν σεμνῶν οἰομένων εἶναι τοὺς θυμοὺς ποιοῦσιν κηρίνους; 'Now, what about courage? How are we to define that? Is it perfectly straightforward, simply a struggle against fear and pain, or do we include desires, pleasures, and those allurements, so terribly enticing, which, no matter how full of their own importance people may be, can still turn their hearts to putty?' (Transl. Schofield & Griffith). In the Budé text the sentence finishes with a question mark, in the OCT with a period.

side (πρὸς τἀριστερὰ μόνον δυναμένην ἀντιβαίνειν, 634a2–3) and unable to resist flattery and wheedling on the right. This compels Cleinias to assert that training in ἀνδρεία enables one to resist both pain and pleasure; yet when he and Megillus are asked to identify institutions that force and persuade citizens to master their ἡδοναί (ἠνάγκαζε καὶ ἔπειθεν τιμαῖς ὥστε κρατεῖν αὐτῶν), they are perplexed.[32] Sparta has plenty of institutions that train control of pain: Megillus enumerated the συσσίτια, γυμνάσια, θήρα, κρυπτεία, and γυμνοπαιδίαι (633a4–c7). Yet there are no institutions that train control of pleasure. The interlocutors are forced to admit that Cretan-Spartan law fails to enable a person to achieve what was agreed to be the most difficult victory of all, the victory over oneself.[33]

The search for an equivalent of the Cretan-Spartan institutions that aim to toughen people up so as to be able to resist pain (fears) implies an essential idea: the idea that, like resistance to pain, resistance to pleasure needs to be *trained*, 635c3–d1:

> ταὐτὸν δὴ τοῦτ', οἶμαι, καὶ πρὸς τὰς ἡδονὰς ἔδει διανοεῖσθαι τὸν αὐτὸν νομοθέτην, λέγοντα αὐτὸν πρὸς ἑαυτὸν ὡς ἡμῖν ἐκ νέων εἰ ἄπειροι τῶν μεγίστων ἡδονῶν οἱ πολῖται γενήσονται, καὶ ἀμελέτητοι γιγνόμενοι ἐν ταῖς ἡδοναῖς καρτερεῖν καὶ μηδὲν τῶν αἰσχρῶν ἀναγκάζεσθαι ποιεῖν, ἕνεκα τῆς γλυκυθυμίας τῆς πρὸς τὰς ἡδονὰς ταὐτὸν πείσονται τοῖς ἡττωμένοις τῶν φόβων·
>
> 'This same lawgiver, in my view, should have taken the same view of pleasure as well, telling himself that if our citizens, from their youth, are to be without experience of the greatest pleasures, and get no practice in holding out amidst pleasures and not allowing their self-indulgence where pleasure is concerned to force them into some action they would be ashamed of, then the same thing will happen to them as happens to those who let fear get the better of them' (Transl. Schofield & Griffith).

The mode of reasoning about pleasure constitutes an exact parallel to what was pinned down as the purpose of the Cretan *syssitia* and *gymnasia*. The *gymnasia* and *syssitia* are institutionalized ways to train resistance against fear. The same logic is now applied to the resistance against pleasure. The mastery of pleasure is the domain that is most naturally referred to as σωφροσύνη, 'self-control'. It is hence no surprise that the discussion now explicitly moves from the topic of ἀνδρεία to that of σωφροσύνη (moderation), in an attempt to identify what sort of institution enables one to train resistance against pleasure.[34]

The Athenian now makes a cautious point: it is difficult for a social institution to be undisputed in action and theory alike (ἔοικεν δῆτα … χαλεπὸν εἶναι τὸ περὶ τὰς πολιτείας ἀναμφισβητήτως ὁμοίως ἔργῳ καὶ λόγῳ γίγνεσθαι, 636a4–5). Every institution has both advantages and drawbacks. The Spartan and Cretan *gymnasia* and *syssitia* are no exception: they may be beneficial for *poleis* in many respects, but there is also a risk that they provoke *stasis* (ἐπεὶ καὶ τὰ γυμνάσια ταῦτα καὶ τὰ συσσίτια πολλὰ μὲν ἄλλα νῦν ὠφελεῖ τὰς πόλεις, πρὸς δὲ τὰς στάσεις χαλεπά, 636b1–3). The *syssitia* are thus a potential threat to the internal social harmony of a

32 *Leg*. 634a6–b6.

33 In her argument, Belfiore 1986 emphasizes an element of strife: "Plato's new view that antirational emotion is valuable in itself depends on a new view that *sôphrosynê* involves constant strife" (428). Cf. Meyer 2015, 161–163.

34 *Leg*. 635e5–6: μετ' ἀνδρείαν γὰρ δὴ σωφροσύνης πέρι λεγώμεν.

polis – precisely that which was established as the greatest human good in an earlier phase of the discussion. The Athenian invites his interlocutors to reassess the strong and weak points of their native institutions in the light of the newly established conclusions.

Megillus, however, insists that he remains convinced that the Spartan lawgiver was right, and that the Spartan way of altogether *avoiding* pleasure (τὸ τὰς ἡδονὰς φεύγειν, 636e6) is the only correct way of dealing with pleasures.[35] He points to the benefit of the laws that order complete abstention from pleasure: such laws save people from a particularly intolerable institution, the *symposion*, 637a2–7:

> οὗ γὰρ μάλιστ᾽ ἄνθρωποι καὶ μεγίσταις προσπίπτουσιν ἡδοναῖς καὶ ὕβρεσι καὶ ἀνοίᾳ πάσῃ, τοῦτ᾽ ἐξέβαλεν ὁ νόμος ἡμῶν ἐκ τῆς χώρας συμπάσης, καὶ οὔτ᾽ ἂν ἐπ᾽ ἀγρῶν ἴδοις, οὔτ᾽ ἐν ἄστεσιν ὅσων Σπαρτιάταις μέλει, συμπόσια οὐδ᾽ ὁπόσα τούτοις συνεπόμενα πάσας ἡδονὰς κινεῖ κατὰ δύναμιν, (…).
>
> 'The thing which, more than any other, causes people to fall victim to the greatest pleasures and excesses, and every kind of folly, has been banished by our law from the entire country: neither in the countryside nor in the towns under Spartan control will you find drinking parties or any of the stuff which goes with them, with all their power to arouse pleasure in all its forms.' (Transl. Schofield & Griffith)

Spartan law has completely banished the *symposion* from its territory, because *symposia* as a rule provide occasion for men to fall victim to the worst and most degrading behaviour. Every person in Sparta would inflict on the spot the severest punishment upon a drunken partygoer who crosses his path (οὐδ᾽ ἔστιν ὅστις ἂν ἀπαντῶν κωμάζοντί τινι μετὰ μέθης οὐκ ἂν τὴν μεγίστην δίκην εὐθὺς ἐπιθείη …, 637a7–b1). Plato's masterstroke here is to have Megillus introduce the *symposion* – the very institution that has been lurking in the background as the training context for resistance against pleasure – as the horrifying example of utter depravity.

By presenting Megillus as still unwilling to discuss the *symposion*, Plato can now have the Athenian introduce a relatively harmless example (goatkeeping) in order to demonstrate that when an otherwise harmful gathering (κοινωνία, 638c1) – in this case, a herd – is put under the guidance of a good ruler, it can be beneficial. Hence it is unreasonable to criticize a congregation that one only knows without a ruler or under a bad ruler (πᾶν θρέμμα ἄναρχον ἢ μετὰ κακῶν ἀρχόντων ἰδών, 639a5–6; cf. 639c3–5). The obvious claim is that a *symposion* – *if* governed by a good ruler – can have positive effects.

This assertion triggers the question of what a useful ruler is (χρηστὸς ἄρχων). This again sounds highly familiar: the good ἄρχων is discussed repeatedly in the Platonic corpus, for example in *Republic* Book I.[36] In that dialogue, the introduction of the expert ἄρχων with ἐπιστήμη allows Socrates to argue that the true ἄρχων cannot be mistaken about his own interests and those of others and the *polis* as a whole. Yet it soon becomes apparent that the good ἄρχων in *Laws* I is not the person with ἐπιστήμη. Or rather, to be more precise, the relevant ἐπιστήμη is only *part of* the qualification of the χρηστὸς ἄρχων in *Laws*. This is illustrated by two exam-

35 *Leg*. 636e4–637a2.

36 The entire passage is *Resp*. 339b9–347e6. See also Chapter Two, p. 43.

ples of ἄρχοντες with ἐπιστήμη who are nevertheless unable to fulfil their function. The helmsman who only has the ἐπιστήμη of steersmanship (ἐὰν τὴν ναυτικὴν ἔχῃ ἐπιστήμην μόνον, 639a9–b1), but is at the same time seasick (ναυτιᾷ) is not a useful ruler. The general who possesses the πολεμικὴ ἐπιστήμη yet is a coward amidst dangers – being 'drunk' and seasick from fear (ὑπὸ μέθης τοῦ φόβου ναυτιᾷ, 639b7) – cannot be a capable military leader. In order to be χρηστός and ἱκανὸς ἄρχειν, the ἄρχων needs an additional quality. What is that quality? Although the two analogies do not specify the quality in case, we can infer that the desired, but unnamed quality is tranquillity and steadfastness in the face of fears.[37]

In line with the implied parallel between Spartan military training and the *symposion*, the military general is used as the counterpart of the ἄρχων of the *symposion* (the symposiarch).[38] The commander of an army in a hostile encounter has to be absolutely fearless and undisturbed (μηδὲν τὸ παράπαν δεδιότα μηδὲ θορυβούμενον, 640b2–3). The symposiarch, who does not preside over an army in a hostile encounter but over a congregation of friends who will share in each other's kindliness among peaceful circumstances (φίλων δ' ἐν εἰρήνῃ πρὸς φίλους κοινωνησόντων φιλοφροσύνης, 640b7–8), has to watch over the existing φιλία between the members and endeavour to increase it. This also presents a challenge, however, because the *symposion* is not without disturbance, due to the increasing drunkenness of the symposiasts (ἔστιν δέ γε ἡ τοιαύτη συνουσία, εἴπερ ἔσται μετὰ μέθης, οὐκ ἀθόρυβος, 640c1–2). This requires the symposiarch to be 'imperturbable' (ἀθόρυβος, 640c6),[39] as well as 'sensible with regard to the company' (περί γε συνουσίας … αὐτὸν φρόνιμον εἶναι δεῖ, 640c9–10), 'sober' (νῆφος, 640d4),[40] 'clever' (σοφός, 640d4), and not too young (he should not be a νέος ἄρχων μὴ σοφός, 640d6).[41] A seasick steersman or any other drunken leader will of course upset everything under his command.[42]

37 For the idea that fear is the cause of seasickness, see my contribution 'Plato's seasick steersman', in the forthcoming volume 'Emotions in Plato', edited by Laura Candiotto and Olivier Renaut. This study offers a more detailed account of the quality desirable in the symposiarch.

38 The symposiarch (the term itself is not used in *Laws*) is φύλαξ τῆς τε ὑπαρχούσης φιλίας αὐτοῖς, καὶ ἔτι πλείονος ἐπιμελητὴς ὅπως ἔσται διὰ τὴν τότε συνουσίαν (640c10–d2). The successful *symposion* has to augment the existing φιλία (τῆς ὑπαρχούσης φιλίας) during the *symposion* and to increase φιλία in the future (ἔτι πλείονος … ὅπως ἔσται). Future friendship will have been caused 'by that gathering', διὰ τὴν τότε συνουσίαν (τότε signals that this is spoken in retrospect). England's objections *ad loc.* to the position of τε in 640c10 are therefore misguided.

39 For the symposiarch, see Schöpsdau *ad* 640b6–8 and Tecuşan 1990, 251–253.

40 Cf. *Leg*. 671d5–e3.

41 In *Laws*, there is a clear association between being σοφός and advanced age; see also below, n. 123, p. 105.

42 *Leg*. 640e5–641a2: ἢ οὐ συννοεῖς τοῦθ', ὅτι μεθύων κυβερνήτης καὶ πᾶς παντὸς ἄρχων ἀνατρέπει πάντα εἴτε πλοῖα εἴτε ἅρματα εἴτε στρατόπεδον, εἴθ' ὅτι ποτ' εἴη τὸ κυβερνώμενον ὑπ' αὐτοῦ; 'Or is it news to you that a helmsman, or anybody directing anything, if he is drunk, causes absolute chaos – whether in a ship, or a chariot, or an army, or whatever it is that is under his direction?' (Transl. Schofield & Griffith).

The conclusion of this argument is not spelled out, but clear: to assess the true value of an institution, it must be observed in its best possible form under the regulation of a steadfast leader. To condemn an institution on the basis of its very worst functioning, as Megillus has repeatedly done, is a sign of ignorance (ἄγνοια).[43] The way is now cleared for a discussion of the *symposion*, which Megillus previously resisted on moral grounds.

3.1.3 A 'myth of virtue': the 'puppet'

The task Cleinias now imposes on the Athenian is to explain what kind of good for the city arises from the well-regulated *symposion* (συμποσίου δὲ ὀρθῶς παιδαγωγηθέντος, τί μέγα ἰδιώταις ἢ τῇ πόλει γίγνοιτ᾽ ἄν; 641b1–2). The Athenian replies that those who have been well educated become virtuous people (παιδευθέντες μὲν εὖ γίγνοιντ᾽ ἂν ἄνδρες ἀγαθοί, 641b8). From this, Cleinias infers that the Athenian is in effect saying that correct drinking in company contributes to *paideia* (δοκεῖς ἡμῖν, ὦ φίλε, τὴν ἐν τοῖς οἴνοις κοινὴν διατριβὴν ὡς εἰς παιδείας μεγάλην μοῖραν τείνουσαν λέγειν, ἂν ὀρθῶς γίγνηται, 641c8–d2). The question of the benefit of the *symposia* will dominate the rest of the discussion until the end of Book II.

The Athenian elucidates what he has in mind when he uses the term education (παιδεία). This particular notion of *paideia* shapes the subsequent discussion about virtue, so it is important that we briefly dwell on it here. According to the Athenian, the person who will become good in something (τὸν ὁτιοῦν ἀγαθὸν ἄνδρα μέλλοντα ἔσεσθαι, 643b4–5) must practice this pursuit from childhood (τοῦτο αὐτὸ ἐκ παίδων εὐθὺς μελετᾶν δεῖν, 643b5).[44] This holds true for all serious pursuits, but the Athenian specifically wants to reserve the term παιδεία for education in excellence (πρὸς ἀρετὴν … παιδείαν, 643e4). He conceives of παιδεία as the training of a *skill*: 'the person who wants to become good *in something*', τὸν *ὁτιοῦν* ἀγαθὸν ἄνδρα μέλλοντα ἔσεσθαι.[45] The frame of the professional – like Socrates, the Athe-

43 *Leg*. 640e3. The fact that some issues repeatedly occur in Books I–II is not to be taken as a sign that Plato was an old man when he wrote *Laws*, that *Laws* is not finished, or that a clumsy editor has reorganized the material. Rather, the Athenian is attempting to persuade Cleinias and Megillus of something to which they find it difficult to assent to because of their cultural background; this is why the discussion is sometimes repetitive.

44 See *Leg*. 643b4–d3, esp. 643c6–d3 (Budé text): (…) καὶ πειρᾶσθαι διὰ τῶν παιδιῶν ἐκεῖσε τρέπειν τὰς ἡδονὰς καὶ ἐπιθυμίας τῶν παίδων, οἳ ἀφικομένους αὐτοὺς δεῖ τέλος ἔχειν. κεφάλαιον δὴ παιδείας λέγομεν τὴν ὀρθὴν τροφήν, ἣ τοῦ παίζοντος τὴν ψυχὴν εἰς ἔρωτα ὅτι μάλιστα ἄξει τούτου ὃ δεήσει γενόμενον ἄνδρ᾽ αὐτὸν τέλειον εἶναι τῆς τοῦ πράγματος ἀρετῆς· 'The aim should be to use the children's games to direct their pleasures and desires towards the things they will have to deal with when they grow up. The key to education, we maintain, is correct upbringing, which will, more than anything else, lead the soul of the child at play to a passionate desire for what will be needed to make him perfect in the practice of the activity at its best when he becomes a man' (Transl. Schofield & Griffith). Schöpsdau 1994 translates τέλος ἔχειν as "erwachsen sein", but notes *ad* 643c8 that it also, in virtue of τέλειον εἶναι, can mean "Vollendung, vollkommene Beherrschung".

45 This is still in line with with the original Cretan idea that ἀνδρεία can be trained.

nian mentions the farmer (γεωργός) and housebuilder (οἰκοδόμος) (643b7–8) – supplies an important new element: the idea that there is a point at which the mastery of a pursuit is complete.[46] The notion of a skill entails the idea that there is an end-stage at which one *masters* it. By this argument, the virtuous (ἀγαθοί) are those who have reached the final stage of the ability to control themselves, which, in turn, is consistent with the earlier definition of virtue as being κρείττων ἑαυτοῦ.

As a first step towards demonstrating the value of the *symposion*, the Athenian makes use of an εἰκών (image) or myth, the 'myth of virtue' (ὁ μῦθος ἀρετῆς, 645b1–2). This myth, which follows in *Laws* 644c1–645b8, has widely become known in the scholarly literature as the image of the 'puppet' (θαῦμα). It is important to keep in mind that the puppet image is an attempt to demonstrate the need for *paideia* understood as the training of a skill, whereby the final mastery of that skill is the ability to be κρείττων or ἥττων ἑαυτοῦ.[47] An additional reason to examine this image in some detail is that it has often been used as evidence to support the claim that Plato still endorses the tripartite soul in *Laws*.[48] Yet a closer look at the image in its context shows that that is not what Plato has in mind. The puppet image thus lends itself exceptionally well to demonstrating the importance of reading passages in their proper context.[49]

46 The familiar epistemological underpinning, however, is absent: the idea of adducing these τεχνικοί is not that they know the right way to perform their task because they possess the relevant τέχνη or ἐπιστήμη. In addition, the specific examples of the farmer and the housebuilder suggest the prominence of experience for mastering the skill.

47 It is to clarify what is meant by saying that those who are virtuous are capable of 'ruling oneself' (*Leg*. 644b6–7), that is, being κρείττων or ἥττων ἑαυτοῦ. See also the end of the εἰκών, *Leg.* 645c1–4: ἐναργεστέρου δ' αὐτοῦ γενομένου καὶ παιδεία καὶ τἆλλα ἐπιτηδεύματα ἴσως ἔσται μᾶλλον καταφανῆ, καὶ δὴ καὶ τὸ περὶ τῆς ἐν τοῖς οἴνοις διατριβῆς. 'And once this distinction becomes sharper, I dare say it will be easier to get a clear view of education and other activities; in particular, this question of time spent drinking wine' (Transl. Schofield & Griffith). For a different interpretation see Meyer 2015. She argues that the puppet image is an "episode" in which the Athenian appeals to the language of self-mastery of the interlocutors, whereas he himself thinks virtue consists in harmony in the soul, a notion only introduced in Book II. See especially *ibid*., 161–163, 168–172, 178.

48 For an overview of the debate, see Meyer 2015, 172–173. Recently, the case for tripartition in *Laws* has again been defended by Wilburn 2013. See also, e. g.: England *ad* 645a6 (who sees in δεῖσθαι ὑπηρετῶν αὐτοῦ τὴν ἀγωγήν a resemblance with *Resp*. 441e3–5); Saunders 1962; Schöpsdau 1994, 231; Gerson 2003; Woerther 2008, 95–97; Irwin 2010, 99–100. See for references to the debate Wilburn 2013, 65, n. 5 and 69, n. 15. Kahn 2004 argues *contra* Bobonich 2002 that the peculiarities of *Laws*' psychology can be adequately explained by its different context, so that there is no need to postulate a change in Plato's thinking about the soul, which Kahn considers unlikely because the late *Timaeus* upholds the tripartite soul. For literature on tripartition in Plato, see Cairns 1993, 381, n. 111. For the argument that *Laws* offers a bipartite soul, see Rees 1957, Saunders 1962 (who notes: "the bipartite analysis can never *exclude* the tripartite" (*ibid*., 37, emphasis in original) and Sassi 2008. The latter argues that law in *Laws* has a role parallel to the role of θυμός in *Republic*.

49 Bobonich 2002, 261–263 and Chapter 4, has argued (on the basis of arguments different from those presented here) that the puppet image does not involve the notion of the tripartite soul (cf. Frede 2010, 118, 120).

The Athenian first identifies two forces that had already been assumed in the preceding discussion. Each individual person, although whole (ἕνα, 644c4), has within himself two 'counsellors that are opposite [*sc*. to each other] and foolish' (συμβούλω ἐναντίω τε καὶ ἄφρονε, 644c6–7), namely 'pleasure' (ἡδονή) and 'pain' (λύπη). Yet the picture soon becomes more complicated, 644c9–d1:

> Αθ. Πρὸς δὲ τούτοιν ἀμφοῖν αὖ δόξας μελλόντων, οἷν κοινὸν μὲν ὄνομα ἐλπίς, ἴδιον δέ, φόβος μὲν ἡ πρὸ λύπης ἐλπίς, θάρρος δὲ ἡ πρὸ τοῦ ἐναντίου·
>
> Ath. 'And in addition, there are opinions about future occurrences of these two,[50] to which we give the general name 'expectation', but the particular name 'fear' for expectation of pain, and 'confidence' for expectation of the opposite.' (Transl. Schofield & Griffith, modified)

Besides ἡδονή and λύπη, a person also has beliefs about future λύπαι and ἡδοναί, which are known by the common name ἐλπίς ('expectation'): on the one hand, the expectation of ἡδονή, here called θάρρος ('confidence'), on the other, the expectation of λύπη, called φόβος ('fear'). The terminology of φόβος and θάρρος here is derived from the Cretan-Spartan conception of virtue as fear and confidence on the battlefield.

In addition to all of these (ἐπὶ δὲ πᾶσι τούτοις), each person possesses a faculty of 'calculation' (λογισμός), 644d1–2:

> ἐπὶ δὲ πᾶσι τούτοις λογισμὸς ὅ τί ποτ' αὐτῶν ἄμεινον ἢ χεῖρον, (…).[51]
>
> 'Presiding over all this – deciding which of them is better or worse – is 'calculation'' (Transl. Schofield & Griffith)

The λογισμός that has become the shared conviction of a *polis* is called law (λογισμός (…) ὃς γενόμενος δόγμα πόλεως κοινὸν νόμος ἐπωνόμασται, 644d2–3).[52]

These forces are now explained in mythical terms: since all of these elements exert a pull (ἀνθέλκειν, 644e3, e6), the individual human being is like a 'puppet' (θαῦμα); yet he is 'the divine [puppet] among the animals' (θαῦμα … τῶν ζῴων θεῖον, 644d7–8). The puppet is an image of 'each one of us' (ἕκαστον ἡμῶν, 644d8).[53] The εἰκών pertains to human beings in general: all human beings possess (a rudimentary) λογισμός. The three forces θάρρος, φόβος and λογισμός are

50 In *Leg*. 644c9, πρός should not be construed with τούτοιν ἀμφοῖν ('besides these two'; so Schöpsdau 1994, 236, *ad* 644d1), but in an absolute sense ('in addition'). In addition (to λύπη and ἡδονή), there are *δόξαι* of those two, namely φόβος and θάρρος. This also seems to have been the reading of Stephanus (who proposed to read μελλόντοιν) and Ast (see England *ad loc*.).

51 The Budé text prints ὅ τί ποτ', the OCT ὅτι ποτ'.

52 *Leg*. 644d2–3 λογισμὸς (…) ὃς γενόμενος δόγμα πόλεως κοινὸν νόμος ἐπωνόμασται (see also above); 644e6–645a2: ταύτην δ' εἶναι τὴν τοῦ λογισμοῦ ἀγωγὴν χρυσῆν καὶ ἱεράν, τῆς πόλεως κοινὸν νόμον ἐπικαλουμένην; 645a4–5: δεῖν δὴ τῇ καλλίστῃ ἀγωγῇ τῇ τοῦ νόμου ἀεὶ συλλαμβάνειν. Nightingale's interpretation of ἐπικαλουμένην (645a2) as "to call in as a helper or ally" (*ibid.*, 104, n. 13) reverses the primacy: according to her reading, the λογισμός of the individual citizen summons the law as its helper.

53 See Bobonich 2002 for the argument that the puppet illustrates "akratic conflict" (262); Annas 1999 for the claim that the puppet represents human's irrationality (143); Schöpsdau 1994 for the argument that the analogy represents "die Seele des erwachsenen Menschen" (231); Belfiore 1986, 425, with n. 15, and Tecuşan 1990, 247, for the argument that the puppet re-

'affections' (πάθη)[54] and resemble, in terms of the myth, 'cords' or 'strings' (οἷον νεῦρα ἢ σμήρινθοί τινες) which draw the puppet towards opposite actions because they are opposite to each other (σπῶσίν τε ἡμᾶς καὶ ἀλλήλαις ἀνθέλκουσιν ἐναντίαι οὖσαι ἐπ᾽ ἐναντίαις πράξεις, 644e2–3).[55] Θάρρος, 'confidence', and φόβος, 'fear', are opposites, but also the extremes on a single scale. The function of the λογισμός, 'calculation', is to consider *how far* one may go in θάρρος and φόβος, and λογισμός therefore enables one to make better choices – it is a calculating *faculty*, not a rational *part* (λογιστικόν) that is naturally oriented towards a fixed norm. Thus far, the basis on which the λογισμός makes its calculations is still unclear. We will come back to this briefly below.[56]

In this 'myth of virtue' the λογισμός is a 'golden' (χρυσῆ) cord. By contrast, the cords of θάρρος and φόβος are 'hard and iron' (σκληρὰς καὶ σιδηρᾶς) and stronger than λογισμός, which is weak (μαλακή) because it is golden.[57] Since λογισμός is καλός and 'gentle' (πρᾷος) instead of 'violent' (βίαιος), it needs the guidance of external assistants (δεῖσθαι ὑπηρετῶν αὐτοῦ τὴν ἀγωγήν, 645a6–7). The weakness of λογισμός and the strength of the other two cords explain why helpers are necessary and why self-restraint – in the language of the puppet εἰκών, following the cord of λογισμός – needs to be trained. Here it is important to keep the backdrop of the *symposion* in mind: the calculating faculty must ensure that one is not dragged along by the intensity of the situation nor goes too far in either direction.[58] Moreover, as

presents the older person; Rankin 1962 for the idea that the puppet "is associated with childhood" (131).

54 The λογισμός is presented in 644e1 as one of the πάθη, cf. Schöpsdau 1994, 234. Bobonich 2002, 540, n. 77, discusses why. Anticipating my argument below: the function of λογισμός is later denoted by αἰδώς, which is more obviously a πάθος. Yet here Plato represents the more moderate course of action (than an action motivated by just θάρρος or φόβος) as the result of a distinctly rational *faculty*.

55 All three elements (θάρρος, φόβος, and λογισμός) are opposed to each other: ἀλλήλαις ἀνθέλκουσιν ἐναντίαι οὖσαι in 644e3 pertains to the three πάθη. That φόβος and θάρρος are opposed to each other is evident. Below, it will become clear why λογισμός is also opposed to each of them, pp. 95–96.

56 This interpretation of the λογισμός agrees to some extent with Frede 2010, who notes that there is "no hint of a higher metaphysical task of the calculative faculty in the *Laws*" (118). However, Frede regards this as one of the "omissions" of the puppet image, and on this basis concludes that the puppet image "serves only a limited purpose and may not fully disclose Plato's psychology in the *Laws*" (*ibid.*). It should be kept in mind, however, that εἰκόνες such as these serve a specific rhetorical function: in this case, the puppet image elucidates *paideia*, and in particular *paideia* through the *symposion*: see 645c1–6 and n. 64 below. The 'limitedness' of the image is thus not to be interpreted as a *lack of clarity* on Plato's part, but as a sign of its *rhetorical* function: an effort of the Athenian to persuade his sceptical Spartan and Cretan interlocutors. To the extent that all imagery in the Platonic dialogues is rhetorical and contextual, no one image by itself "fully discloses Plato's psychology".

57 According to Frede 2010, 117, this does not mean that λογισμός has "less power than the other two strings", but that the "hardness" of the latter "signifies only their inflexibility". Such a reading, however, seems unlikely in virtue of the fact that the image is meant to illustrate the meaning of being ἥττων and κρείττων ἑαυτοῦ.

58 That λογισμός is a moderating factor has been obscured by the standard but incorrect identification of the two other cords as λύπη and ἡδονή. For example, Bobonich 2002, 264, 541, n. 85,

we will see below, the εἰκών is only consistent with the ensuing argument if the two other cords are identified as θάρρος and φόβος.[59]

The appropriate context for the training of the λογισμός of the individual is of course the *polis*, since in the *polis* λογισμός is already present in the form of law.[60] The 'assistants' (ὑπηρεταί) of the individual's λογισμός are the law and the magistrates who see to the application of the law or, in terms of the *symposion*, the symposiarch.[61] The process implied is the strengthening of the individual's λογισμός by the λογισμός contained in the laws: it is a process of social conditioning, coming to accept and comply with the norms of one's society.[62] The λογισμός of the citizens is trained in accordance with the λογισμός laid down in the laws, so that their own λογισμός will come to endorse the δόγμα laid down in the law.[63] The puppet analogy therefore reflects an essentially optimistic attitude towards the human capacity for excellence: λογισμός is innate in every person by nature, and the assumption is that, in the right environment, every person can in principle become ἀγαθός.[64]

and Sassi 2008, 131, 138, argue that the phrase ἐναντίαι οὖσαι must pertain only to pleasure and pain: they are opposed to each other, not opposed to reason. See also below, pp. 95–96. There is no evidence for Sassi's claim that "a primary aim of legislation is the repression of the *whole* plane of emotions" (2008, 138–147, emphasis in original).

59 A careful examination of the 'myth of virtue' thus makes plain that the puppet image has nothing to do with the tripartite soul of *Republic* or *Phaedrus*, nor with *Republic*'s notion that there are distinct 'classes' of human beings, some of whom are more prone to rationality than others. The gentle pull of λογισμός does not receive assistance from another soul-part. Moreover, the static idea of the tripartition of the soul is fundamentally at odds with the idea that virtue can be trained.

60 We may here compare *Leg*. 752b9–c8: the character of citizens is determined by the customs of their city; the citizens are to become 'of the same disposition' (συνήθεις) as the laws.

61 Görgemanns 1960, 121, identifies the ὑπηρεταί with "die staatlichen Erziehung"; Schöpsdau 1986, 122, with the lawgiver and his πολιτικὴ τέχνη (650b7–9). The idea that the laws educate recalls Protagoras' description of *paideia* by the laws in *Prot*. 326c6–d1.

62 The myth of virtue recalls the theory of Protagoras in *Protagoras*, who holds that morality is partly an innate disposition, which, since it does not develop automatically, needs further training. See on the *Protagoras* myth Cairns 1993, 354–360; Beresford 2013, 151, in turn notes the close correspondence of Protagoras' moral theory to Aristotle's claim that "virtues are neither purely natural nor purely cultural, but that 'nature primes us to receive them, and habituation perfects them'", in *EN* 1103a25–26: οὔτ' ἄρα φύσει οὔτε παρὰ φύσιν ἐγγίνονται αἱ ἀρεταί, ἀλλὰ πεφυκόσι μὲν ἡμῖν δέξασθαι αὐτάς, τελειουμένοις δὲ διὰ τοῦ ἔθους.

63 Cf. p. 108. According to Nightingale 1999, 104, the supplementing of the rational faculty by the law involves a "complete lack of autonomy" for the individual.

64 A failure to realize that *paideia* consists in the training of one's faculty of calculation has led to unduly pessimistic readings of the puppet image. According to such readings, the puppet presents an image of the indiviual at the mercy of irrational forces, stressing its lack of autonomy: see, e. g., Görgemanns 1960, 120, n. 2, 160 ff.; Rankin 1962, 131; Klosko 2006, 219–221; Nightingale 1999*a*, 104; Russell 2005, 226; Laks 2005, 45–47. More optimistic readings have been advocated by, e. g., Adkins 1960 "(…) Plato does not assert that the gods pull the strings and that man must needs follow where they lead, in the sense that each individual action is determined from above. The sole relation of the 'strings' to the gods seems to be that the gods have planted them in us, and we can do nothing about their presence. In that sense men are at the mercy of the strings, but in no other" (302); also Stalley 1983, 61; Schöpsdau 1994, 235; Bobonich 2002, 266; Laurent 2006, 461; Frede 2010, 116.

The myth of virtue suggests that the λογισμός of the individual is trained by obeying the λογισμός in the form of the law of the *polis* (the 'assistants'). This use of terms creates a circular image.[65] A question the myth does not address but that we may well ask after reading it is the question of *whose* λογισμός will become the κοινὸν δόγμα in the *polis* and *whose* λογισμός is instituted as law in the first place. This is left almost entirely out of consideration by the circularity entailed in the use of the term λογισμός on both the level of the individual and the level of the *polis*. What we do hear is not very informative: the person whose λογισμός becomes law in the *polis* can only be one kind of person, namely someone who does not need that kind of training himself, as we read in a rather complex sentence, 645b1–8:

> καὶ οὕτω (…) καὶ τὸ κρείττω ἑαυτοῦ καὶ ἧττω εἶναι τρόπον τινὰ φανερὸν ἂν γίγνοιτο μᾶλλον ὃ νοεῖ, καὶ ὅτι πόλιν καὶ ἰδιώτην, τὸν μὲν λόγον ἀληθῆ λαβόντα ἐν ἑαυτῷ περὶ τῶν ἕλξεων τούτων, τούτῳ[66] ἑπόμενον δεῖ ζῆν, πόλιν δὲ ἢ παρὰ θεῶν τινος ἢ παρὰ τούτου τοῦ γνόντος ταῦτα λόγον παραλαβοῦσαν, νόμον θεμένην, αὐτῇ τε ὁμιλεῖν καὶ ταῖς ἄλλαις πόλεσιν.
>
> And in this way (…) it may become clearer what 'being self-superior' and 'being self-inferior' intend, and that, regarding a *polis* and an individual, the one, having grasped within himself the true account [λόγος] about these pullings, must live in accordance with that [τούτῳ, *sc.* λόγος], and that the *polis*, having adopted the account [λόγον παραλαβοῦσαν] either from one of the gods or from that individual who knows these things [ταῦτα] and having instituted it as a law, must associate with itself and other cities in accordance with it. (Transl. MB)

The remark about the lawgiver is made in an off-hand manner. First, we hear what the myth implies for the individual: the individual must grasp the λόγος ἀληθής and live in accordance with it (τούτῳ ἑπόμενον δεῖ ζῆν, 645b5). This λόγος ἀληθής seems to be the true account of what ὁ μῦθος ἀρετῆς in a mythical way depicts as the 'pullings' (ἕλξεις, 645b5) of the cords of the affections.[67] The city (πόλιν δέ) also adopts this account (λόγον παραλαβοῦσαν) and institutes it as law (νόμον θεμένην). All we hear is that the city has received this λόγος from one of the gods (ἢ παρὰ θεῶν τινος) or from someone who – in a rather vague phrase – 'knows those things' (ἢ παρὰ τούτου τοῦ γνόντος ταῦτα). Ταῦτα in 645b7 refers in a rather oblique way to the λόγος ἀληθής that is itself mentioned in the description of the virtuous individual (ἰδιώτης) in the *polis*. The λόγος (645b7) which the city insti-

65 Likewise, Schöpsdau 1986, 121, argues that the λογισμός mentioned in the context of the individual "ist (…) dadurch subjektiven Meinen entzogen, daß sie gleich zu Beginn des Gleichnisses identifiziert wird mit der gemeinsamen Überzeugung der Polis, die sich im Gesetz objektiviert (644d1–3)". Cf. Schiller 1790 about Sparta: "Der wichtigste Teil seiner [Lycurgus'] Gesetzgebung war daher die Erziehung, und durch diese schloß er gleichsam den Kreis, in welchem der spartanische Staat sich um sich selbst bewegen sollte. Die Erziehung war ein wichtiges Werk des Staats, und der Staat ein fortdauerndes Werk dieser Erziehung" (in Christ 1986*a*, 77).

66 Refers to λόγον ἀληθῆ in 645b4.

67 For an alternative reading, see Schöpsdau 1994. Schöpsdau inquires into the relation between λόγος ἀληθής and λογισμός and offers arguments *pro* and *contra* the identity of λόγος and λογισμός at 233–234 and 237–238. The most important argument against their identification is listed under (b) 2: the λογισμός is one of the ἕλξεις and therefore cannot be identified with the λόγος ἀληθής about these ἕλξεις. Schöpsdau concludes that this relation is "nicht eindeutig" (238) but that λόγος can be conceived of as the activity of the λογίζεσθαι of the individual.

tutes must in turn refer to the *content* of the λογισμός of the person who 'knows those things'.[68] We are not further informed about the content of the λόγος … περὶ τῶν ἕλξεων τούτων (645b4–5), which we only hear in the form of a μῦθος about a 'puppet'.

The lawgiver is mentioned only in παρὰ τούτου τοῦ γνόντος ταῦτα (645b6–7), in the wake of the description of the individual in 645b4–5 and the *polis* in 645b6–8, and by dint of this remains outside the limelight. The sparsity of information about him is relatively unproblematic in this context, precisely because we were just told (645b4–5) what it means for the individual to be κρείττων ἑαυτοῦ. The remark about the individual thus to a certain extent preempts the need to provide more clarity about the lawgiver. Yet, though this brief phrase may *in this immediate context* suffice as a qualification, it does leave us with a puzzle. For how the lawgiver has acquired his qualification and what this qualification consists in do not become apparent from the 'myth of virtue'. This unwillingness to bring the lawgiver into focus is in fact characteristic of the philosophical perspective of Plato's final work: it obscures the lawgiver from our view by focusing on the laws and the people who guard and apply them.[69]

3.1.4 The *symposion* as a training in αἰδώς

The Athenian now applies the myth of virtue directly to the *symposion*: naturally, drunkenness would intensify the pleasures, pains, agitations and lusts of the puppet, while it would make its rational faculties, perceptions (αἰσθήσεις), memories (μνῆμαι), opinions (δόξαι), and thoughts (φρονήσεις) abandon him completely, bringing the adult back to a state of childhood (645e1–7). Such a person would hardly be in control of himself (ἥκιστα δὴ τότ' ἂν αὐτὸς αὑτοῦ γίγνοιτο ἐγκρατής, 645e8). The question is, therefore: why would anyone willingly (ἑκών) indulge in such a depravity (φαυλότης, 646b6) of soul, rather than avoiding drunkenness as much as possible (as the Spartans do)?

With another notable Socratic turn of the argument, the Athenian appeals to the beneficial effects of a training regime for the body in order to demonstrate the effect of the *symposion* on the soul.[70] The drinking of medicine (φαρμακοποσία) and physical training (γυμνάσια) put people in such a painful and shameful condition that, were it to last for the rest of their lives, no one would prefer to stay

68 Frede 2010, 118, reads this remark about the lawgiver as "emphasizing" that "laws should come from a god or from someone with superior understanding" rather than that "the will of all should become law". This puts the emphasis in the wrong place. Rather, 645b1–8 simply concludes by way of matter of fact that under these circumstances, it is the λογισμός of a god or insightful human being that becomes law.

69 In *Laws* we repeatedly find ὁ νόμος where one would expect νομοθέτης, for example in *Leg*. 625c7. See also below, Chapter Five, n. 60, p. 172.

70 *Leg*. 646b9–c1. Cf. the argument of Rowe 2012, who argues that Socrates is 'present' in *Laws* because *Laws* frequently refers to "ideas that Plato typically associates with his Socrates rather than with anyone else", 331.

alive.[71] Nevertheless, it is plain that people submit to training and medicine out of their own free will because of the ensuing benefit (τῆς μετὰ ταῦτα ὠφελίας ἕνεκα ἑκόντες πορεύονται, 646c10–11). If the *symposion* (τῆς περὶ τὸν οἶνον … διατριβῆς, 646d5) could be shown to offer a benefit (ὠφελία) that is not inferior to the benefit for the body, then it must even be superior to physical training, since it is not accompanied by pain. Yet Cleinias is not so easily convinced that something so alien to his native laws as the *symposion* could really be beneficial. He once again says that he would be surprised if they could indeed discern a way in which the *symposion* would offer a benefit that was greater than physical training.[72] It remains, therefore, to determine the benefit that the *symposion* confers.

It is with a view to the determination of the ὠφελία of the *symposion* that the Athenian introduces a distinction between two kinds of fear (δύο φόβων εἴδη, 646e4). The first kind is the fear that bad things will happen to us (φοβούμεθα μέν που τὰ κακά, προσδοκῶντες γενήσεσθαι, 646e7–8). This is in fact the kind of fear that ἀνδρεία seeks to conquer. The second kind of fear is the fear of public opinion, of being thought disrespectable because of doing or saying something indecorous (φοβούμεθα … δόξαν, ἡγούμενοι δοξάζεσθαι κακοί, πράττοντες ἢ λέγοντές τι τῶν μὴ καλῶν, 646e10–11). This fear of a bad reputation is labelled 'embarrassment' (αἰσχύνη).[73] In what will prove to be an essential step in the argument, this second kind of fear is said to be opposed both to pain and all other kinds of fear (ἐναντίος μὲν ταῖς ἀλγηδόσιν καὶ τοῖς ἄλλοις φόβοις, 647a4–5) and to the most numerous and greatest pleasures (ταῖς πλεῖσταις καὶ μεγίσταις ἡδοναῖς, 647a6). Any lawgiver who is worth anything (νομοθέτης, … πᾶς οὗ καὶ σμικρὸν ὄφελος, 647a8–9[74]) should have the highest regard for this second kind of fear and call it αἰδώς, 'awe' or 'shame', an inhibition before others, including those in authority (647a10; cf. 649c2, 671d2, 672d8).[75] As we hear at the end of Book II, when the discussion of the *symposion* has come full circle and the interlocutors recapitulate their earlier discussion (οὐκοῦν ἔφαμεν, 671b8), αἰδώς and αἰσχύνη are the lawgiver's instruments to make the symposiast adhere to the sympotic rules about silence, speech, drinking, and music, 671b8–d3:

71 The painfulness of this condition becomes clear at *Leg.* 646b9–10 (πονηρίαν, λεπτότητά τε καὶ αἶσχος καὶ ἀδυναμίαν), c5–6 (ἔξουσιν τοιοῦτον τὸ σῶμα, οἷον εἰ διὰ τέλους ἔχειν μέλλοιεν, ζῆν οὐκ ἂν δέξαιντο), c6–7 (τοὺς … πόνους ἰόντας), d10 (μετ' ἀλγηδόνων).

72 *Leg*. 646e1–2: Ὀρθῶς λέγεις, θαυμάζοιμι δ' ἂν εἴ τι δυναίμεθα τοιοῦτον ἐν αὐτῷ καταμαθεῖν.

73 *Leg*. 647a2; cf. 647b7, 649c2, 671d2, 672d8.

74 There is absolutely no mention of an *expert* lawgiver.

75 For a study of αἰδώς, see Cairns 1993; on αἰδώς in *Laws ibid*., 373–378. Cairns concludes that αἰδώς "appears in thoroughly traditional guise in the *Laws*" (373). See also Schöpsdau 1986, 113, n. 33, with references. At *Leg*. 699c4–6, αἰδώς is the 'fear' inspired by the traditional laws (ὁ φόβος (…) ὁ (…) ἐκ τῶν νόμων τῶν ἔμπροσθεν γεγονώς); cf. Cairns *ibid*., 375–376. See Rowe 2007, 99–100 for the argument that there exists a relevant distinction between the αἰδώς τις of the Athenians at Marathon and Salamis (discussed in the historical overview of *Laws* Book III) and the αἰδώς the Athenian wants to produce in the citizens. See Stalley 1983, 54–56 for the argument, supporting Barker (cited in the edition of 1960, 343), that σωφροσύνη is as fundamental to *Laws* as δικαιοσύνη is to *Republic*. For the centrality of self-control in *Laws*, cf. Campbell 1981.

> Αθ. Οὐκοῦν ἔφαμεν, ὅταν γίγνηται ταῦτα, καθάπερ τινὰ σίδηρον τὰς ψυχὰς τῶν πινόντων διαπύρους γιγνομένας μαλθακωτέρας γίγνεσθαι καὶ νεωτέρας, ὥστε εὐαγώγους συμβαίνειν τῷ δυναμένῳ τε καὶ ἐπισταμένῳ[76] παιδεύειν τε καὶ πλάττειν, καθάπερ ὅτ᾽ ἦσαν νέαι; τοῦτον δ᾽ εἶναι τὸν πλάστην τὸν αὐτὸν ὥσπερ τότε, τὸν ἀγαθὸν νομοθέτην, οὗ νόμους εἶναι δεῖ συμποτικούς, δυναμένους τὸν εὔελπιν καὶ θαρραλέον ἐκεῖνον γιγνόμενον καὶ ἀναισχυντότερον τοῦ δέοντος, καὶ οὐκ ἐθέλοντα τάξιν καὶ τὸ κατὰ μέρος σιγῆς καὶ λόγου καὶ πόσεως καὶ μούσης ὑπομένειν, ἐθέλειν ποιεῖν πάντα τούτοις τἀναντία, καὶ εἰσιόντι τῷ μὴ καλῷ θάρρει τὸν κάλλιστον διαμαχόμενον φόβον εἰσπέμπειν οἵους τ᾽ εἶναι μετὰ δίκης, ὃν αἰδῶ τε καὶ αἰσχύνην θεῖον φόβον ὠνομάκαμεν;
>
> Ath. 'Well, we said, didn't we, that when this happens, the souls of the drinkers become heated, like iron in the fire;[77] they become softer – yes, and younger, so that they finish up, in the hands of the person with the ability and knowledge required to educate them and shape them, being as malleable as they were when they were young. And this person who moulds them, we said, is the same good lawgiver, now as then, who must have laws to govern drinking parties: when our drinker becomes cheerful, overconfident, and utterly outrageous, refusing to observe any kind of order or alternation in keeping silent or in speaking, in drinking or in music, these laws must make him willing to behave in exactly the opposite way; when his overconfidence (which is so far from fine) makes its entrance, then they must be capable, with a little assistance from justice, of sending in against it that finest of all fears, a divine fear, to which we have given the name 'sense of shame or respect'?' (Transl. Schofield & Griffith)

Parallel to the training of ἀνδρεία through exposure to fears (649c3–6), the benefit entailed by the *symposion* is that it allows one to train[78] and strengthen one's αἰδώς by being exposed to sentiments of boldness, 649c8–d2:

76 Since *Laws* assumes a distinction between 'knowing how' (ἐπίστασθαι, γνῶναι) and 'being able to' (δύνασθαι), it relinquishes a central Socratic tenet: that knowing the good is doing it, and that virtue consists in knowledge. The Socratic conception of τέχνη was essential for maintaining this claim (see on this aspect of τέχνη Chapter Two, p. 44). That *Laws* relinquishes this is compatible with the non-intellectualist moral outlook of the work. We may compare the τέχνη analogy in 639a9–b1 (see above, p. 85), claiming that the τέχνη of steersmanship has to be complemented by a firm stomach at sea, and *Leg*. 875a1–b5, especially 875a2–4: φύσις ἀνθρώπων οὐδενὸς ἱκανὴ φύεται ὥστε γνῶναι τε τὰ συμφέροντα ἀνθρώποις εἰς πολιτείαν καὶ γνοῦσα, τὸ βέλτιστον ἀεὶ δύνασθαί τε καὶ ἐθέλειν πράττειν. For a discussion of this passage, see Chapter Five, pp. 163–166.

77 That the symposiasts are said to become younger is relevant because, as it will turn out in Book II, the participants in the *symposion* are older, of the age of the so-called chorus of Dionysus, between 30–60.

78 Cf. *Leg*. 648d4–e5: Αθ. (…), ὀρθῶς ἄν τι πράττοι, εἴτε τις ἑαυτῷ πιστεύων φύσει καὶ μελέτῃ καλῶς παρεσκευάσθαι, μηδὲν ὀκνοῖ μετὰ συμποτῶν πλειόνων γυμναζόμενος ἐπιδείκνυσθαι τὴν ἐν τῇ τοῦ πώματος ἀναγκαίᾳ διαφορᾷ δύναμιν ὑπερθέων καὶ κρατῶν, ὥστε ὑπ᾽ ἀσχημοσύνης μηδὲ ἓν σφάλλεσθαι μέγα μηδ᾽ ἀλλοιοῦσθαι δι᾽ ἀρετήν, πρὸς δὲ τὴν ἐσχάτην πόσιν ἀπαλλάττοιτο πρὶν ἀφικνεῖσθαι, τὴν πάντων ἧττον φοβούμενος ἀνθρώπων τοῦ πώματος. Ath. 'That would be a perfectly correct way of going about things – but then so would having confidence in himself, deciding he was well equipped by his nature and training, and not hesitating to exercise in the company of a number of fellow-drinkers, showing off his speed and strength against the power of the drink and its inescapable effects, his goodness of mind protecting him from the bad behaviour which might result in any serious breach of propriety or change of personality; and when it came to the final draught, he would leave before it came round, fearing the defeat which for humans, where drink is concerned, is inevitable' (Transl. Schofield & Griffith).

> Αθ. ἃ παθόντες ἄρα πεφύκαμεν διαφερόντως θαρραλέοι τ᾽ εἶναι καὶ θρασεῖς, ἐν τούτοις δέον ἄν, ὡς ἔοικ᾽, εἴη τὸ μελετᾶν ὡς ἥκιστα εἶναι ἀναισχύντους τε καὶ θρασύτητος γέμοντας, φοβεροὺς δὲ εἰς τό τι τολμᾶν ἑκάστοτε λέγειν ἢ πάσχειν ἢ καὶ δρᾶν αἰσχρὸν ὁτιοῦν.
>
> Ath. 'In which case, being under the influence of things whose nature is to make us particularly fearless and bold – that would be the place, apparently, to practice being not shameless and full of effrontery, but wary of ever being so barefaced, on any particular occasion, as to say, do, or have done to us, anything shameful.' (Transl. Schofield & Griffith)

By offering a controlled exposure to ἀναισχυντία, the *symposion* is supposed to offer one the opportunity to strengthen αἰδώς. As a training ground for the mastery of one's pleasures, it takes the place of the Spartan institutions such as the *gymnasia* and *syssitia*.[79] Here the parallel with the lawgiver who controls the citizens becomes explicit, since the leader of the *symposion* is referred to as the lawgiver rather than the symposiarch. The lawgiver is a πλάστης, 'moulder', of the souls of the drinkers, who are εὐάγωγοι, 'easily pliable'. By 'sending in' (εἰσπέμπειν) the instruments αἰδώς and αἰσχύνη against the reprehensible form of confidence when it enters the soul (εἰσιόντι τῷ μὴ καλῷ θάρρει), the lawgiver can keep the symposiasts under control. This 'most excellent fear' (κάλλιστος φόβος) that restrains the symposiasts and that the interlocutors have called αἰδώς and αἰσχύνη is what the lawgiver considers 'divine fear' (θεῖον φόβον, 671d2).

We are now in the position to recognize that the logic of the two kinds of fear aligns with the scheme of the puppet image. In the myth of virtue, θάρρος was the opposite of λογισμός; here θάρρος ('confidence') is the opposite of αἰδώς. Hence, what in the myth of the puppet was called λογισμός is here called αἰδώς.[80] As a result of being opposed to αἰδώς, θάρρος comes to be associated with ἀναισχυντία, "a reprehensible form of confidence"[81] and with ἀναίδεια (a lack of inhibition before others and those in authority) and is declared to be the absolutely greatest evil

79 The juxtaposition of training αἰδώς in the *symposion* with training ἀνδρεία in the *syssition* and *gymnasion* is implicit in the whole passage, but see especially *Leg*. 635c3–d6; also 647c7–d7, stressing the need for training and experience: Τί δ᾽ ὅταν ἐπιχειρῶμέν τινα φοβερὸν ποιεῖν μετὰ δίκης; ἆρ᾽ οὐκ ἀναισχυντίᾳ συμβάλλοντας αὐτὸν καὶ προσγυμνάζοντας νικᾶν δεῖ ποιεῖν διαμαχόμενον αὑτοῦ ταῖς ἡδοναῖς; ἢ τῇ μὲν δειλίᾳ τῇ ἐν αὑτῷ προσμαχόμενον καὶ νικῶντα αὐτὴν δεῖ τέλεον οὕτω γίγνεσθαι πρὸς ἀνδρείαν, ἄπειρος δὲ δήπου καὶ ἀγύμναστος ὢν τῶν τοιούτων ἀγώνων ὁστισοῦν οὐδ᾽ ἂν ἥμισυς ἑαυτοῦ γένοιτο πρὸς ἀρετήν, σώφρων δὲ ἄρα τελέως ἔσται μὴ πολλαῖς ἡδοναῖς καὶ ἐπιθυμίαις προτρεπούσαις ἀναισχυντεῖν καὶ ἀδικεῖν διαμεμαχημένος καὶ νενικηκὼς μετὰ λόγου καὶ ἔργου καὶ τέχνης ἔν τε παιδιαῖς καὶ ἐν σπουδαῖς, ἀλλ᾽ ἀπαθὴς ὢν πάντων τῶν τοιούτων;

80 Schöpsdau 1986, 107 arrives at the same conclusion, observing a "funktionelle Entsprechung zwischen dem λογισμός und der αἰδώς". Despite the recent surge of interest in Books I–II of *Laws*, Schöpsdau's analysis of the argument of *Laws* Book I, and especially of the argument of the two φόβοι (103–113), remains unrivalled and deserves to be more widely known. For a different view, see Wilburn 2013, who sees the passage on the two φόβοι as evidence for the existence of the θυμοειδές in *Laws*: according to him, the discussion of drunkenness recognizes "an intermediate class of superior non-rational motivations", which "are precisely the kinds of motivations that were previously attributed to the spirited part of the soul" (76).

81 Cairns 1993, 374.

(μέγιστον κακόν, 647b1) in private and public affairs alike.[82] We also observe the parallel to the role of the golden λογισμός in the puppet analogy when it is stated that αἰδώς 'saves' (σῴζει, 647b4) us in many respects. One of these is war: for victory in war and preservation (σωτηρία) are not only motivated by θάρρος in the face of the enemy (θάρρος as confidence is here a stand-in for ἀνδρεία, martial bravery), but *also* by the fear of being a coward in the eyes of one's friends (φίλων δὲ φόβος αἰσχύνης πέρι κακῆς, 647b7).[83]

The virtue of αἰδώς is a kind of fear: it is the fear of incurring the disapproval of others. By presenting αἰδώς as a kind of fear,[84] the Athenian uses the rhetoric of φόβος and θάρρος that characterizes the Spartan-Cretan outlook. This allows him to effectively address and criticize the moral perspective of his two interlocutors, for now that αἰδώς has been introduced besides θάρρος ('confidence', used as an alternative for ἀνδρεία, 647b6), the valuation of θάρρος changes: pitched against αἰδώς, it becomes plain that θάρρος is in fact not a virtue, as Cleinias and Megillus hold: it is, in terms of the puppet image, one of the two irrational cords (θάρρος as the δόξα of future pleasures). The problem with θάρρος-ἀνδρεία, and the reason why it is opposed to λογισμός-αἰδώς, is that θάρρος can lapse into *over*confidence.[85] We can see this in 649c3–4, where it is not θάρρος but ἀνδρεία itself that is put on a par with fearlessness (ἀφοβία) (ἐπειδὴ δὲ τήν τε ἀνδρείαν καὶ τὴν ἀφοβίαν ἐν τοῖς φόβοις δεῖ καταμελετᾶσθαι).

The ambivalence inherent in θάρρος forces the interlocutors to reassess the value of ἀνδρεία – one may go to excess in being courageous, and therefore, ἀνδρεία does not suffice as a virtue. Having construed θάρρος as the opposite of λογισμός in the image of the puppet, the Athenian can now dismiss the Cretan-Spartan conception of virtue and once more affirm the inferiority of θάρρος-ἀνδρεία. This argument not only creates room for a broader conception of virtue than ἀνδρεία, it also marginalizes ἀνδρεία itself. Here αἰδώς is motivated by the fear of the rebuke of others and *replaces* ἀνδρεία as the core virtue.[86] This effect is enhanced because

82 *Leg.* 647a10–b1. Likewise, Schöpsdau 1986, 107 notes, "Wenn die αἰδώς in der Furcht besteht, durch schlechtes Tun oder Reden in den Ruf eines κακός zu geraten, so muß das θάρρος als deren kontradiktorischer Gegensatz (ἀν-αίδεια) in der Mißachtung der δόξα bestehen, was durch 701a8–b2 bestätigt wird".

83 See Cairns 1993, 382–384 (*contra* Fortenbaugh 1975, who situates αἰδώς and αἰσχύνη in the λογιστικόν) and Wilburn 2013 for the association between αἰδώς and the θυμοειδές in *Republic*. Wilburn 2013 sees the prominence of αἰδώς in *Laws* as proof that that *Laws* continues to endorse the idea of the tripartite soul.

84 For αἰδώς as a kind of fear, compare the examples from Greek tragedy discussed in Cairns 1993, 354.

85 Apuleius' explanation of Platonic *fortitudo* as the middle between *audacia* and *timiditas* (*De Plat.* II, 5) is possibly influenced by the argument of *Laws* Book I. Apuleius' description of courage provoked Siniscalco 1981, 98, n. 15, to remark that it is "weniger platonisch als aristotelisch".

86 The passage on ἀνδρεία and αἰδώς has sometimes been assumed to correspond to the idea that the virtues of ἀνδρεία and σωφροσύνη *need* each other: Görgemanns 1960, 118; Cairns 1993, 374, n. 90. In *Statesman* 310c9–311c6 the Stranger claims that the fabric of the good state must combine the two qualities of courage and self-restraint as the warp and woof. Therefore, the good statesman is to make sure that he does not create citizens in whom one of these elements

αἰδώς itself now also comes to include the capacity for ἀνδρεία, since the fear of being a coward in the eyes of one's friends is deemed more effective than anything else in securing victory in war. The desired result of victory itself is ascribed to a large extent to αἰδώς, although the role of θάρρος is not entirely ignored.

The praise of αἰδώς and the devaluation of θάρρος go a long way towards the suggestion that virtue consists in the right measure.[87] This is reminiscent of Aristotle's notion of κακία as ὑπεροχή or ὑπερβολή (as opposed to ἔλλειψις), and ἀρετή as the right measure more than it is of Plato's own *Republic*.[88] The idea that αἰδώς is opposed to θάρρος and that ἀνδρεία is opposed to φόβος (in the sense of cowardice) adumbrates a notion of virtue conceived of as moderation and the right measure. Yet the language of ἀρετή and κακία in the puppet image suggests that Plato is trying to avoid speaking about virtue as something that differs from vice merely in degree, and that he maintains his characteristic claim that there exists a qualitative distinction between ἀρετή and κακία. In the myth of virtue, Plato had explicitly spoken of a 'boundary' that *separates* ἀρετή from κακία: οὗ δὴ διωρισμένη ἀρετὴ καὶ κακία κεῖται (644e4).[89] The representation of θάρρος and φόβος as 'cords' seems in line with this idea; also, the isolation of the faculty of λογισμός in the puppet image was motivated by the idea that the λογισμός in the city was already given in the form of law (and the individual's λογισμός is that faculty that enables him to obey it).

The centrality of αἰδώς in a Platonic text is also noteworthy in itself. A closer look at αἰδώς shows how far this is from the notion of ἀρετή assumed in other Platonic dialogues. As Cairns notes, in Greek culture, αἰδώς and αἰσχύνη have an "intimate relationship with conventional values and social disapproval"[90] and are

becomes too strong. Yet the trains of thought in *Statesman* and *Laws* are fundamentally different. In this phase of the discussion in *Laws*, the Athenian is developing a general conception of complete virtue, which is labelled αἰδώς in the present passage. This complete virtue comes to *replace* the criticized Cretan-Spartan notion of virtue as ἀνδρεία.

87 *Pace* Frede 2010, who on the basis of the distinction between two kinds of fear (646e4–647a1) concludes, no doubt under the influence of *Republic*, that "Plato's education does not aim for the 'right mean' between defect and excess of the same affection. Instead, there are right and wrong kinds of pleasure and pain" (120).

88 In Book II.6–9 of the *Nicomachean Ethics*, Aristotle argues that virtue is an intermediate (μεσότης) between two extremes. In *NE* III.6–7, the virtue of courage is the intermediate state in relation to fear and boldness (μεσότης … περὶ φόβους καὶ θάρρη, 1115a1–2; cf. 1116a10–11); the same argument is made in *EE* III.1. In *NE* III.8, 1116a17–29 Aristotle distinguishes a 'political courage' (ἡ πολιτικὴ *sc*. ἀνδρεία). This kind of courage arises through shame and a longing for the fine, and through avoidance of reproach as something shameful (δι' αἰδῶ γὰρ καὶ διὰ καλοῦ ὄρεξιν (τιμῆς γάρ) καὶ φυγὴν ὀνείδους, αἰσχροῦ ὄντος, 1116a28–29). Cf. *EE* III.1, 1229a11–13, ἔστι δ' εἴδη ἀνδρείας πέντε (…). μία μὲν ἡ πολιτική· αὕτη δ' ἐστὶν ἡ δι' αἰδῶ οὖσα. In *NE* III.10, σωφροσύνη is defined as an intermediate state relating to pleasure.

89 Cf. *Leg*. 645b8–c1. Cf. also Schöpsdau 1994, 232, *ad* 645b8–c1.

90 Cairns 1993, 354–355. The role of αἰδώς in *Laws* is thus very similar to its role in Protagoras' ethics (to the extent that it can be reconstructed; see for a particularly promising attempt Beresford 2013, as a form of ethical naturalism, which "implies that our intelligence is something that we have because it is a mechanism of survival. *We think in order to live*", 147 (emphasis in original)). See for the role of αἰδώς in the Protagoras myth Cairns 1993, 354–360. He argues that the social virtues, including αἰδώς, are imparted in the process of socialization and insists that the "stress on education and emulation" suggests that "citizens internalize the values im-

associated with fear of punishment. He finds that in *Laws* αἰδώς appears in "thoroughly traditional guise", in that it has affinities with traditional accounts of αἰδώς "which stress the external sanctions of punishment and popular opinion and advocate deference to human and institutional authority".[91] The conventional character of αἰδώς is significant because to a large extent it eclipses a discrimination between concern for others' opinions and concern for those of the truly wise, a distinction that we find so often asserted elsewhere in the Platonic corpus.[92] When we recall that in *Crito* Socrates *denies* that shame (αἰσχύνη) and popular opinion (δόξα) are relevant motivations for action compared to what is truly just to do, and refuses to be persuaded by the arguments of his friends, it seems particularly remarkable that in this context in *Laws* the Athenian equates αἰδώς with the rational faculty, which earlier on had been identified as λογισμός.[93] The startling aspect of this is that the norm in *Laws* turns out to consist in the social pressure exerted by esteem (ἔπαινος) and disapproval (ψόγος), 'praise' and 'blame';[94] and it seems significant that the preambles appeal especially to considerations of praise and blame, as has often been recognized. In retrospect, we can see that this was also implied by the double role of λογισμός in the puppet image: the individual's λογισμός is 'assisted' by the pressure of the κοινὸν δόγμα of the *polis*. The idea of a κοινὸν δόγμα ('shared belief') stresses the undesirability of opinions or actions that deviate from this norm: in an environment of such rigorous social discipline the fear of embarrassment is a powerful motivation and shame is already a form of punishment. The κοινὸν δόγμα is one more indication of the overriding importance accorded to social control in Plato's last work.

The importance of external pressure as a motivation explains why virtue is couched here predominantly in terms of αἰδώς, pushing the more conventional (in a Platonic text) terminology of σωφροσύνη somewhat into the background.[95] Virtue is self-directed inhibition based on the vulnerability of one's image in the eyes of others and on a self-conscious sensitivity to other people's judgments: it is the wish

parted in the process of education" and that therefore Protagoras "cannot be said to believe that morality is maintained by external sanctions alone" (358–359).

91 Cairns 1993, 376.

92 Cf. Cairns 1993, 378.

93 *Crito* 44c1–9. Chapter Two has offered a reading of the Athenian laws' speech in *Crito* as Socrates' apology for his choice *to his φίλοι* in a speech that does endorse the value of φιλία and solidarity, but professes a different priority in his loyalty. This higher φιλία transcends the loyalty to his human friends. In *Gorgias*, αἰσχύνη disqualifies an interlocutor in dialectic, 482e6–483a1, 487a5–b2, 494c5; ἀναισχυντία is, philosophically speaking, desirable.

94 Cf. Gigon 1954, 228, noting that the idea that the "Waffen" of the lawgiver are τίμη and ἀτιμία is a blatant contradiction to earlier Platonic thought: "Wenn hier [*i. e.* in *Laws*] der Bürger durch τιμή zum rechten Handeln veranlaßt wird, so ist dies ein Vorgehen, das zwar allgemein griechischem Denken entspricht, mit der platonischen ἐπιστήμη τοῦ ἀγαθοῦ aber völlig inkommensurabel ist". For the importance attached to αἰδώς in Books I–II, we may compare the importance attached to 'esteem', τιμή, in the laws of the interlocutors, for example as institutionalized in the competitions in virtue: 730d2–731b3, 964b4–5. Wilburn 2013, 73–75 and 83–87 argues for the importance of esteem-related considerations in *Laws* as part of his argument for the existence of the θυμοειδές in *Laws*.

95 See *Leg*. 648d1–e7 for σωφροσύνη as self-training in private or in the company of others.

to protect this self-image out of the fear of compromising it by disgracing oneself. The use of the term αἰδώς implies that the primary motivation for virtue is external: "one is driven to focus on oneself and one's own status or self-image as a result of a certain focus on a significant other, before whom one is 'abashed'".[96] This also explains the value attached to the sentiment of φιλία: the existence of φιλία among the citizens makes the αἰδώς even more powerful: one can be abashed in front of strangers, but the sentiment is even stronger if one fears being disgraced in front of one's associates.[97]

The outcome of the argument is thus that Cretan-Spartan institutions such as the *gymnasion* and *syssition* are replaced by the *symposion* as the training ground for virtue. The *symposion* offers a twofold ὠφελία, because this training at the same time allows the symposiarch to observe people's behaviour and test their virtue.[98] Plato has the Athenian quasi-seriously sum up the benefits of drunkenness: it is a 'touchstone' (βάσανος) for people's moral quality and unrivalled in cheapness, safety and speed (τό τε τῆς εὐτελείας καὶ ἀσφαλείας καὶ τάχους διαφέρειν πρὸς τὰς ἄλλας βασάνους, 650b3–4).[99] This requires some degree of freedom: self-restraint implies the risk that people *fail* to restrain themselves.[100] Nevertheless, though the *symposion* still involves a certain risk that things may get out of hand, in contrast to war it is a relatively safe environment for testing virtue. The *symposion* is a form of play (παιδιά, 649d9, 650a6), because the risks are comparatively minor; if things do go wrong, the consequences are far less grave than in other possible environments of practice. In comparison, testing the disposition of a discontented and coarse man by entering into money transactions with him is much more risky than associating with him and being able to observe him drunk (συγγενόμενον μετὰ τῆς τοῦ Διονύσου θεωρίας, 650a1–2) – likewise, it is much more dangerous to entrust one's own daughters, sons and wife to a person liable to act on sexual impulses, which would involve exposing one's loved ones to such a dangerous character.[101]

96 Cairns 1993, 2–3. But see below, p. 101.

97 Cf. Schöpsdau 1986, 110, n. 28: φιλία is "konstitutiv für die αἰδώς": "je enger die Freundschaft unter den Bürgern, desto stärker ist der verpflichtende Charakter des αἰδώς".

98 Cf. *Leg*. 649d9: τῆς ἐν οἴνῳ βασάνου καὶ παιδιᾶς. The *symposion* allows insight into the nature and condition of the souls, τὸ γνῶναι τὰς φύσεις τε καὶ ἕξεις τῶν ψυχῶν (650b6–7); cf. 652a2–3, τὸ κατιδεῖν πῶς ἔχομεν τὰς φύσεις. "To the connoisseur, the parallelism with dialectics is striking: in the same way as dialectics is a test for the truth of a statement (…), the consumption of wine is a test for the quality of the soul itself", Van Raalte 2004, 306.

99 Cf. *Leg*. 649d7–e2: τούτων δὲ εὐτελῆ τε καὶ ἀσινεστέραν πρῶτον μὲν πρὸς τὸ λαμβάνειν πεῖραν, εἶτα εἰς τὸ μελετᾶν, πλὴν τῆς ἐν οἴνῳ βασάνου καὶ παιδιᾶς, τίνα ἔχομεν ἡδονὴν εἰπεῖν ἔμμετρον μᾶλλον, ἂν καὶ ὀπωστιοῦν μετ' εὐλαβείας γίγνηται; 'And if we're looking, first to find, and then to make use of, a cheap and relatively harmless test of these things, what pleasure can we suggest that is more proportionate – provided it is operated with a modicum of caution – than this touchstone (and entertainment) afforded by wine?' (Transl. Schofield & Griffith)

100 Freedom (ἐλευθερία) is listed as one of the purposes of νομοθεσία in *Leg*. 693c7–8, d8, 694b6, 701d8.

101 *Leg*. 649e2–650a5.

3.1.5 Synopsis: what the argument of the *symposion* implies about ἀρετή

Now that the criticism of ἀνδρεία as the core virtue and the substitution of αἰδώς for ἀνδρεία have come full circle, we may adopt a synoptic viewpoint and reflect on the kind of virtue trained in the *symposion*, especially in comparison with δικαιοσύνη in Plato's *Republic*. What kind of 'scenario' of virtue does the *symposion* imply? What conception of virtue is implied by the idea that virtue can be trained in the context of the institution of the *symposion*? Is there any suggestion that virtue consists in τέχνη or expert knowledge?

The fundamentally social nature of the *symposion* has already been noted. The *symposion* is a social 'gathering' or 'community' (ὁμιλία, κοινωνία, συνουσία) of 'friends' (φίλοι).[102] The *symposion* as a friendly ὁμιλία is opposed to the hostile ὁμιλία of war (πόλεμος). Whereas the goal of the *symposion* is the intensification of φιλία and φιλοφροσύνη (benevolence), the latter aims at mutual destruction.[103] Thus, virtue emerges as friendly, rule-conform and non-aggressive behaviour: the sort of behaviour conducive to the cohesion of the symposiasts. The *symposion* allows φιλία and φιλοφροσύνη to emerge as the conditions upon which the preservation of the group as a whole depends: social behaviour is normative because its opposite compromises the continued existence of the community. This is consistent with the premiss that the preservation and self-preservation of the group as a whole is the key to virtue, introduced at the very beginning of the discussion.[104]

It is now evident that the norm determining what is labelled κακόν and καλόν is a comparatively *pragmatic* norm: it is what contributes to social stability and the preservation of the group. The *symposion* does not represent a social order based upon the recognition of a transcendent norm like the Idea of the Good. Rather, virtue is viewed in terms of adherence to the rules and the limits imposed on acceptable behaviour. The same pragmatic norm was already subscribed to by the interlocutors' preference of the arbiter who reconciles the different parties in a family feud.[105] The notion of ἀρετή remains largely implicit and is much less clearly defined than in *Republic*; roughly, it is 'that which is conducive to the σωτηρία of

102 The *symposion* as a social gathering: μίαν τινὰ συνουσίαν (639d3); σύνοδοι and κοινωνία (640a4); [ὁμιλία] φίλων δ' ἐν εἰρήνῃ πρὸς φίλους κοινωνησόντων φιλοφροσύνης (640b7–8); συνουσία (…) μετὰ μέθης (640c1–2); περί γε συνουσίας (640c9); διὰ τὴν τότε συνουσίαν (640d2); τὴν ἐν τοῖς οἴνοις κοινὴν διατριβήν (641c8–d1); ἐν τῇ κατ' ὀρθὸν χρείᾳ τῆς ἐν οἴνῳ συνουσίας (652a4–5); πᾶσαν τὴν συνουσίαν (672a1). The *symposia* ought to cement its participants to each other instead of setting them on bad terms, which is the effect of the *symposia* in their current form, *Leg*. 671e5–672a3; cf. 638c2–e3. "Pflege der Freundschaft galt seit je als Zweck des Symposions", Schöpsdau *ad* 640b6–8, with references. The term συνουσία in Plato is the standard term to refer to a philosophical congregation, or the coming together of of a teacher and pupil, e. g. *Prot*. 337b3, 338c7; cf. [Pl.] *Epist.* VII, 341c6.

103 Φιλία is explicitly identified as one of the goals of lawgiving in *Leg*. 693b4, c3, c7, e1, 694b6, on a par with ἐλευθερία and φρόνησις. Cf. n. 100 above. For φιλοφροσύνη see *Leg*. 640b8, cf. 628c11.

104 See above, pp. 79–80.

105 *Leg*. 627d11–628a5; see for this passage above, p. 80.

the community', αἰδώς, φιλία.[106] This pragmatism is grounded in naturalism: it is pragmatism because it looks at the consequences of behaviour for the cohesion of the group as a whole. It is grounded in naturalism because this pragmatism reflects the idea, reminscent of Aristotle, that it is the best way of life because living in a harmonious *polis* is the *natural way* for human beings to live.

The pragmatic bend of *Laws* – the emphasis on the avoidance of the consequences of hostility – and the prominence of αἰδώς emphasize the importance of correct *behaviour*. This external perspective is notably different from the idea of ἀρετή as the hierarchy of soul-parts in *Republic*. As Cairns concludes in his discussion of αἰδώς in *Laws* Books I–II, "In all this there is no explicit suggestion that *aidōs* involves anything more than fear of disgrace or inhibition before more powerful or august forces, and much that suggests that it does not. Much of the *Laws*, indeed, seems designed to foster concepts of honour which focus on the outward aspect of actions and encourage conformity rather than commitment". Yet virtue in *Laws* is not only decorous behaviour motivated by the fear of incurring disgrace, as Cairns goes on to observe: "the great stress on education and habituation in the work suggests that individuals would actually internalize their values of the honourable and the shameful" and "it is acknowledged that some people at least are not deterred from wrongdoing by external sanctions alone".[107]

Laws thus combines a conception of ἀρετή as decorous behaviour with an attempt to penetrate beyond the surface of mere outward behaviour. This it does by conceiving of ἀρετή in terms of a person's 'character' or 'disposition'. As such, *Laws* deviates from texts like *Gorgias*, *Republic*, and *Phaedrus*, which conceive of ἀρετή in terms of the soul (ψυχή) (or the order of the parts of it).[108] Terms like ἕξις, τρόπος, or ἦθος, all roughly 'disposition', are prominent in the discussion of virtue in *Laws* and on a par with ψυχή. The stress on character is understandable in the light of *Laws*' conception of ἀρετή as the result of training in a skill: in contrast to ψυχή, notions such as ἕξις, τρόπος, and ἦθος leave room for gradual development and changes.[109] To conceive of ἀρετή on the level of ἕξις is thus in line with the

106 Speaking of '*the* norm' (as I have done in the Introduction for the sake of clarity, in 'what is the norm for the laws?') may even suggest too much uniformity here, where no single system exists.

107 Cairns 1993, quotes from 376 and 377. *Laws* thus still to some extent shares the Socratic-Platonic tendency to "locate virtue at the 'background' level of the 'state of the soul' that 'explains' virtuous behaviour, rather than on the 'foreground' level of the virtuous behaviour itself", Rademaker 2005, 296. However, there is the difference that the predominant terms for this "background" in *Laws* are 'disposition' and 'character' rather than 'soul'. The term ψυχή is used in a less technical sense in *Laws* than in those texts in the Platonic corpus that assume a tripartite (or bipartite) soul. Ψυχή in *Laws* does not denote an entity consisting of parts, analogous to a ζῷον, but a bearer of a particular ἕξις or ἦθος.

108 Cf. Cairns 1993, 373–378: "*Aidôs*/*aischunê* are here [in *Laws*] persistently related to fear of the external sanction of disgrace, but the creation of a sense of *aidôs* which can withstand the influence of alcohol also suggests the acquisition of an *instinctive disposition* towards self-control; (…)".

109 As is argued in Chapter Four, pp. 125–126 below, it seems that to some extent Plato uses relics of a more 'traditional' Platonic terminology in a changed, underlying moral framework. In the case discussed in Chapter Four, we encounter the traditional phrase ἀρετὴ τῆς ψυχῆς only to

Athenian's definition of *paideia* as a kind of training, which implies stages of a process and involves a much more dynamic picture of virtue.[110] The notion of 'disposition' assumes the place that the more technical conception of the soul (as consisting of parts) has in other Platonic texts. The notion of soul, due to its conceptual inheritance in the Platonic corpus, is much less compatible with the idea of training than character and therefore not very prominent in Books I–II.

This leads us to another difference between *Republic* and *Laws*: the *symposion* implies a much more homogeneous notion of virtue than the city of *Republic*. The *symposion* leaves no room for the strict and clear-cut separation of the virtues that is asserted in the dialogues that discuss the unity and plurality of virtue such as *Protagoras* and *Republic*.[111] Concominantly, the image of the society that the *symposion* evokes is much more egalitarian. The order of the *symposion* is that of taking turns (the rule is 'to the right'). Again, this is a notable contrast with the strict class system of *Republic*, which is the essence of δικαιοσύνη (analogous to the order of a ζῷον).[112] *Laws* is very far away from the idea of a good *polis* as that in which each person πράττει τὰ αὑτοῦ, resulting in a *polis* with δικαιοσύνη as its defining characteristic and implying at the same time a strict separation of the virtues and a hierarchic class system. The more homogeneous notion of virtue is mirrored in a much more social and communicative society than the just society of *Republic*: people have to coexist peacefully, and virtue is the quality that enables them to do so. Another aspect of this egalitarian picture is that every human being is, *qua* human, not only qualified to become virtuous, but also to assess other people's moral quality. It implies that virtue can be identified and examined by means of a practical test, the results of which are visible to all. All of these characteristics of virtue as a fundamentally social quality that can be improved by training in society – socialization – entail a more optimistic view of the human capacity for virtue than a conception of virtue as the prerogative of that rare bird – the moral expert.[113] This should be noted, as *Laws* has a reputation for offering a distinctly pessimistic view of human nature. The evidence presented in this chapter, however, suggests otherwise.

A further point to note is that the *symposion* presupposes a more commonsense conception of well-being than *Republic*, where it is assumed that most people are

find that it can be influenced and shaped by a host of different factors, including acquisition, habituation, desire and opinion.

110 See also below, section 3.2; cf. Chapter Five, pp. 158, 161.

111 But see below, section 3.2.2: the *symposion itself* is part of a process of *paideia* articulated in different phases.

112 See section 2.2.3.2, Chapter Two, pp. 65–66.

113 For a different view, see Tecuşan 1990, who compares *Laws* I–II to *Protagoras* 347c3–348a9 and concludes that Plato's attitude towards the *symposion* in *Laws* reflects a "change towards the irrational" and regards the *symposion* as an expression of Plato's increased pessimism; the Athenian has "no such radiant confidence in man's rationality" (260). See also Murray 2013, "The change that comes about in the *Laws* is not a change in the definition of pleasure but part of a fundamental reassessment of human nature and the realisation that human beings are so imperfect that they cannot be controlled through persuasion alone: they must also be trained in the proper use of their desires" (111).

ignorant of what truly affords them the most pleasure.[114] In *Laws*, well-being and the good of society are not given by a fixed higher norm that is imperceptible for large sections of the citizenry. It is what human beings, *qua* human beings, find pleasant: peace and harmony. The awareness of the norm is not *expert* knowledge, as the prerogative of a small section within society, but a much more vague 'feeling for' what constitutes good social behaviour. The claim is that this feeling for what is appropriate can become more sophisticated through training and eventually develop into a full-blown rational faculty (see below, section 3.2). There is no suggestion that some people are by nature more prone to act on the basis of pleasure and therefore belong to a different class – in contrast to *Republic*, where people of different classes have different *kinds* of ἀρετή, and virtue depends on one's social function and position in the city.[115]

The more homogeneous conception of virtue and the absence of a class system do not, however, exclude differences in virtue altogether. Yet these distinctions are not distinctions *between* different virtues, at least not within the *symposion*. The *symposion* tests people's moral quality, but this test presupposes differences in degree rather than differences between *kinds* of people (as Callipolis does). The *symposion* implies a division of roles, such as speaking and drinking in turn, but such a division does not reflect different virtues and serves a solely practical purpose: to avoid irregularities. The distinctions are differences in the *command of the skill* to be trained. They are differences in degree rather than different qualities. Though the scenario of the *symposion* does not rule out the possibility that there exist differences in natural aptness, in any case it does not assume insurmountable inequalities between people, as a theory of different soul types does.

In *Laws* Book I, Plato has introduced the notion of *paideia* as the training in the acquisition of a skill. In Book II, he uses his Socratic-Platonic idiom of the four ἀρεταί to create the suggestion of a division into phases. In this way, each ἀρετή is related to a specific age group, and to a different stage of *paideia*. It is to this analysis of *paideia* that we will now turn.

3.2 SETTING THE SCENE II: THE FOUR VIRTUES AND THE PHASES OF *PAIDEIA*

3.2.1 The earliest *paideia*

In order to investigate whether revealing people's φύσεις is the only positive aspect (ἀγαθόν) of the correctly conducted *symposion* or whether it also offers some kind of *benefit* (τι μέγεθος ὠφελίας),[116] the interlocutors now return to 'the correct edu-

114 Cf. Chapter Two, pp. 45–46.

115 But see below, section 3.2, where the relevant differences are differences in age.

116 *Leg.* 652a1–5. The Athenian claims that it does, at least, that is what the λόγος apparently wants to make clear (ὡς ὁ λόγος ἔοικεν βούλεσθαι σημαίνειν, 652a5–6). They must hear how it does (ὅπῃ δὲ καὶ ὅπως, 652a6) and pay attention that they are not entangled by the λόγος (μή πῃ παραποδισθῶμεν ὑπ' αὐτοῦ, 652b1). This is again good Socratic usage. The discussion is somewhat repetitive, as the Athenian remarks in 659c9–d4.

cation', ἡ ὀρθὴ παιδεία, which the Athenian briefly discussed before.[117] The Athenian now conjectures (τοπάζω) that the *symposion* is the 'salvation' (σωτηρία) of this correct education.[118] To explain this idea, he proceeds to define what he means by the correct education.

In an earlier section of the discussion, the process of training in virtue was likened to acquiring a skill, and therefore is assumed to have an endpoint.[119] The Athenian now distinguishes two phases of that process and in the course of this develops a specific notion of *paideia*.[120] Although the entire process of training in virtue right until the end can be called *paideia*, here he wants to reserve that term for the earliest phase of that process (παιδείαν δὴ λέγω τὴν παραγιγνομένην πρῶτον παισὶν ἀρετήν, 653b1–2; cf. 653c2–4).[121] This earliest *paideia* (τῶν παίδων παιδικὴν … πρώτην αἴσθησιν, 653a5–6) is the perception of pleasure and pain, ἡδονή and λύπη. Pleasure and pain have to be conditioned: children have to be taught right from the beginning to hate what must be detested and to like what must be welcomed (μισεῖν μὲν ἃ χρὴ μισεῖν εὐθὺς ἐξ ἀρχῆς μέχρι τέλους, στέργειν δὲ ἃ χρὴ στέργειν, 653c1–2). In a thematically closely related passage, Book XII, 963e1–8, the term used for this earliest phase of virtue is not *paideia* but ἀνδρεία (963e2, 4). That this term is not used here in Book II is probably because the whole purpose of the discussion of Book I was to remove the focus from ἀνδρεία. It seems that Plato did not want to reintroduce the term again in this context so as to avoid confusion. In the context of Book XII, however, the way is free for applying ἀνδρεία to the earliest phase of virtue. Both in 653a7 and in Book XII φρόνησις is associated with the later phase of virtue, the virtue of elderly people.

117 In *Leg*. 643b4–644b4. See above, pp. 86–87.

118 *Leg*. 653a1–3: τούτου [*sc*. of the ὀρθὴ παιδεία] γάρ, ὥς γε ἐγὼ τοπάζω τὰ νῦν, ἔστιν ἐν τῷ ἐπιτηδεύματι τούτῳ καλῶς κατορθουμένῳ σωτηρία.

119 *Leg*. 643b4–d3; see above, pp. 86–87.

120 This is a complex passage, cf. Schöpsdau *ad loc*., 256–257. According to the reading defended here, the Athenian is concerned with an issue of definition. In 653a1, he has announced that he will define what he means by 'the correct education', ἡ ὀρθὴ παιδεία. First, the Athenian notes that ἀρετή can be used for different cases: it can be used for the virtue in children (παιδικὴ αἴσθησις) and for the virtue of senior people (φρόνησις and firm δόξαι). Having distinguished between these phases of virtue, he now wants to confine παιδεία to the ἀρετή of children for his particular purposes, that is to say, to correctness in pleasure and pain that precedes λόγος. It is this demarcation with which the Athenian is concerned in *Leg*. 653b6–c4: (…) τὸ δὲ περὶ τὰς ἡδονὰς καὶ λύπας τεθραμμένον αὐτῆς [*sc*. ἀρετῆς] ὀρθῶς ὥστε μισεῖν μὲν ἃ χρὴ μισεῖν εὐθὺς ἐξ ἀρχῆς μέχρι τέλους, στέργειν δὲ ἃ χρὴ στέργειν, τοῦτ' αὐτὸ ἀποτεμὼν τῷ λόγῳ καὶ παιδείαν προσαγορεύων, κατά γε τὴν ἐμὴν ὀρθῶς ἂν προσαγορεύοις. 'But that part of it [*sc*. ἀρετή] that is nurtured correctly and has to do with pleasures and pains, so that we hate what we ought to hate right from the beginning till the end, and love what we ought to love – when you isolate that in speech (or: 'by a term') and call it 'education', you will, in my opinion, give it its correct name' (Transl. MB). This concludes what the Athenian announced in 653b1–2, παιδείαν δὴ λέγω τὴν παραγιγνομένην πρῶτον παισὶν ἀρετήν. For the interpretation of αὐτῆς in 653b7 as referring to ἀρετή, cf. Schöpsdau 1994, 257, *ad* 653b6: for clarification of the correlation between σύμπασα μέν and τὸ δὲ … αὐτῆς "[scheint es] am sinnvollsten, den Genitiv αὐτῆς als partitivus auf die Tugend zu beziehen".

121 Cf. Chapter Six, pp. 193–194.

The conditioning and habituation of pleasure and pain are distinguished from the later phase of *paideia*, in which a person has acquired λόγος.[122] The second phase is characterized by the presence of reason (λόγος), and correctly trained pleasures and pains will then accord with it (here again we may think of the puppet image). Λόγος is a precondition (albeit not a sufficient one) for 'firm, true convictions' (ἀληθεῖς δόξαι βέβαιοι) and 'insight' (φρόνησις),[123] 653a7–b1:

> φρόνησιν δὲ καὶ ἀληθεῖς δόξας βεβαίους εὐτυχὲς ὅτῳ καὶ πρὸς τὸ γῆρας παρεγένετο· τέλεος δ' οὗν ἔστ' ἄνθρωπος ταῦτα καὶ τὰ ἐν τούτοις πάντα κεκτημένος ἀγαθά.
>
> But insight and unshakable true opinions are a fortunate thing for the person who acquires them, even if it comes to him towards old age. A man who possesses them, and all the good things they entail, is complete. (Transl. MB)

The Athenian uses another virtue-term, φρόνησις, to describe the final, mature phase of *paideia*.[124] Once there is λόγος, the correctly trained ἡδοναί and λύπαι will turn out to be in concord (συμφωνία) with it. In terms of the puppet image, λόγος is apparently a stronger form of λογισμός; in terms of the *symposion*, what is here called λόγος is the equivalent of αἰδώς.

Here we witness an important argumentative manoeuvre: the Socratic terminology of the four virtues in *Laws* becomes associated with *age*. The term ἀνδρεία is applied to the first phase of *paideia*; the term φρόνησις (and βέβαιοι, ἀληθεῖς δόξαι) to the last. This suggests the existence of more or less clear distinctions between different phases of this process.[125] In the passage in Book XII just mentioned, the ἀρετή of children is labeled ἀνδρεία, and the final stage of ἀρετή, for which λόγος is a prerequisite, is φρόνησις. By identifying only the beginning and the end of this

122 *Leg.* 653b2–4: ἡδονὴ δὴ καὶ φιλία καὶ λύπη καὶ μῖσος ἂν ὀρθῶς ἐν ψυχαῖς ἐγγίγνωνται μήπω δυναμένων λόγῳ λαμβάνειν, λαβόντων δὲ τὸν λόγον, συμφωνήσωσι τῷ λόγῳ …. 'When pleasure and affection, pain and hatred well up correctly in the souls of those who are not yet capable of grasping these with reason, and then, when they have come to possess reason, these [affections] will accord with reason (…)' (Transl. MB).

123 In *Leg.* 653a8 it is said of φρόνησις and ἀληθεῖς δόξαι βέβαιοι that these are εὐτυχὲς ὅτῳ καὶ πρὸς τὸ γῆρας παρεγένετο, 'a fortunate thing for the person to whom they come, even if that is in old age'. This implies that φρόνησις and βέβαιοι δόξαι are firmly connected to old age – that is, the final phase of *paideia* in which the skill of virtue is mastered (and therefore not really a phase *of paideia* anymore). γῆρας is as it were a necessary condition for these to take hold. However, old age is not a sufficient condition: φρόνησις and βέβαιοι δόξα do not come automatically with γῆρας. Tantalizingly, we are not told what the occurrence of these depends upon other than old age. That it is called εὐτυχές when they do should not be interpreted, as it is almost always done (witness most modern translations), as entailing that the acquisition of φρόνησις depends on luck. The term εὐτυχές simply signals that it is a good thing for the person involved.

124 Most interpreters (for example Wilburn 2013, 96) have focused on how this passage fails in making clear that the citizens will really *learn* anything. This, however, misrecognizes that virtue in *Laws* is not conceived in terms of expert knowledge and, secondly, that the perspective in 653a5–c4 is not on the citizens' failure to acquire knowledge, but on the *link* between the virtues and age. For the gerontocratic nature of *Laws*' society, see Campbell 1981, 429; Samaras 2010, 172, n. 3; Bartels 2012.

125 Age distinctions were an important element in Doric paideutic traditions and characteristic of Spartan *paideia*, see Nilsson 1912 (reprinted in Christ 1986*a*, 205–225); for age distinctions in the social and educational practices in Crete, see Willetts 1955, 17.

process, the suggestion is that the four ἀρεταί can be mapped onto the process of *paideia*.[126] We will see below that the introduction of four age groups (the three choruses plus the story-tellers) exploits this suggestion. By dividing *paideia* into phases during the human life span, Plato can maintain the suggestion that the virtues are still distinct. Yet the image here is notably different from that in *Republic*; for instance, φρόνησις in *Laws* Book II is conceived of as συμφωνία,[127] the concordance between perception and reason, an idea that is not compatible with the idea that virtue consists in the hierarchy of soul parts. At the same time, by identifying only the initial and final phase of that process, Plato can forgo having to be more specific about the exact circumstances of the manifestation of λόγος.

What exactly does the earliest *paideia*, the conditioning of pleasure and pain in children, consist of? In order to explain how this works, the Athenian first gives a biological sketch of young animals in general, and subsequently isolates the human species. All young creatures (τὸ νέον ἅπαν, 653d7) have a natural inclination to make uncontrolled sounds and movements.[128] They lack physical self-restraint (τοῖς τε σώμασι καὶ ταῖς φωναῖς ἡσυχίαν ἄγειν οὐ δύνασθαι, 653d7–8). They are always leaping and jumping – as if engaging in some sort of chorus-dance (οἷον ὀρχούμενα, 653e2) – and producing all kinds of sounds.[129] Unique to human children among the ζῷα[130] is their capacity to perceive the difference between order (τάξις) and disorder, 'rhythm' being the name for order in the sphere of movement and 'harmony' for order in the sphere of the voice.[131] The education of children therefore consists in teaching them to feel ἡδονή for what ought to be enjoyed, and λύπη for what ought to be detested: to like order (here, music) and to dislike disorder.[132] To this end, they have to join in χορεία, which consists of both singing (orderly movement of the voice) and dancing (orderly movement of the body). Children's willingness to participate in χορεία has its source in pleasure, an idea

126 Cf. Chapter Six, pp. 193–194.

127 For φρόνησις as συμφωνία, cf. *Leg*. 689d4–5: πῶς γὰρ ἄν, ὦ φίλοι, ἄνευ συμφωνίας γένοιτ' ἂν φρονήσεως καὶ τὸ σμικρότατον εἶδος; Müller 1968 is also struck by the difference between *Republic* and *Laws* in this respect: "Das Wissen vom transzendenten Guten beherrschte und durchwirkte (…) in der P[oliteia] die Tugend. Wo ist es bei dem Verfall des Tugendsystems geblieben? Unter den Unklarheiten, die uns befremdeten, war dies die erstaunlichste, daß φρόνησις einer συμφωνία gleichgesetzt wurde und ihren Bezugspunkt zu verlieren schien" (21). On συμφωνία in music, see West 1992, 160; Barker 2000, 90.

128 *Leg*. 653d7–e5; cf. 673c9–d5.

129 Cf. *Leg*. 664e3–665a3.

130 Cf. *Leg*. 653d7–654a5, 664e3–665a6, 673c9–d5. A possible association for the reader of *Laws* familiar with Plato's works might be the Protagoras myth in *Protagoras*. In this myth, other living animals (τὰ … ἄλλα ζῷα, 321c4) are called ἄλογα (321c1) and man by implication has λόγος (for an explanation of this 'anachronistic' ascription of λόγος to the human race, see Nussbaum 1986, 100–106). *Leg*. 653c9–d1 is also reminiscent of the Protagoras myth.

131 For rhythm, see 664e8–665e1: τῇ … τῆς κινήσεως τάξει ῥυθμὸς ὄνομα εἴη. For harmony, see 665a1–3 τῇ … τῆς φωνῆς [*sc*. τάξει], τοῦ τε ὀξέος ἅμα καὶ βαρέος συγκεραννυμένων, ἁρμονία ὄνομα προσαγορεύοιτο.

132 For the argument that musical education addresses the spirited part of the soul, see Wilburn 2013, especially 72–82.

that receives support from an alleged etymological link between χορός ('chorus') and χαρά ('joy').[133]

Plato seems to have especially welcomed people's *intuitive* association of music with pleasure. The essence of music is order (τάξις), which manifests itself in rhythm and harmony, 653e3–5: τὰ μὲν οὖν ἄλλα ζῷα οὐκ ἔχειν αἴσθησιν τῶν ἐν ταῖς κινήσεσιν τάξεων οὐδὲ ἀταξιῶν, οἷς δὴ ῥυθμὸς ὄνομα καὶ ἁρμονία· 'All the other animals do not have the ability to perceive the forms of order in movements which we call by the name 'rhythm' and 'harmony', nor the forms of disorder' (transl. MB). This τάξις is natural[134] and can be perceived by every human being because of the inborn rational faculty in the human soul (even if rudimentary at birth).[135] The gods have given human beings 'the rhythmic and harmonic perception accompanied by pleasure' (τὴν ἔνρυθμόν τε καὶ ἐναρμόνιον αἴσθησιν μεθ' ἡδονῆς, 654a2–3), and are their fellow dancers.

The perception of order in the form of rhythm and harmony is a more primitive version of the very same capacity that may develop into a strong λογισμός and αἰδώς.[136] The implicit assumption seems to be that every human being can perceive that one interval is concordant while another is discordant. The αἴσθησις of rhythm and harmony accompanied by pleasure is a naturally present capacity for virtue, since it is the innate perception of rhythm and harmony that is automatically accompanied by pleasure.[137] From this it follows that musical or virtuous behaviour is suggested to be *naturally* correct for human beings *qua* human beings. Χορεία, which combines singing and dancing, is hence the cultivation of an already present natural sensitivity for and liking of order in movement (τάξις as ῥυθμός) and sound

133 *Leg*. 653e5–654a5 (Budé text): ἡμῖν δὲ οὓς εἴπομεν τοὺς θεοὺς συγχορευτὰς δεδόσθαι, τούτους εἶναι καὶ τοὺς δεδωκότας τὴν ἔνρυθμόν τε καὶ ἐναρμόνιον αἴσθησιν μεθ' ἡδονῆς, ἥδη κινεῖν τε ἡμᾶς καὶ χορηγεῖν ἡμῶν τούτους, ᾠδαῖς τε καὶ ὀρχήσεσιν ἀλλήλοις συνείροντας, χορούς τε ὠνομακέναι παρὰ τὸ τῆς χαρᾶς ἔμφυτον ὄνομα. 'But in our case, the gods we said were given to us to be our companions in the dance – they are also the ones who have given us the ability to take pleasure in the perception of rhythm and harmony. This is their way of moving us and acting as our chorus-leader, joining us one with another through song and dance, and giving this the name 'choir', from the word 'cheer' that captures its nature' (Transl. Schofield & Griffith). Cf. *Leg*. 657c3–6. The motif of joy "has very deep roots in the cultic language of choral lyric", Prauscello 2011, 139, with references.

134 Barker 2007: "(…) it is axiomatic for all the theoretical writers whose views can be clearly pinned down that there is an objective and discernible line of demarcation, independent of human whim, decision or ingenuity, between musically well-ordered relations and transformations on the one hand, and on the other the indeterminate chaos of the non-musical. The distinction is not one of convention or taste, but is somehow fixed in the order of things, awaiting discovery, (…)" (10, see also 317–318, 324).

135 Cf. Bobonich 2002, 360: "the low level perception of order in harmony involves conceptualizing it in accordance with concepts drawn from reason".

136 It may be noted that τάξις is a phenomenon that is perceived by human beings; it does not describe virtue in the soul itself, as it does in *Resp*. 443c9–444a2.

137 It has often and rightly been stressed that the emotions play a prominent role in *Laws*' view of education, see, e. g., Stalley 1983, 45–58; Belfiore 1986, 427; Cairns 1993, 377 (further references in n. 102 *ibid*.); Carone 2003; Klosko 2006, 221–225; Woerther 2008, 95–98 (focusing on the prominence of musical education in life-long *paideia*); Frede 2010, 113. For the role of pleasure in *Republic*, see Cooper 1984, Gosling & Taylor 1982, 97–128.

(τάξις as ἁρμονία). The physical conditioning (learning to control one's σῶμα and φωνή) of children happens through χορεία, which trains movement and voice.[138] Χορεία cultivates the inborn, rudimentary capacity for the perceiving of order.[139] The idea that musical *paideia* cultivates an innate capacity for reason aligns with the idea that the individual's λογισμός is trained by the λογισμός in the law. The new element in this phase of the discussion is that this process of *paideia* can be divided into stages. In each stage, the restrained, rational faculty assumes different shapes: from perception of order in children to αἰδώς in seniors.

3.2.2 The four citizen groups

A little later, it turns out that the Athenian envisages not one, but three choruses in the city: not only children, but all citizens up to the age of 60 will participate in χορεία. *Paideia* therefore is co-extensive with χορεία: the whole of chorus-dancing (ὅλη … χορεία) *is* the whole process of education (ὅλη παίδευσις), and the interlocutors agree that ὁ ἀπαίδευτος is equal to ἀχόρευτος, and regard ὁ πεπαιδευμένος ἱκανῶς as κεχορευκώς (654a9–b1).[140] Each chorus is dedicated to one of the three gods that were said to be people's fellow dancers in χορεία.[141] To the three choruses, the Athenian adds a fourth group, that of the μυθολόγοι. The four groups are thus:

1. the chorus of the Muses, consisting of children;
2. the chorus of Apollo, consisting of the citizens between the ages of 18 and 30;

138 A similar labelling of social behaviour as 'musical' can also be found in *Protagoras* (324d6 ff.): a training in rhythm and *harmonia* is an education in political virtue. Acquaintance with fine music makes people more tame (ἡμερώτεροι 326b3, *i. e.* not ὥσπερ θήριον ἀλογίστως, 324b1). Tameness is juxtaposed to being more 'well-rhythmed' (εὐρυθμότεροι) and 'more harmonious' (εὐαρμοστότεροι), 326b3. Using one's voice and body graciously makes one suitable for life in the *polis*: such people become useful *citizens*, *i. e.* people who will speak and act in the interest of society (χρήσιμοι … εἰς τὸ λέγειν τε καὶ πράττειν, 326b4).

139 Cf. the argument of Tecuşan 1990: "The idea of πρώτη παιδεία (654a6), which one would get while young by attending to the Muses' chorus first, then to Apollo's (…) hints at the fact that Plato in the end came to think of the *symposion* as a kind of δευτέρα παιδεία, both more significant and higher than the first one – given that age on the one hand, and reason, knowledge, and understanding on the other, depend on each other closely (653a)" (248). Taylor 1926 notes a parallel between *Laws*' teaching of the young to "'feel pleasure and pain' rightly (653b)" and Aristotle; "'rightly' means 'in accord with the rightly uttered discourse of the law' (659d, πρὸς τὸν ὑπὸ τοῦ νόμου λόγον ὀρθὸν εἰρημένον), a sentence which seems to be the source from which the expression ὀρθὸς λόγος has got into the *Ethics* of Aristotle" (469).

140 *Leg*. 672e5–673a1. On χορεία in *Laws* see Mouze 2005, Prauscello 2011, Rocconi 2012, and the various contributions in Peponi 2013*a*.

141 Morrow 1960, 317–318, suggests that Plato may have taken his cue from Spartan chorus-dancing (as described by Plutarch). The same suggestion is made by Murray 2013, 117, who provides a historicizing reading of the themes of the *symposion* and chorus in *Laws* I–II.

3. the chorus of Dionysus, consisting of those between 30 and 60;[142]
4. a fourth group of μυθολόγοι; they are over 60 and too old to sing and dance.[143]

Each of these four groups is bound by strict drinking rules. The chorus of children is to abstain from drinking wine entirely: there is no need to pour fire on the fire already present in the bodies and souls of the youngest, and caution has to be taken about their frantic state (τὴν ἐμμανῆ … ἕξιν τῶν νέων, 666a7). The members of the second chorus, youngsters between 18 and 30 years of age, are allowed to taste wine in moderate quantities. The third chorus is allowed to drink immoderately.[144] This chorus is restricted to those between 30 and 60: only the elderly (πρεσβύτεροι) are allowed to drink until they become drunk. It thus turns out that the *symposion* is identical to the chorus of Dionysus: the *symposion* also involves control of one's body and voice.[145]

For the argument presented here, it is important to note that the choreutic education is not life-long, contrary to what is frequently assumed.[146] The limit lies at the age of 60. The age of 60 is also the minimum age for a member of the nocturnal council.[147] Those above 60 are no longer able to sing and dance, but will tell inspired stories about the same characters that the younger citizens represent in dance: virtuous people (τοὺς δὲ μετὰ ταῦτα (…) μυθολόγους περὶ τῶν αὐτῶν ἠθῶν διὰ θείας φήμης, 664d2–4). By setting the upper age limit of education at 60, Plato creates a fourth group of people who are excluded from χορεία and apparently no longer need any kind of education. In this way, the fourth group can function as the authority for the choice of music: the correct music is the kind of music that the well-educated elderly take pleasure in.[148] The suggestion of a natural correctness is established by presenting their preference as the more fully developed version of the natural preference for order in young children.

The number four is significant. Within *paideia*/χορεία, the citizens are divided into three choruses, followed by a group of elderly storytellers. The significance

142 *Leg*. 664c4–d2. For the interpretation of φέρειν ᾠδάς: Prauscello 2011, 153: "a reference to the "my-knees-cannot-bear me" motif in lyric poetry. Cf. also England *ad loc*., who refers to 665d9 to support his translation "to support the toil of".

143 Cf. Ritter 1896, 350; Tecuşan 1990, 248. The fact that the education is almost lifelong has often been interpreted in a pessimistic way, e. g. Woerther 2008, 96; Kamtekar 2010, 147; Frede 2010, 121, 126.

144 *Leg*. 666b2 τετταράκοντα δὲ ἐπιβαίνοντα ἐτῶν is to be explained, with England, as "'when a man is rising forty,' as we say – i. e. enters the fourth decade"; endorsed by Schöpsdau 1994, 312, *ad loc*., with parallels for this use of ἐπιβαίνω. The reading "after reaching forty" (among others Belfiore 1986, 80, n. 36, see Schöpsdau *ibid*.) "ist schon deshalb unwarscheinlich, weil dann für die Leute zwischen 30 und 40 Jahren überhaupt keine Regelung bezüglich des Weins vorgesehen wäre".

145 The identification of the symposiasts with the chorus of Dionysus becomes clear from *Leg*. 671a1 onwards. For the identification of the chorus of Dionysus with the *symposion*, see Ritter 1896, 17 (and 350 for the Dionysian chorus as "die Vorschule des νυκτερινὸς σύλλογος)"; Tecuşan 1990, 246–248. Murray 2013 argues that Plato uses "the two images of the symposion and the chorus separately" (116) and treats them as metaphors (114–115).

146 E. g. Frede 2010, 123.

147 For the nocturnal council, see Chapter Six, section 6.1.

148 *Leg*. 659c9–d4. Cf. the argument of Bartels 2012.

of this number becomes clear when we recall that the earliest *paideia* is labelled ἀνδρεία, while the final phase is called φρόνησις – a thought that surfaces in Book II and is taken up again in Book XII. The division of the citizens into four age groups supports the suggestion, introduced by the application of the terminology of ἀνδρεία and φρόνησις to the earliest and final phase of *paideia*, that the four virtues map onto the four citizen groups. Thus, the division of the citizens into four groups seemingly corresponding to the four virtues maintains the overt claim that there are four virtues that are clearly distinguishable. The terms ἀνδρεία and φρόνησις refer to the first and the final phases of the diachronic process of education, respectively. Although Plato does not go so far as to explicitly link each one of the four virtues with one of the four age groups, the overall suggestion is that these four groups embody virtue as a whole.[149] It is not a coincidence that φρόνησις and νοῦς are the virtues of the eldest members of the nocturnal council, and that the theme of the four virtues is brought up again in the context of the discussion of the members of the nocturnal council, who now appear to be identical to the last group, the people above 60.[150]

Education as a whole is represented as χορεία, of which the *symposion* (the Dionysian chorus) is a more advanced stage than the musical education of the young. The *symposion* is retrospectively embedded in the diachronic narrative of *paideia*; the claim is that early musical *paideia* and training of moderation in the *symposion* are two manifestations of the same thing, virtue. And we can see that there are some correspondences between the two.[151] Both the *symposion* and χορεία emphasize desirable outward *behaviour*. The *symposion* trains decorous, fitting behaviour, χορεία trains elegant bodily postures and singing, that is, appropriate use of the voice.[152] Yet there are also some differences, because they each represent virtue in different phases of development. Whereas during the *symposion* the symposiarch has to prevent things from getting out of hand, χορεία is more constructive. It presupposes a χορηγός who governs the movements and songs of the chorus as a whole: the chorus members have to imitate patterns of song and dance, there is a choreography.[153] By contrast, as the drinking proceeds, a *symposion* will grow rowdier (671a4–6). Wine will cause a profound change in each symposiast: he will feel uplifted, blurt out whatever thought comes to mind, and not hold his tongue in

149 Cf. the argument that the nocturnal council represents νοῦς, Chapter Six, pp. 193–194.

150 See *Leg*. 965a1–2. See also below, Chapter Six, pp. 195–197.

151 The *symposion* is not discussed as an institution in the legislative part of *Laws* (only at 812b9–c7 do we find a reference to the 60-year-old singers of Dionysus). Morrow 1960 considers this reason to doubt "whether it is to be taken as more than a symbol for the supervisory role of the elders, particularly as critics and censors of dance and song. A definite state organ it cannot be (…)" (318). Tecuşan 1990 suggests that the *syssition* "replaces" the *symposion* in the law code (256). That the *symposion* is not envisaged to be part of the interlocutors' provisional sketch for a new colony is corroborated by the nature of the reference at 812b9–10: it is only a brief recapitulation in service of the point the Athenian goes on to make in 812d1 ff. (τούτων τοίνυν δεῖ χάριν κτλ.).

152 Good μουσική and χορεία produce representations of virtuous characters: μουσική is one of the mimetic τέχναι and represents 'ways of life': μιμήματα τρόπων (655d5).

153 Rhythm is the aspect that voice and body have in common: τὸ δὲ γε κατὰ τὴν τοῦ σώματος κίνησιν ῥυθμὸν μὲν κοινὸν τῇ τῆς φωνῆς εἶχε κινήσει, *Leg*. 672e8–9; cf. 673d2–5.

order to listen to his neighbour (παρρησίας ἐμπίμπλαται καὶ ἀνηκουστίας … τῶν πέλας, 671b4–5).[154] He will consider himself fit to be in charge of both himself and of others (ἄρχων δ' ἱκανὸς ἀξιοῖ ἑαυτοῦ τε καὶ τῶν ἄλλων γεγονέναι, 671b5–6). The interventions of the symposiarch are of a more *ad hoc* nature and potentially involve punishment,[155] something that the education of the young through music does not entail. The mechanism that guarantees adherence to choreography and melody differs according to age group and chorus: for children it is pleasure; for the elderly it is shame.[156]

Towards the very end of Book II, the terminology used to describe the *symposion* changes. We have already seen above that rather than speaking of a ruler, the Athenian here refers to the rulers as νομοφύλακες and συνδημιουργοί. In this phase of the discussion of the *symposion*, the terminology of laws makes its introduction. If a *polis* uses the *symposion* with laws and order (μετὰ νόμων καὶ τάξεως, 673e4) for the sake of training self-restraint (ὡς τοῦ σωφρονεῖν ἕνεκα μελέτῃ), and allows pleasures for the sake of mastering them (τοῦ κρατεῖν αὐτῶν ἕνεκα), then the *symposion* must definitely be instituted. This reveals that the *comparandum* of the *symposion* is that of the lawful society: the *symposion* has served as a tongue-in-cheek[157] version of the society characterized by lawfulness. In this framework, the rules of the *symposion* are the laws; the symposiarch is the one who applies the law, and the symposiasts are the citizens who act in obedience to the law – and are otherwise brought to their senses by the intervention of the symposiarch.

At what has become the end of Book II in the *Laws*' division, the Athenian concludes that what their argument (λόγος) had been aiming to demonstrate, that

154 Cf. *Leg.* 645d1–646a5.

155 As is suggested by the 'sending in the sense of shame' against a person who fails to abide by the rules at the *symposion*, *Leg.* 671b8–d3.

156 *Leg.* 665d9–666a1: Αθ. Πᾶς που γιγνόμενος πρεσβύτερος ὄκνου πρὸς τὰς ᾠδὰς μεστός, καὶ χαίρει τε ἧττον πράττων τοῦτο καὶ ἀνάγκης γιγνομένης αἰσχύνοιτ' ἂν μᾶλλον, ὅσῳ πρεσβύτερος καὶ σωφρονέστερος γίγνεται, τόσῳ μᾶλλον. ἆρ' οὐχ οὕτως; Κλ. Οὕτω μὲν οὖν. Αθ. Οὐκοῦν ἐν θεάτρῳ γε καὶ παντοίοις ἀνθρώποις ᾄδειν ἑστὼς ὀρθὸς ἔτι μᾶλλον αἰσχύνοιτ' ἄν· καὶ ταῦτά γ' εἰ καθάπερ οἱ περὶ νίκης χοροὶ ἀγωνιζόμενοι πεφωνασκηκότες ἰσχνοί τε καὶ ἄσιτοι ἀναγκάζοιντο ᾄδειν οἱ τοιοῦτοι, παντάπασίν που ἀηδῶς τε καὶ αἰσχυντηλῶς ᾄδοντες ἀπροθύμως ἂν τοῦτ' ἐργάζοιντο; Κλ. Ἀναγκαιότατα μέντοι λέγεις. 'Ath. Everybody, as he gets older, is filled with a dread of singing; he enjoys it less, and if he can't avoid it, then the older he is, the more self-control he has, the more embarrassing he's going to find it. Isn't that so? Cl. It is. Ath. And if it's a question of standing up on his hind legs in the theatre, in front of all sorts of people, he'd find it even more embarrassing. If, on top of that, a chorus of this kind were required to sing as choruses in competitions do – lean, half-starved, and after a course of voice-training – then I imagine they would find singing altogether unpleasant and humiliating, and have no enthusiasm for it whatever. Cl. That goes without saying' (Transl. Schofield & Griffith).

157 Cf. Saunders' view as recorded by Guthrie: "My friend Dr T. J. Saunders and I have agreed to differ on this point, and I must record his contrary conviction that the *Laws* is full of humour, and that the long sermon on drinking-parties is written with tongue in cheek" (1978, 382, n. 2). Guthrie himself confesses that "the lengthy and humourless disquisitions in the first two books on the moral and educational advantages of drinking-parties" have for a long time been an obstacle to his going through the whole work. Cf. Rutherford 1995, 306, and n. 100 *ibid*.

wine ('the help for the Dionysian chorus') has now been stated as far as possible.[158] He recapitulates one last time the question of whether the *symposion* is useful for *paideia*: was it really a legitimate claim that this Dionysian chorus deserved the interlocutors' praise? If the *symposion* is regulated by law, and if the sober guide those who are drunk, the symposiasts will end up becoming better friends than they were before – instead of becoming enemies, as happens during *symposia* in their current form.[159] Furthermore, the *symposion* will be supervised by the symposiarchs, the νομοφύλακες and συνδημιουργοί, who are imperturbable and sober (τοὺς ἀθορύβους καὶ νήφοντας τῶν μὴ νηφόντων στρατηγούς, 671d6–7).[160] They are here called the 'officers' of Dionysus, and said to be those over 60. The sober must govern the unsober – for to fight drunkenness without sober leaders would be worse than fighting enemies without imperturbable leaders (μὴ μετὰ ἀρχόντων ἀθορύβων, 671d8).[161] Cleinias agrees, on the proviso that the *symposion* is organized in the way the Athenian has proposed.[162] Wine is the 'drug' (φάρμακον) that is given to humans for the sake of acquiring αἰδώς in the soul and health and vigour in the body.[163] They should thus no longer denounce wine, 'the gift of Dionysus' (672a5) in the conviction that it is not good (κακή) and not welcome in a *polis* (εἰς πόλιν οὐκ ἀξία παραδέχεσθαι, 672a6–7).

3.3 CONCLUSION

In Books I–II of *Laws*, Plato sets the scene. The present chapter has looked at two scenes in their order of appearance and explored their implications for the notion of ἀρετή implied in this phase of the dialogue. First, we investigated the *symposion* as the counterpart of the *syssition* (section 3.1). This suggests that ἀρετή in *Laws* is conceived of as the mastery of a skill and the ability to restrain oneself, and that

158 *Leg*. 671a1–4: καὶ ὅπερ ὁ λόγος ἐν ἀρχαῖς ἐβουλήθη, τὴν τῷ τοῦ Διονύσου χορῷ βοήθειαν ἐπιδεῖξαι καλῶς λεγομένην, εἰς δύναμιν εἴρηκεν· 'Well, the original aim of our discussion was to demonstrate that a defence of the Dionysiac chorus was worth making; and we have made that defence to the best of our ability' (Transl. Schofield & Griffith).

159 *Leg*. 671e5–672a3: Αθ. Οὐκοῦν εἴ γε εἴη τοιαύτη μὲν μέθη, τοιαύτη δὲ παιδιά, μῶν οὐκ ὠφεληθέντες ἂν οἱ τοιοῦτοι συμπόται καὶ μᾶλλον φίλοι ἢ πρότερον ἀπαλλάττοιντο ἀλλήλων, ἀλλ' οὐχ ὥσπερ τὰ νῦν ἐχθροί, κατὰ νόμους δὲ πᾶσαν τὴν συνουσίαν συγγενόμενοι καὶ ἀκολουθήσαντες, ὁπότε ἀφηγοῖντο οἱ νήφοντες τοῖς μὴ νήφουσιν; 'And if that was the nature of the drinking, and that was the nature of their play, wouldn't it be a help to these fellow-drinkers? Wouldn't they part friends – and better friends than they were before – rather than enemies, the way they do now? Wouldn't their whole gathering be governed by laws, with those who were drunk following the directions of those who were not drunk?' (Transl. Schofield & Griffith).

160 Cf. Tecuşan 1990, 247–248.

161 Cf. above, p. 85.

162 *Leg*. 672a4: Ὀρθῶς, εἴ γε δὴ εἴη τοιαύτη οἵαν νῦν λέγεις, 'Quite right – if their drinking really was as you are now describing' (Transl. Schofield & Griffith).

163 Cf. *Leg*. 649a1–b6. *Leg*. 647e1: φόβου φάρμακον. Cf. England *ad loc*.: "a drug to *produce* fear" (emphasis in original); not, as Tecuşan 1990 thinks, "the supposed medicine against fear" (248).

paideia is the process that enables one to acquire that skill. The notion of ἀρετή advanced by this 'scenario' of the *symposion* is relatively pragmatic: virtue is the behaviour that contributes to the social cohesion and internal harmony of the group.

Second, we have focused on the 'scenario' of χορεία (section 3.2). The narrative of the *symposion* becomes embedded in an overall narrative of χορεία. In this retrospective embedding of the *symposion* for the elderly as one phase of χορεία that spans the whole of human life, Plato reintroduces the four virtues. The suggestion he creates is that the human process of socialization can be divided into several phases or stages, of which however only the two outer phases are explicitly named: ἀνδρεία for the earliest *paideia* which consists in correct αἴσθησις, φρόνησις for the final phase of the process, the complete mastery of the skill. In a loose way, the unity of the virtues can be maintained, but only diachronically, insofar as it is suggested that the virtues refer to different phases of a continuous process.

The *symposion* and χορεία have been called 'scenarios', because they are illustrations (rather than analogues) of *paideia* and ἀρετή: we have to think about *paideia* and ἀρετή using the 'logic' of these narratives. These narratives in Book I and II serve to say something about how virtue is conceived. They are not part of the legislation, which is here not yet within sight, and they do not describe customs that the Athenian really envisages for a city. The use of the *symposion* is tongue-in-cheek: Plato does not have the Athenian envisage a *symposion* in the new city (indeed, there are no laws for *symposia*, and with the exception of the reference to the Dionysian chorus, the *symposion* is not referred to after Book II).[164] The scenario of the *symposion* is supposed to illustrate the well-ordered and law-abiding society under a ruler who applies the laws correctly.

What creates a bewildering effect in the opening discussion is a tension between the familiar Socratic terminology and turns of argument on the one hand and what is *de facto* suggested about ἀρετή on the other. The interlocutors speak about being κρείττων and ἧττων ἑαυτοῦ and about the four Socratic virtues ἀνδρεία, σωφροσύνη, δικαιοσύνη, and φρόνησις, but the idea is not that κρείττων ἑαυτοῦ refers to the supremacy of the knowing part of the soul. The notion of expert knowledge is as good as absent in *Laws*, and the unity of the virtues, to the extent that it can be said to be upheld in *Laws*, is not given with expert knowledge (τέχνη) or δικαιοσύνη. Beyond this familiar surface of terminology, the correspondences to earlier Platonic texts quickly come to an end.

A final point should be noted here. The scenarios of the *symposion* and *paideia* through music both imply the notion of a norm. In the scenario of the *symposion*, these are the laws; in the scenario of musical education, it is the correct music that represents virtuous individuals. Both the laws and the correct music can be said to represent, or imitate, virtue. The suggestion is that φρόνησις is an advanced stage, characterized by the presence of λόγος, of an innate capacity in human beings *qua* human beings: a fondness for order, manifested at the most basic level in the pleasure children take in music. Senior citizens have received the entire *paideia* and

164 *Leg*. 828a1–c6 according to Wilburn 2013, 96 suggests that "the symposium is to take place quite frequently" (perhaps monthly or even daily).

therefore (the assumption runs) possess the fully developed form of the natural liking for order innate in human beings generally. Yet both of these scenario's make it difficult to see the underlying norm. The claim is that they are manifestations of the same skill: the later law-abidingness of mature citizens is as it were a more advanced stage of the musical *paideia* of the young. The claim is that imitating virtuous characters in music and law-abidingness are two different manifestations of what is essentially the same thing: virtue.

The closest we may come to perceiving the norm itself is in the context of the musical education. The fourth group, who decides what the choruses have to sing, selects the kind of music that represents virtuous characters on the basis of their knowledge of virtue.[165] Yet the seniors are still members of society: they are an *internal* authority who have gone through the whole course of education and possess the supreme virtue. Yet the lawgiving authority outside the *polis* (such as the philosophers in *Republic*) remains out of sight. We will encounter this problem more often in the course of this book. The disappearance of the lawgiver from our view is characteristic for the philosophical perspective of *Laws*: it focuses on the laws themselves, and therefore the authority for the laws remains beyond the horizon.

165 See Meyer 2015, 307–312, for the most convincing account of the three things that the wise judge of music has to know. See also my argument in Bartels 2012.

CHAPTER FOUR

LAWGIVING *LOGÔI*: FORMAL FEATURES OF THE LEGISLATION

In accordance with the internal structure of *Laws*, the present chapter will turn to the legislative activity of the interlocutors. At the end of Book III, there is a clear caesura in the conversation: the opening discussion is brought to a close in 702a7. Henceforth the 'open' investigation of laws and lawgivers makes way for a much more focused and goal-oriented type of conversation. The present chapter analyses what *Laws* itself suggests about the status of the interlocutors' legislative activity that it purports to portray. We will investigate the formal means by which the laws are embedded in the dialectical discussion. The interlocutors not only lay down laws, in the course of their legislation they also reflect on the form that their laws should have and on their legislative activity. For analytical purposes, we may distinguish between statements made on the level of the 'framing' conversation and statements that are clearly part of a law or legal discourse in the broadest sense (including preambles), imagined as addressed to a citizen in need of instruction.

Yet one of the reasons why *Laws* is such a complex text is precisely that it often turns out to be impossible to separate these two levels. Notwithstanding the impression one is likely to gain when reading the literature on *Laws*, Plato's final work does not offer an unambiguous and straightforward law code ready for use: there is no fixed 'code' that can be easily extracted from the dialogue. Explicit statements about the exact text of the preamble or law are often lacking; in many cases, it remains unclear what parts of the interlocuters' discourse are supposed to belong to their legislation. The nature of the discussion and argument often make it impossible to distinguish between preambles or laws and other material; moreover, the discussion contains a wealth of normative material that is not part of either preamble or law. With the observation that *Laws* does not offer a clear and unambiguous law code, the questions of why Plato has composed the text in this way, and what implications this lack of clarity has for the status of the legislative project, become even more urgent.

Before turning to the formal aspects of the legislative discourse, we first need to analyse *how* the idea to frame laws is introduced. What do the interlocutors aim to accomplish by framing laws? It is important to attain clarity about this, since only when we know what the stated purpose of the legislative project is can we investigate its formal characteristics. The complications regarding the undeterminedness of the legislation have been overlooked due to the fact that it is usually assumed that *Laws* offers a blueprint that to a greater or lesser degree adapts the constitution

of Callipolis to the demands posed by practice, for a constitution named Magnesia.[1] Here it is argued that the purpose of the interlocutors' legislative activity rules this out – indeed, this is another important reason for examining closely the interlocutors' motivation for laying down laws. This has important consequences. If it is accepted that *Laws* does not simply offer a law code for a second best constitution, the question of the status of the laws and legislative discourse becomes even more pressing. For if it is not a law code for Magnesia, how *are* we to view the interlocutors' legislative activity: what *is* the status of their legislation? The recognition that *Laws* does not offer a fixed code throws into relief a number of features that have gone unnoticed and cannot be explained with the standard reading of *Laws*. An example of this is the interlocutors' ambivalence towards their own role as lawgivers: in the dialogue, they adopt the role of lawgivers and refer to their own activity as legislating, while at the same time, they also state that they are not lawgivers yet. The latter type of remark does not fit well with the standard reading according to which *Laws* presents a law code for a second best constitution.[2]

This chapter sets out to answer the question of the status of the legislation in *Laws* by being sensitive to the text's own indications. In the first section (section 4.1) we analyse what the interlocutors aim to accomplish by making laws. It will be argued that they have an immediate practical purpose in mind, which is not formulating laws for a second best constitution. Rather, the formulation of the laws serves the *dialogue-internal* purpose of testing whether the opening discussion on laws and virtue (the subject of Chapter Three) has yielded insights that may be put to use for the improvement of human life. Subsequently, we look at the formal characteristics of the interlocutors' legislative activity, that is, the interweaving of the 'law code' with the framing discussion (section 4.2), and at the interlocutors' own ambivalent attitude towards their legislative project (section 4.3).

4.1 LEGISLATING ΛΟΓΩΙ

4.1.1 A test for the opening discussion

In 701, at the end of Book III, the Athenian recapitulates the central claim that emerged from the discussion that constitutes the third Book of *Laws*. The goal of the lawgiver is threefold: he aims to make his *polis* free, harmonious and sensible (ἐλέξαμεν ὡς τὸν νομοθέτην δεῖ τριῶν στοχαζόμενον νομοθετεῖν, ὅπως ἡ

1 See the Introduction of Schofield & Griffith 2016, 18. For the discussion of the views that *Laws* is more practical, or second best, see Chapter One, pp. 18–22.

2 There is a second consequence. If *Laws* itself does not offer the law code for Magnesia, the question that necessarily arises is that of the relation between the legislative activity portrayed in *Laws* and real legislation by human lawgivers, outside *Laws*. What does the text of *Laws* itself suggest about the application of its results beyond it, in a real case of lawgiving? We might wonder, for example, whether preambles will also be part of a real law code, outside *Laws* – and, if so, in what form (will they be written down?). Chapter Four briefly reflects on this issue, see p. 151.

νομοθετουμένη πόλις ἐλευθέρα τε ἔσται καὶ φίλη ἑαυτῇ καὶ νοῦν ἕξει, 701d7–9). This is why the interlocutors had previously selected the two most extreme constitutions to investigate, the most despotic one and the most liberal one. It turned out that prosperity (εὐπραγία) existed in the more moderate versions, and diminished proportionally as the constitution tended towards the extremes.[3] Likewise, the interlocutors surveyed the Doric settlement and that of Dardanus, the people who survived the destructive flood and were therefore the first people (τοὺς πρώτους δὴ τοὺς περιλιπεῖς γενομένους τῆς φθορᾶς, 702a4–5), as well as the subjects of music and drunkenness, and everything discussed before.[4] All of these were discussed for the purpose of perceiving how a *polis* might be organized in the finest way and how the individual may best lead his life (πῶς ποτ' ἂν πόλις ἄριστα οἰκοίη, καὶ ἰδίᾳ πῶς ἄν τις βέλτιστα τὸν αὑτοῦ βίον διαγάγοι, 702a8–b1).[5]

Having established the conclusions of their discussion, the Athenian wonders what kind of 'test' (ἔλεγχος) would allow them to establish whether the conclusions reached are really useful (εἰ δὲ δή τι πεποιήκαμεν *προὔργου*, τίς ποτ' ἂν ἔλεγχος γίγνοιτο ἡμῖν πρὸς ἡμᾶς αὐτοὺς λεχθείς, 702b1–3). Though ἔλεγχος is a well-known term for anyone familiar with those Platonic texts usually referred to as 'Socratic', it quickly becomes clear that in this context it does not refer to the Socratic ἔλεγχος, which is supposed to test the truth of statements. The term ἔλεγχος here refers to another procedure: not an attempt to map out the truth on the basis of consistency in statements and assumptions, but an attempt to bridge the gap between theory and practice. The Athenian asks for a test that will prove the practical *viability* of the results: the test is to tell whether the results of the dialectical discussion *so far* are not mere trifles, castles in the air with no practical value.[6] The

3 *Leg*. 701e1–8.

4 *Leg*. 702a2–7.

5 For statements about the topic of their conversation, see *Leg*. 630e7–631a2, 637d1–3; the conversation in of Books I–III is called a σκέψις in 683c1 (τῆς νομοθεσίας, by Megillus), 685b3 (περὶ νόμων); cf. the reference back in 722c9 (οὐδὲν ἀλλ' ἢ περὶ νόμων διαλεγόμενοι). At the very start of the dialogue, the Athenian supposes that the topic of constitutions and laws will be a welcome one, *Leg*. 625a6–7. Cf. p. 31, n. 73.

6 It is perhaps not inconceivable that this remark (and therefore, in a way, *Laws* itself) echoes, and can in a way be read as answering, Isocrates' criticism of what he considered the trifling philosophical activities of Plato's Academy. An indirect indication of such criticism may be the parallel between Isocrates' criticism of the older σοφισταί in *Antidosis* 261–269 (he names Empedocles, Ion, Alcmaeon, Parmenides, Melissus, and Gorgias), which was written in 354/3 B. C., and Callicles' criticism of Socrates' philosophy in *Gorg*. 484c8 ff. and 487c6–7 (noted by Too *ad loc*.). In *Antidosis* 261 and 265 Isocrates specifically mentions astronomy and geometry and similar disciplines as not philosophy proper, but only providing preliminary gymnastics: ἐν τούτοις γυμνασθέντες καὶ παροξυνθέντες ῥᾷον καὶ θᾶττον τὰ σπουδαιότερα καὶ πλείονος ἄξια τῶν πραγμάτων ἀποδέχεσθαι καὶ μανθάνειν δύνανται. We would connect these studies more readily with Plato (especially because of *Republic* Book VII) than with the σοφισταί mentioned (as well as also being reminscent, funnily enough, of the Socrates of Aristophanes' *Clouds*). In *Laws* 818a4–7, the Athenian states that the citizens of the city are all required to learn the basics of arithmetic, geometry and astronomy (817e5–818a1), and in 747b3–6 he states that ἡ περὶ τοὺς ἀριθμοὺς διατριβή is a 'divine art' (θεία τέχνη) because it has the power to make the natural slow-witted a good learner (εὐμαθής), inspite of his own nature (παρὰ τὴν αὑτοῦ φύσιν).

Athenian does not ask for a way to establish whether their conclusions are *true* on a metaphysical level. If the results of such a test fail to do anything to morally improve (ἄριστα, βέλτιστα, 701e8–b1) the government of cities and the way of life of individuals, what was established in their earlier discussion (that is, Books I–III[7]) should be discarded as offering no value for human life in practice. Moreover, the discarding of the results is up to the interlocutors themselves; it does not depend on a transcendent norm and has nothing to do with how well the laws answer to a higher principle or not. What has been established at the end of Book XII is not that the claims made in Books I–III are true, but that the principles at which the interlocutors arrived in their dialectical discussion do indeed lend themselves to framing laws. In the practical perspective adopted by the interlocutors – the testing, by means of formulating laws, of their results so far – objective, metaphysical truth is left out of consideration.

In response to the Athenian's call for a test, Plato has Cleinias bring forward (702c2–d5) that he is part of a Cnossian committee with the task of founding a new colony and making a law code for this new Cretan *polis*, to be called Magnesia.[8] The scholarship on *Laws* usually overlooks that *this* – the Athenian's call for a test – is the reason why Cleinias is made to mention that he is part of a legislative Cretan committee, thus obscuring the purpose for which the interlocutors embark upon legislation in the dialogue.[9]

The new Cretan law code is to draw upon both local (Cretan) laws and laws from elsewhere; if foreign laws happen to be better than endemic ones, the fact that they are not Cretan should not be considered an argument against adopting them, 702c5–8:

Hentschke 1971, 250 argues that προὔργου responds to a "Selbstvorwurf" that becomes clear from *Republic* and the *Seventh Letter* and that is implicit in Plato's ethics.

7 Although the interlocutors endeavour to test the validity of what has emerged about laws in Books I–III, I have here not discussed Book III at length. It seems to me, however, that an argument along similar lines as the one presented here can be made for the argument of Book III; that is, that there is no recognition that laws ought to be based on metaphysical truth, together with the pragmatic assumption that laws are good when they preserve (a common sense notion of) social harmony (cf. the 'mixed constitution'). Yet I have not discussed Book III because in my view there is less misunderstanding in the literature about its argument, and the way in which the Athenian in Book III draws on insights deriving their validity from historical experience (real or mythical) in a more obvious way excludes metaphysics from consideration than the more 'Socratic' argument about virtue in Books I–II. Moreover, Books I–II constitute an integral whole, as the discussion about the *symposia* is brought to a close at the end of Book II. But the claim is, of course, that the argument in Book III builds on the insights of Books I–II.

8 As becomes clear later on, *Leg*. 860e6, 919d3, 946b6.

9 For example, Schofield 2016, 11, notes that the "upshot" of Book III consists in the statement that a lawgiver should have in mind that a city needs to be "free, rational, and on friendly terms with itself" (693b), and in the next paragraph goes on to say "At this point Cleinias announces that he is to be one of a delegation of ten citizens of Cnossos charged with drawing up laws for a new settlement (…)". It is also somewhat misleading to state that one of the aims in constructing a city is "furthering the *theoretical investigation* on which they have embarked" (*ibid*., emphasis mine).

> ἅμα δὲ καὶ νόμους τῶν τε αὐτόθι, εἴ τινες ἡμᾶς ἀρέσκουσιν, τίθεσθαι κελεύει, καὶ εἴ τινες ἑτέρωθεν, μηδὲν ὑπολογιζομένους τὸ ξενικὸν αὐτῶν, ἂν βελτίους φαίνωνται.
>
> 'At the same time, the assignment is to establish laws, both taken from the ones here, if they satisfy us, and, if laws from elsewhere [satisfy us, to lay down those], taking no account of the fact that they are foreign, if they appear to be better.' (Transl. MB)[10]

It is important to note that the task of laying down the law code for the new Cretan colony consists simply and only in *making a selection from existing* laws, Cretan or otherwise. The idea is not that the ten committee members will lay down a law code from scratch, to some extent drawing upon Cretan and foreign laws.[11] The lawgivers have to establish laws from Crete for the new colony but may pick laws from other *poleis* if they think those are better.

Cleinias now proposes that the interlocutors *draft* laws themselves as a test of the kind the Athenian called for. This will kill two birds with one stone: founding their own *polis* will provide the investigation they are looking for (ἅμα μὲν ἡμῖν οὗ ζητοῦμεν ἐπίσκεψις γενήσεται, 702d3), *and* he himself will likely be able to make use of their own foundation (ταύτῃ τῇ συστάσει, i. e., in speech) when it comes to the founding of the future Cretan *polis* (ἅμα δὲ ἐγὼ τάχ' ἂν χρησαίμην εἰς τὴν μέλλουσαν πόλιν ταύτῃ τῇ συστάσει, 702d3–5).[12] The founding of a *polis* offers the

10 Some translations suggest that the task of the committee is more creative than it actually is, as if the ten members were to *frame* a new law code that may incorporate existing laws, rather than simply making a selection: so Bury ('we are bidden also to *frame* laws, choosing such as we please either from …'), similarly Schofield & Griffith ('to *draw up* laws based on the laws here') (emphasis mine).

11 Indeed, this is standard practice, as Greek colonies usually adopted the constitution of the metropolis: "Bei der Einrichtung der Colonie folgte man vielfach den Einrichtungen der Mutterstadt, aus der man auch das heilige Feuer vom Prytaneion mitnahm", *RE s. v.* ἀποικία (an alphabetically ordered overview of the Greek colonies is given *ibid*., 2828–2836), with reference to Hdt. See Graham 1964 for the relation between historical colonies and their mother city. Motives for founding colonies are mentioned in *Leg*. 707e1–708b8, with Morrow 1960, 3–4. There must be strong bonds between the founding cities and the new colony: for example, in *Leg*. 752e4–754d4 the Cnossians have a special responsibility for ensuring that the first offices are filled in the most secure and best way (τὰς πρώτας ἀρχὰς … ὡς ἀσφαλέστατα καὶ ἄριστα); they have to select the 37 νομοφύλακες, 18 of whom come from Cnossos itself (on this passage Morrow 1960, 204–205, 238–240; in Excursus D he argues that this passage reflects two versions of Plato's thought on the matter; the same textual problem is addressed in Wilamowitz-Moellendorff 1910, cf. Chapter One, p. 28, n. 61). In *Leg*. 754a9–d4, the Athenian compares the relation between the founding cities and the colony to that between parent and child and once again stresses the Cnossians' responsibility for making decisions that will allow the colony to live on its own in the future. These are all references to the future foundation to be executed by the Cretan committee, which the interlocutors keep in mind. See Miller 1997, 253–257 on the metaphor of child/mother for colony/metropolis. The character of the citizens is determined by the customs of their city: the citizens are to become 'of the same disposition' (συνήθεις) as the laws, *Leg*. 752b9–c8.

12 For the idea that the Cretan lawgivers may use material from the legislation of the interlocutors, cf. *Leg*. 722a4–5: τούτου γὰρ ἡ πόλις ἡ νῦν τοῖς τοιούτοις νόμοις χρῆσθαι διανοουμένη: Megillus is in favour of adopting preambles in the interlocutors' own lawgiving but says that the idea of preambles must also appeal to Cleinias, since it is his *polis* that contemplates making use (χρῆσθαι) of laws of the kind that the interlocutors are discussing. How the interlocutors go

possibility to apply the insights derived from their discussion to the practical task of lawgiving and thus to test them.

It is *because* of Cleinias' involvement in this Cretan legislative project that he now proposes that he and his companions will themselves found a *polis*, albeit 'in speech' ((τῷ) λόγῳ, 702d1–2, e1 cf. 712b2; opposed to ἔργῳ, see 778b4–c2), by way of a test. In other words, Cleinias' involvement in the common legislative scheme of the Cretan *poleis* explains why he proposes *this* – making laws – as a suitable test of the kind the Athenian was looking for. His involvement in the Cretan legislative scheme does not mean that he and his interlocutors will go on to formulate the laws for Magnesia. This passage leaves no doubt that the interlocutors will not engage in drafting the law code *for Magnesia*, contrary to what is unanimously assumed in the scholarship.[13] The very purpose of their lawgiving is precisely to test *whether* their discussion so far (that is, *Laws* 624a1–702a7) has yielded anything useful for a lawgiver. It is only the specific form the test takes that is inspired by the planned Cretan colony. The formulating of laws is a self-test for the interlocutors, an exercise in legislation for the real challenge later.

After the decision to found a city λόγῳ at the end of Book III, the interlocutors do not embark upon framing laws immediately. The discussion of the laws (the διέξοδος τῶν νόμων; this is how the legislative part of the discussion is referred to) only starts at 771a5 (Book VI, ἀρχὴ δὲ ἔστω κτλ.). The discussion in Book IV, 704a1 to Book VI, 771a5 constitutes an intermediate phase, which lays the apparently necessary foundations for the actual διέξοδος τῶν νόμων. In this part of the conversation, the Athenian receives the necessary information from Cleinias about the location, natural resources, and local climate of the new colony that serves as the background for their exercise in legislation. This is followed by general stipulations about the size of the population, the distribution of land, and the possession of money (704a1–747e11, Book IV and part of V). In the ensuing part of the conversation until the start of the διέξοδος, the interlocutors discuss the various magistracies, including the judges (751a1–768c2, Book V and part of VI).[14]

The fact that the discussion proceeds to these practicalities after the interlocutors' agreement to found a *polis* signals that such issues are necessary preliminaries, which have to be taken into account in any act of lawgiving.[15] This way of going

about lawgiving is thus at least partly influenced by what Cleinias may consider useful for the legislative enterprise in which he is involved. Cf. *Leg*. 747e8–9: the Athenian admonishes Cleinias to investigate what site (χώρα) is suitable for the colony in the same way as the interlocutors are doing now. In all these cases, the implication is clearly that the interlocutors are not yet making the law code for the Cretan colony, but are engaged in an exercise of which Cleinias *cum suis* may make use in the future foundation ἔργῳ.

13 For a recent expression of this view, see for example Meyer 2015, 2: "Book 4 turns to the task of devising legislation for a soon-to-be-founded Cretan colony".

14 For a succinct overview of the bodies of officials with relevant passages, see Stalley 1983, 186–189.

15 Cf. Hentschke 1971, 253: "Die Erörterung dieser Fragen wie Verfassung, Besitz- und Landverteilung, Ämter etc. ist so gestaltet, daß sie als *Vorfragen* zur konkreten Gesetzgebung behandelt werde. Dadurch ergibt sich eine Straffung gegenüber dem Dahintreiben vor der Gründung der Kolonie" (emphasis in original).

about legislation thus reflects a conception of lawgiving as necessarily influenced and determined by a *specific* – geographical, cultural – context, even though the interlocutors maintain that their lawgiving should be directed at the whole of virtue. From this it may be inferred that how this goal might best be realized depends to some extent upon the practical circumstances. We may recall that Cleinias instantly connects ἀνδρεία to the nature of the Cretan χώρα in 625c10 ff.; it is a characteristic assumption in *Laws* that the realization of virtue is directly related to the practical and natural circumstances of the *polis* in question.[16] The circumstances of the Cretan colony that constitute the impulse for this particular ἔλεγχος are involved to a certain extent because lawgiving – at least in *Laws* – is not something that can be done *tabula rasa*: a law code is always made for a specific city under particular circumstances. Dramatically, this is therefore a clever move: by having one of the interlocutors participate in the founding of a colony, Plato has not only provided one of the speakers with a good reason to propose legislation as a suitable test, but can also use some specifics of the colony as the necessary cultural and geographical background against which the interlocutors themselves formulate their laws λόγῳ. The local circumstances, such as the new colony's distance to the sea, influence its capacity for virtue, and therefore any act of lawgiving must take them into account.[17] The interlocutors' draft therefore naturally receives some input from the

16 The geographical circumstances have direct implications for the quality of the citizenry. Some localities are more likely to produce good or bad characters than others (*Leg*. 747d1–e5); good laws must not fly in the face of local circumstances (747d4–5, cf. 747e6–8) such as climate, quality of the water, and soil. The preamble on hunting (*Leg*. 823d7–824a9) takes into consideration the possibilities offered by the country for training the right, divine (θεία) kind of ἀνδρεία. Cf. *Leg*. 704d4–8: if the natural circumstances are unfavourable for the acquisition of virtue (πρὸς ἀρετῆς κτῆσιν), a lawgiver of special quality is required. Aristotle in his *Politics* notes about Plato's *Laws*, 'It is said that the legislator ought to have his eye directed to two points – the people and the country', λέγεται δ' ὡς δεῖ τὸν νομοθέτην πρὸς δύο βλέποντα τιθέναι τοὺς νόμους, πρός τε τὴν χώραν καὶ τοὺς ἀνθρώπους (1265a18–20, Ross in the app. crit. refers to *Leg*. 704a1–708c2). The colony's χώρα and resources are discussed in *Leg*. 704a1–707d6; the colonists are discussed in *Leg*. 707e1–708d5. There is no reason to suppose, as Laks 2000 does (see especially pp. 263–264, 266, 286–288), that discussion of the local conditions and preambles in Books IV and V functions to "postpone" or "suspend" the law because law is "a certain kind of violence" (287). The discussion in Books IV and V is part of what νομοθεσία involves, and is thus not a strategy to postpone lawgiving. Cf. below, pp. 129–130, n. 48.

17 As we hear in *Leg*. 704d3–705a2: Οὐ τοίνυν ἀνίατός γε ἂν εἴη πρὸς ἀρετῆς κτῆσιν. εἰ μὲν γὰρ ἐπιθαλαττία τε ἔμελλεν εἶναι καὶ εὐλίμενος καὶ μὴ πάμφορος ἀλλ' ἐπιδεὴς πολλῶν, μεγάλου τινὸς ἔδει σωτῆρός τε αὐτῇ καὶ νομοθετῶν θείων τινῶν, εἰ μὴ πολλά τε ἔμελλεν ἤθη καὶ ποικίλα καὶ φαῦλα ἕξειν τοιαύτη φύσει γενομένη· νῦν δὲ παραμύθιον ἔχει τὸ τῶν ὀγδοήκοντα σταδίων. ἐγγύτερον μέντοι τοῦ δέοντος κεῖται τῆς θαλάττης, σχεδὸν ὅσον εὐλιμενωτέραν αὐτὴν φὴς εἶναι, ὅμως δὲ ἀγαπητὸν καὶ τοῦτο. 'In which case, acquiring goodness would not be an impossible dream. If it was going to be on the sea, with good harbours, and not self-sufficient, but lacking in all sorts of things, then to stop these characteristics resulting in bad habits of any and every kind, the city would stand in need of some great saviour, and inspired lawgivers. As it is, those ten miles are a bit of a blessing, though it certainly does lie closer to the sea than is ideal, given that you describe it as having good harbours' (Transl. Schofield & Griffith). Proximity to the sea and good harbours will induce the city to engage in trade, fostering in the citizens 'habits of double-dealing and distrust' (ἤθη παλίμβολα καὶ ἄπιστα ταῖς ψυχαῖς, 705a5–6).

Cretan case (such as in Book IV[18]) concerning its location and natural resources. The interlocutors will fit their laws to the foundation in which Cleinias is involved (προσαρμόττοντες τῇ πόλει σοι, 712b1). Yet the fact that an act of lawgiving, even in speech, needs concrete input and must be 'fitted' to a particular case should not be confused with assuming that the interlocutors are here making the law code for Magnesia.

As noted above, the foundation in *Laws* is a *polis* 'in speech': πειρώμεθα λόγῳ πρῶτον κατοικίζειν τὴν πόλιν, 'let's first try to found the *polis* in speech' (702e1–2).[19] Only at the very end of the dialogue, the final part of Book XII, does the *real* foundation of Magnesia (ἔργῳ) come in sight. Cleinias will achieve the highest κλέος if he sets it up to to the satisfaction of those involved – which clearly implies that the real law code has not been laid down yet.[20] In addition, Megillus, who is portrayed as highly impressed by the Athenian, is made to exert pressure on Cleinias that he, by all means, must be persuaded to participate in the foundation of the new *polis*.[21] This ending of the dialogue would make little sense if *Laws* were portraying the process of laying down the actual law code for Magnesia (even if not all details are finished). By contrast, it does make sense if the legislation in *Laws* is an exercise, which is also implied when the Athenian likens their activity to children's play in 712b1–2: πειρώμεθα (…) καθάπερ παῖδες πρεσβῦται, πλάττειν τῷ λόγῳ τοὺς νόμους, 'let us attempt, by fitting them to that city of yours, to model its laws in speech, like old children'.[22] The interlocutors imagine the actual legislation for the Cretan colony as taking place outside the dialogue reported in *Laws*. In the dialogue, lawgiving ἔργῳ is not yet within sight. The fact that *Laws* draws a line between lawgiving λόγῳ and a real case of lawgiving (for Magnesia) is the reason why any investigation into *Laws* has to be aware of the specific terms and conditions under which the laws in *Laws* are framed.

The dialogue ends on the thought that the interlocutors will now proceed to found the Cretan city for real. The exercise portrayed in the text – the founding of a *polis* λόγῳ – is therefore a highly complex one. On the one hand, it is an exercise for a real lawgiving case and meant to put the viability of a specific idea about lawgiving to the test of νομοθεσία in speech; at the same time, the fact that it is lawgiving λόγῳ permits the interlocutors certain liberties that would not have been possible with lawgiving ἔργῳ.[23] In a way, therefore, the present exercise of testing the viability of the results of their preceding discussion about lawgiving by making laws is somewhat ambivalent: laying down laws λόγῳ to some extent removes what *Laws* makes the very essence of the activity of legislation: its being grounded in practical

18 *Leg.* 704b2–5 (distance to the sea), 704b6–9 (harbours), 704c1–3 (degree of self-sufficiency; cf. 704d3–9), 704c4–7 (neighbouring states), 704c8–d2 (landscape), 705c1–6 (trees and wood), 707e1–708a9 (the settlers).

19 *Leg.* 800b2, b7

20 *Leg.* 969a4–b2.

21 *Leg.* 969c4–d1. For the Athenian stranger, see Chapter Six, section 6.2.

22 Cf. England *ad loc.*: "the laws are not the real ones; πλάττειν is also chosen as being a word associated with *fiction*" (emphasis in original). Cf. also Schöpsdau *ad loc.*, 178.

23 See below, pp. 127–128.

and immediate circumstances. The fact that *Laws*' own legislation is legislation λόγῳ makes it clear that this is a project that must be conceived in its own terms.

We may briefly compare *Laws* to *Republic* on the issue of founding a city in speech. Recalling under what conditions the *polis* of Plato's *Republic* is founded, several aspects may be noted. If we compare the motivation to embark upon founding a *polis* of the interlocutors in *Laws* with that of the interlocutors in *Republic*, it becomes clear that there is a vast difference between the two texts. The interlocutors in *Republic* are looking for the nature of justice (δικαιοσύνη); they found a just city 'in speech' (λόγῳ, *Resp.* 369a6) because they want to determine what justice is, and assume that it will be plainly visible in a just city.[24] In *Republic*, δικαιοσύνη is the *a priori* principle that determines the structure of the *polis*. By contrast, the interlocutors in *Laws* found a city in speech by making a *selection from their previous discussion* (ἐκ τῶν εἰρημένων ἐκλέξαντες, τῷ λόγῳ συστησώμεθα πόλιν, 702d1–2). The difference with *Republic* is telling: the *polis* of the interlocutors in *Laws* is not designed as the embodiment of one uniform principle of virtue that is identical for both the just city and the just soul.[25] Founding a *polis* on the basis of a selection from what has been stated, ἐκ τῶν εἰρημένων – a rather vague idea in itself – leaves open the possibility that another exercise could lead to different results and a different set of laws. The idea in *Laws* is not that these are *the* just laws, and even less that the laws in *Laws* fit a constitution that has been described in another dialogue. The primary evidence for such a reading, *Laws* 739b8–e4, is part of a different context altogether and, as has been noted above, does not refer to Callipolis.[26]

This means that any interpretation assuming that the legislation in *Laws* is the law code for a practical version of Callipolis, or a substitute for the philosopher-kings,[27] ignores both what is explicitly claimed to be the basis of the laws in *Laws* and the fact that the legislation is presented as an exercise. Since δικαιοσύνη stands or falls with the rule of the philosophers, the absence of philosopher-kings affects the very status of the political order described. The assumption in *Republic* is that the just *polis* can *only* be realised if the philosophers rule: the just *polis is* the constitution that the philosophers impose upon it. The interlocutors in *Laws* merely want to test whether their conclusions can yield a contribution to the improvement of human life – for if these ideas about lawgiving *do not lead to sufficiently good laws*, it will challenge the practical merit of their conclusions. Only those laws are sufficient which make a real improvement in the individual's and city's life. The interlocutors are not attempting to map out parts of the truth. Their discussion therefore formally resembles a dialectical conversation, but is not dialectic in the full Platonic sense.

24 *Resp*. 368e7–369a4.

25 See Chapter Two, p. 66; also section 2.2.3.3.

26 Chapter One, pp. 21–22.

27 Cf. Chapter One, p. 20. For a discussion of *Laws* 875a1–d5, which is often considered to be evidence for just such a claim, see Chapter Five, pp. 163–166.

4.1.2 The suggestion of consistency between the laws and Books I–II

The idea that the laws in *Laws* are the practical result of the application of the principles of the opening discussion (I–II, III) in the form of laws is explicitly insisted upon in later Books, namely in passages from Books IV and VI. These passages are not part of the legislation itself, but belong to that part of *Laws* in which necessary preliminaries are discussed, such as the geographical location of the new colony and the magistrates. The ensuing legislative activity of the interlocutors is here presented as an exercise in making laws that aim at 'complete virtue', rather than lawgiving that aims at a 'part' of virtue – terms that are comprehensible because of the discussion in Books I–II. Precisely because the claim is that all lawgiving until now has either been *ad hoc*, triggered by immediate needs,[28] or at best, as in the Cretan and Spartan case, aimed at a *part* of virtue, given that human beings need laws,[29] it remains to be tested whether the idea that lawgiving ought to aim at the whole of virtue results in useful laws. That the proclaimed goal of the interlocutors' laws is complete virtue is made explicit shortly after the interlocutors have agreed to found a *polis* in speech, at the beginning of Book IV, 705d3–706a4:[30]

> Αθ. Ὦ δαιμόνιε, φύλαττέ με εἰς τὸ κατ' ἀρχὰς εἰρημένον ἀποβλέπων, τὸ περὶ τῶν Κρητικῶν νόμων ὡς πρὸς ἕν τι βλέποιεν, καὶ δὴ καὶ τοῦτ' ἐλεγέτην αὐτὸ εἶναι σφὼ τὸ πρὸς τὸν πόλεμον, ἐγὼ δὲ ὑπολαβὼν εἶπον ὡς ὅτι μὲν εἰς ἀρετήν ποι βλέποι τὰ τοιαῦτα νόμιμα κείμενα, καλῶς ἔχοι, τὸ δὲ ὅτι πρὸς μέρος ἀλλ' οὐ πρὸς πᾶσαν σχεδόν, οὐ πάνυ συνεχώρουν· νῦν οὖν ὑμεῖς μοι τῆς παρούσης νομοθεσίας ἀντιφυλάξατε ἑπόμενοι, ἐὰν ἄρα τι μὴ πρὸς ἀρετὴν τεῖνον ἢ πρὸς ἀρετῆς μόριον νομοθετῶ. τοῦτον γὰρ δὴ τίθεσθαι τὸν νόμον ὀρθῶς ὑποτίθεμαι μόνον, ὃς ἂν δίκην τοξότου ἑκάστοτε στοχάζηται τούτου ὅτῳ ἂν συνεχῶς τούτων ἀεὶ καλόν τι συνέπηται μόνῳ, τὰ δὲ ἄλλα σύμπαντα παραλείπῃ, ἐάντε τις πλοῦτος ἐάντε ἄρα τι τῶν ἄλλων τῶν τοιούτων ὂν τυγχάνῃ ἄνευ τῶν προειρημένων.
>
> Ath. 'Bravo, my friend! Keep an eye on me. But if you look back at what was said at the beginning, about the laws of Crete having one single aim, you two were saying that this aim was military, to which my objection was that while it was fine for legal provisions of this kind to have goodness for their aim, I absolutely disagreed with making that aim a part of goodness, rather than goodness as a whole. Now it's your turn. You must keep an eye on this lawgiving I'm doing now, following closely to see if I introduce any law whose object is not goodness, or is only a part of goodness. My basic assumption is that it is right to pass a law only if, in any particular instance, it has as its aim, when it draws its bow, that which always brings with it something of permanent value – if it ignores everything else, be it wealth or anything else of that kind which lacks the quality I have just mentioned.' (Transl. Schofield & Griffith)

The Athenian criticized the aim of the Cretan laws, war; now he admonishes his interlocutors to monitor in turn (ἀντιφυλάξατε, 705e2) the laws he frames: they must make sure that his laws aim at virtue as a whole. The laws follow upon the dialectical discussion and therefore are at least *presented as* in line with the outcomes of the preceding conversation; this consistency is explicitly insisted upon by the admonitions of the Athenian to his interlocutors in passages such as the one cited above. Indeed, we also find various substantial correspondences between sections

28 For criticism of contemporary legislation, see *Leg*. 630d9–e7, 709a1–b2.
29 Expressed in *Leg*. 713c2–714a8, 874e7–875a4.
30 Cf. *Leg*. 707d1–5.

of the legislation and the opening discussion (mainly Books I and II).[31] Yet, at the same time, it should be noted that in the discussion of the preambles and the magistrates, and in the διέξοδος τῶν νόμων itself, the themes of the four virtues and the unity of the virtues remains completely out of sight.[32]

Apart from the passage just discussed, there are two further passages in which the interlocutors are made to insist that their laws aim at virtue. It is notable that in these two cases, the statements about the goal of the laws are part of 'programmatic' discourse. The first passage, Book IV, 717a3–6, is part of a design for a speech of the sort they imagine could be directed at the new colonists. The Athenian states that their aim (σκοπός, 717a3) is to make the citizens pious (τοῦ τῆς εὐσεβείας σκοποῦ, 717a8–b1) and behave in a manner pleasing to god (φίλη καὶ ἀκόλουθος θεῷ, 716c1; cf. the σώφρων is θεῷ φίλος, 716d2). The right 'missiles' (βέλη) to achieve this involve ordering the new citizens to honour the gods, daemons, heroes, ancestral deities, and their parents.[33]

In the second passage, Book VI, 770b4–e6, the interlocutors *qua* lawgivers address the lawguards, whom they identify as their successors.[34] Part of their speech to them is the instruction that when making additional laws, the lawguards 'keep their gaze fixed at those things at which we have agreed amongst each other that the lawguard and lawgiver ought to look', βλέποντας πρὸς ταῦτα εἰς ἅπερ ἡμεῖς συνεχωρήσαμεν ἀλλήλοις τὸν νομοφύλακά τε καὶ νομοθέτην δεῖν βλέπειν (770c5–7).[35] Although the interlocutors here explicitly insist that the subsequent phases of lawgiving should be consistent with and aim at their original purpose, the terms they use are notably vague and indirect (πρὸς ταῦτα εἰς ἅπερ ἡμεῖς συνεχωρήσαμεν ἀλλήλοις τὸν νομοφύλακά τε καὶ νομοθέτην δεῖν βλέπειν, 770c5–7). Most plausibly, this must refer to the 'complete virtue' of Books I–II; but, as with ἐκ τῶν εἰρημένων ἐκλέξαντες above, Plato is not very specific.

The main point of the interlocutors' agreement (ἡ συγχώρησις, 770c7; that is, in the opening discourse) was that the lawgiver had to direct his efforts to ensure that a person will become good (ὅπως ποτὲ ἀνὴρ ἀγαθὸς γίγνοιτ' ἄν, 770c7–d1) and acquire the appropriate excellence of soul (τὴν ἀνθρώπῳ προσήκουσαν ἀρετὴν τῆς ψυχῆς, 770d1–2). This is a curious phrase. The formula τὴν … ἀρετὴν τῆς ψυχῆς sounds traditionally Platonic. Yet ἀνθρώπῳ προσήκουσαν and the continuation of

31 *Leg*. 798e refers to 654e and 668a; 803d to Book I; 806e to the discussion of the *syssitia* in Book I; 807b to 739c; 812b-c to the Dionysian chorus; 840c to Book I; 841a-b to Book I; 864b to the puppet analogy; 876b to Book VI; 959d to the imaginary poet's criticism of the lawgiver in Book IV (717–718).

32 With one explicable exception (in Book X), it only features in the discussion in Books I–II and XII (cf. Chapter Three, pp. 104–105, 110). For a brief discussion of the passage in Book X, see Chapter One, pp. 35–36.

33 *Leg*. 717a4–718a6. The remainder of the speech will prescribe the required behaviour towards children, relations, friends and citizens, as announced in 718a6–b5.

34 The idea that a lawgiver has 'successors' is discussed in Chapter Five, pp. 155–156 and section 5.2.

35 The Athenian here explicitly presents what was established in their earlier conversation as the product of the dialectical discussion rather than as his own insight. Formally, of course, he can claim this because the interlocutors did indeed agree to his view. Cf. Chapter Six, p. 192.

the sentence alter this impression. That virtue can be acquired in multiple ways, including through habit or acquisition (ἔκ τινος ἐπιτηδεύματος ἤ τινος ἤθους ἢ ποιᾶς κτήσεως ἢ ἐπιθυμίας ἢ δόξης ἢ μαθημάτων ποτέ τινων, 770d2–4), is out of tune with the Platonic notion of virtue as a state of soul analogous to knowledge. Moreover, the added list 'man or women, young or old' (εἴτε ἄρρην τις τῶν συνοικούντων οὖσα ἡ φύσις εἴτε θήλεια, νέων ἢ γερόντων, 770d4–5) that follows after τὴν ἀνθρώπῳ προσήκουσαν ἀρετήν is more reminiscent of the variable, context-dependent Gorgianic idea of virtue than of the static, absolute Platonic conception.[36] The description here hints at a much less essentialist notion of virtue, which can be induced or acquired in a variety of ways which are all equal – be it through some pursuit, habitual practice, possession, desire, belief or studies.[37] In other words, *how* a person may acquire virtue is of secondary importance: virtue can be induced by any of these.

4.1.3 The characteristics of legislation λόγῳ

So far, it has been argued that the formulation of laws in the dialogue is an exercise in lawgiving by means of which the interlocutors aim to test the viability of their earlier conclusions, rather than the law code for Magnesia. This is confirmed by the way in which the interlocutors designate their own activity: 'going through the laws', διέξοδος τῶν νόμων or περὶ νόμων.[38] They also refer to the legislative phase of their conversation as an 'investigation' (σκέψις).[39] The idea is clearly that this διέξοδος, and law codes in general, have some kind of order: the topics are discussed ἑξῆς, 'in order',[40] and it is possible to distinguish between a beginning (ἀρχή), middle (τὰ μέσα) and end (τέλος).[41] Generally, the order of the topics follows the sequence of events of the human life cycle: the διέξοδος begins with the

36 For Gorgias' notion of virtue, see Pl. *Men*. 71e1–72a5; cf. *Ion* 540b3–5. Cf. Kube 1969, 129–130.

37 An example of encouraging virtue through κτῆσις may be the 'additional payment' (δίκη … συνεπομένη) that is owed by the person who commits theft or violence: see below, p. 184. This is also connected to the relatively egalitarian conception of virtue (see Chapter Three, p. 102): virtue is not πράττειν τὰ ἑαυτοῦ, an occupation or curriculum appropriate to members of a specific class. Rather, the thought is that every citizen will acquire virtue in the way(s) that is or are open to him or her.

38 *Leg*. 718b2 (τῶν νόμων αὐτῶν ἡ διέξοδος), 768d5 (ἡ διέξοδος), 799e5 (ἡ διέξοδος αὕτη), 812a9 (ἡ διέξοδος περὶ νόμων); cf. 805b5, 806d2 (with ἱκανῶς), 857e3–4, 887c4 (with ἱκανῶς). The term διέξοδος is also used for exercises in the description of sports in 813e1, 813e8–814a1.

39 *Leg*. 799e1–2 (and cf. the preceding comparison, 799d3, d5), 858a1.

40 In the context of the legislative part: *Leg*. 779d6, 780c6, 782d7, 796e4, 804c2, 823d3, d6, 834b1, 853b1, 914b1; cf. 860d3, 900b6 (τὸν ἑξῆς λόγον). In the discussion of the magistrates, this suggestion is present as well: 755b6, 763e4. It therefore seems somewhat unfair to say that "the argument lurches from topic to topic" (Saunders, Intr. translation p. xlii). Of course, this is the natural form of a law code. Yet it *feels* unsatisfactory because it is embedded in a Platonic crafted literary dialogue, in which argumentative and thematic coherence is expected.

41 *Leg*. 768d4–6: a complete διέξοδος must go from the beginning through τὰ δεύτερα καὶ τὰ μέσα καὶ πάντα μέρη τὰ ἑαυτῆς ἀπολαβοῦσα until the end (τέλος). For observations about the structure of the legislation and the division into beginning, middle and end, see Miller 2013.

festivals at which suitable marriage partners are selected (as a prelude for procreation) and ends with bequeathals and burial rituals.[42] By placing the regulations about procreation first, the lawgiver will be following the order of nature (κατὰ φύσιν τὴν περὶ γενέσεως ἀρχὴν πρώτην … κατακοσμήσει, 720e11–721a1). Hence, it is natural that the first law for which a preamble is framed is that relating to the identification of a suitable marriage partner, as marital intercourse is the beginning of the production of citizens in all states.[43] The order of the laws is presented as *natural* again in the penal part of the legislation: laws about punishments (δίκαι) naturally follow (ἀκόλουθοι … *κατὰ φύσιν* γίγνοιντο ἄν, 853a1–2) on the practices (in markets) that were described in the previous section: this is the natural order of the laws ([κατὰ φύσιν] τὴν τῆς διακοσμήσεως τῶν νόμων, 853a2–3). Lawgivers can be more or less competent in choosing the appropriate order: in 874e3–5 the Athenian says that even the most inferior lawgiver (καὶ ὁ φαυλότατος … τῶν ἐπὶ νόμον τρεπομένων) would place rules about woundings and maiming (τραύματα δὴ καὶ πηρώσεις ἐκ τραυμάτων) second in the penal code, after the rules about deaths.

The interlocutors note that the order of the topics discussed in their legislation deviates at some points from the order in which topics would have to be discussed had they been legislating for real. The founding of a city λόγῳ permits the interlocutors to treat topics somewhat more freely. Reality requires that some aspects of founding a *polis* precede others. For example, the Athenian remarks about house-building and city-planning, 778b4–c2:

> γάμων δ' ἦν ἔμπροσθεν ταῦτα, ὦ Κλεινία, νῦν δ' ἔπειπερ λόγῳ γίγνεται, καὶ μάλ' ἐγχωρεῖ ταύτῃ γίγνεσθαι τὰ νῦν· ἔργῳ μὴν ὅταν γίγνηται, ταῦτ' ἔμπροσθεν τῶν γάμων, ἐὰν θεὸς ἐθέλῃ, ποιήσαντες, ἐκεῖνα ἤδη τότε ἐπὶ πᾶσιν τοῖς τοιούτοις ἀποτελοῦμεν. νῦν δὲ μόνον ὅσον τινὰ τύπον αὐτῶν δι' ὀλίγων ἐπεξέλθωμεν.
>
> 'Building comes before marriage, Cleinias. But at the moment, since it's all theoretical, this is a convenient moment to deal with the question. In real life, we will do building before marriage, god willing, and only then – on top of all that sort of thing – will we finish it off with marriage. For the present, let's just give a brief description of the *kind* of buildings we need.' (Transl. Schofield & Griffith)

In the present case, the interlocutors will deal with these affairs only in outline (ὅσον τινὰ τύπον), and only discuss a limited number of the regulations about the construction and location of buildings (αὐτῶν δι' ὀλίγων ἐπεξέλθωμεν). Once again, it becomes clear that the interlocutors do not conceive of their laws to be the real law code for Magnesia.

The assumption that they are engaged in an exercise λόγῳ rather than in founding a city ἔργῳ also absolves the interlocutors from going into every detail at pres-

42 Cf. Laks 2000, 265–266: "In fact, no less than three principles must be taken into account to explain the fairly complex order of exposition followed in Books VII to XII: (1) the chronological principle of the cycle of human life and its nodal points – marriage and procreation, education, military service, political life, death and funerary arrangements; (2) a reality principle according to which activities linked to survival must be regulated (842e3–5, cf. 842d1–e1); (3) the principle of penal regulation, which rests on a classification of transgressions in order of their degree of seriousness (884a1–885a7)."

43 *Leg*. 720e10–721a7.

ent. The fact that the foundation of their city takes place in their dialogue under the stipulated conditions rather than for real makes it unnecessary to go into the tricky details of determining, for example, the selection procedure of the future citizens, 736b5–7:

> πόνος δ', ὡς ἔοικεν, καὶ κίνδυνός ἐστιν ἐν πάσῃ κατασκευῇ πολιτικῇ. τὰ δ' ἐπείπερ λόγῳ γ' ἐστὶν τὰ νῦν ἀλλ' οὐκ ἔργῳ πραττόμενα, πεπεράνθω τε ἡμῖν ἡ συλλογὴ καὶ κατὰ νοῦν ἡ καθαρότης αὐτῆς ἔστω συμβεβηκυῖα·
>
> 'Well, there is hard work and risk involved in making any political arrangements, but since what we are engaged in at the moment is a theoretical undertaking, not a practical one, let's take it that the collection has been completed, and its purification carried out as planned.' (Transl. Schofield & Griffith).

In their legislation in speech, the interlocutors need not worry about the risky and toilsome mechanisms of purgation or selection of the new colonists, but can simply proceed as if these had already been completed. They will assume an outright favourable situation in which only the good citizens are granted access.[44] The format – the founding of a city λόγῳ – to some extent influences the nature of the interlocutors' legislative project: it allows the interlocutors to discuss some things in a different order than the order a law code ἔργῳ demands, and it allows them to pass over some tricky topics that a real lawgiver would have to solve.

4.2 EMBEDDING LAWS IN DIALOGUE

4.2.1 Formal observations

In the present section, it will be argued that *Laws* does not straightforwardly offer an actual *code* of laws. This section investigates what is going on in the legislative part of the dialogue instead. It analyses the formal characteristics of the interlocutors' legislative activity; that is, what factors give the διέξοδος τῶν νόμων its particular shape in the dialogue? What does the failure to be clear about what constitutes the text of the laws suggest about what the interlocutors are doing?

We may begin by briefly reflecting on the dialogue form of the text. *Laws* as a whole is set up in the way characteristic of the texts in Plato's oeuvre: as a dialectical conversation.[45] Book I in particular raises the expectation that we will witness a dialectical conversation, and the suggestion of a dialectical conversation is sustained throughout the whole dialogue – especially because the Socratic character of the conversation once again comes to the fore at the very end of Book XII, thus creating the effect of closure and a ring composition (cf. Chapter Three). Yet we find frequent exchanges between Cleinias, Megillus and the Athenian in other parts of the text as well. In such cases, there is a brief exchange in which Cleinias asks the Athenian for further clarification, which the Athenian proceeds to offer, or in which Megillus expresses his agreement. Here we may recall that an interlocutor's will-

44 *Leg*. 736b7–c4.
45 See Chapter Three, pp. 78–79.

ingness to clarify his statements, σαφέστερον λέγειν, is a token of εὔνοια ('benevolence') to a serious interlocutor.[46] Books VI–XII do contain longer passages where the Athenian talks for several pages without interruption,[47] but generally speaking the text as a whole is a dialogue, as becomes sufficiently clear from looking at the layout of the OCT edition.

Although the dialogue contains several familiar dialectical elements, in section 4.1 we saw that there is ample evidence that *Laws* is not concerned with the search for objective metaphysical truth. The purpose of formulating laws λόγῳ is to *test* whether the results of the opening conversation can contribute something to the improvement of human life *in practice*. The interlocutors are neither concerned with establishing whether the laws and regulations are objectively true (they are *making* them), nor with establishing, via the test of lawgiving, that the outcomes of the opening discussion (Books I–III) are true on a metaphysical level. The dialectical conversation of *Laws* offers a setting for a different kind of philosophical project than the aim of 'real' dialectic as a philosophical method that assumes (and is premised on) the existence of an objective truth.

The context of the dialogue to some extent influences the interlocutors' legislative project. The interlocutors can decide to formulate laws in speech because they are already engaged in a conversation: the very nature of the test at least partly follows from the conversational setting. At the same time, the fact that the interlocutors formulate laws for the purpose of a test also significantly modifies the nature of the 'dialectic' portrayed in *Laws*. The conversation in *Laws* may incorporate formal dialectical elements and possess the semblance of dialectic, but if the aim of the discussion in the legislative part of the dialogue is not to attain the truth (as was argued above), it is not really dialectic in the Platonic sense.

Turning from the 'framing' conversation to the legislative part of the text (roughly Books VI–XII), we can see that the legislation itself is embedded in the text in highly complex ways.[48] In fact, it is so complicated that one can hardly say

46 Pl. *Plt*. 262c2–4: when the young Socrates asks Πῶς, ὦ ξένε, λέγεις τοῦτο; the Stranger responds: Πειρατέον ἔτι σαφέστερον φράζειν εὐνοίᾳ τῆς σῆς φύσεως, ὦ Σώκρατες 'I must try to tell you still more clearly, Socrates, out of good will towards your natural endowments' (transl. Rowe). In *Gorgias* 486e6–487a3, εὔνοια was stipulated as one of the three conditions for successful dialectic. Cf. Bobonich 1991, 376, n. 45: "Plato often suggests a connection between 'gentleness' and the ability to learn and teach", with references *ibid*.

47 These are (four or more pages without interruption): *Leg*. VII, 806d7–810c4; VIII, 842b1–848b2; IX, 853b4–856e3, 869e10–885b9 (interrupted, however, by a brief exchange with Cleinias in 876a4–8), X–XI, 907d4–918c7 (the very end of the Book X and part of Book XI); in 918c7 the monologue is interrupted by Cleinias who asks πῶς λέγεις; to which the Athenian responds in 918c9 ff.

48 Laks 2000 offers similar observations, but his interpretation differs from the one defended here. He distinguishes between "contingent" and "essential" obscurities. Among the former, Laks sees a "disorder" in the final two books, which is taken to suggest that Plato "died before he could put the final touches to his work". The latter has to do with the "specific way in which Plato envisages the legislative task": the "overall structure of the legislative work tends to be blurred as a result of the constant and deliberate 'postponement' of legislation" (citations from page 263). Yet it remains unclear why we should interpret these mechanisms as ways of "postponing" legislation, when Laks at the same time argues that legislation as "expert knowledge

that *Laws* really offers a law *code*.[49] This may seem a surprising observation, but it is only surprising in view of the non-problematising way in which the literature usually speaks of the "the laws" or "the law code" in *Laws*.[50] The διέξοδος τῶν νόμων mostly consists of extensive considerations motivated by the issue at hand that requires legislation. Plato has not composed a text in which a speaker simply lays down a law code for a city of which the structure and basic organizational principle are clear from the outset and are assumed as an *a priori* given (which is the case in *Republic*). Had he wanted to present an unambiguous law code, he could easily have done so in a clear way. Some laws are explicitly announced (and the formulation makes it clear that it is the actual law), and sometimes the Athenian explicitly makes a distinction between legislation and digression.[51] Yet often the composition of the text leaves it unclear which parts of the conversation are part of the actual text of the preambles and laws and which are not. It is therefore necessary to problematize the formal characteristics of the interlocutors' mode of proceeding in their lawgiving, and ask why Plato has composed his text in this way.

One factor that may have contributed to hide the complexities from our view is the convention of several translations to mark off the presumed text of the laws from other parts of the conversation by typographical means. It is misleading that the translations of Saunders and Schofield & Griffith mark off parts of the text as being unequivocally part of a law code, because such a practice does not reflect the intricacies of the text and the fact that unambiguous indications are often lacking. Saunders prints what he takes to be the actual text of the laws indented and in a smaller font.[52] Yet in his Introduction, he admits that things are much more complicated: "My biggest headache has been the presentation of the legal code. (…) to articulate the entire code by a comprehensive use of 1, 2, 3, (a), (b), (c), etc., would be equally confusing, because the material is far too complicated to be organized consistently according to any single method." Saunders assumes that the central point embedded in any given set of regulations, "in however much exhortation, incidental comment, ritual and administrative detail it may be embedded", is "the statement of the offence and its penalty or other consequence", and that he has attempted to systematise.[53] "But in some unusually tangled parts of the code (mainly

or art (*technē*)" encompasses more than just making laws, such as discussing preconditions, the constitution and giving the laws to the magistrates (*ibid*. pp. 263–264).

49 I have tried to avoid referring to the laws in *Laws* as a 'law code', preferring 'legislation' (the activity) 'legislative activity' or 'legislative project' instead – the term that best describes it is διέξοδος, at times with the addition of τῶν νόμων or περὶ νόμων; see above, p. 126, with n. 38.

50 E. g., Meyer 2015, 1.

51 For example, at *Leg*. 864c10–11, the Athenian states that after their digression, they must return to the point from which they departed (ἴωμεν δὴ τὰ μετὰ ταῦτα ἐκεῖσε ὁπόθεν ἐξέβημεν δεῦρο), in order to realize the actual legislation (περαίνοντες τὴν θέσιν τῶν νόμων).

52 For example, pp. 253 ("failure to marry"), 254 ("dowries"), 255 ("the wedding feast"), 344–345 ("duties to neighbours"), 345 ("the water supply (1)"), 346–347 ("the harvest"), 386–391 (regulations about murder and killings).

53 The consequence of this is that Saunders does *not* print indented even some passages where a law is explicitly announced when this law is not followed by the stipulation of a punishment, as for example in 824b (or 824a11–19, in the OCT). Schofield & Griffith do use italics here,

in the long discussions of homicide, wounding and assault), a rigidly consistent application of these devices would have confused rather than clarified the text, and I have had to print in indented type a certain amount of other material too" (40–41).[54]

The typography of the translation by Schofield & Griffith likewise suggests that *Laws* offers a clear design for laws, which can unproblematically be separated from other parts of the dialogue.[55] The text that supposedly belongs to the law code is printed in italics.[56] Yet the choices made are not beyond dispute, which becomes clear from the fact that their choices do not always correspond to those made by Saunders. For example, Saunders on p. 303 includes a law plus penalty (number 38, according to his counting) in the law code: it is printed indented and in smaller font (the lines are 846b2–4). In the translation of Schofield & Griffith, however, this is not treated as a law and accordingly printed in regular font. The same goes for 847a3–b2: this is treated as part of the law code in Saunders (p. 304), but not in Schofield & Griffith (pp. 317–318). There are more examples.[57] The extent of the differences between the two translations already shows how little is unequivocal about the supposed text of the preambles and laws.

There are some unequivocal cases, where the Athenian explicitly announces that the law should be as follows, and where the ensuing text is printed in italics, such as 845e, on page 316.[58] Yet it is not clear why Schofield & Griffith print the first paragraph in italics (until "that the purification is to be done"), whereas the following paragraphs on pages 316–317, which still consist of stipulations[59] and arguably could be supposed to be part of the law code (and indeed, Saunders does print some parts indented), are printed in regular font. The same goes for 843c-e on pages 313–314: here one might also wonder why this section is not printed in italics, while 843a-b on pages 312–313 is. The passage 843c-e contains numerous directives of the same kind and phrasing as in 843a-b, which is printed in italics.[60] In

p. 291. This is in fact the first time in their translation they do so; to compare, by 808e7–809a3 (the closest passage before 824 where he does print the text indented) Saunders has already isolated 24 laws.

54 Cf. n. 42 *ibid*., 41: "This is by no means a drawback, as the various regulations by no means fall into watertight categories. For instance, in the homicide law there are several measures which could be treated *either* as penalties *or* as mere religious observances" (emphasis in original).

55 This is not commented on in the Introduction.

56 For example on pp. 341–354, 357–364 (Book IX).

57 To offer just a few additional examples: one may compare Saunders and Schofield & Griffith for *Leg*. 843c6–e3 (printed for the most part indented in Saunders, not in italics in Schofield & Griffith); 854e1–6 (*idem*, and one wonders why, since Schofield & Griffith do print 854d in italics); and in Book IX, Saunders starts the law at 864d5, Schofield & Griffith at 865a3.

58 Also *Leg*. 824a11–19, on p. 291 in Schofield & Griffith.

59 These are the following: "anyone who chooses shall be permitted", "The officials are to act as inspectors in these cases …", "In all cases of this kind (…) he shall bring it to the attention of the officials and obtain redress", "If anyone has a larger claim against anybody else, he shall bring an action in the public courts …", "If any of the officials is found to have been biased in his approach to assessing damages, he shall be liable for double the amount …" (examples from p. 316). It is not clear (nor is it explained) why this section is *not* printed in italics.

60 For example: "If anyone does go beyond his boundaries …, then he shall pay …", "In these and all similar cases the rural commissioners shall act as inspectors, judges, and assessors …", "If

any case, even when the directives do not take the form of an actual law, large parts of *Laws* contain considerations judged to be compelling and descriptions of how things should be organized, rather than rules that could be imagined to be addressed to a citizen (at this point fictive).[61] Yet even when the law is explicitly announced in some cases, the typography of the translation of Schofield & Griffith shows that the laws are deeply intertwined with the conversation: in the longer stretches on pages 341–354 and 357–364 (Book IX), for example, italics and regular text keep alternating.

The legislative part of *Laws* contains a great many descriptions of procedures, rules and suggestions not directly addressed to a citizen and therefore remains relatively 'deliberative' in character. At some points, these deliberations culminate in concrete specimens of legislation, where the Athenian formulates text that could be used in a law code. Yet the interlocutors are certainly doing more than formulating laws; they are *discussing* possible regulations for those topics which a law code normally settles.[62] That is, they use the idea of a law code as a rough guideline to indicate the topics that need to be discussed, but they also significantly modify it, as they want to include things in their own legislation which it would be impossible or inappropriate to regulate in the form of real laws. Not only do they change the order of the topics, as we saw above, it also turns out that they include a great number of prescriptions that are considered unfit to be laid down in the form of a law in the narrow sense (i. e. stipulation followed by punishment). Such regulations therefore take another form than that of a law followed by punishment: admonition (νουθήτεσις),[63] advice (παραινεῖν),[64] encouragement (παραμυθία),[65] instruction (διδαχή),[66] or persuasion (πειθώ).[67] An important part of the legislative activity of the interlocutors is therefore the discussion of topics the Athenaian considers unfit for the shape of a law, yet which the Athenian considers too important to be left without any kind of regulation.[68]

One such domain is the regulation of the nurture and education of newborn children, 788a1–5:

anyone allows his cattle to encroach …", "If any beekeeping enthusiast gets carried away and starts appropriating … he shall pay damages", "If he is burning wood … he shall pay a fine decided upon by the magistrates".

61 One might also wonder why 865e (pp. 340–341) is not printed in italics.

62 It seems misleading to note "some [passages] looking more like digressions than preambles, where the attempt is made to *move discussion to* a different and more reflective plane" (Schofield 2016, 17, emphasis added), not in the least because one of the passages listed as evidence is a passage from Book I, 638b–641a, at which point of course the whole legislative project and the idea of the preamble have yet to be introduced. The reflective plane *is* the level of the discussion: the interlocutors are running a *test*, and are not yet laying down a real law code.

63 E. g. *Leg*. 740d8–e1, 788a4, 822d7, 845b4–5, 908e3, 909a4.

64 E. g. *Leg*. 741a7, 933b7.

65 E. g. *Leg*. 720a1, 773e5, 880a7, 885b3, 923c2.

66 E. g. *Leg*. 788a4, 845b5, 880d9, 885d2.

67 E. g. *Leg*. 720a1, 773d6, 885d2.

68 E. g. *Leg*. 718b5–c3. See further below.

> Γενομένων δὲ παίδων ἀρρένων καὶ θηλειῶν, τροφὴν μέν που καὶ παιδείαν τὸ μετὰ ταῦτα λέγειν ὀρθότατ' ἂν γίγνοιθ' ἡμῖν, ἣν εἶναι μὲν ἄρρητον πάντως ἀδύνατον, λεγομένη δὲ διδαχῇ τινι καὶ νουθετήσει μᾶλλον ἢ νόμοις εἰκυῖ' ἂν ἡμῖν φαίνοιτο.
>
> 'Once the children have been born – male and female – the next topic for discussion, presumably, if we go about things in the right way, will be upbringing and education. To say nothing about these is totally out of the question, but if we do talk about them, then it would clearly be appropriate to employ a degree of instruction and admonition, in preference to legislation.' (Transl. Schofield & Griffith)

The task of the lawgiver consists of more than just formulating laws: in addition to laws, he must lay down something which holds the middle between admonition and law (ἕτερον δέ τι πρὸς τοῖς νόμοις εἶναι μεταξύ τι νουθετήσεώς τε πεφυκὸς ἅμα καὶ νόμων, 822d6–7), as he has said before.[69] The best citizen will be the one who obeys all of the lawgiver's writings, 822e4–823a6:

> γεγραμμένων δὴ ταύτῃ τῶν νόμων τε καὶ ὅλης τῆς πολιτείας, οὐ τέλεος ὁ τοῦ διαφέροντος πολίτου πρὸς ἀρετὴν γίγνεται ἔπαινος, ὅταν αὐτόν τις φῇ τὸν ὑπηρετήσαντα τοῖς νόμοις ἄριστα καὶ πειθόμενον μάλιστα, τοῦτον εἶναι τὸν ἀγαθόν· τελεώτερον δὲ ὧδε εἰρημένον, ὡς ἄρα ὃς ἂν τοῖς τοῦ νομοθέτου νομοθετοῦντός τε καὶ ἐπαινοῦντος καὶ ψέγοντος πειθόμενος γράμμασιν διεξέλθῃ τὸν βίον ἄκρατον. οὗτος ὅ τε λόγος ὀρθότατος εἰς ἔπαινον πολίτου, τόν τε νομοθέτην ὄντως δεῖ μὴ μόνον γράφειν τοὺς νόμους, πρὸς δὲ τοῖς νόμοις, ὅσα καλὰ αὐτῷ δοκεῖ καὶ μὴ καλὰ εἶναι, νόμοις ἐμπεπλεγμένα γράφειν, τὸν δὲ ἄκρον πολίτην μηδὲν ἧττον ταῦτα ἐμπεδοῦν ἢ τὰ ταῖς ζημίαις ὑπὸ νόμων κατειλημμένα.
>
> 'Once our laws, and the social and political system as a whole, have been written down in the way we are suggesting, our approval of the citizen who is outstanding in terms of human excellence will not confine itself to saying that whoever is the best servant of the laws, and the most obedient to them – that this is the one who is good. A fuller description would be: 'whoever passes his whole life, consistently, in obedience to the writings of the lawgiver – both his laws and his (positive or negative) recommendations'. This is the most accurate form of words when it comes to praising a citizen, and it puts a corresponding onus on the lawgiver to do more than merely write the laws; in addition to the laws he has to write down his views – say what he thinks is good, and what not good – blended in with the laws. The perfect citizen should treat these views as immovable, no less than the ones which have the backing of the law and its penalties.' (Transl. Schofield & Griffith)

Here the interlocutors anticipate the moment when their laws and the entire constitution have been written down 'in this way' (ταύτῃ). In addition to the laws (πρὸς δὲ τοῖς νόμοις), the lawgiver must write down everything he considers fine and not fine (ὅσα καλὰ αὐτῷ δοκεῖ καὶ μὴ καλὰ εἶναι), which will be *intertwined with* the laws (νόμοις ἐμπεπλεγμένα) (823a3–5). The person of outstanding virtue (ὁ διαφέρων πολίτης, 822e5; ὁ ἀγαθός, 822e7–8) obeys all directions of the lawgiver. Saying that he is the servant of only the laws themselves is incomplete praise (οὐ τέλεος … ἔπαινος, 822e5–6). It is the mark of the excellent citizen that he will not uphold these other writings any less than the rules enforced by legal penalties (τὰ ταῖς ζημίαις ὑπὸ νόμων κατειλημμένα, 823a6). These assertions about the virtuous citizen seamlessly pass over into the discussion of hunting and turn out to have a

69 *Leg*. 822d7–e2: ὃ δὴ πολλάκις ἡμῶν ἐμπέπτωκεν τοῖς λόγοις, οἷον περὶ τὴν τῶν σφόδρα νέων παίδων τροφήν.

direct bearing on this topic.[70] The topic of hunting itself testifies to the need for praise and censure in addition to the laws.[71] The term θήρα covers a great many varieties of hunting: the hunting of water animals, of birds, of land animals, of people (in war, in love) – all these different activities are subsumed under this one term (περιειλημμένον ὀνόματι νῦν σχεδὸν ἑνί, 823b2).[72] To leave these things unclear (οὔτε μὴ δηλοῦν) or lay down rules and punishments for all kinds of hunting (οὔτε ἐπὶ πᾶσιν τάξεις καὶ ζημίας ἐπιτιθέντα ἀπειλητικὰ νόμιμα τιθέναι) are not viable options (823c2–3). The lawgiver will need to compose the praise and censure of the various forms of hunting, with a view to the toils and exercises of the young (πρὸς τοὺς τῶν νέων πόνους τε καὶ ἐπιτηδεύματα, 823c5–6).

Statements such as these are numerous and themselves an important *part of* the legislative section of *Laws* (roughly Book IV–XII, 960b5). The διέξοδος of the laws therefore contains a great deal of normative material – 'praise and blame' – that does not constitute a law in the narrow sense, but that nevertheless should be obeyed and be considered no less binding than the laws themselves, as the Athenian envisages the situation. Such extensive discourse in the context of discussing the *paideia* of the citizens in Books VII and VIII takes on the form of admonitions, encouragement and praise, and in the context of the penal laws discussed mainly in Books IX and X, it takes the form of preambles. Moreover, the legislative part of *Laws* also contains the Athenian's considerations, for example, about the necessity to make particular distinctions in the laws on wounding and violence, which govern the choices he makes in formulating the preambles and laws. It is precisely the fact that the interlocutors are founding a city in speech by way of a test and are not yet engaged in actually laying down a law code, which offers the possibility to include such elaborate considerations into their foundation.

4.2.2 The so-called 'preambles' (προοίμια)

One of the most important additional types of discourse that forms part of the interlocutors' legislation is introduced and discussed in Book IV. These are the so-called 'preambles' (προοίμια). In 718b5–c3, the Athenian notes:

> ἃ δὲ χρὴ μὲν αὖ καὶ ἀναγκαῖον εἰπεῖν νομοθέτην ὅστις ἅπερ ἐγὼ διανοεῖται, ἐν δὲ σχήματι νόμου ἀναρμοστεῖ λεγόμενα, τούτων πέρι δοκεῖ μοι δεῖγμα προενεγκόντα αὐτῷ τε καὶ ἐκείνοις οἷς νομοθετήσει, τὰ λοιπὰ πάντα εἰς δύναμιν διεξελθόντα, τὸ μετὰ τοῦτο ἄρχεσθαι τῆς θέσεως τῶν νόμων.
>
> There are also matters which a lawgiver who has the same view as I do must necessarily state, yet that are ill-suited for statement in the form of a law; about these, he must adduce an example for his own use and for those for whom he is going to legislate, and expound all remaining

70 See *Leg*. 824a20–21 (the very end of Book VII).

71 *Leg*. 823a6–b1: τὸ δὲ δὴ παρὸν ἡμῖν τὰ νῦν <εἰ> οἷον μάρτυρα ἐπαγόμεθα, δηλοῖμεν ἂν ὃ βουλόμεθα μᾶλλον, 'The subject we are discussing at present [hunting] is one we could well point to as evidence of what we are after' (Transl. Schofield & Griffith).

72 Cf. the Athenian's remarks about the rules concerning the varieties of φιλία, *Leg*. 837b2–d7.

> subjects to the best of his ability, and only afterwards should he turn to laying down laws. (Transl. MB)

When confronted with the choice between a longer version of the law (preambles with law, example in 721b6–d6) and a shorter version (the law by itself, 721b1–3), Megillus opts for the longer version, despite his Laconic preference for brevity, and Cleinias agrees.[73] Preambles will therefore make up a large part of the penal part of their laws.[74] The preambles (and law) are as a rule directed at a specific risk group (or individual) as part of the collective of the *polis*: they address a person at risk of committing an illegal act. They feature in the text from 854a3 onwards, in the penal law section of Book IX. These are the preambles against temple-robbing,[75] against all types of murders,[76] atheism and irreligion,[77] against adulteration (κιβδηλεία),[78] one addressed to those who are dying and are about to make a will,[79] a preamble to

73 *Leg*. 721e4–722a5, with the Athenian's reaction in 722a7–b4: the important thing is neither brevity (τὰ βραχύτατα) nor length (τὰ μήκη), but the best option (τὰ … βέλτιστα).

74 Preambles indeed do not seem to be a custom in ancient Greek legislation. There is an ancient tradition that Zaleucus and Charondas attached preambles to their laws: Cic. *De leg*. 1.14; Stob. 4.123.12. See Morrow 1960, 555–556 and Dyck 2004, 280–281 on Cic. *ad loc*. (both with further references), both of whom are, however, sceptical about the evidence of Stobaeus. Morrow thinks it "likely that the writings from which Diodorus and Stobaeus drew their excerpts are a later composition fictitiously ascribed to these early legislators" and concludes that, since the Attic laws that have come down to us do not contain preambles and address the magistrates rather than the citizen "this doctrine is original with Plato". Dyck observes that the material in Stobaeus "may be contaminated with Pythagorean doctrine". According to Dyck, the idea of a preamble to laws "probably goes back to Near Eastern models" (see references *ibid*.).

75 The preamble is announced in *Leg*. 854a3–5, concluded by 854c6–7; the preamble itself occupies 854b1–c5; the law begins in 854d1, and probably ends at d4 (so also Schofield & Griffith), or perhaps after the γάρ clause of 854d4–e1, in 855a2 (according to Saunders). The fact that the translators' opinion about the exact text of the law diverges is yet again evidence for the vagueness and lack of explicit indications about the text of the laws in many cases. The preamble explicitly claims to instruct: μαθέ (854b6). If the person who intends to rob a temple notices that his 'disease' does not diminish, he should look upon death as the preferable alternative.

76 At *Leg*. 870d4–5, the Athenian says that for all the cases of murder they have enumerated, the preambles mentioned ought to be stated (προοίμια μὲν εἰρημένα ταῦτ' ἔστω), probably referring to the analysis of the various kinds of emotions that may provoke murder in 870a1–d4, but perhaps also to the discussion about the distinctions between voluntary and involuntary crime in 860d1 ff. The series of laws against premeditated murder on different types of people begins in 871a2 (explicitly announced) and ends in 872c6 (which becomes apparent from how 872c7 ff. proceeds).

77 The preamble against impiety is referred to in *Leg*. 887a3, c1. It begins in 888a7 with a direct speech to the atheist (ὦ παῖ), and is explicitly concluded in 907d1. Yet in the meantime we have witnessed a dialogue between the interlocutors, and they have even gone beyond legislation (891d7–e3). After the preamble, the law itself follows from 907d7 until (probably) 908a1.

78 *Leg*. 916d6–917b7. The law follows in 917b7; where it ends is not entirely clear, but at the latest in 918a6.

79 *Leg*. 923a2–c2: marked off by a direct address at the beginning (ὦ φίλοι) and an explicit conclusion at the end (ταῦτα μὲν οὖν παραμύθιά τε καὶ προοίμια τῶν τε ζώντων). The law follows in 923c4. A special general preamble is to be designed with the purpose of pardoning the law-

the lawguards and guardians about the care of orphans,[80] and one for the worship of gods, deemed equally fitting for honouring one's parents.[81] It thus seems that the preamble was originally designed as a preface for this kind of statutes (which seems to be corroborated by the fact that the *analogon* used to explain the function of the preambles is the doctor, implying that a preamble addresses someone who has fallen ill). The only preambles that do not precede penal laws are the general preambles addressed at all imagined future citizens, in 716c1–718a6 (identified as preamble in 724a1–3), the proposed preamble for marriage regulations (addressed to the young men of the city)[82] and 726a1–734e2 (identified as preamble in 734e3–6).

Two things about the preambles are important for the argument of this chapter. First, not all preambles receive a final statement in *Laws*; only a minority does.[83] Some preambles have a more or less definitive form, others clearly need to be supplemented, and a further group of preambles consists of excerpts from the discussion that the interlocutors say have to be turned into preambles, but are not preambles yet. As was the case with the laws, noted above, it is therefore not always clear where the preamble begins and where it ends, nor is it entirely beyond doubt what part of the conversation is supposed to be part of the preamble.[84] In some cases, the law or preamble is explicitly announced and hence marked off.[85] Yet in most cases, the preambles are even less clearly marked off from the conversation; meta-legislative or more general considerations evolve into direct injunctions and, conversely,

giver in case the situation compels the person to disobey the law, as the Athenian explains in 925d5–926a3.

80 It is called a preamble in *Leg*. 926e8: the interlocutors have offered fitting preludes (ἐμμελῆ … περὶ τροφῆς ὀρφανῶν προοιμιασάμενοι, 926e7–8) earlier (in 865e, England *ad* 927a1).

81 *Leg*. 930e5. The discussion that follows (until 932a6) seems to contain fragments that might add up to a preamble. The law starts in 932a7 (explicitly announced) and probably runs until 932d8 (since in the following sentence the Athenian reviews what laws have been made and which still need to be framed).

82 *Leg*. 721b6–d6; also announced in *Leg*. 772e3–4; the προοίμιον starts at 772e7 and addresses the sons of good fathers: Ὦ παῖ, τοίνυν φῶμεν ἀγαθῶν πατέρων φύντι.

83 Cf. Yunis 1996, 227, nn. 26, 27, 28: besides "fully realized" and "abbreviated" preambles, Yunis identifies explanations to be turned into preambles. Lisi 2000 argues for a differentiation between the preamble *stricto sensu* and more general reflections that provide "un fondement d'ordre philosophique" (61). According to Laks, *Laws* IX, 857b4–864c8 (the excursus about the possibility of involuntary injustice) is not a preamble; see Morrow 1960, 554, n. 29 for the opposite view.

84 This point about the preambles has been noted by Stalley 1983: "In practice it is often difficult to distinguish the preamble from (a) the general discussion which introduces a particular section of legislation and (b) the law proper which lays down the penalty" (42). When they are explicitly introduced, two formulas can be distinguished, Nightingale 1993, 286–287: most common is that the lawgiver addresses the citizens or a subgroup in the second person ("Oh friends, we advise/warn you to behave as follows …"). The second group are "injunctions in the third person that are designated either prospectively or retrospectively as 'preludes' (…). The formula for this category of prelude is: "let everyone be advised/warned …".

85 For example, *Leg*. 800a3–b1 (law); 824a11 (text of the law in a11–19); 854c8–9 (text in 854d1 ff., not clear where it ends); 857a2–4 (text in 857a4–b3, but criticized by Cleinias in 857b4–8), 874b4–5 (texts of the laws about φόνος from 865a1–874b5), 882b3 (text in 882b3–c2).

injunctions seamlessly pass over into ideas that seem to be stated on the level of the dialogue. As we saw above, when the preamble in Book X is rounded off, a lot of material has been mentioned, even going outside the legislation proper. This is also manifest in the case of the preamble preceding the penal laws in Book IX, and the preamble, or rather series of preambles, in Book X. In the literature the status of the two most philosophical and elaborate 'preambles' of *Laws* is understandably disputed.[86]

Again, rather than seeing *Laws* as a design for a law code at times interrupted by more discursive or reflective bits, the essence of the legislative activity is to formulate considerations and concerns, sometimes leading to a more fixed, finalized text of a preamble or law. In fact, the vague, fluid nature of the legislative activity is essential to the legislation in *Laws*: it is inherent in the nature of the legislative activity of the interlocutors as an *exercise in legislation*, thereby allegedly testing the outcome of their earlier discussion (in Books I–II and III). The vagueness underlines the explicit presentation of the lawgiving as an exercise: it suggests that the laws and preambles are under discussion, and at this point remain *provisional*. They are all of a kind with the conversation.

Besides their fuzzy boundaries, there is a second aspect of the preambles that needs to be discussed. The Athenian analogizes the effect of the preamble to the effect of a doctor who instructs (διδάσκει) his patient and converses with him and his relatives (κοινούμενος αὐτῷ τε καὶ τοῖς φίλοις), thus claiming that the *effect* of the preamble will be the same – that is, persuasion (πειθώ).[87] What is of particular interest for our argument here is that the description of the free doctor's procedure in its contrast with the treatment of the slave doctor recalls Plato's own dialectical method.[88] The depiction of the free doctor's method is replete with familiar dia-

86 E. g. Morrow 1960, 554: "Plato does obviously not intend that the two lengthy discussions just mentioned [*sc*. 857e–864c and 887a–907d] shall be prefixed to the statutes that follow them; for the briefer statement in 885b is evidently the formal preamble. These discourses, however, show the kind of defense that he thinks a legislator should be able to give for his prescriptions …". However, n. 19 *ibid*. seems to contradict this. Morrow classifies 857e–864c and 887a–907d as preambles that "take the form of a dialogue, eliciting through questions and answers the distinctions and values that underlie the law to follow". In a similar fashion, Lisi 2000*a* argues that IX, 857b4–864c8, "ne constitue pas un préambule au sens strict, puisqu'elle ne vise pas le possible criminel et n'est pas une admonestation destinée à obtenir une conduite plus adaptée aux lois" (62). Yunis 1996, 227, n. 26 includes the preamble against forms of impious belief in Book X in his list of "fully realized preambles". Detailed interpretations of the argument of 857e–864c in Schöpsdau 1984, Saunders 1991, Schofield 2012, and Neschke-Hentschke 2013.

87 *Leg*. 720d1–e1. Again, the Athenian uses the same device that Socrates was portrayed as using in other dialogues – one of the most important examples of course being the analogy of justice to health in *Republic*.

88 The same is observed by Laks 2000, 289: "(…) the Socratic model of a dialectical conversation constitutes the horizon within which the theory of legislative preamble must be situated"; cf. *id*. 2001, 112. Laks perceives, however, a manifest tension between the two doctor analogies and the actual preambles formulated by the Athenian (see *id.*, 2001, 111), and for this reason has called the idealising picture of legislation described in the analogies a "legislative utopia" 1991, 2001, 113–114, which is internal to *Laws* and has no counterpart in *Republic* or *Statesman*.

lectical motives: it is a shared enterprise (about τὰ νοσήματα, in which the doctor communicates and also learns himself);[89] it is a one-to-one conversation (cf. ὡς ἑνὶ διαλεγόμενοι, 888a6); it instructs the patient on the basis of an account of his individual situation (τινὰ λόγον ἑκάστου πέρι νοσήματος ἑκάστου τῶν οἰκέτων … δίδωσιν 720c3–5; cf. διδάσκει in 720d6 and ἔλεγχον διδόναι in 891a2); it does not proceed without the patient's assent (οὐ πρότερον ἐπέταξεν πρὶν ἄν πῃ συμπείσῃ, 720d6–7); finally, the free doctor is not constrained by time.[90] The slave doctor – who treats his patient in the way a law without persuasion affects a citizen – does not give an account of the illness to the individual patient (οὔτε τινὰ λόγον … οὐδεὶς τῶν τοιούτων ἰατρῶν δίδωσιν, 720c3–5), nor does he ever receive an account (οὐδ' ἀποδέχεται [*sc*. λόγον], 720c5). His diagnosis is based on routine (τὰ δόξαντα ἐξ ἐμπειρίας, 720c4–5) rather than on careful scrutiny; he gives his prescription 'immediately' (εὐθύς, 719e8). His permanent shortage of time makes him a self-willed tyrant to his patients (καθάπερ τύραννος αὐθαδῶς, 720c6–7), who departs immediately after having issued his command.[91] By contrast, the method of the free doctor largely consists of an extensive examination of the patient and his illness 'from the beginning and according to nature' (ἀπ' ἀρχῆς καὶ κατὰ φύσιν, 720d3) in the form of a friendly conversation.[92] To the extent that he is able, the free doctor *educates* his patient: διδάσκει τὸν ἀσθενοῦντα αὐτόν (720d6);[93] in contrast

89 Cf. England *ad* 720d3. The term ἐξετάζειν is used by Socrates in *Apology* to describe his philosophical activity, *Ap.* 23c4, c5, c8, 28e6, 33c3, 38a5, 41b5, 41c3; cf. *Tht*. 155a1; *Phdr.* 270c7; *Charm.* 172b7; *Tim*. 62c4. It is typically concerned with truth (τὰ ὄντα, *Gorg*. 495a8) and with objective moral improvement (*Gorg*. 515b1). By contrast, in *Laws* the scrutiny of the patient happens in the context of the pragmatic project of getting the patient to conform to the law. The conversation is characterized as ἐξετάζειν in *Leg.* 685a7, 891c9, and 900d5: that is, in Book III and in Book X (and hence not the διέξοδος τῶν νόμων itself). In 891c9, the discussion is turning into a real examination and is about to go beyond legislation; 900d5 is part of an exchange between Cleinias and the Athenian.

90 For the leisurely aspect of dialectic, see, e. g., *Tht*. 154e7–155a2, 172c2–173b3. In *Theaetetus*, Socrates likens those who frequent the law courts to slaves. They always have to speak in a hurry (οἱ δὲ ἐν ἀσχολίᾳ τε ἀεὶ λέγουσι) because they are forced to stick to the time limit (the water clock) and to the pre-fixed statement in the ἀντωμοσία. The effect is moral corruption (173a1–b3). By contrast, those who spend their lives pursuing philosophy always have leisure (σχολή) and develop their arguments in peace at their leisure (τοὺς λόγους ἐν εἰρήνῃ ἐπὶ σχολῆς ποιοῦνται).

91 He states immediately (εὐθύς) what must and must not be done (719e8–720a1). Other references to continuous haste: περιτρέχοντες (720c2), προστάξας … τὰ δόξαντα … οἴχεται ἀποπήδησας (720c5–7). The aorist participles (προστάξας, ἀποπήδησας) suggest a lack of time: the chain of completed events produces a staccato effect. The lawgiver/doctor utters the threat when he is already on his way to the next patient.

92 Cf. *Leg*. 888a6–7: λέγωμεν πράως, σβέσαντες τὸν θυμόν, ὡς ἑνὶ διαλεγόμενοι τῶν τοιούτων [*sc.* people who deny the existence of the gods]. A face-to-face conversation seems to be part and parcel of the attempt to remain friendly to dissidents who refuse to believe in the city's religion.

93 The revision of the doctor analogy, in Book IX, 857c4–e6, hints at a distinction between διδάσκειν (which is what the preambles supposedly do) and παιδεύειν (which is what the state education system does). The misunderstanding of the slave doctor is that he mistakes the former for the latter: he thinks that what the preambles do is παιδεύειν.

to the slave doctor, he gives every individual patient an account of his illness (λόγον ἑκάστου πέρι νοσήματος (…) δίδωσιν, 720c3–4). His treatment is even portrayed as involving mutual instruction: the free doctor himself, in communicating with his patient, learns from his patient as well. To attach preambles to the laws that have the same effect on the citizen as the free doctor has on his free patient is the most promising way to achieve what was declared to be the purpose of lawgiving: to make the addressee 'more docile and benevolent in listening' (ἡμερώτερόν τε ἂν ἀκούειν καὶ εὐμενέστερον, 718d4) as well as a better learner (εὐμαθέστερον, 718d5–6).

What should be noted because it is often misunderstood is that the analogy does not present some form of 'interaction' between the preamble and the citizen (which will, of course, not take place because the real laws will be written down) as analogous to the conversation between a free doctor and his free patient. Rather, it analogizes the effect of the preamble on the citizen to the persuasive effect that the treatment of the free doctor has on the patient: the claim is that the preamble will have the *very same persuasive effect* on the citizen as the kind of treatment depicted in the analogy as characteristic of the free doctor.[94] The discussion between the doctor and patient has the purpose of getting the patient, or citizen, to *submit* to the prescription out of his own free will. Yet the fact that the effect of the preambles can be represented as analogous to that induced by a particularly benevolent form of spoken admonition *can be sustained because of* the overall conversational framework of the dialogue, as lawgiving in speech.

The two levels, however, do not collapse: the interlocutors do not relate to the Athenian stranger in the same way as the patients relate to the doctor-lawgiver. Cleinias and Megillus need not be persuaded to obey the law; they are lawgivers, not patients.[95] The dialectical conversation of the interlocutors also includes directives followed by the threats. If a preamble is successful, the addressee will never hear the text of the law in the narrow sense: the law will 'remain silent'.[96]

We have seen that the text of *Laws* incorporates many different types of normative discourse. They can be subsumed under the common denominator of 'praise and blame': preambles, addresses to an anonymous lawgiver, to the future colonists, to the lawgivers' successors, regulations that do not receive the form of a law proper,

94 That preambles will in reality be written is therefore not a partial disanalogy, *pace* Nightingale 1993, 287–288, and Görgemanns 1960, 61 and Chapter III. The *claim* is that the written preamble will have the same persuasive effect on the citizen as the gentle exchange between doctor and patient on the patient.

95 E. g., Stalley 1994: "the analogy between the legislator and the doctor is (…) highly misleading", since "the activity of the lawgiver is "necessarily one-sided" (170). He concludes that, therefore, "we cannot reach an accurate evaluation of the preludes simply by taking at face value everything the Athenian says about them" (170–171). A similar critique is expressed by Nightingale 1993, 283, 291; also *id*., 1999*a*, 117–118; Yunis 1996, 220; Waugh 2003, 30; Klosko 2006, 245, with reference to *Phdr*. 275d and *Prot.* 329a-b; Bickford 2009, 151, n. 56 (*Laws* is second best because it relies on written laws). Mayhew 2010 holds that written texts are praised "because Magnesia is second best, and, related to this, because the rule of law is second best, behind the rule of philosopher-kings (see *Laws* 5.739b8–e7 and *Statesman* 293a6–297e5)" (98), but such a reading misconstrues the *Laws*' own representation of the preambles.

96 *Leg*. 854c7–8, 870e4–871a1.

reflections of the interlocutors, and laws. The Athenian introduces preambles and likens them in turn to dialectic (though that should not lead us to assume that the two conversational situations – that between the interlocutors and between the doctor and his patient – are entirely parallel). The legislative project is an exercise and receives a fluid, provisional form that cannot be 'extracted' from the 'framing' conversation. Most importantly, the effect is that the laws are presented at least partly *as the result of a conversation* that is characterized as dialectical. The next section will turn to the role of the interlocutors as lawgivers in *Laws*. It will be argued that the way in which Plato has the interlocutors reflect on their own position as lawgivers in the dialogue supports the idea that the legislation in *Laws* is an exercise.

4.3 LAWGIVERS OR NOT? THE POSITION OF THE INTERLOCUTORS

4.3.1 The interlocutors as lawgivers

Another characteristic of the presentation of the legislative activity that merits discussion in this chapter is the position of the interlocutors as regards their own lawgiving in the dialogue. Their identification as lawgivers is certainly not free of ambiguity. On the one hand, in the dialogue they clearly fulfil the role of lawgivers. Indeed, they are repeatedly made to refer to their project as lawgiving (νομοθεσία) and legislating (νομοθετεῖν).[97] Yet there are also passages in which the interlocutors do not identify themselves as lawgivers, or only in a very indirect, suggestive way. Finally, there are several instances where the interlocutors distinguish between themselves and 'the lawgiver'. The present section will offer an account of the interlocutors' role as lawgivers, and of the complexities surrounding the question of the identification between the interlocutors and the lawgiver, before turning to the question of the function of this ambivalence, and what it suggests about the status of the interlocutors' legislative activity.

Nightingale is one of the few commentators who have drawn attention to the literary strategies Plato uses in *Laws*.[98] She argues that the Athenian creates an "ideal lawgiver", who becomes "a live presence throughout the entire text".[99] According to her, the fact that the Athenian "tries to avoid identifying himself with this figure"[100] is a device that "makes his [Plato's] lawcode appear objective, im-

97 E. g. *Leg*. 752b9–10 (νομοθετοῦμεν), 790b8 (μήπω λήξωμεν τῆς τοιαύτης νομοθεσίας), 818e6–7 (ἀλλ' εἰς ἄλλον χρόνον … ἀκριβέστερον ἂν νομοθετησαίμεθα), 828a5 (ἴσως ἡμέτερον ἂν νομοθετεῖν), 832c9 (the *politeia*, ἣν νομοθετούμενοι λέγομεν), 834b1–2 (γίγνοιτο ἐξῆς ἂν νομοθετούμενα), 834d1 (ὀρθῶς ἂν νομοθετοῖμεν), 841e3 (ὀρθῶς ἂν δόξαιμεν νομοθετεῖν), 853c7 (νομοθετοῦμεν), 855d3–4 (τὴν διαψήφισιν δὲ ἡμέτερον ἔργον νομοθετεῖν, and they do so immediately following), 876d4 (νομοθετοῦμεν), 891d7–8 (it is necessary to go beyond lawgiving, νομοθεσίας ἐκτός), 935e3 (νομοθετησώμεθα), 960b4–5 (τέλος of the νομοθεσία).

98 Nightingale 1993; also Görgemanns 1960.

99 Nightingale 1993, 284.

100 The evidence Nightingale adduces *ibid*., n. 24, 284 can hardly corroborate this claim: "Note, for example, that the Athenian often pretends that the lawgiver is speaking to the three of them (such as at 719A-E, where the three of them address the lawgiver)".

personal, and timeless".[101] The actual situation in the dialogue is, however, more complex. It is true that the presence of an imaginary lawgiver is sometimes presupposed, either as an addressee of the interlocutors, or as a hypothetical agent, but this lawgiver is hardly an ideal one. All the different references in *Laws* to 'a lawgiver' do not add up to a consistent expert lawgiver who "proceeds by way of τέχνη (632d)".[102] We have already seen that τέχνη acquires other connotations in *Laws* than the strongly intellectualist one in other Platonic dialogues.[103] In 632d5 τέχνη is not expert knowledge, but lies in the sphere of *experience* (ἐμπειρία). The arrangement of the laws of Zeus and Apollo is evident 'to the person experienced in laws, either by art or by particular habits' (τῷ περὶ νόμων ἐμπείρῳ τέχνῃ εἴτε καί τισιν ἔθεσιν). The interlocutors refer to a great variety of lawgivers: sometimes the lawgiver referred to is 'wise' or sensible, at other times it is 'any lawgiver who is worth his salt', or 'even the slightest lawgiver';[104] there is mention of a lawgiver with despotic power (735d3–4) and one without despotic power (735d5). Apart from that, many of the references to a 'lawgiver' are to a future lawgiver, whom the interlocutors give advice – which of course makes sense, considering that the interlocutors imagine that their exercise will be followed by a real act of legislation. The interlocutors give the imaginary lawgiver cues, making forward-looking pronouncements. The lawgiver must, for example: distinguish genuine from spurious honours (728d4–6), come up with ways to purge the hoard of citizens if that be necessary (735c5–d1), reflect on his purpose in legislating (744a3–5), keep his gaze fixed on particular considerations (747a5–7), not consider the nurturing of children a thing of secondary importance or a side-affair (766a4–6), only mind injustice and harm in making his penal laws (862b5–6), would do well to divide ignorance into two kinds (863c2–3), enact some penal regulations himself while leaving others to be settled by the courts (876a5–6), should defend the law with all his might (890d1–8), give sufficiently precise prescriptions in the field of adulteration (κιβδηλεία) (916e4–6), provide 'medicines' against financial deficiency and surplus (919b3–4), should know better than all poets that thievery and robbery are shameful (941c1–2), and use persuasion as a first strategy in dealing with emigra-

101 Nightingale 1993, 284. Similarly, Yunis 1996, 230: "Plato's lawgiver speaks virtually as the mouthpiece of god, and thus represents divine authority: the source of the lawgiver's discourse, like the source of law itself, is the divine reason that animates the benign universe." Cf. Jaeger 1945, 340, n. 77: "God himself is the ultimate lawgiver. The human lawgiver speaks out of his knowledge of God; and his laws derive their authority from God."

102 As Nightingale asserts on the basis of *Laws* 632d5. Making laws is not the kind of activity that allows for the intellectualist conception of the expert we meet elsewhere in Plato's oeuvre (see also above, Chapter Two, section 2.1.1).

103 See Chapter Three, pp. 84–85.

104 νομοθέτης ἀκριβής 628d7–8; πᾶς νομοθέτης οὖ (τι) καὶ σμικρὸν ὄφελος 630c2–3, 647a8–9, 663d6; ὁ ὀρθὸς νομοθέτης 660a4; ὁ ἀγαθὸς νομοθέτης 671c3, 688a5, 742d3–4; μεγάλοι νομοθέται 691d5; νομοθέτης ἄξιον ἐπαίνου 710c8; νομοθέτης ἄκρος 710d7; ἀληθὴς νομοθέτης 710e8; ὁ τούτων ἐπιστήμων 723b7; ὁ ἔμφρων νομοθέτης 729b5–6; ὁ γε ὀρθῶς νομοθετῶν 742e1; τέλεον … καὶ οὐ διήμισυν δεῖν τὸν νομοθέτην εἶναι 806c3–4; ὁ νομοθέτης ὄντως 823a2–3; καὶ ὁ φαυλότατος ἂν τάξειεν τῶν ἐπὶ νόμον τρεπομένων 874e4–5; ὁ γε ἄξιον καὶ σμικροῦ νομοθέτης 890d3.

tion and immigration as far as his ability allows (949e6–7). A lawgiver runs the risk of appearing ridiculous (καταγέλαστος) or unseemly (ἀσχήμων) if he gives many detailed regulations about domestic affairs.[105] All of these references do not add up to one, consistent persona of a divine lawgiver, in whose mouth the laws are put. It should also be noted that this once again indicates that the laws in *Laws* are not a law code ready for use: admonitions *to* a lawgiver would not make sense *in* a law code.

Moreover, Nightingale's account, perceptive though it is, ignores the fact that the interlocutors do at times identify themselves as lawgivers – both explicitly, when they call their own activity lawgiving, and implicitly, for example when they substitute themselves for 'the lawgiver' that has been mentioned immediately before. A more complete account of their role in the dialogue and their status as lawgivers needs to take into consideration the various sides of the issue, as well as the textual mechanisms themselves that suggest the identification of the interlocutors with the lawgiver. The issue of the coalesence between interlocutors and lawgiver is closely related to the issue explored in the previous section: the provisionality of the laws and the fact that the interlocutors address a future lawgiver are textual mechanisms that formally indicate that the lawgiving in *Laws* has the status of an exercise. The significant aspect is not that the interlocutors 'avoid' identifying themselves with the lawgiver. What is significant is that they consider it necessary to refer to a lawgiver other than themselves. They anticipate a future act of lawgiving, in that way marking off their own efforts as an exercise.[106] The 'lawgiver' to whom the interlocutors refer is not a divine lawgiver[107] but a *future* lawgiver: what the interlocutors do is to offer recommendations for the lawgiver who will lay down a law code ἔργῳ. The presence of references to a future lawgiver in the text only makes sense from the point of view that the lawgiving in *Laws* is an exercise.

We may take a look at a number of passages in which the interlocutors identify themselves as lawgivers. A relatively straightforward self-identification of the Athenian as lawgiver occurs at 804d6–e1: 'The same goes for females as well: my law would make all the same provisions as for males, and say that females too need

105 *Leg*. 800b4–5, 807e2–4.

106 It might be objected that this reading ignores the opening line of *Laws*, where Plato "confronts the problem of authority: how can his spanking new lawcode pretend to utter timeless truths?" (Nightingale 1993, 282), and its dramatic setting, which can be seen as a reenactment of the pilgrimage of Minos to the cave of Zeus. The interlocutors, however, do not seek "the sanction of Zeus for their legislation" (*ibid*., 283) – they seek *advice* on legislation. Minos received oracles (τὰς … φήμας, *Leg*. 624b2) from Zeus, not ready-made laws. In [Pl.] *Min*. 319e3–5 it is said that Minos went to the cave of Zeus every ninth year 'to learn some things, and to demonstrate others, that he had learned from Zeus in the previous nine years' (τὰ μὲν μαθησόμενος, τὰ δὲ ἀποδειξόμενος, ἃ τῇ προτέρᾳ ἐννεετηρίδι ἐμεμαθήκει παρὰ τοῦ Διός). Minos himself came to the cave of Zeus for advice and brought new experience. Rather than implementing laws that came down to him from Zeus, he received material that had to be converted into laws. See also Chapter Six, pp. 200–201, the Athenian as μάντις. A recent case for the divine nature of the laws is made by Lutz 2012; he argues that *Laws* is an inquiry into divine law and presents a reconciliation between philosophy and divine revelation. I have criticized his interpretation in Bartels 2014.

107 As Nightingale argues.

to have training which is not inferior', τὰ αὐτὰ δὲ δὴ καὶ περὶ θηλειῶν ὁ μὲν ἐμὸς νόμος ἂν εἴποι πάντα ὅσαπερ καὶ περὶ τῶν ἀρρένων, ἴσα καὶ τὰς θηλείας ἀσκεῖν δεῖν. At 834c7–d1 the Athenian notes, 'For people without armour, whether in the athletics or here in the horse-racing, we will institute no competitions; we would be doing the wrong thing as lawgivers if we did', ψιλοῖς δὲ ὅπλων οὔτ' ἐν τοῖς γυμνικοῖς οὔτε ἐνταῦθα τιθέντες ἀγωνίας ὀρθῶς ἂν νομοθετοῖμεν, clearly implying that they are legislating.[108] And in 862a2–7 the Athenian stranger emphatically stipulates the principle in accordance with which he will and will not legislate:

> οὐ γάρ φημι ἔγωγε, ὦ Κλεινία καὶ Μέγιλλε, εἴ τίς τινά τι πημαίνει μὴ βουλόμενος ἀλλ' ἄκων, ἀδικεῖν μέν, ἄκοντα μήν, καὶ ταύτῃ μὲν δὴ νομοθετήσω, τοῦτο ὡς ἀκούσιον ἀδίκημα νομοθετῶν, ἀλλ' οὐδὲ ἀδικίαν τὸ παράπαν θήσω τὴν τοιαύτην βλάβην, οὔτε ἂν μείζων οὔτε ἂν ἐλάττων τῳ γίγνηται·
>
> 'My own position, Cleinias and Megillus, is not that if one person does some harm to another without meaning to, unintentionally, he is acting unjustly, albeit unintentionally, so that on that basis I can then make a law for this as one making a law for unintentional injustice. No, I shall make it my premise that such an injury – be it greater or lesser – is not an injustice at all.' (Transl. Schofield & Griffith).

Here the Athenian identifies himself explicitly as lawgiver, and refers to their process as legislating (νομοθετεῖν). When the interlocutors (or rather the Athenian) explicitly formulate a law, the formula used is often of the form νόμος κείσθω or νόμος ἔστω.[109]

In some cases, Cleinias and/or Megillus are made to give their explicit assent to one of the Athenian's proposals for legislation. Such passages, within the part of *Laws* concerned with framing laws, serve to sustain the impression of a dialogue and the suggestion that the laws are the result of the discussion and the product of the interlocutors' agreement. Speaking of the regulations to be instituted about military training and women's participation, the Athenian asks Cleinias and Megillus whether they would lay this down as a law, 814c2–5:

> Αθ. Οὐκοῦν τιθῶμεν τὸν νόμον τοῦτον, μέχρι γε τοσούτου μὴ ἀμελεῖσθαι τὰ περὶ τὸν πόλεμον γυναιξὶν δεῖν, ἐπιμελεῖσθαι δὲ πάντας τοὺς πολίτας καὶ τὰς πολίτιδας;
> Κλ. Ἐγὼ γοῦν συγχωρῶ.
>
> Ath. 'Shall we give this the force of law, then, that military skill and training – at any rate to the level we have described – are not a matter of no concern to women? That it is something which does concern all male and female citizens?'
> Cl. 'Well, speaking for myself, I would certainly go along with that.' (Transl. Schofield & Griffith)

A slightly more complicated case of the identification of the interlocutors with a lawgiver is *Laws* 831b2–3. The Athenian specifies the correct mode of reasoning for the lawgiver (ὁ νομοθέτης, 829e6) in the case of legislating for warfare: he must ask himself what sort of citizens he wants to produce. From the reasoning subsequently supplied by the Athenian in 830a3–c4 (the training of boxers), he concludes that the lawgiver must ensure that his citizens have a better training than those

108 Translations Schofield & Griffith.
109 Cf. also note 84, p. 136.

boxers (830c7–831b1). The lawgiver must not shrink from instituting *gymnasia* out of fear that they will seem ridiculous to some (830d1–3). He must assign honours to the person with a firm, brave soul, and discredit the fearful. In the continuation, the lawgiver remains the subject: he is the subject of the participles διανέμων (831a1) and ἡγούμενος (831a5), and of the verba finita παρασκευάζῃ (831a2) and τιθῇ (831a4). Cleinias replies to the Athenian, 'Well, we would certainly agree, my friend, on the need for every city to pass this kind of law and behave in this kind of way', συμφαῖμεν ἂν ἡμεῖς γε, ὦ ξένε, τὰ τοιαῦτα δεῖν καὶ νομοθετεῖν καὶ ἐπιτηδεύειν πόλιν ἅπασαν (831b2–3). In 941c2–4, the Athenian adopts the position of lawgiver when he wishes well to the person who is persuaded by their arguments, and threatens the disobedient: 'Anyone who listens to what we say is fortunate, and may he continue fortunate for all time; he who does not listen, let him, as a next step, find himself up against the law, something like this', ὁ μὲν οὖν πεισθεὶς ἡμῶν τῷ λόγῳ εὐτυχεῖ τε καὶ εἰς χρόνον ἅπαντα εὐτυχοῖ, ὁ δὲ ἀπιστήσας τὸ μετὰ ταῦτα τοιῷδέ τινι μαχέσθω νόμῳ.[110]

A case of the indirect identification of the interlocutors as lawgivers occurs in Book VI. At this point in the dialogue, the διέξοδος τῶν νόμων has not yet started. Through the use of an analogy of painting, the Athenian has just established that lawgiving is a long-term process that requires that laws be tested in practice, and that therefore, the lawgiver needs to appoint a successor.[111] Appointing successors is in fact what *the interlocutors themselves* proceed to do immediately after the painter analogy, with reference to their advanced age (ἡμεῖς δ' ἐν δυσμαῖς τοῦ βίου, 770a6).[112] The advanced age of the first lawgiver constitutes a practical reason why a successor is necessary.[113] The insistence on the need for a successor therefore seems to imply that a first lawgiver will be old, perhaps suggesting that a good lawgiver needs to have experience.[114] It is, however, only in light of the preceding painter analogy that the interlocutors' strategy to appoint successors is fully understandable, for it is the analogy that has framed lawgiving as a lengthy process. The parallelism between the lawgivers in *Laws* and the lawgiver in the analogy also manifests itself in the interlocutors' own subsequent procedure of lawgiving. The Athenian clearly approaches the interlocutors' own lawgiving as a lengthy process, similar to the principles stipulated in the analogy, and reflects on their own lawgiving in terms of the painter analogy. Both the place of the analogy, immediately

110 Translations Schofield & Griffith. Τοιῷδέ τινι … νόμῳ in 941c4 suggests that the law need not have this exact wording.

111 *Leg*. VI, 769a7–e2. This passage will be discussed in detail in Chapter Five, section 5.1.

112 On the advanced age of the interlocutors, see *Leg*. 799c4–d4 (πρεσβῦται by implication), 821a7 (πρεσβῦται), 846c3 (the interlocutors identify themselves implicitly with the first lawgiver, the γέρων νομοθέτης). Cf. 625b4–5, 634d1–2. The successors are not of the age of νέοι (which is between 18 and 30, see *Leg*. 664c6–d1, and Book II, where the group of νέοι lies in between παῖδες and πρεσβύτεροι); they are young (νέοι) in relation to the aged interlocutors (πρὸς ἡμᾶς). *Leg*. 892d7 (νεώτατος δ' ἐγὼ τυγχάνων ἡμῶν) implies that the Athenian is indeed younger than the other two.

113 See also Chapter Five, p. 166.

114 Cf. Chapter Three, pp. 104–106; for the argument for the association of the elderly with authority in *Laws* (on the basis of their experience and *paideia*), see Bartels 2012.

preceding the lawgiving in *Laws*, and the correspondence in procedure suggest that we can read the analogy as the pattern after which the lawgiving on the dramatic level is modelled. By appointing successors, the interlocutors put themselves on a par with the first painter-lawgiver of the analogy.[115]

4.3.2 Not lawgivers yet

In addition to what we found in the previous section, the interlocutors also at times emphasize that they are not lawgivers or not lawgivers yet. We already saw that the legislation is legislation in speech. Their test by means of lawgiving involves that they act *as if* they are lawgivers.[116] In Book IX, for instance, the Athenian remarks that their present condition is fortunate (εὐτυχές, 857e8). When Cleinias asks what it is about their current position that makes it fortunate, the Athenian explains, 857e10–858a6:

> Αθ. Τὸ μηδεμίαν ἀνάγκην εἶναι νομοθετεῖν, ἀλλ' αὐτοὺς ἐν σκέψει γενομένους περὶ πάσης πολιτείας πειρᾶσθαι κατιδεῖν τό τε ἄριστον καὶ τὸ ἀναγκαιότατον, τίνα τρόπον ἂν γιγνόμενον γίγνοιτο. καὶ δὴ καὶ τὸ νῦν ἔξεστιν ἡμῖν, ὡς ἔοικεν, εἰ μὲν βουλόμεθα, τὸ βέλτιστον σκοπεῖν, εἰ δὲ βουλόμεθα, τὸ ἀναγκαιότατον περὶ νόμων· αἱρώμεθα οὖν πότερον δοκεῖ.
>
> Ath. 'The fact that there is no absolute requirement to be making laws, merely to involve ourselves in an enquiry into social and political systems in general, with a view to identifying both the best possible, and also the bare necessary minimum (and how it would come into being, if it ever did so). There is the added advantage, on the face of it, that it is open to us, in our study of laws, to investigate the best possible, if we wish, or, if we prefer, just the bare minimum. So let us make our choice which to do.' (Transl. Schofield & Griffith)

Yet Cleinias remonstrates that this choice is ridiculous (γελοίαν … προτιθέμεθα τὴν αἵρεσιν, 858a7); they are not constrained by any sort of major necessity, as if there were no tomorrow (ὡς οὐκέτ' ἐξὸν εἰς αὔριον, 858b1–2). They are at liberty to collect (παραφορήσασθαι) abundant material (χύδην) and select from that what will be beneficial (τὰ πρόσφορα) for the future colony (τῇ μελλούσῃ … συστάσει, 858b4–5). This is, of course, because they are legislating in speech and involved in an exercise in lawgiving, rather than laying down a law code. The process of selection can be performed at leisure (κατὰ σχολὴν ἐκλέξασθαι, 858b5–6). Cleinias likens the interlocutors to bricklayers (λιθολόγοι, 858b3) or to people who are laying the foundations of a structure (τινος ἑτέρας ἀρχομένοις συστάσεως, 858b3). They

115 For the interlocutors as on a par with the first lawgiver, see *Leg*. 855c6–d4. For the distinction between the first and second lawgiver(s), see Chapter Five, especially section 5.2. The εἰσαγωγαί and the προσκλήσεις, etc. (ὅσα τοιαῦτα καὶ ὡς δεῖ γίγνεσθαι) in cases involving the death penalty have to be left to the younger lawgivers (τοῖς νεωτέροις νομοθέταις χρὴ μέλειν, 855d2–3). It is 'our job' (ἡμέτερον ἔργον), the interlocutors say, to legislate about the procedure for the voting (τὴν διαψήφισιν). The description of the procedure follows in 855d4–856a8.

116 *Leg*. 712b1–2: πειρώμεθα προσαρμόττοντες τῇ πόλει σοι, καθάπερ παῖδες πρεσβῦται, πλάττειν τῷ λόγῳ τοὺς νόμους, 'let us attempt, by fitting them to that city of yours, to frame its laws in speech'. Cf. England *ad loc*. notes that Stallbaum (1859, 410–411) "rightly explains the 'childishness' of the proposal to lie, not (…) in the comparison, but in the *make-believe* that they are real lawgivers" (emphasis added). For this passage, see also above, section 4.1, p. 122.

are 'assembling' (παρατιθεμένους) some things, and have established some other things (συνιστάντας). It will therefore be correct to say about their present laws (τὰ μὲν ἤδη τῶν νόμων) that some parts can be considered as instituted (ὡς τιθέμενα), others as collected (ὡς παρατιθέμενα).

The Athenian highlights the inquisitive aspect of their activity: they are engaged in an investigation (σκέψις, 858a1).[117] In 859b6 he encourages his interlocutors to examine in detail (διασκεπτέον … ἀκριβῶς; cf. εἰ δὴ δοκεῖ περὶ ὧν εἴρηκα ὡς εἴρηκα σκοπεῖσθαι, σκοπώμεθα, 859c3–4) the law about temple-robbing, every kind of theft and the entirety of injustice. Recalling Cleinias' comparison with bricklayers and the distinction between παρατιθέναι and συνιστάναι (858b7–8), the Athenian says that in the process of legislating (νομοθετοῦντες), they have laid down some things (τὰ μὲν ἔθεμεν) but are still investigating others (τῶν δ' ἔτι διασκοποῦμεν πέρι, 859c1–2). He explains this by referring to their status: they are in the process of becoming lawgivers, but are not lawgivers yet, even though they may well become lawgivers before long: νομοθέται γὰρ γιγνόμεθα ἀλλ' οὐκ ἐσμέν πω, τάχα δὲ ἴσως ἂν γενοίμεθα (859c2–3). This fits with the idea that the legislative project of the interlocutors in *Laws* is an exercise for an ensuing, real act of legislation.

The detachment of the interlocutors from the lawgiver also becomes apparent in the forward-looking descriptions of future procedures. The syntax in such passages is often characterized by the use of impersonal constructions and passive participles that fail to make explicit who is to perform the tasks outlined. This is the case, for example, in *Laws* 802a6–c4.[118] The language here is characteristic of the style of *Laws* in the 'legislative' part: the Athenian describes in impersonal terms what would need to be done in order to achieve a particular goal (for instance, the selection of appropriate music from the existing corpus) at the moment that the outline of the first lawgiver has already been made. Precisely because the Athenian here does *not* lay down laws, expliticly refers to 'the lawgiver', and looks forward to the second generation of officials, he maintains a distance between their own provisional, anticipatory reflections and the work of the envisaged real lawgiver. The passive phrase δοκιμαστὰς δὲ τούτων ἑλομένους (802b1–2) signals that what the Athenian goes on to describe assumes that the δοκιμασταί are already in place (and he can skip the issue of the selection procedure because they are legislating in speech and hence not every detail needs to be discussed). The interlocutors here outline what will need to be done by the δοκιμασταί when the first lawgiver has already made a law code: they have to make the selection from the existing songs and poems and include what they think suffices, leave out other things, etc., 802b1–

117 Cf. above, p. 126, n. 39, for other references to their conversation as an 'investigation'.

118 We find here the impersonal phrase τὰς δὲ ᾠδάς τε καὶ ὀρχήσεις οὑτωσὶ χρὴ καθίστασθαι (802a5–6); the likewise impersonal phrase ὧν οὐδεὶς φθόνος ἐκλέξασθαι (802a8); the passive construction δοκιμαστὰς δὲ τούτων ἑλομένους (802b1–2); the infinitives (τὴν ἐκλογὴν) ποιεῖσθαι, ἐγκρίνειν, ἀποβάλλεσθαι, ἐπιρρυθμίζειν, συστήσασθαι that are still governed by the force of χρή; and the accusative participles παραλαβόντας, χρωμένους, (μὴ) ἐπιτρέποντας, ἐξηγουμένους of which the δοκιμασταί are the subject.

c4.[119] The interlocutors are not legislating themselves; they are describing the tasks of a particular group that succeeds the lawgiver.

It is often assumed that the interlocutors themselves are the agent in this passage, possibly reinforced by the assumption that the interlocutors are engaged in a veritable act of legislation. For example, the phrase δοκιμαστὰς δὲ τούτων ἑλομένους has in several translations been glossed over to suggest that *the interlocutors* will make this selection. Bury makes the interlocutors, not the δοκιμασταί, the subject of the whole passage; he translates ἑλομένους as "we shall choose out" and makes the interlocutors also the subject of the infinitives ἐγκρίνειν, ἀποβάλλεσθαι, and ἐπιρρυθμίζειν. Likewise, England *ad loc*. makes the interlocutors at least grammatically the subject of the infinitives: "[i]n *form* ποιεῖσθαι, ἐγκρίνειν, ἀποβάλλεσθαι, ἐπιρρυθμίζειν, and συστήσασθαι (c3) are infinitives denoting the course to be pursued, and having as their subject the (supplied) ἡμᾶς with which ἑλομένους agrees; in *effect* many of the actions thus described would be vicariously performed by the δοκιμασταί" (emphasis in the original). Saunders renders the impersonal construction ὧν οὐδεὶς φθόνος ἐκλέξασθαι (802c8) with the active "from which *we* should not hesitate to choose" (my emphasis). Though he assumes that the δοκιμασταί are to make the selection, he switches to "we" with the participle παραλαβόντας in 802b6–7 and accordingly also takes ἐξηγουμένους to refer to the interlocutors, translating "we shall interpret the wishes of the lawgiver". Yet the subjects of the infinitives are those who have been chosen as δοκιμασταί.[120] The same goes for the participle phrase 'by interpreting the wishes of the lawgiver', ἐξηγουμένους δὲ τὰ τοῦ νομοθέτου βουλήματα (802c2).[121] It would be curious if the interlocutors here spoke of *themselves* as the ones interpreting (ἐξηγεῖσθαι) the wishes (βουλήματα) of the lawgiver. That the Greek in these future procedures remains in some respects vague is to some extent obscured by the preference of the English language for active over passive constructions, demanding that an agent is stipulated where the Greek leaves who the agent is somewhat nebulous; here the translation of Schofield & Griffith represents a major improvement over the other translations. Yet it is important to observe the idiosyncracies of the Greek, as closer inspection of the passages on future regulations once again shows that the interlocutors' project is more complex than simply laying down laws for the new colony: they are reasoning out from a detached point of view what must be done once a law code is ready and the relevant officials have been chosen. The vagueness is directly related to the fact that not all details about particular procedures are clear at the moment of speaking.

119 Cf. *Leg*. 829d4–5: the censure of poetry is to be in the hands of the supervisor of education and the other lawguards (κρίσις δὲ αὐτῶν ἔστω παρά τε τῷ παιδευτῇ καὶ τοῖς ἄλλοις νομοφύλαξι).

120 So Schofield & Griffith. Schöpsdau *ad loc*. notes that the grammatical subject of the infinitives is "entweder ein vorschwebendes ἡμᾶς (so England) oder die in 801d als Zensurbehörde eingesetzten 'Gesetzgeber auf dem Gebiet der Musenkunst' (…), die ihrerseits eine Gutachterkommission wählen" and prefers the second because of αὐτῶν in 802c4 (which he reads instead of αὐτῶν). The accusative δοκιμαστάς functions as the object of ἑλομένους, and the force of χρή in 802a5 governs the infinitives.

121 Bury and Saunders both translate as if ἐξηγουμένους referred to *the interlocutors*: "we". Contrast Schofield & Griffith, Pangle, and the Budé translation (XII[1], p. 32).

Another complex case is *Laws* 809a6–810c9. The Athenian here raises the issue of how the supervisor of education (the παιδευτής) is to be educated: how can the law itself sufficiently educate him (τοῦτον δὲ αὐτὸν αὖ πῶς ἂν ἡμῖν ὁ νόμος αὐτὸς παιδεύσειεν ἱκανῶς; 809a6–7). The supervisor of education is one of the lawguards, and we saw above that the lawguards are also lawgivers, the successors of the first lawgiver/interlocutors. So far, the law has not given a complete account of this official; it has covered some things but not others. Yet in dealing with this supremely important figure, the law should, as far as possible, omit nothing (δεῖ δὲ εἰς δύναμιν μηδὲν παραλείπειν αὐτῷ, 809b1–2). Instead, it should fully expound every statement (πάντα λόγον ἀφερμηνεύειν, 809b2) so that the supervisor of education can become both an interpreter and nurturer for others (ἵνα οὗτος τοῖς ἄλλοις μηνυτής τε ἅμα καὶ τροφεὺς γίγνηται, 809b2–3). In 809b6 the Athenian then switches to direct speech: he addresses the supervisor directly (ὦ ἄριστε τῶν παίδων ἐπιμελητά, 908b7–c1; ὦ φίλε, 809d7) and states that 'we' (that is, the interlocutors) have not stated (οὐκ εἰρήκαμεν) what kind of prose literature his charges ought to engage with, and in what way. Once the interlocutors pretend to address the supervisor of education directly, they substitute themselves for the law (cf. ἔφαμεν 809c4; λέγομεν, 809d1). In 809c3–d7, however, the Athenian enumerates a number of things – such as literature, lyre-playing, arithmetic, some elementary astronomy – that he says (still in direct speech) have not been explained sufficiently 'by the lawgiver' (παρὰ τοῦ νομοθέτου, 809d7–e1), only to switch back to 'we' a few lines later, with εἴπομεν in 809e2, and φαμεν in 809e7.

The direct address to the supervisor of education is continued in the next section. After setting out regulations about the length of time to be devoted to literature, lyre-playing, and handwriting (809e1–810b4), the issue that must be addressed is how the supervisor of education can censure written compositions. Yet in 810c2–3, the Athenian turns to the lawguards, the lawgiver's envisaged successors and asks 'How will you deal with these, my most excellent lawguards?' οἷς, ὦ πάντων βέλτιστοι νομοφύλακες, τί χρήσεσθε; This is followed by the question of what 'the lawgiver' must stipulate: 'or what way of dealing with these will be correct for the lawgiver to order? He will be very perplexed, I suppose' (ἢ τί ποθ' ὑμῖν ὁ νομοθέτης χρῆσθαι προστάξας ὀρθῶς ἂν τάξειε; καὶ μάλα ἀπορήσειν αὐτὸν προσδοκῶ, 810c3–4). The Athenian says that the lawgiver will probably be in a state of *aporia* when he is faced with this issue. Cleinias then asks for the reason of this *aporia*: 'Why do you, stranger, seem to be addressing yourself in a state of veritable *aporia*?' (τί ποτε τοῦτο, ὦ ξένε, φαίνῃ πρὸς σαυτὸν ὄντως ἠπορηκὼς λέγειν; 810c5–6). It is *Cleinias* who identifies the Athenian as the lawgiver from which the Athenian had just distinguished himself by speaking of 'the lawgiver', rather than of 'I'. A few lines later, after the Athenian explained his worries, Cleinias again puts the Athenian on a par with the lawgiver when he asks: 'how and what would you then advise the lawguard?' (πῶς οὖν καὶ τί παραινοίης ἂν τῷ νομοφύλακι; 811b6). Cleinias wants to know what standard (παράδειγμα, 811b8) the Athenian would recommend to the lawguard who has to censure literature. Whereas Cleinias eagerly identifies the Athenian with the lawgiver (and, we may recall, at the very end of *Laws* insists that the Athenian should participate in the Cretan foundation),

the Athenian himself is more cautious (and indeed, we do not hear whether he accepts Cleinias' invitation).

For a standard, the Athenian does not have to look far: the best standard he can think of are their own λόγοι: to him these discourses seem quite like a poem (ἀποβλέψας πρὸς τοὺς λόγους οὓς ἐξ ἕω μέχρι δεῦρο δὴ διεληλύθαμεν ἡμεῖς … ἔδοξαν δ' οὖν μοι παντάπασι ποιήσει τινὶ προσομοίως εἰρῆσθαι, 811c7–10).[122] Of all the discourses that he has come across, both in poetry and prose, their own λόγοι appear to him to be absolutely the most suitable and fitting for the young to hear (πάντων μοι μετριώτατοί γε εἶναι κατεφάνησαν καὶ προσήκοντες τὰ μάλιστα ἀκούειν νέοις, 811d3–5). There is no better standard he could recommend to the lawguard and the supervisor of education than this (τῷ δὴ νομοφύλακί τε καὶ παιδευτῇ παράδειγμα οὐκ ἂν ἔχοιμι, ὡς οἶμαι, τούτου βέλτιον φράζειν, 811d5–6).[123] The Athenian is not very specific about what exactly this standard is supposed to be. He vaguely referred to them as 'our own λόγοι from dawn until now' in 811c7, and refers to them again by ταῦτα in 811d7 (in the phrase ταῦτά τε διδάσκειν παρακελεύεσθαι).[124] It is understandable that he cannot be more specific from the interpretation argued here: because there is no law code ready for use, and the legislative material cannot always be isolated from its direct context. Yet in any case, the Athenian makes the educational material – praise and blame and the actual preambles and laws – in their own conversation, that is, the preambles and all those normative discourses addressed to the citizens, the standard by which the lawguard and supervisor of education have to judge other works of literature in the city.[125]

For the purposes of our argument, this is significant. First, it is made dramatically possible by the fact that the Athenian has introduced the lawguards as their successors. The Athenian here advises the lawguard and supervisor of education, thus implicitly putting himself on a par with 'the lawgiver'. In his function

122 On this passage Jaeger 1945, 255; Morrow 1960, 339–340 (with n. 149) suggests that Plato here had something in mind similar to ancient states, such as Crete, that set their laws to music and sang them in schools and on public occasions. Görgemanns 1960, 103–104, concluded that *Laws*, on a par with poetry, is intended for the young: "Die Nomoi müssen als Schulbuch eine ähnliche Stellung haben wie die Poesie; den Anspruch, eine höhere intellektuelle Bildung zu geben, können sie nicht machen" (104). In a somewhat similar line of reasoning, Stalley 1983, 10, interprets the idea that *Laws*, or parts of it, can "have a morally improving effect on a relatively unsophisticated audience" as a sign that *Laws* is concerned with "popular" virtues "of the man in the street" rather than with the true virtue of *Republic* that is only attainable by the philosophers. Nightingale 1999*a* argues that "[i]n Plato's Magnesia" the law code itself will be the "foundation of [the citizens'] education" (102); cf. *id*., 1993, 289. Further Zuckert 2009, 106; Kraut 2010, 68. Miller 2013, 18–19.

123 The conversation of the interlocutors resembles poetry because, like poetry, it contains praise and blame, ἔπαινος and ψόγος. Cf. Schöpsdau 2003, 577–578, *ad* 811c9–10.

124 The phrase λόγους οἰκείους οἷον ἀθρόους (811d1) does not identify the material that the Athenian considers as a standard; he merely says that 'overseeing' (ἐπιβλέψαντι) their own discourses all together, he is struck by a sensation of wonder.

125 Some interpreters have argued that the Athenian here means that *Laws* as a whole is to function as παράδειγμα: Bobonich 1991, 1996, 2002, 106–107; Adomenas 2003. It seems more plausible, however, that the Athenian does not refer to *Laws* as a whole, but only to those parts of their conversation which are envisaged to be directed to the citizens in the first place: the preambles.

of lawgiver, he advises the lawguard and the minister to use parts of the exercise in lawgiving he and his interlocutors have agreed upon as the standard for literature. Second, it shows once again how *Laws* obscures from our view any idea of a standard on which the descriptions and legislative material are based. At the end of Book III, the interlocutors said that in founding their *polis* in speech, they would select from their opening discourse (ἐκ τῶν εἰρημένων ἐκλέξαντες, 702d1). Here the Athenian makes their λόγοι from the beginning until now the standard for their successors.

4.4 CONCLUSION

The present chapter has taken its cue from a number of observations that seemed to suggest that the legislation in *Laws* does not amount to an unambiguous law *code* ready for use. These were: the fact that the interlocutors turn to Magnesia only at the end of *Laws*, that exact indications about the laws and preambles are often lacking, and that the interlocutors are ambiguous about their own role as lawgivers. Such observations seem hard to reconcile with the standard reading of *Laws*, according to which the text offers a law code or blueprint for a second best constitution. The textual features identified, such as the fuzzy boundaries between the different types of discourse (laws, admonitions, preambles, reflections, and meta-legislative considerations) and the interlocutors' labelling of their own activity as πλάττειν τοὺς νόμους τῷ λόγῳ are anathema to such an interpretation. In view of these considerations, the question that arises is how are we to understand the *status* of the legislation in *Laws*, if not as a law code for a second best city? For why, if *Laws* were meant to present a law code, would the author leave so much unclarity about the actual laws and the actual text of the law code?

In order to attain clarity about the status of the interlocutors' διέξοδος, this chapter has started off by examining what purpose the interlocutors pursue with their legislation. It has argued that the interlocutors set out to *test* the outcomes of their previous discussion (in *Laws* I–III) by making laws in speech, and has proceeded to identify and explain two pervasive features of the ensuing legislation – the discursive nature of the legislation and the interlocutors' ambiguous attitude towards their legislative activity – as reflecting its provisional status. It has thus offered a reading of the text that relates the obscurities in the composition to the status of the interlocutors' activity as an exercise in lawgiving, the fact that they are *testing* their earlier results.

The way in which the legislation takes shape in the dialogue and the way in which the interlocutors present their διέξοδος τῶν νόμων can only be satisfactorily explained as part of a legislative project that has the status of an *exercise* for a real act of lawgiving. The vagueness of the exact text of the laws and preambles, the various levels (the Athenian addressing his interlocutors; the Athenian addressing a lawgiver; the Athenian addressing magistrates in speeches embedded in the conversation; the Athenian addressing the citizens in general; the Athenian / the lawgiver / an advise / a preamble / a law addressing an adressee), the interlocutors' ambiguous

attitude towards their own positions as lawgivers, their forward-looking attitude, and their repeated and manifold references to 'the lawgiver' in such contexts: all of these are indicative of, and should be interpreted within, the project of founding a city λόγῳ by way of preparation for the real act of legislation.

The fact that the legislation itself (Book VI, 771a5 – Book XII, 960b5) is embedded in a formally dialectical discussion creates the ostensible suggestion that the laws are the result of dialectic. The purpose of the interlocutors' legislative efforts is to test whether they have established something προὔργου: whether these moral and political propositions really lead to the best way of life for the *polis* and individual. The laws framed in *Laws* are what results from this test: they are *presented as* the laws that result from applying the principles of the opening discussion to a relatively open case of lawgiving. The overt claim is, therefore, that they aim at virtue as a whole.

This interpretation gives rise to an important question and one, I submit, that *Laws* is meant to raise. This problem arises because the laws in *Laws* itself are not the definitive law code for Magnesia (a law code ἔργῳ), but only an exercise for legislating ἔργῳ. That the laws are made λόγῳ has, as we have seen, certain consequences for what shape the legislation in *Laws* takes: it is not necessary at this point to settle everything in a definitive way, and the interlocutors are presented as aware of the fact that they are not making a real law code. As Cleinias phrases it, the interlocutors are engaged in collecting material about some topics, and laying down laws about others. The text as a whole therefore raises the *very question* of what a law code consistent with its principles and laws λόγῳ ought to look like.[126]

There is another way in which *Laws* points beyond itself, besides by being an exercise for a real act of legislation (ἔργῳ). As we will see in the next chapter, any (real) act of lawgiving must necessarily remain incomplete, and consists of several phases. The legislation in *Laws* is a test only for a first phase of legislation, distinct from a second phase that inevitably lies outside the interlocutors' reach. This is another way in which the legislation of the interlocutors – and, indeed, as we will see, any act of lawgiving – is bound to remain provisional. The imagined second 'phase' of legislation and how it relates to the interlocutors' own legislative activity in *Laws* will be discussed in Chapter Five.

126 Understandably, considering the involvement of members of the Academy in contemporary issues of legislation: see Trampedach 1994.

CHAPTER FIVE

OUTLINE AND AMENDMENT: AN INEVITABLE LACK OF ACCURACY

The present chapter will investigate in more detail why the interlocutors see the need to instruct 'successors' (as briefly noted in the previous chapter). The interlocutors are portrayed as acutely aware that they will not complete their legislation within the framework of their conversation reported in *Laws*. This is a remarkable textual feature: for it means that Plato *chose* to present the laws of the interlocutors as unfinished. The present chapter asks why, and what this implies about the status of the interlocutors' legislative exercise and, indeed, about *Laws*' conception of the nature of lawgiving in general. It will be argued that the attitude of the interlocutors reflects a profound insight about the nature of lawgiving: that lawgiving is a discipline that by its very nature lacks the potential for accuracy – and thus seems an unlikely candidate for the notion of τέχνη as it has been explained in Chapter Two. This ultimately prompts the question of whether the legislation in *Laws can* be finished or, rather, whether the interlocutors *think* that legislation has an end point – and what determines when a law code is finished. Within the framework of their legislative project, the interlocutors reflect upon the right procedure to follow in order to settle those things that they leave open. Such passages offer important clues about the *norm* underlying the legislative project portrayed in *Laws*.

That the interlocutors leave their laws unfinished has much to do with their general conception of the sort of activity that legislation is. The present chapter will reconstruct *Laws*' notion of lawgiving on the basis of the interlocutors' reflections about the unfinished status of their laws. The painter analogy briefly mentioned in Chapter Four[1] plays a key role in the argument, because it offers us the terms in which we are supposed to understand legislation – both the legislation of the interlocutors and lawgiving in general. After isolating and discussing the significant features of this analogy and the specific way in which it conceptualizes legislation, the ensuing sections will address the 'lacunae passages' in which the interlocutors state that they are leaving matters open to be settled at some later stage in terms that recall the painter analogy. We shall investigate what guides the filling in of these open parts of their lawgiving: who will accomplish the future legislation and what does this imply about the kind of qualifications required and the considerations that need to be taken into account for laying down good laws? What does that tell us about the norm that determines the process of legislation? Is legislation in *Laws* conceived of as a τέχνη in the sense set out in Chapter Two? Is it perhaps in the

1 See above, pp. 144–145.

context of painting – after all, an analogy for the philosopher-king creating the just *polis* in *Republic* – that we finally meet the norm of δικαιοσύνη again?

For the sake of clarity, it should be noted that the future lawgiving to be performed by the envisaged successors of the interlocutors discussed in this chapter differs from the lawgiving projected to take place beyond *Laws* discussed in section 4.1 above. The text of *Laws* points beyond itself in a variety of ways, and the prospect of lawgiving ἔργῳ to follow at the end of Book XII is only one of those ways. The present chapter discusses a further way in which the interlocutors project lawgiving beyond their own efforts. Apparently, any act of legislation, including their own, is a protracted activity spanning different *phases*. The interlocutors can only complete the first phase, which becomes clear from the way in which they themselves are made to present the art of legislation. This is accomplished through an analogy, and it is to this analogy that we now turn.

5.1 THE LEGISLATION AS AN OUTLINE: THE PAINTER ANALOGY, *LAWS* VI

After the introduction of the magistrates, the Athenian announces that the interlocutors will now commence their legislation (768d7–e3).[2] Yet what follows is not the first law, but an analogy for lawgiving. This analogy therefore occurs at a highly salient place in the layout of *Laws*, right before the interlocutors begin their own lawgiving and after they have already announced its beginning. This suggests that the analogy offers a crucial contribution to the interlocutors' approach: it *frames* their own subsequent legislative activity. Preceding the dramatic act of lawgiving portrayed, the analogy articulates the subsequent lawgiving on the dramatic level: at different stages in the course of their legislation, the interlocutors reflect on their own legislative activity in the terms and distinctions originally introduced through the analogy.

The *analogon* for the lawgiver is the professional painter. The analogy therefore picks up on, and systematically develops, a use of language that immediately precedes it. For the terminology belonging to the domain of painting surfaces for the first time in a brief afterthought on the institution of the courts (δικαστήρια), the final body of the magistrates introduced (768c3–d7).[3] The Athenian concludes the discussion of the courts there by noting that they have 'like some kind of outline with an outer boundary drawn around it, stated some things, yet more or less omit-

2 *Leg*. 768d7–e3: νῦν μὴν ἐν τῷ παρόντι μέχρι τῆς τῶν ἀρχόντων αἱρέσεως γενομένης τελευτὴ μὲν τῶν ἔμπροσθεν αὕτη γίγνοιτ' ἂν ἱκανή, νόμων δὲ θέσεως ἀρχὴ καὶ ἀναβολῶν ἅμα καὶ ὄκνων οὐδὲν ἔτι δεομένη, 'For the moment, though, now that we have got as far as the selection of officials, this may be as good a point as any to end our introductory remarks and make a start on enacting laws – a start which calls for no further postponement or delay' (Transl. Schofield & Griffith). The actual lawgiving starts after the analogy, at *Leg*. 771a5 (ἀρχὴ δὲ ἔστω τῶν μετὰ ταῦτα ἡμῖν νόμων ἥδε τις κτλ.). At *Leg*. 751a1–b2 a distinction is made between two aspects of the organization of a *politeia*: the magistrates and the laws.

3 The entire passage is quoted below, p. 171.

ted some others' (οἷον περιγραφή τις ἔξωθεν περιγεγραμμένη τὰ μὲν εἴρηκεν, τὰ δὲ ἀπολείπει σχεδόν[4], 768c5–6). The reason for omitting some things at this point is that the most accurate institution and classifications in laws for the δικαστήρια can be made much better towards the end of their legislation (πρὸς γὰρ τέλει νομοθεσίας ἡ δικῶν ἀκριβὴς νόμων θέσις ἅμα καὶ διαίρεσις ὀρθότατα γίγνοιτ' ἂν μακρῷ, 768c6–8). The whole *and* accuracy about matters of detail cannot become clear before the διέξοδος has reached its end (πρὶν ἂν ἡ διέξοδος ἀπ' ἀρχῆς τά τε δεύτερα καὶ τὰ μέσα καὶ πάντα μέρη τὰ ἑαυτῆς ἀπολαβοῦσα πρὸς τέλος ἀφίκηται, 768d5–7).[5] It is significant that the painting imagery – entailing a distinction between the generality of the outline and accuracy that can only be attained later – originates in the context of the courts.[6] In fact, the terminology finds its original significance there as the painter terminology is recalled at later points in the dialogue when the relation between the role of the judge and that of the lawgiver is discussed. We will return to this below.

The idea that the interlocutors themselves are only drafting an outline, originating in the context of the courts, is subsequently carried over into a full-blown analogy for lawgiving. The Athenian now uses the terminology of painting to elucidate some salient points about lawgiving; or rather, to be more precise, the Athenian analogizes the lawgiv*er* (and thereby the interlocutors themselves in their role of lawgivers) to a paint*er* (καθάπερ ζωγράφων … ἡ πραγματεία 769a7–8). The point he sets out to make is that the activity of the painter lacks a natural limit (πέρας), 769a7–b3:

> Αθ. Οἶσθ' ὅτι καθάπερ ζωγράφων οὐδὲν πέρας ἔχειν ἡ πραγματεία δοκεῖ περὶ ἑκάστων τῶν ζῴων, ἀλλ' ἢ τοῦ χραίνειν ἢ ἀποχραίνειν, ἢ ὁτιδήποτε καλοῦσι τὸ τοιοῦτον οἱ ζωγράφων παῖδες, οὐκ ἄν ποτε δοκεῖ παύσασθαι κοσμοῦσα, ὥστε ἐπίδοσιν μηκέτ' ἔχειν εἰς τὸ καλλίω τε καὶ φανερώτερα γίγνεσθαι τὰ γεγραμμένα.
>
> Ath. 'You know how it is with painting, say, as an activity. You get the impression it never reaches an end, in any particular work, but seems to go on endlessly beautifying, heightening the colour or softening it, or whatever it is people with an upbringing as painters do in fact call

4 The adverb σχεδόν, or σχεδόν τι, mitigates the exactness of the statement by inserting a degree of vagueness or indeterminacy: see e. g. Stein 1894, "σχεδόν ermäßigt die Zuversichtlichkeit des Tons", *ad* Hdt. 5.19.10 with further parallels. σχεδόν is therefore, like ὡς ἔπος εἰπεῖν, a sign of a less strict use of terms and stands in contrast to the use of precise language (ἀκριβολογεῖσθαι), which is characteristic of Socrates' use of his terminology (at least, it is an accusation that we hear Thrasymachus make against Socrates, see Chapter Two, p. 42, n. 11). With 125 instances σχεδόν occurs relatively often in *Laws*. See also *Leg*. 768d2.

5 The issue of the courts and the punishment of minor offences are revisited in *Leg*. 934e1–945b2 and 956b3–958c6. Schöpsdau 2003, 437, reflects on a possible connection: "Ein zwingender sachlicher Zusammenhang zwischen der Vollendung der Gesetze und der Regelung und Einteilung des Gerichtswesens läßt sich allerdings höchstens durch den Gedanken herstellen, daß zuerst die Gesetze zu geben und danach die Organe zur Überwachung der Einhaltung der Gesetze einzusetzen sind; (…)." As Schöpsdau rightly notes, not all issues involving the court are settled in 957a-b; the settling of the details is left to the νομοφύλακες (957a1–b5).

6 Cf. *Leg*. 934b6–c2: the courts must, like a painter (καθάπερ ζωγράφον), outline some concrete cases (ἔργα) that follow the principles of the law code (ὑπογράφειν ἔργα ἑπόμενα τῇ γραφῇ), so that, if the law leaves it up to the judge to decide the punishment, the judges have some examples ready. See also below, pp. 164–165.

> it. What has been painted never reaches the point where no further improvement, in terms of beauty or clarity,[7] is possible.' (Transl. Schofield & Griffith, modified)

In this analogy, professional painters never cease to continue touching up the painting (χραίνειν, ἀποχραίνειν, κοσμεῖν). Painting is an activity that continues to allow room for 'improvement' (ἐπίδοσις): the painting itself never reaches the stage at which there is no further room for improvement towards clarity and beauty – a painting is never finished, and perfection is impossible.

Before analysing the implied similarities between the lawgiver and the painter, let us look at the next stage of the analogy, 769b6–c8:

> Αθ. (…). χρησώμεθά γε μὴν τῷ νῦν παρατυχόντι περὶ αὐτῆς ἡμῖν λόγῳ τὸ τοιόνδε, ὡς εἴ ποτέ τις ἐπινοήσειε γράψαι τε ὡς κάλλιστον ζῷον καὶ τοῦτ' αὖ μηδέποτε ἐπὶ φαυλότερον ἀλλ' ἐπὶ τὸ βέλτιον ἴσχειν τοῦ ἐπιόντος ἀεὶ χρόνου, συννοεῖς ὅτι θνητὸς ὤν, εἰ μή τινα καταλείψει διάδοχον τοῦ ἐπανορθοῦν τε, ἐάν τι σφάλληται τὸ ζῷον ὑπὸ χρόνων, καὶ τὸ παραλειφθὲν ὑπὸ τῆς ἀσθενείας τῆς ἑαυτοῦ πρὸς τὴν τέχνην οἷός τε εἰς τὸ πρόσθεν ἔσται φαιδρύνων ποιεῖν ἐπιδιδόναι, σμικρόν τινα χρόνον αὐτῷ πόνος παραμενεῖ πάμπολυς;
>
> Ath. '(…). But anyway, it needn't stop us using a ready-made analogy drawn from painting. Suppose someone took it into his head to paint the most beautiful painting possible – and what is more, one that would never deteriorate, just go on getting better with the passage of time. You can see, can't you, the painter being mortal, that unless he leaves behind him some successor able to make good any damage done to the painting by time, or embellish it and improve it, in the case of any defect resulting from the painter's own deficiencies in technique, then all his great labour will last but a short time.' (Transl. Schofield & Griffith)

The language here is striking. In an important argumentative move, the painter is said to aim at painting a picture that will never grow worse, but will always improve in the course of time (τοῦτ' αὖ μηδέποτε ἐπὶ φαυλότερον ἀλλ' ἐπὶ τὸ βέλτιον ἴσχειν τοῦ ἐπιόντος ἀεὶ χρόνου, 769c1–3). Yet he knows that, since he is mortal, unless he leaves behind a successor on whom it is incumbent to 'correct' the painting (διάδοχον τοῦ ἐπανορθοῦν, 769c4), his efforts will not last. The reason why the creation of a painting never ends is because of this need for ongoing correction. This arises from two factors: first, when in some respect the painting 'errs' or 'slips' through the passage of time (ἐάν τι σφάλληται τὸ ζῷον ὑπὸ χρόνων, 769c4–5[8]);

7 Schofield & Griffith translate: 'where no further improvement, in terms of beauty or *fidelity to the original*, is possible' (emphasis mine). It should however be noted that the relevant Greek phrase, φανερώτερα γίγνεσθαι τὰ γεγραμμένα, does not necessarily imply that clarity here means resemblance to an original. Such *may* of course be the first and indeed natural interpretation of what φανερώτερα means here ('it is clear what it represents'), but nothing is made explicit. Compare Saunders: 'It always looks as if the process of touching up by adding colour or relief (…) will never finally get to the point where *the clarity* and beauty of the picture are beyond improvement' (emphasis mine). As will be argued here, what is so remarkable about this painter analogy is that it suppresses the possible idea that the painting of this painter is a *copy* of an original. See further below.

8 Schofield & Griffith 2016 render the phrase with a passive construction, '*damage done* to the painting by time' (emphasis added). Yet this is too specific for what the Greek suggests (which is admittedly vague). The verb σφάλληται is grammatically middle-passive, and it has intransitive semantic value: 'if in some way the painting will come to err', with the subsequent suggestion that the cause of this σφάλλεσθαι is the passage of time (ὑπὸ χρόνων). In other words, the painting itself *becomes* worse during (and one could therefore say, by) the passing of time.

second, the successor has to touch up what was left incomplete by the deficiency of the original painter (τὸ παραλειφθὲν … οἷός τε εἰς τὸ πρόσθεν ἔσται φαιδρύνων ποιεῖν ἐπιδιδόναι, 769c5–7).[9]

For a Platonic painter analogy, the one in *Laws* VI is peculiar: what is meant by the deterioration over time and by the correcting of what was 'left open'? This becomes clear in the following section of the analogy, when it is made explicit that the *analogon* of the painter, the one of whom the painter is an illustration, is the lawgiver. In 769d1–e2 the Athenian states that the lawgiver's intention is similar to that of the painter:

> Αθ. Τί οὖν; ἆρ' οὐ τοιοῦτον δοκεῖ σοι τὸ τοῦ νομοθέτου βούλημ' εἶναι; πρῶτον μὲν γράψαι τοὺς νόμους πρὸς τὴν ἀκρίβειαν κατὰ δύναμιν ἱκανῶς· ἔπειτα προϊόντος τοῦ χρόνου καὶ τῶν δοξάντων ἔργῳ πειρώμενον, ἆρ' οἴει τινὰ οὕτως ἄφρονα γεγονέναι νομοθέτην, ὥστ' ἀγνοεῖν ὅτι πάμπολλα ἀνάγκη παραλείπεσθαι τοιαῦτα, ἃ δεῖ τινα συνεπόμενον ἐπανορθοῦν, ἵνα μηδαμῇ χείρων, βελτίων δὲ ἡ πολιτεία καὶ ὁ κόσμος ἀεὶ γίγνηται περὶ τὴν ᾠκισμένην αὐτῷ πόλιν;
>
> Ath.: 'Well, what about the lawgiver? Don't you think he has the same kind of intention? First, to paint his canvas of laws with all the precision he can muster; second, as time passes and he tries out his ideas in practice, do you think there has ever been a lawgiver so foolish as to be unaware that there are inevitably going to be any number of things left for someone coming after him to amend, if he wants the political arrangements and organisation of the city he has founded to go on getting better, and not worse?' (Transl. Schofield & Griffith)

It is the lack of *accuracy* (ἀκρίβεια) in the work of the first lawgiver that the painter analogy aims to introduce. The first lawgiver makes his laws while striving for accuracy (γράψαι τοὺς νόμους πρὸς τὴν ἀκρίβειαν, 769d2–3; cf. ἡ … ἀκριβὴς θέσις ἅμα καὶ διαίρεσις, 768c7–8; τὸ δὲ ὅλον ἀκριβές, 768d2–3), yet at the same time knows that he himself is unable to attain complete accuracy. He accomplishes it as far as his ability allows him to (κατὰ δύναμιν, 769d3).

Here we may briefly pause in order to ask what exactly accuracy means in this context. Specifically, what does accuracy in painting mean when there seems to be no model to be copied, and accuracy cannot consist in faithful correspondence to the model? Here it is instructive to dwell briefly on the role of other painting analogies in Plato. Painting is a frequent *analogon* in the Platonic corpus; together with the arts comprised under the common denominator μουσική, it is one of the

What is meant here is not 'damage done' to the painting, which becomes transparent further onwards, when it is spelled out more clearly what σφάλλεσθαι refers to.

9 ζῷον is the technical term for the object of the painter (he is a ζω-γράφος, see also the references in Ast [1835–1838], '*imago*'). This could in theory be construed in either of two ways: ζῷον may either refer to the object painted by the painter, or to the painting itself. At first sight, ζῷον in 769c1 may seem after all to import the idea that the painting is an imitation of something else. However, τοῦτ' in 769c1 (ὡς κάλλιστον ζῷον καὶ τοῦτ' αὖ μηδέποτε ἐπὶ φαυλότερον ἀλλ' ἐπὶ τὸ βέλτιον, 769c1–2) and ζῷον in 769c5 clearly refer to the material painting because it is this ζῷον which deteriorates (ἐάν τι σφάλληται τὸ ζῷον ὑπὸ χρόνων, 769c4–5). Therefore, and especially because of τοῦτο, we have to conclude that ζῷον in 769c1 also refers to the resultant, material painting. The superlative ὡς κάλλιστον is not to be understood as 'the (absolutely) most beautiful imitation', but 'the most beautiful painting (of which the painter is capable)'.

so-called 'imitative arts', the μιμητικαὶ τέχναι. Yet from the very start, it becomes clear that the approach of this particular analogy is different.[10]

A first thing to note is that the analogy in *Laws* does not present the painter as an *expert*, and certainly not in the idealised fashion that this figure so often assumes with Socrates (the doctor as a producer of health, or health as the product of the doctor's τέχνη). Additionally, in the Platonic corpus the painter is typically a mimetic artist: indeed, the painter and his art often figure as the prototype of the class of the μιμητικαὶ τέχναι, as he does for example in *Republic* X.[11] In Chapter Two, we saw that the 'product' (ἔργον) of a τέχνη is one of the standard elements of the conceptual framework of τέχνη. The product of a mimetic τέχνη has the status of an imitation (μίμησις or μίμημα): it is a likeness of a 'model' (παράδειγμα, ἰδέα). This can work out in either of two ways. One possible implication is that the imitation exists on an ontologically inferior level than the object of which it is an imitation. The most notorious example of this negative evaluation of μίμησις is no doubt the discussion of poetry in *Republic* Book X. Painting is there the prototypical mimetic τέχνη to which poetry (imitation in words) is likened: although capable of accurate reproduction, both poet and painter lack knowledge (ἐπιστήμη) of the things they reproduce.[12] Alternatively, the idea of an imitation of a model can also be used to emphasize the similarity of the imitation to its model. The philosopher-ruler is likened to a painter who paints the just *polis* after the divine παράδειγμα.[13]

10 *Pace* Schofield & Griffith 2016, 223, n. 52.

11 For the painter as an imitator in Plato, see, e. g., *Crat*. 424d7–425a4, 430b3–4, 430d1–434b2; *Soph*. 235d6–236c7; *Phdr*. 275d5–6; *Prot*. 312c6–d3; *Gorg*. 503d5–504a2; *Resp*. 472d4–7, 596e6, 598b1 ff.

12 *Resp*. 596b4–597e5. See Halliwell 2011, 155–207 for a recent and nuanced argument for "Platonic ambivalence" towards poetry. About *Resp*. X, see especially his observations *ibid*., 182–204.

13 *Resp*. 500d11–501c9. The philosopher is a 'painter of constitutions', πολιτειῶν ζωγράφος (501c6–7). See Halliwell 2011, 182. In *Republic*, Socrates likens the philosopher-ruler to a painter who paints a constitution on the basis of a divine model. Several aspects show that the painting activity of the philosophers consists in producing a copy: (1) the philosophers refuse to work on a *pinax* that is not pure (καθαράν, 501a3, a6) and erase the existing *polis* and characters of its citizens (ἤθη ἀνθρώπων) before they commence their own painting. (2) The philosophers work on the basis of a model (παράδειγμα). Their eyes quickly zigzag between model and imitation, so as to produce the best likeness (ἔπειτα … ἀπεργαζόμενοι πυκνὰ ἂν ἑκατέρωσ' ἀποβλέποιεν, 501b1–2). They look alternatively 'at natural justice, the good, the temperate, and all such things' (πρός τε τὸ φύσει δίκαιον καὶ καλὸν καὶ σῶφρον καὶ πάντα τὰ τοιαῦτα, 501b2–3), and at the painting, the δίκαιον in people (καὶ πρὸς ἐκεῖνο αὖ τὸ ἐν τοῖς ἀνθρώποις ἐμποιοῖεν, 501b3–4). Cf. Adam *ad loc*. (3) That the philosophers paint a *likeness* is also suggested by the fact that they sometimes erase things, when the likeness is not good enough, and then again paint things anew (τὸ μὲν ἄν … ἐξαλείφοιεν, τὸ δὲ πάλιν ἐγγράφοιεν, 501c1). (4) Finally, *Republic* speaks about painters in the plural. There are no differences between individual philosophers – they are identical *qua* philosophers and operate on the same basis, the divine *paradeigma*. By contrast, *Laws* speaks of an individual lawgiver, each of whom fabricates his own creation; the import of the painter analogy is distributive rather than collective.

With the mimetic interpretation of painting as our frame of reference, it becomes immediately apparent that the implications attached to painting in *Laws* VI are vastly different. First and foremost, the painter in this analogy is not imitating anything: *there is no παράδειγμα* and there is no talk of remaining close or as close as possible to a model.[14] Hence, in the painter analogy, ἀκρίβεια does not consist in the resemblance of a painting to a model. It is significant that ἀκρίβεια is only introduced in the part of the analogy that describes legislation, not in the first part about the painter. Second, it is unclear when a painting will be finished, if it can ever be finished at all. These two aspects are two sides of the same coin: the absence of a πέρας for the act of painting a picture is the direct consequence of the absence of a model. If a painter is presented as simply a copyist as he is in *Republic*, it is never a question of whether or not the painting can be finished: the τέχνη itself consists in producing its ἔργον, 'producing a copy'.[15] Yet in *Laws* incomplete parts of the painting are left open 'by [the painter's] weakness in relation to the art' (ὑπὸ τῆς ἀσθενείας τῆς ἑαυτοῦ πρὸς τὴν τέχνην). This is a highly striking phrase: that the expert has a 'weakness' (ἀσθένεια) 'in respect to his art' (πρὸς τὴν τέχνην) is unthinkable in texts such as *Gorgias* or *Republic*. In the idealising and indeed more characteristic tendencies of thought within the Platonic corpus, the expert is in principle capable of realising the ἔργον of his τέχνη – otherwise, he would not be an expert in the first place – though circumstances may not permit him to do so.[16] By contrast, in the analogy in *Laws*, the activity of painting is much more complicated than the static 'creating a copy of a model'. Painting here is a dynamic activity: it is an open-ended process with various stages that are not clearly demarcated from each other. The painting takes a very long time to make, and different people will work on it (or at least two: the original painter and a successor). The painting is also susceptible to deterioration over the course of time, and ongoing efforts are necessary to correct it. Also, the conceptualisation of the expert in *Republic* does not leave room for differences between experts in δόξα (opinion) and δύναμις (capacity): ἐπιστήμη makes opinion irrelevant and guarantees capacity. The painter analogy in *Laws*, by contrast, is at least compatible with the idea that different lawgivers will draw different sketches and have different abilities, and that there are different ways in which the outline can be filled in.

14 A παράδειγμα is however mentioned twice in Book V, in *Leg*. 739e1 and 746b7. In 739e1, παράδειγμα refers to the city of the gods that is a unity as far as possible; in Chapter One, pp. 21–22, it was already argued that this is not identical to the model of *Republic*, but an ideal particular to *Laws* itself. *Leg*. 746b7 seems to refer back to the earlier passage and is put in the mouth of an imaginary lawgiver who is made to address the objection that in practice things can never work out exactly as they have been planned.

15 Cf. Campbell 1981, 440: "The discussion of the *nomoi* is throughout grounded in practical experience rather than in metaphysics. (…) The Lawgiver is no longer the metaphysical artist, described in the *Republic*, who, viewing the pattern of absolute truth, would wipe clean his mortal canvas and establish in 'this world also the laws of the beautiful, the just, and the good …'. Now he resembles the less exalted bricklayer engaged in mere piecemeal construction."

16 See Chapter Two, p. 42.

A comparison of the terminology of the 'sketch' in *Laws* and *Republic* is also instructive. When we compare *Laws*' appraisal of a sketch (περιγραφή) to a counterpart passage in *Republic*, it becomes manifest that the latter views the status of a sketch (ὑπογραφή) in a very different light. In relation to the μαθήματα μέγιστα, the *apodeixeis* of the εἴδη of the four cardinal virtues presented earlier[17] amount only to a 'sketch' (ὑπογραφή, *Resp*. 504d6).[18] The interlocutors' earlier statements were lacking in precision (τὰ τότε τῆς μὲν ἀκριβείας … ἐλλιπῆ, 504b5–6; cf. μέτρον τῶν τοιούτων ἀπολεῖπον, 504c1). The incomplete (ἀτελὲς … οὐδέν) cannot be a measure of anything (οὐδενὸς μέτρον). Looking at a mere sketch of the virtues and passing by the perfectly finished product will not do (αὐτῶν τούτων[19] οὐχ ὑπογραφὴν δεῖ ὥσπερ νῦν θεάσασθαι, ἀλλὰ τὴν τελεωτάτην ἀπεργασίαν μὴ παριέναι, 504d6–8). The guards must walk 'the longer road' (τὴν μακροτέραν … περιιτέον, 504c9, cf. b2), aspire to the most complete product (τελεωτάτη ἀπεργασία), and aim at the highest precision (μεγίστας … τὰς ἀκριβείας) in the most important affairs (τῶν … μεγίστων, 504d6–e2). This high degree of precision is possible in virtue of the greatest object of knowledge (μέγιστον μάθημα), the Idea of the Good (ἡ τοῦ ἀγαθοῦ ἰδέα, 505a2).[20] From this perspective, incompleteness amounts to a failure to persevere, that is, to indifference (ῥᾳθυμία, 504c5), a trait explicitly said to be of no avail to *polis* and laws. By implication, a city and laws benefit from the zeal of a guard who takes the longer road (τὴν μακροτέραν [ὁδόν]) and who exerts himself both intellectually and physically (μανθάνοντι πονητέον ἢ γυμναζομένῳ, 504d1); otherwise he will never reach the great principle that is most befitting for a person in his position (as guard of *polis* and laws) to learn (τοῦ μεγίστου τε καὶ μάλιστα προσήκοντος μαθήματος ἐπὶ τέλος οὔποτε ἥξει, 504d2–3).[21]

Comparison with *Republic* casts the analogy in *Laws* VI in relief, and we can now perceive the analogy's idiosyncracies. In our *Laws* passage, painting is not a

17 For the references, see Adam *ad loc*.

18 ὑπογράφειν is what teachers do: 'trace letters for children to write over' (LSJ, *s. v.* II). In *Prot*. 326d2–5, we find an analogy between this school practice and the education of the citizen by law, both of which enforce (ἀναγκάζειν) a certain kind of writing and behaviour, respectively. The ὑπογραφή of the virtues in *Resp*. 504d6 is only an *adumbratio* (Adam, *ad loc*.), and points forward to the need for their *realisation*, the τελεωτάτη ἀπεργασία.

19 That is, of δικαιοσύνη and the things the interlocutors discussed, *Resp*. 504d4–5.

20 Cf. Müller 1968, 14: "Es wird dann (504d) ausdrücklich gesagt, daß die Skizze (ὑπογραφή) 'der Gerechtigkeit und dessen, was wir durchgesprochen haben', nicht genügt, sondern dass die vollkommene Ausführung (τελεωτάτη ἀπεργασία) nötig und von der höchsten Wissenschaft (μέγιστον μάθημα), von der Idee des Guten aus möglich ist."

21 Lisi 1998, 101–102, with reference to the sketch terminology, argues that both *Republic* and *Laws* offer theoretical models, and that Plato himself offers a ranking of the philosophical legislations, though Lisi also believes that Plato holds on to the ideal of *Republic* (100–101, with reference to *Leg.* 875a1–d5). In Lisi 1985, 246–250, he argues that *Laws* coincides with the constitution the philosopher describes in *Statesman*, when he exercises power himself; in Lisi 1998 he adds that the rule of law anticipates the rule of philosophy: Magnesia is "ein Staat im Werden, d. h. die Herrschaft des Gesetzes soll solange bleiben, bis die Philosophen ausgebildet werden und schließlich die Macht übernehmen können" (104). He suggests that the fact that *Laws* appeals to existing laws must be explained by the "Vorläufigkeit" of the rule of law (104, cf. 99).

mimetic τέχνη, and ἀκρίβεια does not consist in correspondence to a model. Instead, accuracy depends upon a host of other things, including reality and how things work out in practice. It also depends upon the completion of the διέξοδος τῶν νόμων: a rough draft of the whole has to be outlined before further details can be filled in. Due to the nature of the subject matter and the limitations of human foresight, it is simply impossible to advance beyond drawing an outline in the initial stages. The initial incompleteness of a law code is part and parcel of the very πραγματεία of lawgiving. The three interlocutors in *Laws* will do whatever lies in their power (εἰς δύναμιν, 770b7): they will not fall short in zeal. The fact that complete precision is simply not possible at this stage absolves the interlocutors from having to go into more detail.[22]

The inevitable lack of accuracy inherent in the πραγματεία of lawgiving arises from the fact that laws need to be *applied* to particular cases, which are part of human lives and occur in certain circumstances. Laws are necessarily made in advance, and knowledge of all the possible things that may happen in the future is humanly impossible. This is what H.L.A. Hart in *The Concept of Law* (1961) calls "our relative ignorance of fact".[23] As a consequence, a law code has an "open texture" and therefore needs to be continuously touched up (like the painting in the analogy).[24] As Hart explains:[25]

> "If the world in which we live were characterized only by a finite number of features, and these together with all the modes in which they could combine were known to us, then provision could be made in advance for every possibility. We could make rules, the application of

22 Cf. *Leg*. 875d4–5: it is inherent in law that it can take into account the majority of cases, not all: τάξιν καὶ νόμον, ἃ δὴ τὸ μὲν ὡς ἐπὶ τὸ πολὺ ὁρᾷ καὶ βλέπει, τὸ δ' ἐπὶ πᾶν ἀδυνατεῖ. On this passage, see below, pp. 163–165. Cf. *Leg*. 925e8–926a3.

23 *The Concept of Law*, 125.

24 *Ibid*., 124. Harris 2000, 2004 (with reference to Hart at 241–242), 2013 (Chapters 4 and 5), studies the phenomenon of the open texture of ancient Greek law. He rightly notes (2004, 242) that Hart's observation was not entirely original, but omits to include Plato's *Laws*. In his discussion of *Laws* in Harris 2013, 205–209, he concludes on the basis of *Leg*. 820e2–3 that Plato in *Laws* "attempts to provide a law code for the utopian city of Magnesia that is so comprehensive that it will contain no gaps" (205) (for this interpretation, cf. England *ad loc*.). However, such an interpretation of the phrase ἵνα μὴ διάκενα ἡμῖν ᾖ τὰ τῶν νόμων is manifestly inconsistent with the repeated insistence by the interlocutors that their legislation *does* contain gaps. Rather than a general statement, ἵνα μὴ διάκενα ἡμῖν ᾖ τὰ τῶν νόμων expresses the necessity to lay down laws for the commensurable and the incommensurable: without appropriate legislation on these μαθήματα, a gap will remain between the previous and the subsequent legal topics. In other words, this statement suggests that the topics of the legislation are treated 'in order', ἑξῆς. This does not, however, have consquences for Harris' claim that "(…) Plato implicitly recognizes that several Athenian statutes contained ambiguities and tries to reduce the amount of open texture in the statutes of Magnesia by providing more detailed definitions of key terms" (2013, 206). The emphasis in my argument is on the ways in which *Laws* signals that its own laws fall short of complete ἀκρίβεια.

25 Hart 1961, 125. See for the open texture of law *ibid*., 124–132, 233, 249. Plato's *Laws* is not the only classical Greek text that mentions this problem; see also the references to Plato's *Statesman*, to Aristotle's *Politics*, *Rhetoric*, and to the pseudo-Aristotelian *Constitution of the Athenians* in Harris 2013, 177–178.

> which to particular cases never called for a further choice. Everything could be known, and for everything, since it could be known, something could be done and specified in advance by rule. (…) Plainly this world is not our world; human legislators can have no such knowledge of all the possible combinations of circumstances which the future may bring."

This sounds almost like the Plato of *Laws*. A law code can never be exhaustive, because human life and character can never be charted completely (πάμπολλα ἀνάγκη παραλείπεσθαι τοιαῦτα, 769d5–6). New cases may reveal that existing legislation is misguided, or that legislation for the subject is non-existent, in which case the existing laws need to be amended or supplemented. We can now see the two reasons why the work of the original painter/lawgiver was said to be in need of correction. The phrase ἐάν τι σφάλληται τὸ ζῷον ὑπὸ χρόνων (769c4–5) refers to cases in which existing legislation turns out to be inadequate for dealing with new cases and the law needs to be amended.[26] The phrase τὸ παραλειφθὲν … οἷός τε εἰς τὸ πρόσθεν ἔσται φαιδρύνων ποιεῖν ἐπιδιδόναι (769c5–6) refers to cases in which existing legislation needs to be supplemented. What takes time is that the lawgiver's ideas (τὰ δόξαντα, 769d4) must be tested 'in practice' (ἔργῳ, 769d4) 'in the course of time' (προϊόντος τοῦ χρόνου, 769d3). The inevitable lack of accuracy in lawgiving is therefore the consequence of the fact that the lawgiver cannot foresee all that may possibly happen in advance. It is inherent in the human 'material' of his discipline. The lawgiver/painter in the analogy is not omnipotent: κατὰ δύναμιν (cf. τὰ λοιπὰ πάντα εἰς δύναμιν διεξελθόντα, 718c1–2) and γράψαι … ἱκανῶς indicate that the degree to which a first design can be accurate is limited. The course of time will supply new cases, and for that reason, there is always a need for magistrates to amend and supplement the laws. From such a perspective, it would seem that the making of a law code can never be finished. The phrase τοῦ ἐπιόντος ἀεὶ χρόνου (769c2–3) and ἐπὶ τὸ βέλτιον ('*towards* the better', 769c2) seem to confirm this, entailing that the process of correction does not have a fixed, clear endpoint.

Part of this dynamic picture is that the analogy creates the effect of a *struggle*: making a painting confronts the painter and his successor with difficulties that can only be overcome in the course of time. In this context, ἀκρίβεια refers to the fittingness of the laws, being tailored to the demands of practice (and not to accuracy of replication as one might have expected in the context of a painter analogy). In the context of legislation, it carries overtones of practicality, detail, and arguably also of equity and fairness; accuracy is necessary because the more accurate laws are, the less possibility there is for conflicts.

The painter analogy in *Laws* clearly does not fit very well with the general pattern of painting analogies in the Platonic corpus. A much closer likeness to *Laws*' conceptualization of legislation is that offered in Aristotle's *Nicomachean Ethics*. Here Aristotle notably uses the very same terminology as does Plato in *Laws*. In this part of Book *EN* V, Aristotle discusses the problems surrounding the notion of ἐπιείκεια or τὸ ἐπιεικές (fairness, equitability). A law is necessarily a general rule; when applied to a particular case, this may result in injustice. This is where τὸ ἐπιεικές comes

26 It is hence that the translation 'damage done' for σφάλλεσθαι is misleading, see above, pp. 155–156, n. 8.

in: in some cases, correctness lies in an alternative notion of justice, not the legally just, but in the just that is identical to the equitable, *EN* V, 1137b11–27:

> ποιεῖ δὲ τὴν ἀπορίαν ὅτι τὸ ἐπιεικὲς δίκαιον μέν ἐστιν, οὐ τὸ κατὰ νόμον δέ, ἀλλ' ἐπανόρθωμα νομίμου δικαίου. αἴτιον δ' ὅτι ὁ μὲν νόμος καθόλου πᾶς, περὶ ἐνίων δ' οὐχ οἷόν τε ὀρθῶς εἰπεῖν καθόλου. ἐν οἷς οὖν ἀνάγκη μὲν εἰπεῖν καθόλου, μὴ οἷόν τε δὲ ὀρθῶς, τὸ ὡς ἐπὶ τὸ πλέον λαμβάνει ὁ νόμος,[27] οὐκ ἀγνοῶν τὸ ἁμαρτανόμενον. καὶ ἔστιν οὐδὲν ἧττον ὀρθός· τὸ γὰρ ἁμάρτημα οὐκ ἐν τῷ νόμῳ οὐδ' ἐν τῷ νομοθέτῃ ἀλλ' ἐν τῇ φύσει τοῦ πράγματος ἐστιν· εὐθὺς γὰρ τοιαύτη ἡ τῶν πρακτῶν ὕλη ἐστίν. ὅταν οὖν λέγῃ μὲν ὁ νόμος καθόλου, συμβῇ δ' ἐπὶ τούτου παρὰ τὸ καθόλου, τότε ὀρθῶς ἔχει, ᾗ παραλείπει ὁ νομοθέτης καὶ ἥμαρτεν ἁπλῶς εἰπών, ἐπανορθοῦν τὸ ἐλλειφθέν, ὃ κἂν ὁ νομοθέτης αὐτὸς ἂν εἶπεν ἐκεῖ παρών, καὶ εἰ ᾔδει, ἐνομοθέτησεν. διὸ δίκαιον μέν ἐστι, καὶ βέλτιόν τινος δικαίου, οὐ τοῦ ἁπλῶς δὲ ἀλλὰ τοῦ διὰ τὸ ἁπλῶς ἁμαρτήματος. καὶ ἔστιν αὕτη ἡ φύσις ἡ τοῦ ἐπιεικοῦς, ἐπανόρθωμα νόμου, ᾗ ἐλλείπει διὰ τὸ καθόλου.
>
> "What creates the problem is that while the reasonable is just, it is not the just according to law, but rather a rectification of the legally just. The cause of this is that all law is general, and yet there are some things about which it is not possible to make general pronouncements. So in the sorts of cases in which it necessarily pronounces generally, but cannot do so and achieve correctness, law chooses what holds for the most part, in full knowledge of the error it is making. Nor is it for that reason any less correct; for the error is not in the law, or in the lawgiver, but in the nature of the case; for the sphere of action consists of this sort of material from the start. So whenever the law makes a general pronouncement, but things turn out in a particular case contrary to the 'general' rule, on these occasions it is correct, where there is an omission by the lawgiver, and he has gone wrong by having made an unqualified pronouncement, to rectify the deficiency by reference to what the lawgiver himself would have said if he had been there and, if he had known about the case, would have laid down in law. Hence the reasonable is just, and better than just in one sense, but not better than what is without qualification just, only than the error that arises through absence of qualification. And this is the nature of the reasonable: a rectification of law, in so far as law is deficient because of its general aspect." (Transl. Broadie & Rowe, modified)

This passage in the *Nicomachean Ethics* makes explicit what *Laws* states by means of an analogy. The law is laid down in advance and necessarily general in nature (ἁπλῶς, καθόλου); but there may be cases in which it is not possible to make pronouncement καθόλου and still possible to speak correctly (ὀρθῶς). In such cases, the deficiency must be corrected (ᾗ παραλείπει ὁ νομοθέτης καὶ ἥμαρτεν ἁπλῶς εἰπών, ἐπανορθοῦν τὸ ἐλλειφθέν, 1137b22–23; cf. τὸ παραλειφθὲν ὑπὸ τῆς ἀσθενείας τῆς ἑαυτοῦ πρὸς τὴν τέχνην, *Leg*. 769c5–6). This must be done in the way that the lawgiver would have done, had he been present and known about the case.[28] The nature (φύσις) of τὸ ἐπιεικές is that it is a 'correction of law' (ἐπανόρθωμα νόμου, 1137b26; cf. διάδοχον τοῦ ἐπανορθοῦν *Leg*. 769c4). The *Nicomachean Ethics* asserts the inevitably general nature of the law. The same idea underlies the painter analogy in *Laws*: this is why the first lawgiver is represented as leaving his legislation unfinished (likewise because he cannot foresee all that will happen) and why the details have to be filled in later by a second generation of lawgivers.

27 Cf. *Leg*. 875d3–5: διὸ δὴ τὸ δεύτερον αἱρετέον, τάξιν τε καὶ νόμον, ἃ δὴ τὸ μὲν ὡς ἐπὶ τὸ πολὺ ὁρᾷ καὶ βλέπει, τὸ δ' ἐπὶ πᾶν ἀδυνατεῖ. For discussion of this passage, see below at the end of this section.

28 Cf. *Leg*. 926b7–d7 (the law on testaments).

The themes of the laws' lack of accuracy and impossibility of having precise and accurate knowledge of future events are also the context in which a well-known but often misunderstood passage from *Laws* should be interpreted: *Laws* 875a1–d5. This passage is one of the stock quotations appealed to as evidence for the claim that *Laws* offers a second best[29] constitution that follows from giving up the belief in the possibility of the philosopher-king. According to such an interpretation, the impersonal rule of law enshrines the expert knowledge of the philosopher, albeit in an imperfect way, and hence replaces the philosopher-king as ruler.[30]

What has produced these misreadings is, first, a failure to recognize that the more general reflections about the function of law in *Laws* 875a1–d5 directly bear upon the subsequent regulations about woundings for the courts (as made explicit by ταῦτα δὴ τῶνδε εἵνεκα εἴρηται in 875d5–6: the interlocutors will now compose the laws about wounding, 875d6–7).[31] Specifically, it pertains to the innumerous cases of wounding and the differences between them (τὸν τί τρώσαντα ἢ τίνα ἢ πῶς ἢ πότε λέγεις; μυρία γὰρ ἕκαστά ἐστι τούτων καὶ πάμπολυ διαφέροντα ἀλλήλων, 875e1–2) and the consequences this given fact has for the need for and role of courts. Immediately preceding our passage, the Athenian notes the need for dividing cases of wounding into categories.[32] A second reason why this passage has been misunderstood is because it has often been assumed that the kind of knowledge considered unattainable is the kind of knowledge possessed by the philosopher-king, expert knowledge. Yet upon closer scrutiny, it turns out that the term ἐπιστήμη used in this passage refers to a different kind of knowledge.

Laws 875a1–d5 gains its relevance from, and directly bears on, the δικαστήρια, which are discussed immediately afterwards, in 875e2–876e5. It is for the δικαστήρια that the laws on wounding and their classifications are relevant, because the judges will have to judge individual cases by applying the laws. The kind of knowledge required is that of how to make the best decisions in each particular instance of the countless cases of wounding.[33] If by a 'divine dispensation' (θείᾳ μοῖρᾳ) there would be someone capable of dealing with all the intricacies of cases of wounding (such as τί, τίνα, πῶς, πότε (875d8–e2), with the offender and the offended, etc.), then such a person would not need the guidance of law (νόμων οὐδὲν ἂν δέοιτο τῶν ἀρξόντων ἑαυτοῦ, 875c5–6). No law or order should be stronger

29 *Leg*. 875d3, cf. 807b7.

30 For example Yunis 1996, 214; Schöpsdau 2003, 345.

31 This passage has usually been taken to have a broader relevance than the context of wounding, see for example Saunders 1992, 258, "This preamble has little specific relevance to wounding: it could be attached to any part of the law code"; Schöpsdau 2003, 345, "Die Thematik dieses Abschnitts verleiht ihm eine weit über den vorliegenden Kontext hinausreichende Bedeutung".

32 *Leg*. 874e5–7: τὰ δὴ τραύματα, καθάπερ οἱ φόνοι διῄρηντο, διαιρετέον, τὰ μὲν ἀκούσια, τὰ δὲ θυμῷ, τὰ δὲ φόβῳ, τὰ δὲ ὁπόσα ἐκ προνοίας ἑκουσία συμβαίνει γιγνόμενα.

33 That γνῶναι and δύνασθαι are severed already indicates that the kind of insight implied here is not expert knowledge as discussed in Chapter Two, see pp. 44–45; cf. p. 94, n. 76. Indeed, that becomes understandable when we realize that the kind of knowledge implied here is insight into possibilities and into human character, especially its weaknesses (since this concerns the punishment of woundings). This kind of insight does not have 'compelling' force, like expert knowledge has.

than knowledge (ἐπιστήμης γὰρ οὔτε νόμος οὔτε τάξις οὐδεμία κρείττων, 875c6–7) because what is best always needs to be determined in the individual circumstances, and law can under these circumstances be no more than a guide. In fact, it would be illicit (οὐδὲ θέμις ἐστίν, 875d7) for such insight (now called νοῦς) to be subordinate and a slave (οὐδενὸς ὑπήκοον οὐδὲ δοῦλον); rather it should rule over everything (ἀλλὰ πάντων ἄρχοντα εἶναι, 875d1). The divine insight is the insight that enables one to always make the best decision in particular cases: an ideal *judge*, who does not need the guidance of the law in order to decide in every case what is best.[34] The terms ἐπιστήμη and νοῦς do not refer to expert knowledge of transcendent forms of the kind possessed by the philosopher-king, but to the omniscient knowledge of an ideal judge who settles transgressions of the laws.

It is precisely because *this* kind of omniscience is impossible that the δικαστήρια need laws for guidance. The relevant contrast here is that between the hypothetical, divine-like person with ἐπιστήμη, who does not need the law as his guidance for deciding the punishments for acts of wounding, and the human members of the δικαστήρια, who do. Since there is no one who would judge every single case in the best way (whatever that may depend upon), τάξις and νόμος must be chosen as a second best option; second best, because they can only look at the majority of cases, not at all cases (διὸ δὴ τὸ δεύτερον αἱρετέον, τάξιν τε καὶ νόμον, ἃ δὴ τὸ μὲν ὡς ἐπὶ τὸ πολὺ ὁρᾷ καὶ βλέπει, τὸ δ᾽ ἐπὶ πᾶν ἀδυνατεῖ, 875d3–5). Laws are therefore a second best option to a kind of jurisdiction that does not involve these general rules. The νόμος and the δικαστήρια cannot do one without the other: on the one hand, the courts have to ensure that individual cases receive the best possible treatment under the circumstances and that the general laws are applied in the best way;[35] on the other, because they lack divine omniscience, the δικαστήρια need the guidance of the law. This explains why τάξις is mentioned beside νόμος in 875d4: the law is a τάξις for the δικαστήρια.[36] It is as impossible to make no laws at all and leave everything to the courts – because the δικαστήρια need the law's guidance in making decisions about punishments and compensations – as it is to leave nothing to the courts, which would have been the case if the lawgiver had been capable of foreseeing everything in advance and laying down laws for all countless cases.[37] According to the interpretation defended here, the passage about the function of law in Book IX expresses the same reservations about the generality of law as the passages from Aristotle's *Nicomachean Ethics* and H. L. A. Hart's *The Concept of Law* quoted above. The point of *Laws* 875a–876a is thus not, as it is often taken to

34 What this best decision is, is not made explicit. In any case, it has to be something that treats the cases of wounding and the two sides involved (τρώσας and βλάψας, 875d6–7) in a way that secures what is best for τὸ κοινόν, rather than τὸ ἴδιον, see 875a6–b1.

35 That the implicit contrast is the judge is also implied by the use of the term ἀνυπεύθυνος: this is used for judges and officials in office: *Leg*. 761e5–6 (δικαστὴν δὲ καὶ ἄρχοντα ἀνυπεύθυνον οὐδένα δικάζειν καὶ ἄρχειν δεῖ).

36 Cf. *Leg*. 875d6–7: νῦν ἡμεῖς τάξομεν τί χρὴ τὸν τρώσαντα ἢ τι βλάψαντα ἕτερον ἄλλον παθεῖν ἢ ἀποτίνειν. Cf. 876d4–6: the interlocutors are legislating for the courts.

37 Cf. *Leg*. 934b6–c2; see also below, pp. 184–185. For the difficulty of attaining exactness, see also: *Leg*. 867d4–e1, 879b1–5, 925d5–926d7, 943e7–944b5, 956b5–6 (εἰς δύναμιν).

be, that human beings lack sufficient rationality to do without laws (the rationality the philosopher-king does possess), a reading that has resulted in the conclusion that *Laws* offers a second best version of the constitution of *Republic*, in which law takes the place of the philosopher-ruler.[38] The passage does not make a point about the human failure to possess the relevant *expert knowledge to rule*; it makes a point about the difficulty of applying laws to concrete cases, and from this perspective asserts that the kind of insight (here called ἐπιστήμη) that would not need the guidance of law in the horrendously difficult task of judging the countless cases of wounding that all differ from each other is beyond human reach. *Laws* 875a–e is not a discussion about the kind of *absolute knowledge* of the *philosopher-ruler*, but applies the term ἐπιστήμη to *insight* of an ideal *judge* in the impenetrable forest of human affairs, a judge whose existence is entirely a matter of 'divine dispensation' (θείᾳ μοίρᾳ).

Laws 875a–e furthermore prepares for a discussion about how detailed the legislation for the courts ought to be and about the division of labour between the lawgiver and the δικαστήρια in 876a9 ff. Not surprisingly, given that the topic of the courts was the context in which the painter terminology originated (768c3–d3, see above), the Athenian describes the relation between the lawgiver and the courts in these same terms in Book IX, 876d6–e3:

> οὐ μὴν ἀλλ' ὅπερ πολλάκις εἴπομέν τε καὶ ἐδράσαμεν ἐν τῇ τῶν ἔμπροσθεν νομοθετήσει νόμων, τὸ περιγραφήν τε καὶ τοὺς τύπους τῶν τιμωριῶν εἰπόντας, δοῦναι τὰ παραδείγματα τοῖσι δικασταῖς τοῦ μήποτε βαίνειν ἔξω τῆς δίκης, κτλ.
>
> 'All the same, there is a principle which we have put forward and acted upon several times in the course of our lawmaking so far, which is that, having provided an outline or sketch of punishments, we give the court examples, to make sure it doesn't ever go beyond legal justice.' (Transl. Schofield & Griffith)

Any first draft of laws must remain a sketch, since punishments have to be decided upon by courts in the countless individual cases of wounding. This means that what is just lies in, and has to be decided by taking into account, all the relevant circumstances of the individual cases and is not given beforehand by a transcendent norm. *Laws* envisages lawgiving as a deeply dynamic process, making the application of the laws, and the activity of the judges in the courts, part and parcel of the art of legislation itself, which therefore comes to be conceptualized as a *process*. The making of a sketch is only the first phase; subsequent generations of 'lawgivers'/judges will fill in this sketch and be guided by practical examples in applying the law to individual cases and, if necessary, make amendments, thereby acting as lawgivers themselves. In contrast to *Republic*, legislation in *Laws* does not involve one individual who makes a complete law code on the basis of a transcendent model. Rather, a law code is never finished, and its never-ending amendment in the context of its application requires various generations of lawgivers, most importantly

38 E. g., Morrow 1960, 544–545, 556.

the νομοφύλακες, judges and the nocturnal council.[39] The need for the nocturnal council is thus given with the limits of law and the nature of lawgiving, like the need for the courts. Since lawgiving is a protracted process, it is important that later generations of lawgivers remain as close to the intentions of the original lawgiver as possible (cf. *EN* V.10, 1137b22–24, part of the passage cited above). This can, at least in the context of the dialogue of *Laws*, be ensured by explicitly instructing the successors. The next section will analyse how Plato portrays the interlocutors doing so.

5.2 INSTRUCTING THE SUCCESSORS

The painter analogy preceding the interlocutors' legislation influences the discussion in various ways: for instance, during the διέξοδος the interlocutors reflect on their own legislation in terms of the analogy (discussed in section 5.3). Yet it also influences the conversation in a more direct way, for it provides the rationale for the fact that the interlocutors proceed to appoint successors. Like the painter in the painter analogy, they 'leave behind' successors, 770a5–9:[40]

> Αθ. Ἐπειδὴ νομοθετεῖν μὲν μέλλομεν, ᾕρηνται δὲ ἡμῖν νομοφύλακες, ἡμεῖς δ' ἐν δυσμαῖς τοῦ βίου, οἱ δ' ὡς πρὸς ἡμᾶς νέοι, ἅμα μέν, ὥς φαμεν, δεῖ νομοθετεῖν ἡμᾶς, ἅμα δὲ πειρᾶσθαι ποιεῖν καὶ τούτους αὐτοὺς νομοθέτας τε καὶ νομοφύλακας εἰς τὸ δυνατόν.
>
> Ath. 'Well, here we are proposing to act as lawgivers, our guardians of the law have been selected. We are in the twilight of life, while they, compared with us, are still young: one thing we have to do, we maintain, is act as lawgivers; the other, surely, is to try and make them lawgivers themselves, as well as guardians of the law, so far as we can.' (Transl. Schofield & Griffith)

The distinction between the lawgiver and his successor(s) is also described in terms of either age or ordinal ranking in the remainder of *Laws*.[41] By appointing successors, the interlocutors implicitly put themselves on a par with the first painter-lawgiver of the analogy.[42] The Athenian clearly adopts the view on legislation introduced through the analogy in his speech to their successors, and reflects on their own lawgiving in terms of the painter analogy.

The successors are to be the 'lawguards' (νομοφύλακες), who were introduced in the discussion of the officials in Book V.[43] The Athenian, imagining that these lawguards are present, addresses them in a fictional speech. He describes their upcoming legislation in the same terms as the painter analogy, 770b4–c1:

39 *Leg.* 957a1–b5. The function of this institution is to keep the intention of the original lawgiver alive, which is essential for the survival (σωτηρία) of the laws and the *polis*. See also Chapter Six, section 6.1.

40 For references to the advanced age of the interlocutors, see p. 144, n. 112.

41 ὁ πρῶτος νομοθέτης and οἱ δεύτεροι (835b1–2); the γέρων νομοθέτης is distinguished from οἱ νέοι (846c3–4); cf. οἱ νεωτέροι νομοθέται (855d2); the things left out by the πρεσβύτης νομοθέτης have to be 'filled in' (ἀναπληροῦν) by ὁ νέος νομοθέτης (957a2–3).

42 Cf. Chapter Four, pp. 125, 144–145.

43 *Leg.* 752d2–755b6. For the lawguards, see Morrow 1960, 198–204; Stalley 1983, 113–114, 116. See also below, p. 174, n. 67.

> Αθ. Λέγωμεν δὴ πρὸς αὐτούς· Ὦ φίλοι σωτῆρες νόμων, ἡμεῖς περὶ ἑκάστων ὧν τίθεμεν τοὺς νόμους πάμπολλα παραλείψομεν – ἀνάγκη γάρ – οὐ μὴν ἀλλ' ὅσα γε μὴ σμικρὰ καὶ τὸ ὅλον εἰς δύναμιν οὐκ ἀνήσομεν ἀπεριήγητον καθάπερ τινὶ περιγραφῇ· τοῦτο δὲ δεήσει συμπληροῦν ὑμᾶς τὸ περιηγηθέν. ὅποι δὲ βλέποντες δράσετε τὸ τοιοῦτον, ἀκούειν χρή.
>
> Ath. 'Let's say to them: 'Friends, protectors of laws, our position is this: in any particular branch of our legislation there are all kinds of things we shall be leaving out. That's unavoidable. Not that we won't do our best to include the important points and the general idea in a kind of outline sketch. Your job will be to fill in the outline. What your aim should be as you carry out a task of this nature, we are now going to tell you.' (Transl. Schofield & Griffith)

Like the lawgiver/painter in the analogy, the interlocutors will by necessity (ἀνάγκη) leave many issues open (πάμπολλα παραλείψομεν). Yet all those things which are not insignificant (ὅσα γε μὴ σμικρά), and the whole (τὸ ὅλον), will not be left 'without outline' (ἀπεριήγητον), 'precisely as a kind of sketch' (καθάπερ τινὶ περιγραφῇ). Although the term περιγραφή is not used in the painter analogy itself, the analogy has prepared us for conceiving of the interlocutors' legislation as an outline that has to be filled in, and for conceiving of lawgiving as a lengthy process in the first place.[44] This terminology creates the expectation (which is subsequently confirmed) that lawgiving in *Laws* will proceed along the same lines as in the analogy. What the interlocutors will be doing in *Laws* is to formulate the outline – the idea is that more detailed regulations have to be deferred until the whole διέξοδος τῶν νόμων is complete. The lawguards have to 'complete' the interlocutors' 'outline': τοῦτο δὲ δεήσει συμπληροῦν ὑμᾶς τὸ περιηγηθέν (770b8).[45]

At several junctures in the διέξοδος τῶν νόμων that follows in Books VI, 771a5 – XII, 960b5, the interlocutors leave matters open to be settled at a fictive moment in the future by different kinds of magistrates.[46] Where they do so, they

44 The Athenian twice refers to their legislation as a περιγραφή (768c5, 770b8). The interlocutors will give some regulations concerning οἰκοδομική: ὅσον τινα τύπον αὐτῶν δι' ὀλίγων ἐπεξέλθωμεν (778c1–2). Also, the first lawgiver must 'set out in outlines' (ἐξηγεῖσθαι τύποις, 816c2) the two types of dances, whereas the lawguard has to trace them and fit them into the rest of the musical education. The lawgiver also has to make a distinction between songs suitable for males and for females (τύπῳ τινί 802e1). Cf. 803e5, 809b5. In that sense, sometimes τύπος is almost identical to νόμος (801c6, 801d7). In 905c2, there is some suggestion about the basis for that τύπος: if one is not aware of the συντέλεια of the gods, one will never be capable of seeing a τύπος or composing a speech about life to both a person in a state of happiness and to one in a less fortunate position. In 876e1, περιγραφήν τε καὶ τοὺς τύπους specifically refers to the section of the draft legislation that concerns punishments (τῶν τιμωριῶν).

45 The age requirements for lawguards are such that they will be between 50 and 70. *Leg*. 755a4–b2: the lawguards ought not to be in function for longer than 20 years. They must on appointment be no less than 50 years of age, and not hold office for longer than twenty years. If someone is appointed lawguard at 60, he must not remain in office for more than ten years. The oldest lawguards will be members of the nocturnal council (see Chapter Six, p. 195).

46 Made explicit at *Leg*. 779c5–d2, 816c1–d2, 828b3–7, 835a2–b4, 840e2–7, 846b6–c8, 847d1–7, 855d1–4, 871c3–d2, 875d4–5, 917e2–918a5, 920b3–c6, 957a1–c1; cf. Bobonich 2002, 573, n. 67. For a discussion of the laws as an outline, see also Schöpsdau 2003, 438–441 ff. He distinguishes between three grounds for its inevitable "Lückenhaftigkeit": the complete regulation of all the "Sachbereiche" (1) is impossible (for three reasons: the abstractness and generality of the law; because not all necessary requirements can be known in advance; and because of the limited time that is left for the elderly lawgiver); (2) is unnecessary, since many smaller things

use the terms and ideas that were originally introduced in the painter analogy to distinguish between what they are doing themselves and the legislative activity of their 'successors'.[47] The sections under 5.3 will examine the blanks in the outline of the διέξοδος τῶν νόμων. For the sake of clarity, it should be noted that statements of this kind are made on the level of the outline; the interlocutors themselves are in no way concerned with making amendments or filling in details.

The interlocutors not only select their successors themselves, they also give them explicit instructions. This is to ensure optimal consistency between their own legislation and the subsequent amendments, or at least more than if the old lawgiver died without instructing anyone else. The Athenian tells the lawguards what they should look to (ὅποι … βλέποντες, 770c1).[48] This is familiar terminology: βλέπειν εἰς or πρός is part and parcel of the idiom of the τέχναι.[49] The lawguards in *Laws* have to 'look at that which we have agreed among each other that a lawguard and lawgiver ought to look at' (βλέποντας πρὸς ταῦτα εἰς ἅπερ ἡμεῖς συνεχωρήσαμεν ἀλλήλοις τὸν νομοφύλακά τε καὶ νομοθέτην δεῖν βλέπειν, 770c5–7; cf. 779e6–7: τό γε μὴν δοκοῦν ὀρθὸν καὶ ἀληθὲς εἶναι πάντως ῥητέον). This goal is, of course, the goal of lawgiving as had been determined in the opening conversation in Books I–II[50] and Book III.[51] The object of the lawguards' contemplation is what *these* interlocutors in *this* conversation have agreed that πᾶσα ἀρετή amounts to.

can be settled by any lawgiver; (3) would be unbefitting, since an elderly lawgiver would make himself ridiculous (438–439). On the incompleteness of the laws of the interlocutors, see also Brunt 1993, 249–250.

47 In some cases, the interlocutors think that issues are better being settled at a later point, where this later point still falls within the span of *Laws* itself. This is for example the case with the question of whether the *syssitia* are open for both men and women, or for men only. At *Leg*. 783b5–c4, the Athenian seems to be saying – there are some grammatical difficulties in this passage, for which see England *ad loc.* – that this issue ought to be settled *after* the discussion of the begetting of children and their nurture and education, and that the discussion of these topics will lead the way for how to regulate the participation in the *syssitia* when they reach that topic. The important point is to make fitting and appropriate laws (τε τοὺς προσήκοντας αὐτοῖς καὶ πρέποντας νόμους): when they have legislated for the two subjects that are as yet unlegislated for in their laws, then they will see those things (αὐτά in 783c2 refers to the *syssitia*) more accurately (ἀκριβέστερον). According to Saunders 1995, 597, the issues left open here are settled in 779d ff., 788a–b, and 839c–d. Schöpsdau 2003, 478–479, in contrast argues that, even though the Athenian does come back to the *syssitia* in 842b, the participation of women is not settled in a definitive way.

48 For discussion of this passage, see also Chapter Four, p. 125.

49 See Chapter Two, p. 44, with n. 31 *ibid*.

50 See Chapter One p. 31, n. 74.

51 See *Leg*. 693b1–d1; when the interlocutors said that the lawgiver ought to look at (βλέπειν πρός) τὸ σωφρονεῖν, φρόνησις or φιλία, it should be realized that these goals are not different, but the same (ὡς ἔσθ' οὗτος ὁ σκόπος οὐχ ἕτερος ἀλλ' ὁ αὐτός, 693c3–4). Cf. 701d7–9: Ἐλέξαμεν ὡς τὸν νομοθέτην δεῖ τριῶν στοχαζόμενον νομοθετεῖν, ὅπως ἡ νομοθετουμένη πόλις ἐλευθέρα τε ἔσται καὶ φίλη ἑαυτῇ καὶ νοῦν ἕξει. The ἔλεγχος (702b2) the interlocutors want to submit it to is a practical test (εἰ … τι πεποιήκαμεν προὔργου) of the viability of this conclusion; cf. above, section 4.1.1. The lawgiver ought to look at 'virtue as a whole', πᾶσα ἀρετή, 630e1–4. Cf. *Leg*. IV, 705e1–706a4 and XII, 962d1–5.

The younger lawgivers are to become 'of the same conviction' (συγγνώμονες) as, and 'pupils' (μαθηταί) of, the interlocutors.[52]

The successors are also referred to in the course of the διέξοδος τῶν νόμων. In *Laws* 855d1–4, the interlocutors assign dealing with the rules and exact procedures for judicial summons and all such matters (προσκλήσεις καὶ ὅσα τοιαῦτα καὶ ὡς δεῖ γίγνεσθαι) to 'the younger lawgivers' (τοῖς νεωτέροις νομοθέταις), that is, to their successors, whereas they say that it is their own job to deal with the casting of the voting ballots (τὴν διαψήφισιν δὲ ἡμέτερον ἔργον νομοθετεῖν). It is not further specified who the younger lawgivers are, but in the light of 770a5–9 and the ensuing speech to the lawguards, it seems likely that they are the νομοφύλακες. The interlocutors repeatedly use the phrase 'younger lawgivers' in contexts where further legislation is deferred to the lawguards. It should be noted, though, that the distinction is not always between the interlocutors themselves and their successors, as it is here, in 855d1–4, and at 772a6. At other times, the younger lawgivers are distinguished from the 'old lawgiver', γέρων νομοθέτης, as is the case in 846c3–5.[53]

In the course of the διέξοδος, it becomes clear that the lawguards are not the only ones involved in future supplementary acts of legislation; in many cases, they cooperate closely with the officials holding the ἀρχή over the relevant sphere of life. In several instances, for example, the νομοφύλακες are to formulate laws in conjunction with the ἀγορανόμοι and/or the ἀστυνόμοι. At 847d1–7, the Athenian stipulates that the hipparchs and generals are to have the control of import and export for military purposes, but that appropriate and adequate laws governing this have to be laid down by the lawguards (νόμους δὲ περὶ τούτων νομοφύλακες τοὺς πρέποντάς τε καὶ ἱκανούς). At 849e1–6, the lawguards, ἀγορανόμοι, and ἀστυνόμοι are to designate suitable places (ἕδρας πρεπούσας) for selling all the other kinds of goods for which a need may arise. The Athenian speaks in very general terms: after specific regulations about retail trade, the assigning of appropriate places for buying and selling in the market further things which individual citizens may need (τῶν δὲ ἄλλων χρημάτων πάντων καὶ σκευῶν ὁπόσων ἑκάστοισι χρεία, 849e1–2) is left to these officials.

In religious matters, the νομοφύλακες are to collaborate with the various religious officials. In order to draw up a sacrificial calendar for the new colony, for instance, the expounders (ἐξηγηταί), priests (ἱερεῖς), priestesses (ἱέρειαι), and diviners (μάντεις, cf. μετὰ τῶν ἐκ Δελφῶν μαντειῶν, 828a2) must, together with the lawguards, regulate the things that have necessarily been left out by the lawgiver (μετὰ νομοφυλάκων ταξάντων ἃ παραλείπειν ἀνάγκη τῷ νομοθέτῃ, 828b4–5). Moreover, it is at the discretion of those same religious officials to decide in what respects the existing laws need supplementing (καὶ δὴ καὶ αὐτοῦ τούτου χρὴ γίγνεσθαι

52 The principle (ἀρχή, 742d1) being that a man will become ἀγαθός and acquire the virtue appropriate to man. The first lawgiver also gives the second lawgivers "bestimmte 'Muster' oder 'Umrisse' an die Hand oder verweist auf eigene Gesetze, die sie als Muster nehmen sollen", or even, in 840a6 ff., "detaillierte Anweisungen zur Formulierung einer zweitbesten Gesetzfassung": see (with references) Schöpsdau 2003, 439. These concrete cases ought to be settled "mit Hilfe ihrer eigenen Erfahrungen": 772b-c, 779c-d, 846c (*ibid.*).

53 For other passages, see n. 46 above.

ἐπιγνώμονας τοῦ παραλειπομένου τούτους τοὺς αὐτούς, 828b5–7). In cases of homicide, the lawgiver himself may easily demonstrate (ῥᾴδιον ἀποφαίνεσθαι νομοθέτῃ) that the prosecution of a person who fails to exact retribution for the premeditated murder of a relative must take place through certain prayers and sacrifices to certain gods; however, who those gods are and which procedure of bringing such cases to court is most correct with respect to the divine (τίς ὁ τρόπος … ὀρθότατα πρὸς τὸ θεῖον ἂν γιγνόνεμος εἴη) ought to be decided by the lawguards together with the expounders, diviners, and the god (νομοφύλακες μετ᾽ ἐξηγητῶν καὶ μάντεων καὶ τοῦ θεοῦ, 871c8–d1). The priests have the authority to judge claims by or against music tourists (who come to the city for the performances at festivals) up to fifty drachmae; a greater claim is to be taken to the ἀγορανόμοι (953a3–b5). The ἐξηγηταί, διδάσκαλοι and νομοθέται also have a role in the re-education of criminals (964b8–c4).

Another group of secondary lawgivers who have to be mentioned are the prize-winners in the competitions for virtue. This is understandable: these people have been supremely educated in the educational system of the *polis*. Their habits and intuitions are extremely important precisely when it comes to those domains for which it is difficult to legislate with accuracy, 919e3–5:

> τὸ δ᾽ ἐλευθερικὸν καὶ ἀνελεύθερον ἀκριβῶς μὲν οὐ ῥᾴδιον νομοθετεῖν, κρινέσθω γε μὴν ὑπὸ τῶν τὰ ἀριστεῖα εἰληφότων τῷ ἐκείνων μίσει τε καὶ ἀσπασμῷ.
>
> 'What is characteristic or not characteristic of a free man, is not easy for a law to define with any precision; it shall be decided by those who have distinguished themselves by their hatred of the one and devotion to the other.' (Transl. Schofield & Griffith, modified[54])

It may be concluded that further legislation is usually assigned to the lawguards who, often in consultation with people experienced in the relevant area of life, have to lay down more exact stipulations. This appeal to relevant experience in the process of laying down further legislation ties in with a tendency in *Laws* to make it a condition for the administration of high offices that the magistrate has relevant personal experience in the sphere of life over which he or she is to preside. This becomes clear, for example, from the requirement that those who act as judges in cases of wounding inflicted by one's own children ought to be over 60 years of age and have children of their own (not adopted ones!).[55] The supervisor of education must also have children of his own. Similarly, the composers of poetry should have distinguished themselves by noble deeds: they have to be 'esteemed in the *polis*',

54 Schofield & Griffith italicize these lines, suggesting they would be part of the text of the law code; this seems to me an unfortunate choice, for it seems hard to believe that a consideration of this kind (τὸ δ᾽ ἐλευθερικὸν καὶ ἀνελεύθερον ἀκριβῶς μὲν οὐ ῥᾴδιον νομοθετεῖν) would itself be part of a law.

55 *Leg*. 878e5–7: ἐκγόνοις δὲ πρὸς γονέας εἶναι τῶν τοιούτων τραυμάτων δικαστὰς μὲν τοὺς ὑπὲρ ἑξήκοντα ἔτη γεγονότας ἐπάναγκες, οἷς ἂν παῖδες μὴ ποιητοί, ἀληθινοὶ δέ, ὦσιν, 'If it is a question of children wounding parents in this kind of way, then the court must, as a matter of necessity, be made up of those over the age of 60 who have natural, not adopted, children' (Transl. Schofield & Griffith, not italicized).

τίμιοι ἐν τῇ πόλει (829d2).[56] Personal moral eminence is more important than technical poetical skills.

5.3 LAWGIVING IN CONSULTATION WITH REALITY

5.3.1 The gaps in the outline

Both the painter analogy and *Laws* 875a-e, on the need of laws to guide the courts in judging cases of wounding discussed above, suggest that the first lawgiver cannot achieve full ἀκρίβεια with his laws. The central questions that the painter analogy and the conception of lawgiving in *Laws* raise are therefore how one can attain more ἀκρίβεια in legislation, and what is needed in order to be able to perceive, and determine, what regulations are necessary in cases that are not fully covered by the existing laws? How can future lawgivers make the laws more accurate? In some cases, what is necessary is the completion of the first draft itself. Several times the interlocutors observe that things will become clearer when the end of the διέξοδος has been reached, and for this reason they postpone laying down regulations, such as for the law courts (768c5–d1) and the hymns and dances to be sung at religious sacrifices (799e5–7). The whole and the details cannot become clear until the διέξοδος has reached its end, 768c3–d7:

> Νῦν δὴ περὶ μὲν δικαστήρια ἡμῖν – ἃ δή φαμεν οὔθ᾽ ὡς ἀρχὰς οὔτε ὡς μὴ ῥᾴδιον εἰπόντα ἀναμφισβητήτως εἰρηκέναι – περὶ μὲν ταῦτα οἷον περιγραφή τις ἔξωθεν περιγεγραμμένη τὰ μὲν εἴρηκεν, τὰ δ᾽ ἀπολείπει σχεδόν· πρὸς γὰρ τέλει νομοθεσίας ἡ δίκων ἀκριβὴς νόμων θέσις ἅμα καὶ διαίρεσις ὀρθότατα γίγνοιτ᾽ ἂν μακρῷ. ταύταις μὲν οὖν εἰρήσθω πρὸς τῷ τέλει περιμένειν ἡμᾶς· αἱ δὲ περὶ τὰς ἄλλας ἀρχὰς καταστάσεις σχεδὸν τὴν πλείστην εἰλήφασιν νομοθεσίαν, τὸ δὲ ὅλον καὶ ἀκριβὲς περὶ ἑνός τε καὶ πάντων τῶν κατὰ πόλιν καὶ πολιτικὴν πᾶσαν διοικήσεων οὐκ ἔστιν γενέσθαι σαφές, πρὶν ἂν ἡ διέξοδος ἀπ᾽ ἀρχῆς τά τε δεύτερα καὶ τὰ μέσα καὶ πάντα μέρη τὰ ἑαυτῆς ἀπολαβοῦσα πρὸς τέλος ἀφίκηται.[57]
>
> 'On the subject of law-courts – where it is not a simple matter, as we admit, to classify them unambiguously as either offices or not offices – we've given a kind of superficial sketch, including some things and pretty much omitting others, since for detailed definition and classification of our laws relating to court cases the best place, by far, is the end of our lawgiving. So with regard to those tasks let our position be that they wait for us at the end, and as for appointments to other offices, well, they've pretty much had the lawgiving they're going to get – though a full and exact picture of each and every detail of the city, together with its whole social and political set-up, cannot become clear until our survey – after starting at the beginning, moving on to what comes second, then to the middle section, and embracing every part of itself – finally reaches its conclusion.' (Transl. Schofield & Griffith)

It may be recalled that this is the passage in which the sketch and painting terminology was originally introduced. This process of application and 'filling in' details was already implied in the painter analogy: the testing of regulations in practice and making amendments when necessary. Good laws should be made in consultation with reality.

56 *Leg*. 829c6–e4.

57 This is the Budé text (which differs from the OCT only in minor matters of punctuation).

The present section examines a number of passages in which the interlocutors explicitly leave things open, and which describe how the interlocutors imagine that future legislation and testing will work in practice and how they will investigate what procedures are envisaged to lead to more accuracy. These blanks in the outline offer a view of how the interlocutors suggest that their legislative outline ought to be filled in.[58] When the interlocutors note that additional regulation is needed, their considerations are often accompanied by explicit instructions to, or about, the second lawgivers and about future legislative procedures. These 'vistas' into the future, embedded in the διέξοδος τῶν νόμων, offer us a view of what the interlocutors assume to be involved in the process of finalizing their draft. The analysis of the painter analogy showed that the difficulty of lawgiving lies in the impossibility of attaining ἀκρίβεια in advance. This is a recurring theme in the διέξοδος τῶν νόμων. The law leaves matters open because of ἀπορία:[59] 'all such things, and of the other things all that the law will leave open because of its being at a loss [*sc*. with regard to how to settle them], the lawguards have to legislate when they have become acquainted with the needs', ταῦτα δὲ πάντα συνιδόντες ταῖς χρείαις οἱ νομοφύλακες ἐπινομοθετούντων καὶ τῶν ἄλλων ὁπόσα ἂν ὁ νόμος ἐκλείπῃ δι' ἀπορίαν (779c7–d2).[60] The idea is that this ἀπορία is *temporary*: in due course, such things can be settled. The present section will investigate the passages in which the interlocutors comment upon their own lawgiving in terms of the possibility or present lack of exactness. It will trace the basis on which future legislation is envisaged to proceed, and what kind of considerations govern it.

58 In their case, of course, this is pure fiction, since the interlocutors are only legislating by way of a test.

59 For ἀπορία of the law, cf. *Leg*. 788b4–c2: the nurture and education of young children involve many small issues that are hidden from the public view (πολλὰ καὶ σμικρὰ καὶ οὐκ ἐμφανῆ πᾶσι γιγνόμενα). This makes it practically impossible to make written rules and lay down punitive laws for such matters. The ἀπορία to legislate about such matters results from their σμικρότης and πυκνότης: the first refers to the triviality (not the insignificance, because it is important that such matters are also regulated) of the actions concerned, the second to the intricacy of such issues: it is hard to disentangle such matters sufficiently to make explicit rules about them.

60 My translation. The law cannot foresee the needs (χρείαι) that will arise, and ταῦτα δὲ πάντα is very unspecific. Cf. England *ad loc*. It may be noted that the Athenian here speaks of the incapacity of the law, rather than that of the lawgiver. This fits in with a general tendency in *Laws* to attribute deficiencies to the law rather than to the legislator – even though, strictly speaking, a failure of the former is a failure of the latter. The same tendency to blame the law rather than the lawgiver is visible in 875c3–d5, where the Athenian distinguishes between a person with ἐπιστήμη on the one hand, and τάξις τε καὶ νόμος on the other (i. e. not a lawgiver). Τάξις τε καὶ νόμος can only look at (and regulate) the majority of cases (ἃ δὴ τὸ μὲν ὡς ἐπὶ τὸ πολὺ ὁρᾷ καὶ βλέπει), not all of them (τὸ δ' ἐπὶ πᾶν ἀδυνατεῖ), 875d4–5. For discussion of this passage, see above, pp. 163–166.

*5.3.1.1 Religious choruses (*Laws *772a–e)*

The first laws formulated by the interlocutors are those governing a certain type of religious festival.[61] These festivals take place on the level of the tribe.[62] Such particular religious festivals are not an arbitrary starting point for a new set of laws, since the function of such festivals is to provide young boys and girls with opportunities to find a suitable marriage partner.[63] Since marriage is necessary for new citizen births, the regulations about forming partnerships are aimed at ensuring the continued existence of the *polis* and laws.[64] The legislation begins with festivals that may lead to a suitable marriage, and ends with a discussion of burial rituals, bequests, testaments and some miscellaneous topics.

In the context of regulating these festivals for the young, it is made explicit that some things have not been settled, and we hear explicit instructions about future lawgiving. First, the supervisors (ἐπιμελητάς, 772a4), organizers (κοσμητάς, 772a4) and rulers of the choruses (τοὺς τῶν χορῶν ἄρχοντας, 772a4–5) are appointed as lawgivers together with the lawguards (γίγνεσθαι καὶ νομοθέτας μετὰ τῶν νομοφυλάκων, 772a5–6). They must settle all of the things that the interlocutors leave open (ὅσον ἂν ἡμεῖς ἐκλείπωμεν, 772a6).[65] The Athenian continues, 772a6–c6:

> ἀναγκαῖον δέ, ὅπερ εἴπομεν, περὶ τὰ τοιαῦτα πάντα ὅσα σμικρὰ καὶ πολλὰ νομοθέτην μὲν ἐκλείπειν, τοὺς δ' ἐμπείρους ἀεὶ κατ' ἐνιαυτὸν γιγνομένους αὐτῶν, ἀπὸ τῆς χρείας μανθάνοντας, τάττεσθαι καὶ ἐπανορθουμένους κινεῖν κατ' ἐνιαυτόν, ἕως ἂν ὅρος ἱκανὸς δόξῃ τῶν τοιούτων νομίμων καὶ ἐπιτηδευμάτων γεγονέναι. χρόνος μὲν οὖν μέτριος ἅμα καὶ ἱκανὸς γίγνοιτ' ἂν τῆς ἐμπειρίας δεκαετηρὶς θυσιῶν τε καὶ χορειῶν, ἐπὶ πάντα καὶ ἕκαστα ταχθείς, ζῶντος μὲν τοῦ τάξαντος νομοθέτου κοινῇ, τέλος δὲ σχόντος, αὐτὰς ἑκάστας τὰς ἀρχὰς εἰς τοὺς νομοφύλακας εἰσφερούσας τὸ παραλειπόμενον τῆς αὐτῶν ἀρχῆς ἐπανορθοῦσθαι, μέχριπερ ἂν τέλος ἔχειν ἕκαστον δόξῃ τοῦ καλῶς ἐξειργάσθαι, τότε δὲ ἀκίνητα θεμένους, ἤδη χρῆσθαι μετὰ τῶν ἄλλων νόμων οὓς ἔταξε κατ' ἀρχὰς ὁ θεὶς αὐτοῖς νομοθέτης·
>
> 'It is unavoidable, as we said, that on questions of this nature a lawgiver is going to leave out all kinds of minor details, and that at any particular time it will be up to those with practical experience from year to year – those whose knowledge comes from applying the rules – to draw up regulations and amendments on a yearly basis, until it is felt that an adequate definition of these rules and procedures has been arrived at. A reasonable measure of time for this trial and error – this applies to sacrifices and choruses, to overall arrangements and particular details – would be ten years, in collaboration with the lawgiver who drew up the arrangements, in his lifetime, and then after his death, each group of officials themselves referring any omission in their own area of responsibility to the guardians of the law for them to put right, until they are satisfied it has been fully worked out in every detail. At that point they should declare their arrangements

61 *Leg*. 771a5 ff. The law mentioned in *Leg*. 666a3 (ἆρ' οὐ νομοθετήσομεν πρῶτον μέν κτλ.) about the complete abstinence from wine of those under 18 is not part of the διέξοδος τῶν νόμων.

62 *Leg*. 771a6–b4.

63 *Leg*. 771e1 ff.

64 See above, p. 132, and pp. 126–127.

65 The Athenian again implicitly identifies his group with the first lawgiver by switching from the first person plural (ἐκλείπωμεν τάττοντες in 772a6) to the neutral νομοθέτης in 772b1.

> immutable, and put them into practice alongside the rest of the laws which the lawgiver who gave them their laws originally drew up for them.' (Transl. Schofield & Griffith)

This is the first time in the legislation that the painting terminology is applied to, and interpreted in, the context of a specific rule: it is necessary (ἀναγκαῖον[66]) that other lawgivers will settle (τάττεσθαι) all those numerous small things that the first lawgiver leaves open (τὰ τοιαῦτα πάντα ὅσα σμικρὰ καὶ πολλὰ νομοθέτην μὲν ἐκλείπειν, 772a7–b1). The original lawgiver will draw an outline (implicit in ἐκλείπειν); the officials in charge of the festivals (τούς δ' in 772b1, αὐτὰς ἑκάστας τὰς ἀρχάς in 772c1) will then fill in what is left open.

In this context, we hear in more detail how the lacunae in the draft are to be filled in. The ἐπιμεληταί, κοσμηταί, etc. in charge of the festivals are to be made lawgivers together with the lawguards.[67] As specialized officials – in the sense of familiar with a certain area of social life – they acquire experience with every year that passes (τοὺς δ' ἐμπείρους ἀεὶ κατ' ἐνιαυτὸν γιγνομένους αὐτῶν[68], 772b1–2). They learn from different situations and needs (ἀπὸ τῆς χρείας μανθάνοντας, 772b2). The officials will formulate new rules and amend existing ones (τάττεσθαι καὶ ἐπανορθουμένους κινεῖν, 772b3) every year (κατ' ἐνιαυτόν, 772b3). Later lawgivers are necessary because the supplementation of the outline requires *experience* with the practicalities (τοὺς δ' ἐμπείρους 770b1; ἐμπειρία in 770b6; cf. ἀπὸ τῆς χρείας μανθάνοντας in 770b2).

This explains in retrospect why the painter analogy underscores that a certain period of time is necessary before the painting can be finished. In the case of these particular festivals, the interlocutors actually stipulate an exact period beforehand: ten years for testing will be a period of appropriate measure (μέτριος, 'reasonable', neither excessively long, nor too short; it is simply unworkable to keep changing the laws all the time) and of sufficient length (ἱκανός) to gain experience with sacrifices and choruses (χρόνος … τῆς ἐμπειρίας θυσιῶν τε καὶ χορειῶν).[69]

66 Cf. ἀνάγκη in 769d6, 770b6.

67 On the lawguards, see the index of Morrow 1960; further Guthrie 1978, 333, 353, 369; Stalley 1983, 113–114; Brunt 1993, 250; Bobonich 2002, 380–384, 397; Klosko 2006, 250–251, 256–257. For a list of passages about the lawguards' involvement in amending and revising laws, see Bobonich 2002, 573–574, n. 67.

68 The pronoun αὐτῶν in 772b2 is vague and unspecific: *with what* do these officials become experienced? A similar observation is made by Bobonich 2002, who notes that it is "idle" to search in the text for an exact answer to questions like "Exactly what officials should be involved in each kind of change and how does the procedure work? Where can the proposals for change originate? If the Assembly is involved, does it need to be approved by a simple majority of those present and voting or is a super-majority required? If the latter, how high is it? In the offices that must approve, does Plato include, e. g., the select judges? The city wardens?" (399) This unspecific language is understandable from the perspective of the difficulty of acquiring knowledge of what will happen in advance: it is impossible to stipulate what events will occur in the future and with what exactly the magistrates will have to become experienced.

69 For other suggestions of a trial phase: e. g. 846c5–7: καὶ τῆς ἀναγκαίας αὐτῶν χρείας ἐμπείρως ἴσχοντες, μέχριπερ ἂν πάντα ἱκανῶς δόξῃ κεῖσθαι (discussed below, pp. 181–182). Concerning the regulation of the thorny domain of sexual conduct: if the interlocutors' first law about sexual conduct is unsuccessful, an alternative law must be laid down instead (840e2–842a3).

As long as the original lawgiver is still alive, he will join the officials in making new laws (κοινῇ, 772c1). After his demise, the officials presiding over the choruses must themselves (αὐτὰς ἑκάστας τὰς ἀρχάς) entrust the lawguards with that part left open within their own jurisdictional sphere (τὸ παραλειπόμενον τῆς αὐτῶν ἀρχῆς, 772c2–3). The filling in of these gaps is to continue until every aspect (ἕκαστον *sc*. τὸ παραλειπόμενον) is believed to have reached the 'end of completion in a fine way' (μέχριπερ ἂν τέλος ἔχειν ἕκαστον δόξῃ τοῦ καλῶς ἐξειργάσθαι, 772c3–4; cf. ἕως ἂν ὅρος ἱκανὸς δόξῃ τῶν τοιούτων νομίμων καὶ ἐπιτηδευμάτων, 772b3–4). The τέλος … τοῦ καλῶς ἐξειργάσθαι and ὅρος of the laws depend on *δόξα*. It is not made explicit whose δόξα it is, but it is presumably the δόξα of the officials involved in the legislation. The final legislation is a product of agreement on *pragmatic* grounds: it depends on the conviction of those involved rather than on some external criterion (such as likeness to a model).[70]

When the end (ὅρος, τέλος) has been reached, the regulations must be made unchangeable (τότε δὲ ἀκίνητα θεμένους). However, amendment after this point is not completely excluded – at least in this case. In such cases, the impulse has to come from the practice itself: when it is believed that a need for change arises, εἰ … τις ἀνάγκη *δόξειε* (772c7).[71] Again, it is not made explicit whose δόξα this is. This vagueness is again inherent in the nature of lawgiving and its material: it cannot be foreseen how the need for changes will appear; and, in any case, it seems that anyone might signal the need for a change.

The Athenian is explicit about the procedure to be followed once the proposal for a change in the laws has been put forward: all officials, the whole *dêmos* and all the oracles of the gods must be consulted, and only if the vote is unanimously in

70 Amendment is therefore not the imitation of some ideal or pattern world, *contra* Morrow 1960, 583–584; cf. on amendment *ibid.*, 570–571. Cf. Zeller 1839, 29: "nicht der Begriff des Staats ist es, aus welchem die einzelnen Bestimmungen hervorgehen, sondern ganz wie in einer positiven Gesetzgebung werden dieselben einzelnen auseinandergereiht, und eben so vereinzelt und empirisch begründet."

71 It is debated whether this procedure for making amendments pertains only to these religious festivals or to laws in general. Ast was the first to argue for a more general reading and proposed deleting θυσιῶν τε καὶ χορειῶν. This was contested by Ritter 1896, 171, who argued that the involvement of the μαντεῖαι θεῶν in the procedure points to the narrow reading (the same argument is made by Schöpsdau 2003, 449, and Bobonich 2002, 396, with reference to Ritter and England). The general reading is adopted by Morrow 1953, 245; Guthrie 1978, 368; Klosko 2006, 250–251; Cohen 1993, 314; Brunt 1993, 250; Zuckert 2009, 115. For the narrower reading, see England *ad* 772b6; Morrow 1960, 571, n. 54; Stalley 1983, 82; Bobonich 2002, 396 (cf. 573, nn. 63 and 64, and for other references see *ibid*., 573, n. 62). In any case, Schöpsdau's comment seems reasonable: "Da aber Platon auch in andern Fällen zunächst eine Zeit der Erprobung und dann eine endgültige Fixierung von Gesetzbestimmungen vorsieht (vgl. 846b-d, 957b), erscheint eine analoge Anwendung der hier gegebenen Vorschriften auf den gesamten Kodex zumindest Platons Intentionen zu entsprechen; der Passus wäre dann ein Nachtrag zu den allgemeinen Ausführungen über die Ergänzung des Gesetzeskodex in 770b–771a, auf die hier 772a6–7 ("es ist jedoch, wie gesagt, unvermeidlich …") zurückverwiesen wird."

favour of change, must the law be amended (ἐὰν συμφωνῶσι πάντες, 772d2).[72] The participation of the entire citizenry in changing these laws may be due to the fact that the law concerns festivals in which all citizens are involved and that are crucial for channelling the social interaction between the citizens (this may be the reason why *all* the oracles are consulted as well).[73]

Contrary to what has sometimes been assumed, the eventual immutability of the laws in the future is the result of a process of testing, not a sign of their divine origin.[74] The provisions for future legislation, including the provisions for rendering the laws immutable, are informed by pragmatic considerations. The laws are to *become* immutable only after a reasonable period of testing them; they are not immutable laws from the beginning because they have been given to humans by a god.

*5.3.1.2 The terminology for the 'outline' (*Laws *800–804)*

In the previous section, we saw that the terminology of the sketch and the filling in of lacunae reoccurs in the διέξοδος of the laws when the interlocutors leave things open, as with the regulation of religious choruses of boys and girls. Yet in the course of the διέξοδος other terminology occurs as well. At several junctures in the process of drafting legislation, the interlocutors refer to their own laws in terms of 'models'

72 Morrow 1960, 571, n. 54, argues that this does not mean any objector, but objections of the three consulting bodies; cf. Bobonich 2002, 396–397. Schöpsdau 2003, 450, notes that the expression ἐπανορθοῦν τοὺς νόμους, common in Athens, suggests that "das Ziel der Neueinführung von Gesetzen [ist] die Verbesserung des bestehenden Gesetzeskodex".

73 There is no hint in this passage that the protection of the laws against changes is connected with a desire to maintain a close relation between the colony and the metropolis, as it becomes apparent from many historical foundation decrees. For Cyrene, Naupactus and Brea, see Graham 1964, 60–61, 67–68. In the case of Naupactus (a colony of Opus) and Brea (a colony of Athens) for instance, the foundation decrees show that a change in the laws would have to be agreed upon by both the colony and the mother city. In the case of Brea, the Athenians deny themselves the right to initiate changes (*ibid.,* 60–61).

74 See on the issue of immutability Bobonich 2002, 400–408. The evidence discussed in this chapter suggests that, as far as it is possible, laws may be declared unchangeable; yet at the same time, the countlessness of new cases (see above, p. 163, p. 182) and indeed the insistence on the absence of a limit seem to entail that a need for change may always arise. Scholars have repeatedly interpreted the alleged immutability of the laws as proof of their divine nature. See Stalley 1983, 81–82; Brunt 1993, 249; Nightingale 1999*a*, 121: "In Magnesia (…) the laws are the product of divine wisdom"; Klosko 2006, 250–251, 256–257, "Plato intends the laws in Magnesia to have the rigidity of a theocracy" (257). Brunt and Morrow 1953, 244–245, connect the irreversibility of the laws with the alleged requirement in *Leg*. 713–714 that "positive law ought to be modelled on divine law (…) [that] will then ensure the true welfare of the citizens. (…) Everywhere Plato tacitly assumes that he himself apprehends the divine law and can embody it in his code" (244). However, this is incompatible with *Laws*' depiction of legislation as an ongoing process that requires later generations of lawgivers and includes the activities of the δικαστήρια. For the procedure of νομοθεσία and changing laws in Athens: Canevaro 2013, 2016, and forthcoming. The (eventual) irreversibility of the laws is particularly striking in view of the fact that every year the Athenians could reject or amend the laws of the previous year.

or ‘casts’: they speak about making ‘impresses’, ἐκμαγεῖα, for regulations concerning euphemy at sacrifices (ἐκμαγεῖ’ ἄττ’ … πλάσασθαι τῷ λόγῳ (800b6, also 800b7, e8), the example is discussed in 800b8–801a4); the law that the poets may not compose anything that contradicts the νόμιμα and δίκαια of the *polis* is one of the ‘casts’, τύποι, of the laws about musical matters (τοῦτον τῶν περὶ μοῦσαν νόμων καὶ τύπων ἕνα (801c6); cf. τύπῳ τινι διορισάμενον (802e1), τῶν τύπων (803e5), νόμος … καὶ τύπος ἐκμαγεῖον (801d7)).

The Athenian here describes how the selection of songs from the existing ancient compositions is to be made. This passage has briefly been considered in Chapter Four above,[75] but we have a different reason for looking at it here. Nothing obstructs making a selection of those songs that are fitting and proper to the constitution that is being established (οὐδεὶς φθόνος ἐκλέξασθαι τῇ καθισταμένῃ πολιτείᾳ τὸ πρέπον καὶ ἁρμόττον, 802a8–b1) – the phrase is notably impersonal (the interlocutors do not say ‘we may select’), 802b1–c4:

> δοκιμαστὰς δὲ τούτων ἑλομένους τὴν ἐκλογὴν ποιεῖσθαι μὴ νεωτέρους πεντήκοντα ἐτῶν, καὶ ὅ τι μὲν ἂν ἱκανὸν εἶναι δόξῃ τῶν παλαιῶν ποιημάτων, ἐγκρίνειν, ὅ τι δ’ ἂν ἐνδεὲς ἢ τὸ παράπαν ἀνεπιτήδειον, τὸ μὲν ἀποβάλλεσθαι παντάπασιν, τὸ δ’ ἐπαναιρόμενον ἐπιρρυθμίζειν, ποιητικοὺς ἅμα καὶ μουσικοὺς ἄνδρας παραλαβόντας, χρωμένους αὐτῶν ταῖς δυνάμεσιν τῆς ποιήσεως, ταῖς δὲ ἡδοναῖς καὶ ἐπιθυμίαις μὴ ἐπιτρέποντες ἀλλ’ ἤ τισιν ὀλίγοις, ἐξηγούμενους δὲ τὰ τοῦ νομοθέτου βουλήματα, ὅτι μάλιστα ὄρχησίν τε καὶ ᾠδὴν καὶ πᾶσαν χορείαν συστήσασθαι κατὰ τὸν αὐτῶν νοῦν.[76]
>
> ‘There are to be assessors making the choice and selection, not less than 50 years of age, who are to include any of the traditional compositions they find satisfactory. Anything that in their view falls short, or is totally unsuitable, they are (in the latter case) to reject out of hand, or (in the former case) to revise and adapt, bringing in poets and musicians for their powers of composition, but not (with a very few exceptions) placing any reliance on their likes or desires, giving substance instead to the wishes of the lawgiver, as they lay down rules for dancing, singing, and choral performances generally, as far as possible in accordance with his intentions.’ (Transl. Schofield & Griffith)

The selection has to be made by the δοκιμασταί, who are to be over 50 years of age. It is only for the amending (ἐπιρρυθμίζειν) of the songs that those experienced in music and the poets will be consulted (ποιητικοὺς ἅμα καὶ μουσικοὺς ἄνδρας παραλαβόντας, 802b6–7) and asked to use their skill to make the required changes (χρωμένους αὐτῶν ταῖς δυνάμεσιν τῆς ποιήσεως, 802b7). The selection of the songs itself will thus not be left to the poets and composers; they will only be consulted about the selection in a limited number of cases (τισιν ὀλίγοις, 802c1–2). Interestingly, the selection is assumed to be made on the basis of preferences and desires of the δοκιμασταί (ταῖς … ἡδοναῖς καὶ ἐπιθυμίαις, 802c1). Their preferences can function as a compass because they have been adequately trained.

As for the appropriateness of songs, some division has to be made between songs that are fitting for males and songs fitting for females. Again, this is cast in the form of an impersonal statement: ἔτι δὲ θηλείαις τε πρεπούσας ᾠδὰς ἄρρεσί τε χωρίσαι που δέον ἂν εἴη τύπῳ τινὶ διορισάμενον, καὶ ἁρμονίαισιν δὴ καὶ ῥυθμοῖς

75 See pp. 146–147.

76 The text is that of the Budé edition.

προσαρμόττειν ἀναγκαῖον, 802d8–e2: 'Furthermore, it will be right to set apart suitable songs for males and females after having defined them by way of general standard, and it is necessary to fit them to harmonies and rhythms.' The participle διορισάμενον seems to imply that the person who is assumed to be the right one for making this division is the lawgiver, which seems to be confirmed by ἀναγκαῖον … νομοθετεῖν in 802e4–5, and by the fact that the interlocutors proceed to the σχήματα (802e5) of these dances themselves in 802e5–11. What tends towards the noble and courageous (τὸ δὴ μεγαλοπρεπὲς … καὶ τὸ πρὸς τὴν ἀνδρείαν ῥέπον, 802e8–9) is masculine; what tends towards decorum and modesty is feminine (τὸ δὲ πρὸς τὸ κόσμιον καὶ σῶφρον, 802e9–10). Similarly, in 816c1–d2 the first lawgiver ought to 'expound in outlines' (ἐξηγεῖσθαι τύποις) two types of dance: war dance (πυρρίχη) and peace dance (ἐμμέλεια), which the lawguard has to 'search for' (ζητεῖν), apparently in other, existing *poleis*. When he has 'tracked them down' (ἀνερευνησάμενον), he has to combine dance with the rest of music (besides ὄρχησις, presumably songs and instrumental accompaniment) and assign what is fitting (τὸ πρόσφορον) to the appropriate sacrificial feasts.

The imagery of the τύπος evolves into another image, that of the frame of a ship. The Athenian compares the framing of these legal τύποι to the activity of a shipbuilder (ναυπηγός):[77] as a shipbuilder begins his work by laying the keels as the form of his vessels (καταβαλλόμενος τὰ τροπιδεῖα ὑπογράφεται τῶν πλοίων σχήματα, 803a4–5), the Athenian will attempt to define the outline of the lives of the citizens (τὰ τῶν βίων πειρώμενος σχήματα διαστήσασθαι, 803a6) in accordance with the characters of their souls (κατὰ τρόπους τοὺς τῶν ψυχῶν, 803a6–7). This is one of the practical considerations that need to be taken into account. The attitude of the lawgiver is therefore distinctly 'human': what laws can be laid down depends upon the character types they address. The lawgiver thus needs insight into the characters of human beings and their characteristic patterns of behaviour.

*5.3.1.3 The music festivals (*Laws *834e–835b)*

Another subject that is deferred has to do with music festivals. Although most musical topics have been dealt with, some issues, such as regulations concerning the rhapsodes and their retinue and the stock chorus competitions at religious festivals, have to be postponed to some later moment (τότε), namely when the respective days, months and years have been allocated to the gods and the frequency of the festivals and their intervals is clear.[78] The determination of the exact date and programme for these choral contests falls to the 'regulators of the games' (ἀθλοθεταί), 'the educator of the young' (παιδευτὴς τῶν νέων) and the lawguards (835a3–4). They will meet in an assembly and become lawgivers themselves (εἰς κοινὸν … συνελθόντων καὶ γενομένων νομοθετῶν αὐτῶν, 835a4–5).

77 Cf. England *ad loc*.: "the asyndeton marks this sentence as an *explanation* of the omission of the details just referred to" (emphasis in original).

78 *Leg*. 834e5–6.

The first lawgiver has already stated what is to be the character of the choruses: their speech, their songs, and the *harmoniai* that accompany certain rhythms and dance movements.[79] The later lawgivers ought to follow in the footsteps of the first lawgiver (καθ' ἃ … μεταδιώκοντας δεῖ νομοθετεῖν, 835b2). The latter instruction is not unique to this case; as the Athenian repeatedly makes explicit, the later lawgivers must take the τύποι or intention(s) (βουλήματα, νοῦς) of the first lawgiver as their guideline. The matters about which the later lawgivers have to decide are: when the choral contests are to be held, who is to perform, and who is to accompany the performers (τοῦ τε πότε καὶ τίνες καὶ μετά τίνων, 835a5–6). In any case, it is not difficult to know how things like these ought to acquire the form of law (ταῦτα … καὶ ἄλλα τοιαῦτα οὔτε χαλεπὸν γνῶναι τίνα τρόπον χρὴ τάξεως ἐννόμου λαγχάνειν, 835b5–6). There is little at stake here: whether something has to be altered again afterwards at some place or other is of no great importance (οὐδ' αὖ μετατιθέμενα ἔνθα ἢ ἔνθα μέγα τῇ πόλει κέρδος ἢ ζημίαν ἂν φέροι, 835b6–7).[80] The interlocutors merely state a general principle at this stage: it is to be expected that future musical officials will offer the choruses the opportunity to compete in turn (χρὴ προσδοκᾶν κατὰ μέρος ἀγωνιεῖσθαι, 835a2–3).[81]

*5.3.1.4 Market regulations (*Laws *917–918)*

A passage in which future legislation is said to come into being through close cooperation of the lawguards and other officials is worth quoting in full. At 917e2–918a5, the ἀγορανόμοι and lawguards are to be informed about the adulterations and malpractices of vendors by those who know the tricks of the trade (πυθόμενοι τῶν ἐμπείρων περὶ ἕκαστα, 917e4):

> τὰ δὲ κιβδηλεύματά τε καὶ κακουργίας τῶν πωλούντων οἵ τε ἀγορανόμοι καὶ οἱ νομοφύλακες, πυθόμενοι τῶν ἐμπείρων περὶ ἕκαστα, ἀναγραψάντων ἅ τε χρὴ ποιεῖν τὸν πωλοῦντα καὶ ἃ μή, καὶ πρόσθε τοῦ ἀγορανομίου θέντων ἐν στήλῃ γράψαντες νόμους εἶναι τοῖς περὶ τὴν τῆς ἀγορᾶς χρείαν μηνυτὰς σαφεῖς. τὰ δὲ περὶ τῶν ἀστυνόμων ἐν τοῖς πρόσθεν ἱκανῶς εἴρηται· ἐὰν

79 *Leg*. 835e7–b2: οἷα δὲ ἕκαστα αὐτῶν εἶναι δεῖ κατὰ λόγον καὶ κατ' ᾠδὰς καὶ καθ' ἁρμονίας ῥυθμοῖς κραθείσας καὶ ὀρχήσεσι, πολλάκις εἴρηται τῷ πρώτῳ νομοθέτῃ. Πόλλακις refers to "e. g. at 798–802" (England *ad loc*.). Contrary to England *ibid*., δεύτεροι does not refer to "the committee" (*sc*. of Cretan legislators of which Cleinias is part). This Cretan committee would be in the position of the first legislator, drafting an outline ἔργῳ. The second lawgivers mentioned here are the officials stipulated, who will become lawgivers themselves to finish the work of the first lawgiver.

80 Cf. *Leg*. 957a1–3: πάντα δ' οὖν ὁπόσα σμικρὰ καὶ ῥᾴδια νόμιμα εὑρίσκειν, πρεσβύτου νομοθέτου παραλιπόντος, τὸν νέον ἀναπληροῦν χρὴ νομοθέτην. 'Anyway, all these day-to-day procedures are trivial, and easy to come up with; an old lawgiver can give them a miss, and leave the young lawgiver to fill in the details' (Transl. Schofield & Griffith).

81 The deontic verb χρή (835b6) expresses another kind of imperative than δεῖ (835b1); χρή in general pertains to the *content* of the laws, it is a behavioural norm. δεῖ on the other hand is given with ἀνάγκη and pertains to things that cannot be changed. That the lawgiver is mortal cannot be altered; it is therefore necessary that he appoint successors, and it is in the same range that the second lawgivers must 'follow closely after' (μεταδιώκειν) the stipulations of the first lawgiver. Cf. Bernadete 1965.

> δέ τι προσδεῖν δοκῇ, νομοφύλαξιν ἐπανακοινώσαντες καὶ γράψαντες τὸ δοκοῦν ἐκλιπεῖν, εἰς ἀστυνόμιον θέντων ἐν στήλῃ τά τε πρῶτα καὶ τὰ δεύτερα τεθέντα αὐτοῖσιν τῆς ἀρχῆς νόμιμα.
>
> 'Which items are adulterated, and what the malpractices of sellers are, is something for the market commissioners and the guardians of the law to find out from people who are expert in a particular area of activity; they shall set down in writing what the seller may do and not do, and post up what they have written in stone in front of the office of the market commissioners, as regulations and clear guidance for people trading in the market. The role of the urban commissioners has been thoroughly discussed earlier; however, if anything seems to be lacking, then they shall, in conjunction with the guardians of the law, put in writing what they think is missing, and post up in stone at the urban commissioners' office both the first set of regulations relating to their office, and the subsequent set.' (Transl. Schofield & Griffith, modified[82])

The ἔμπειροι are, presumably, sellers, since they are privy to the tricks of the trade. Drawing up detailed rules about selling practices is assigned to the lawguards and ἀγορανόμοι. Written rules provide clarity to the businessmen in the market; thus everyone who does business in the market can be expected to be aware of them.[83] The laws are available for consultation on a stele in front of the ἀγορανόμιον, the office building of the ἀγορανόμοι.[84] The making of additions to these laws is, on the other hand, assigned to a different branch of officials, the ἀστυνόμοι. They have to consult with the lawguards (νομοφύλαξιν ἐπανακοινώσαντες) – what this involves is not entirely clear[85] – and record what they think has been left out. These additional rules will also be inscribed, this time on a stele in front of the office of the ἀστυνόμοι.[86] This is an opportunity for the Athenian to mention, more generally, that the stele in front of the building of the ἀστυνόμοι is to contain all the different laws that fall under the authority of the ἀστυνόμοι.[87] The stelai have to be put up in front of the office of the ἀγορανόμοι (τὸ ἀγορανόμιον, 917e5–6) and the office of the ἀστυνόμοι (τὸ ἀστυνόμιον, 918a4), to serve as clear public pronouncements (μηνυτὰς σαφεῖς, 918a1) about what is and is not allowed for sellers. In this context, the value of written regulations lies in the fact that they are expected to offer clarity:

82 The first part of this passage *Leg*. 917e2–918a1 ("Which items … in the market") is printed in italics in Schofield & Griffith (p. 408), suggesting that they consider this sentence as part of the law code, whereas the following sentence, in *Leg*. 918a1–5, is not. Yet what the Athenian gives here are instructions for future procedures of lawgiving. They cannot be part of the text of the law itself; moreover, there is no clear difference between *Leg*. 917e2–918a1 and 918a1–5 that necessitates why, if the first part is regarded as part of the law, the second should not. I have therefore not followed Schofield & Griffith's italicizing of "Which items … in the market". For the problems involved in trying to separate a clear law code from the rest of the text, see Chapter Four, section 4.2.1, pp. 128–134.

83 Cf. the injunctions to the ἀγορανόμοι in [Arist.] *Ath. Pol*. 51.1 as inspectors of the quality of goods for sale. For a discussion of the responsibilities of the ἀγορανόμοι in Greek cities, see Migeotte 2005.

84 For the possibilities for citizens to consult laws in Athens, see Sickinger 1999; Pébarthe 2006, 113–171 on consulting laws in the Bouleuterion and Metroon; 243–289 for public stelai.

85 This is the only occurrence of the term ἐπανακοινόω in *Laws*.

86 *Leg*. 917e4 ἀναγραψάντων; 917e6 θέντων ἐν στήλῃ γράψαντες; 918a3–4 γράψαντες … εἰς ἀστυνόμιον θέντων ἐν στήλῃ.

87 The implied subject of τεθέντα in 918a5 are the interlocutors, while αὐτοῖσιν in the same line refers to the ἀστυνόμοι.

if the rules are printed in front of the office building, there can be no dispute about what is and is not allowed. The purpose of writing the laws down is not so much educational, as it is to prevent confusion and enable everyone in the market to monitor the activities of sellers. Similarly, at 920b7–c1 it is stated that the lawguards are to hold a meeting about retail trading together with all those experienced in every branch of retail trading (μετὰ τῶν ἐμπείρων ἑκάστης καπηλείας) and survey what profit and expense produces a moderate gain for the trader (ἰδεῖν λῆμμά τε καὶ ἀνάλωμα τί ποτε τῷ καπήλῳ κέρδος ποιεῖ τὸ μέτριον, 920c2–3). The profit and expense (τὸ γιγνόμενον ἀνάλωμα καὶ λῆμμα) must be put in writing and monitored by the ἀγορανόμοι, the ἀστυνόμοι, and the ἀγρονόμοι in each of their respective fields.

*5.3.1.5 Public law courts (*Laws *846, 875–876, 933–934)*

Another context in which the Athenian defers further laws to the interlocutors' successors concerns the topic of the public courts. Some of this material has already been discussed.[88] The law courts do not receive a separate heading, but they are addressed whenever the discussion of a possible transgression of the law(s) stipulated immediately before necessitates reference to them.

The law on bringing in the harvest is one of these cases.[89] A person who brings in his crop may do so by any route that pleases him, provided that he does not damage the property of others.[90] This train of thought then receives a follow-up: the Athenian proceeds to stipulate what is to be done when damage is actually inflicted. This depends on the extent of the damage; if the damage is below three minas, the victim must report to the magistrates and obtain redress from them.[91] If the damage exceeds three minas, the victim must obtain redress from the culprit by taking his case to the public courts (τὰ κοινὰ δικαστήρια).[92] If penalties are judged in a biased way, the official must be liable to the victim for double the damage.[93] This, in turn, is reason to stipulate a general rule: injustices of magistrates may be brought to the public courts by anyone who wishes (τὰ δὲ αὖ τῶν ἀρχόντων ἀδικήματα εἰς τὰ κοινὰ δικαστήρια ἐπανάγειν τὸν βουλόμενον ἑκάστων τῶν ἐγκλημάτων, 846b4–6). The details of bringing a case to a public court are many, and they cannot be left unlegislated, yet they are not worthy of the attention of the old first lawgiver, 846b6–c8:

> μυρία δὲ ταῦτα ὄντα καὶ σμικρὰ νόμιμα, καθ' ἃ δεῖ τὰς τιμωρίας γίγνεσθαι, λήξεών τε πέρι δικῶν καὶ προσκλήσεων καὶ κλητήρων, εἴτ' ἐπὶ δυοῖν εἴτ' ἐφ' ὁπόσων δεῖ καλεῖσθαι, καὶ πάντα ὁπόσα τοιαῦτά ἐστιν, οὔτ' ἀνομοθέτητα οἷόν τ' εἶναι γέροντός τε οὐκ ἄξια νομοθέτου, νομοθετούντων δ' αὐτὰ οἱ νέοι πρὸς τὰ τῶν πρόσθεν νομοθετήματα ἀπομιμούμενοι, σμικρὰ πρὸς μεγάλα, καὶ τῆς ἀναγκαίας αὐτῶν χρείας ἐμπείρως ἴσχοντες, μέχριπερ ἂν πάντα ἱκανῶς δόξῃ κεῖσθαι· τότε δὲ ἀκίνητα ποιησάμενοι, ζώντων τούτοις ἤδη χρώμενοι μέτρον ἔχουσι.

88 See the discussion of *Laws* 875a-e above, pp. 163–166.
89 *Leg*. 845e10 f.
90 *Leg*. 845e10–846a3.
91 *Leg*. 846a6–7.
92 *Leg*. 846a8–b2.
93 *Leg*. 846b2–4.

> 'There are any number of minor regulations governing the imposition of penalties – to do with formal written complaints, summonses and their notification (should they be served in front of two witnesses, or, if not, how many witnesses?), and a mass of similar details. These cannot be left outside the scope of the law, but at the same time they are beneath the dignity of our venerable lawgiver. So making these laws can be left to the young, who with an eye to the legislation of these pioneers shall model their lesser regulations on those greater ones, using everyday experience as a guide to what is essential, until they decide that all their proposals are satisfactory. At that point they shall declare their arrangements to be set in stone, and live in accordance with what is by now a reasonable set of measures.' (Transl. Schofield & Griffith)

Again, we hear that there are innumerable details involved in legislation about penalties. These rules have to be made by later generations of lawgivers.[94] We hear that these later lawgivers have to imitate the legislation that is currently existing (οἱ νέοι πρὸς τὰ τῶν πρόσθεν νομοθετήματα ἀπομιμούμενοι), gain experience from applying the laws in practice (τῆς ἀναγκαίας αὐτῶν χρείας ἐμπείρως ἴσχοντες), and must continue doing so until they feel that everything has been settled in a satisfactory way (μέχριπερ ἂν πάντα ἱκανῶς δόξῃ κεῖσθαι). In this context, it is even stipulated that at some point, the rules have to be declared immutable.

In some cases, a division of labour is made between the law courts (δικαστήρια) and the lawgiver, especially where it concerns the question of what penalty to attach to an act of wounding (τί χρὴ πάσχειν … ἢ ἀποτίνειν, 876c8). It has just been explained that cases of wounding are countless and differ greatly from each other (875e1–2), both in magnitude and motivation.[95] For this practical reason, it is impossible either to leave all aspects (πάντα) of wounding up to the law courts to judge, or none (μήδεν) of them (ταῦτ' οὖν δὴ δικαστηρίοις ἐπιτρέπειν κρίνειν πάντα ἢ μηδὲν ἀδύνατον, 875e2–3). We hear why, on the one hand, the question of whether the crime took place or not (τὸ πότερον ἐγένετο ἢ οὐκ ἐγένετο ἕκαστον τούτων) is a matter of κρῖναι – that is, deciding whether something is the case or not – and cannot therefore be settled by the lawgiver in advance. This one aspect is common to all cases (κατὰ πάντων), and since the lawgiver cannot decide, it has to be assigned to the law courts. Nor, on the other hand, can the lawgiver himself legislate exactly what the culprit must pay or suffer in absolutely all cases, large and small. Since it cannot be foreseen exactly who will inflict a wound on whom or what, how, when, and under what circumstances (875d8–e2), it is unfeasible to legislate unambiguously about all the different cases that may occur.[96] Hence it is as good as impossible not to leave anything to the discretion of the law courts as

94 Cf. *Leg.* 843e3–844a1: καὶ ἐὰν φυτεύων μὴ ἀπολείπῃ τὸ μέτρον τῶν τοῦ γείτονος χωρίων, καθάπερ εἴρηται καὶ πολλοῖς νομοθέταις ἱκανῶς, ὧν τοῖς νόμοις χρὴ προσχρῆσθαι καὶ μὴ πάντα ἀξιοῦν, πολλὰ καὶ σμικρὰ καὶ τοῦ ἐπιτυχόντος νομοθέτου γιγνόμενα, τὸν μείζω πόλεως κοσμητὴν νομοθετεῖν· 'If, when planting [*sc*. trees], he fails to leave the required gap between his and his neighbour's plot of land, as laid down, in a perfectly satisfactory way, by any number of lawgivers – well, theirs are the regulations we should use to supplement our own, and not expect the overall architect of our city to make regulations covering all the minute details which any chance lawgiver could deal with' (transl. Schofield & Griffith, slightly modified).

95 See above, p. 163.

96 Cf. again the remarks on this problem of the "open texture" of law, identified in Hart 1961, 121–127, cf. above, pp. 160–161.

regards the punishment of such offences (τὸ δὲ μηδὲν ἐπιτρέπειν αὖ περὶ τοῦ τί δεῖ ζημιοῦσθαι καὶ πάσχειν τί χρεὼν τὸν ἀδικήσαντα τούτων τι, ἀλλ' αὐτὸν περὶ πάντων νομοθετῆσαι σμικρῶν καὶ μεγάλων, σχεδὸν ἀδύνατον, 875e5–876a3). At least some of the questions about fixing penalties must also be left to the courts. The conclusion in 876a5–6 therefore points to a middle way: some things must be entrusted to the courts (τὰ μὲν ἐπιτρεπτέον δικαστηρίοις), and other things must be legislated by the lawgiver himself (τὰ δὲ οὐκ ἐπιτρεπτέον, ἀλλ' αὐτῷ νομοθετητέον).[97] The concerns are mostly pragmatic in nature: the decisions of the courts must be made to measure and satisfactory.

The question is, of course (posed by Cleinias), that of the exact division: what is to be settled by the lawgiver, and what things are to be decided upon by the court? This, it becomes clear from the Athenian's ensuing disquisition, is no simple matter: it depends on how the court comes to reach its verdict, in short, on how the decision-making process is organized. If the procedure is faulty (876a9–b5),[98] the courts are to decide the penalties only in cases of minor significance (περὶ σμικρότατα ἐπιτρεπτέον αὐτοῖς τάττειν τὰς ζημίας, 876c1–2), and for most cases the lawgiver must himself expressly lay down legislation (τὰ δὲ πλεῖστα αὐτὸν νομοθετεῖν διαρρήδην, 876c2). Yet when the courts are instituted correctly and the judges themselves have been well nurtured and extensively tested (τραφέντων τε εὖ … δοκιμασθέντων τε διὰ πάσης ἀκριβείας, 876c4–6), in most cases it is fine to leave it up to the courts to decide what those who have been found liable (τῶν ὀφλόντων πέρι) have to suffer (πάσχειν) or pay (ἀποτίνειν), that is, in addition to the question of liability itself, which is always to be left to the court (876c3–8).[99]

In the present case, the interlocutors assume that the people for whom they are legislating will be fine judges (οὐκ ἥκιστα ἐμμελεῖς … κριτάς, 876d5–6), and hence they assume a relatively favourable situation. On such an assumption, there is no need for much legislation for the law courts in advance. Nevertheless, the interlocutors insist that they will follow the same procedure they have adopted in their preceding legislation (ἐν τῇ τῶν ἔμπροσθεν νομοθετήσει νόμων, 876d7–e1) since this is the right way to go about it. Describing their past procedure, the Athenian

97 Hart 1961 notes that most legal systems tend to compromise between two needs: clear rules that everyone can apply, and recognition that disputes will arise that only an individual can resolve, 126–127.

98 Cf. *Leg*. 766d4–e3.

99 See Saunders 2001, 89; Schöpsdau 2011 *ad loc*., Morrow 1960, 243: "law itself pretends to give only an illustrative sample from the multitude of circumstances in which the magistrates are expected to administer reproof, correction, and punishment". For the relation between lawgiver and judge, see also *Leg*. 933c3, 934b7. As Harris 2004, 242 notes, "[t]he legislator simply cannot know in advance all the different kinds of situations that will occur in the future" (which Hart calls "ignorance of fact", see above, p. 160); cf. Harris, 2013, 176. For a different view on Greek law and the role of the jurors, see Gagarin 2005, who sides with those scholars who argue that Greek law is to a large degree 'procedural': he thinks that Greek legislation is unusual, "not because gaps are present, but because the Greeks explicitly recognize gaps and are willing to tolerate them. Instead of striving to find rules to fill the gaps in this legislation, laws in several *poleis* specify that judges or jurors should judge cases not covered by the laws 'according to the view that is most just (γνώμῃ τῇ δικαιοτάτῃ)', or some variation of this Athenian expression" (35).

uses the terms that have been introduced in the painter analogy in Book VI: by stating an outline and impresses of the penalties (τὸ περιγραφήν τε καὶ τοὺς τύπους τῶν τιμωριῶν, 876e1–2),[100] they give the judges paradigm, clear cases,[101] so that the judges would never go beyond the boundaries of justice (δοῦναι τὰ παραδείγματα τοῖσι δικασταῖς τοῦ μήποτε βαίνειν ἔξω τῆς δίκης, 876e2–3).

A very similar passage to the one discussed above picks up on the division of labour between the lawgiver and the judges. In Book XI, the Athenian reflects on the rationale behind, and the purpose of, paying monetary fines.[102] Every offender who harms another person, either by theft or violence, must complete an additional payment (δίκην … συνεπομένην, 933e10–934a1; δίκη, 934a6) 'for the sake of correction' (σωφρονιστύος ἕνεκα) in addition to the indemnity (ἔκτισις, 933e7) paid to the victim.[103] These two types of fine are imposed from different perspectives, and indeed, in 862b5–6 we hear that the law looks at two things, injustice and harm (πρὸς δύο ταῦτα δὴ βλεπτέον, πρός τε ἀδικίαν καὶ βλάβην). On the one hand, the ἔκτισις is a material compensation for the damage inflicted, and hence depends on the extent of the harm done.[104] From this perspective, the damage done can be healed (παρὰ πάντα δὲ τοσαύτην ἡλίκα ἂν ἑκάστοτε ζημιώσῃ τίς τινα, μέχριπερ ἂν ἰάσηται τὸ βλαβέν, 933e8–10). On the other hand, δοῦναι τὴν δίκην is not a punishment that looks at the damage caused because, from the moral point of view assumed here, what is done cannot be undone (οὐ γὰρ τὸ γεγονὸς ἀγένητον ἔσται ποτέ, 934a6–7).[105] The purpose of δοῦναι τὴν δίκην – suffering punishment – is to discourage similar behaviour in the future: it is either to make both the offender and those who witness him being punished despise injustice (μισῆσαι τὴν ἀδικίαν), or to make them resent such a state in general.[106] The Athenian continues, 934b3–c3:

100 As the interlocutors have done in the discussion of the penal laws on theft, treason, voluntary and involuntary homicide and murder, suicide, etc. that start from the beginning of *Leg*. Book IX, 853d5 ff.

101 Cf. Hart 1961, 125.

102 Saunders' translation groups the laws and considerations put forward in *Leg*. 932e1–960b5 under 'Miscellaneous Legislation'. The section starts with laws about those who inflict non-fatal harm by different kinds of φαρμακεῖαι, poison and enchantment (932e1–933e5). It is followed by a section that reflects on the appropriateness of punishments in light of considerations about the purpose (933e6–934c6).

103 For this division in ἔκτισις and δίκη, see *Leg*. 862d1–4. Cf. *Leg.* 854d4–5.

104 *Leg*. 933e6–10.

105 *Leg.* 933e10–934a7.

106 For this use of συμφορά, cf. *Leg*. 854d2. England *ad* 934b3 interprets συμφορά as "criminality" and notes that it is used here "with the same μείωσις" as at 854d2, 873a5 and 877c8. In his note *ad* 854d2 he says that it is "euphemistically used for a criminal inclination". However, *pace* England, the term must here be taken to refer to the event of undergoing punishment (δικαιοῦσθαι): the idea here is that people may not only be deterred from such illegal actions because they have grown fond of justice but also, simply, because they abhor undergoing such punishment. This is (a) a more natural interpretation of the term συμφορά, and (b) explains what 'less bad' means: the person who comes to loathe illegal actions because of previous punishment (μοχθηρότερον ἧττον ἐξηργάσατο τὸν τὴν δίκην παρασχόντα, *Leg*. 854d7–e1). The finest laws can make a person fond of a just nature, or at least not resentful of it (στέρξαι δὲ ἢ μὴ μισεῖν τὴν τοῦ δικαίου φύσιν, αὐτό ἐστιν τοῦτο ἔργον τῶν καλλίστων νόμων, 862d7–e1). By contrast, 934b1–2 seems more realistic in tone.

> ὧν δὴ πάντων ἕνεκα χρὴ καὶ πρὸς πάντα τὰ τοιαῦτα βλέποντας τοὺς νόμους τοξότου μὴ κακοῦ στοχάζεσθαι δίκην τοῦ τε μεγέθους τῆς κολάσεως ἑκάστων ἕνεκα καὶ παντελῶς τῆς ἀξίας· ταὐτὸν δ' ἔργον δρῶντα συνυπηρετεῖν δεῖ τῷ νομοθέτῃ τὸν δικαστήν, ὅταν αὐτῷ τις νόμος ἐπιτρέπῃ τιμᾶν ὅ τι χρὴ πάσχειν τὸν κρινόμενον ἢ ἀποτίνειν, τὸν δέ, καθάπερ ζωγράφον, ὑπογράφειν ἔργα ἑπόμενα τῇ γραφῇ. ὃ δὴ καὶ νῦν, ὦ Μέγιλλε καὶ Κλεινία, ποιητέον ἡμῖν ὅτι κάλλιστα καὶ ἄριστα·[107]
>
> 'For all these reasons, and with all those aims in view, our laws, like a good archer, must take careful aim – concentrating on the magnitude of the punishment in any particular case, and above all on what is deserved. And in this task the lawgiver needs the assistance of the court, when some law leaves it to the court to assess what should happen to the defendant, or what he should pay. The lawgiver, by contrast, is like an artist whose job it is to give a rough sketch of the practical measures that are consequent upon what he has drawn. And that is what we must do now, Megillus and Cleinias, in the best and finest way we can.' (Transl. Schofield & Griffith)

The judge has the very same task as the lawgiver, and comes to his aid (συνυπηρετεῖν) when the law leaves it to him to assess what the person who is subject to a verdict should suffer or pay (cf. 876c7). The lawgiver must, like a painter, outline some concrete cases (ὑπογράφειν ἔργα). In this way, the judges will have examples of the application of the law to such cases (ἔργα ἑπόμενα τῇ γραφῇ), which parallels the interlocutors' earlier statement that they have given an outline and examples of penalties (τὸ περιγραφήν τε καὶ τοὺς τύπους τῶν τιμωριῶν, 876e1–2). The idea is, apparently, that an additional monetary fine constitutes an extra motivation to refrain from committing theft or violence in the future.[108]

5.4 CHOOSING LAWS FROM OTHER CITIES

So far it has been argued that the future process of legislation is guided primarily by reality and by testing laws in practice. The fact that lawgiving is to be executed by the lawguards in conjunction with the specialized officials in the relevant areas suggests that a familiarity with the respective issues is a *conditio sine qua non* for

107 The Greek is that of the Budé text (which prints ὅ τι in 934b8, where the OCT prints ὅτι).

108 For the idea that punishments serve to encourage correct behaviour and to *teach*, cf. *Prot*. 324a5–c1. This forward-looking attitude is notably different from *Gorgias*' justification of punishment as curing of the soul (*Gorg*. 476a7–479e9, 525b1–c8, also including a deterring function towards others). The idea that σωφροσύνη (increase of it) is the product of a fine seems odd in the light of *Republic*'s opposition between σωφροσύνη and φιλοχρηματία (*Resp.* 485e3, 486b6), the association of φιλοχρηματία with ἀνευλευθερία (391c5, 469d6) and the uncurtailed ἐπιθυμητικόν (553c5). It is reminiscent of the idea that virtue should be acquired 'by whatever means', see above, pp. 125–126. The logic of imposing fines assumes that people are generally attached to possessions (this may be why a city in which all property is common is the 'city of gods' of *Leg*. 739b8–e4, discussed in Chapter One, pp. 21–22). We may compare the lawgiver's use of τιμή and ἀτιμία to motivate people to restrain themselves, *Leg*. 631e2–632a2. The idea that σωφροσύνη can be stimulated by monetary fines suggests that it is not conceptualized in terms of a quality of soul (order of parts), but as self-restraint more generally, which can be motivated by a variety of factors, fines being only one of them. In another case, σωφροσύνη is itself a kind of tax: metics do not have to pay even the smallest μετοίκιον, 'except self-restraint' (πλὴν τοῦ σωφρονεῖν, 850b3).

adequate legislation. That is the reason why lawgiving is a long process: it needs to take into account the effects and consequences of the regulations, and these only become apparent over time. But it is not only a matter of experience gained by the magistrates in their own city; experience may also be drawn from other *poleis*, 957a3–b5:

> τὰ μὲν ἴδια δικαστήρια ταύτῃ πῃ γιγνόμενα μέτρον ἂν ἔχοι· τὰ δὲ δημόσια καὶ κοινὰ καὶ ὅσοις ἀρχὰς δεῖ χρωμένας τὰ προσήκοντα ἑκάστῃ τῶν ἀρχῶν διοικεῖν, ἔστ' ἐν πολλαῖς πόλεσιν οὐκ ἀσχήμονα ἐπιεικῶν ἀνδρῶν οὐκ ὀλίγα νομοθετήματα, ὅθεν νομοφύλακας χρὴ τὰ πρέποντα τῇ νῦν γεννωμένῃ πολιτείᾳ κατασκευάζειν συλλογισαμένους καὶ ἐπανορθουμένους, ταῖς ἐμπειρίαις διαβασανίζοντας, ἕως ἂν ἱκανῶς αὐτῶν ἕκαστα δόξῃ κεῖσθαι, τότε δὲ τέλος ἐπιθέντας, ἀκίνητα οὕτως ἐπισφραγισαμένους, χρῆσθαι τὸν ἅπαντα βίον.
>
> 'And if courts dealing with private lawsuits are dealt with in this kind of way, that will be perfectly reasonable. But when it comes to courts handling public cases affecting the city as a whole, and the courts the magistrates have to use in regulating the affairs of their various offices, there is plenty of very presentable legislation, the work of fair-minded men in many cities, to draw on. From these the guardians of the law should put together procedures appropriate to the political system which is now coming into being; they should collect and revise these, submit them to the test of experience, until they are sure that the procedures for various situations are satisfactory. At that point they should call a halt, give them the seal of irreversibility, and make use of them their whole life through.' (Transl. Schofield & Griffith)

On the subject of public courts, the interlocutors instruct the lawguards to adopt laws in use in other *poleis*. In fact, there is a special body instituted for the purpose of auditing laws in other poleis: the observers (θεωροί).[109] The Athenian even seems quite optimistic on this point: in order to regulate their public courts, many *poleis* have no small number of respectable laws (οὐκ ἀσχήμονα … οὐκ ὀλίγα νομοθετήματα, 957a6–7).

Laws from other *poleis* may thus be adopted in the interlocutors' own city, provided that they are made to fit their own constitution. The idea here seems equally that of testing: the effects of laws in other *poleis* can be observed. If some laws are deemed satisfactory (because they have good effects, because they arrange everything satisfactorily), the lawguards must adopt the laws suitable to the *politeia* (ὅθεν νομοφύλακας χρὴ τὰ πρέποντα τῇ νῦν γεννωμένῃ πολιτείᾳ κατασκευάζειν, 957a7–b1). Τὰ πρέποντα [*sc*. νομοθετήματα] have to be compared and corrected in that process (συλλογισαμένους καὶ ἐπανορθουμένους, 957b2);[110] subsequently, they have to be tested in practice (ταῖς ἐμπειρίαις διαβασανίζοντας, 957b2–3). In

109 See *Leg*. 951a4–952d4. The observers have to collect information from the rare 'divine persons' in other cities, with whom it is worth associating (ἄνθρωποι … θεῖοί τινες – οὐ πολλοί – παντὸς ἄξιοι συγγίγνεσθαι, 951b5). This suggests that practical experience has a clear surplus value for the preservation of the laws (for the observers, see also Chapter Six, pp. 195–197). Cf. Bobonich 2002, 399, the "rationale underlying the appointment of the observers explicitly presumes that the laws of Magnesia may need supplementation or revision and allows for them". Cf. Schöpsdau 2011, 580: "Die Bewahrung der Gesetze impliziert also keineswegs eine starre Unveränderlichkeit der Gesetze". The observers have to report back to the nocturnal council, see Chapter Six, p. 196. The nocturnal council, which has the task to preserve the laws, is thus involved in the process of amending and correcting laws.

110 Cf. *Leg*. 951c2–3.

a way similar to the regulations concerning the chorus festivals of the young discussed above, this process of testing is supposed to continue until every aspect of it is agreed to have been settled in an adequate way (ἕως ἂν ἱκανῶς αὐτῶν ἕκαστα δόξῃ κεῖσθαι, 957b3).[111] The δόξα is that of the νομοφύλακες. When they decide that the laws have been sufficiently finalized, the lawguards will conclude the process and give the laws a seal that will render them immutable (τότε δὲ τέλος ἐπιθέντας, ἀκίνητα οὕτως ἐπισφραγισαμένους, 957b4).[112]

5.5 CONCLUSION

The present chapter has addressed the problem of the manifest incompleteness of the interlocutors' legislation in *Laws*. It has explored the causes of this incompleteness, asked whether a law code can be finished at all given *Laws*' conception of lawgiving, and what this implies about the status of lawgiving, the sort of activity it is (a kind of expert knowledge?). We have focused on the pervasive distinction *Laws* draws between an initial 'outline' for a law code, in the formulation of which the interlocutors in *Laws* are engaged, and the 'filling in' of the details, which they imagine will be done later, by people other than themselves. The importance of this issue lies in the observation, which is central to the argument offered here, that were laws made by an expert on the basis of his objective knowledge of the Idea of the Good, resulting in a *polis* of which δικαιοσύνη is the defining characteristic, the concerns central to this chapter – the necessary status of the first draft as an outline, the lawgiver's incapacity to devise sufficient regulations for all cases, the lack of accuracy of the laws, and the crucial importance of real and practical circumstances – would not play a role.

Laws makes the difficulty of attaining ἀκρίβεια regarding human affairs a central concern in its conception of lawgiving. The first lawgiver cannot achieve accuracy in his laws; this can only be achieved in the course of time. The difficulty of attaining ἀκρίβεια when laying down a law code is reminiscent of Aristotle's reflections on the generality of law. Yet whereas for Aristotle this is a reason to argue for an alternative conception of justice besides the legally just, Plato in *Laws* develops a conception of lawgiving as an ongoing process. This process involves everything from drafting the first outline to the making of amendments years later. It involves the efforts of subsequent generations of lawgivers-lawguards as well as those of the courts, who are guided by the law code but in the process of applying the law have to make their own decisions and possibly amend existing legislation. In a second phase of legislation, the laws need to be put into practice (applied to reality) and tested. Under the supervision of the lawguards and other relevant magistrates, the

111 Cf. *Leg*. 772b4, c4, and p. 175 above.

112 The fact that the laws are to be 'deployed for the entire lifetime' (χρῆσθαι τὸν ἅπαντα βίον, 957b5) may modify the unchangeability and suggest an amount of pragmatism: that these laws remain valid and unchangeable only for the period of one lifetime. See also the discussion in Bobonich 2002, 400–408 on the alleged immutability of the laws.

laws governing various aspects of human life and interaction can be crystallized and, after a longer period of time, eventually finalized.

This means that lawgiving (at least its later phases) in *Laws* is presented as a discipline profoundly concerned with *practical* considerations. The legislative material (broadly conceived) that occupies roughly *Laws* VI–XII is only an outline because many things can only be settled after they have been tested and tried out in practice. It is from this perspective that the design by the lawgiver can be said to be an outline. Beyond the outline, what matters is how certain things will work out in practice, the goal being to create obedient, self-regulating citizens. The activity of lawgiving in *Laws* is not presented as a form of expert knowledge (τέχνη) in the sense in which we encounter that notion in, for example, *Republic* Book I.[113] The subject matter of lawgiving is human behaviour *in the future*: anticipating possible situations, and anticipating how people in particular situations will respond to particular commands. When this is realized, it becomes apparent that *Laws* is to a large extent concerned precisely with *the difficulty* of knowing that. It thus seems reasonable that *Laws* does not refer to a νομοθετικὴ *τέχνη* in its representations of lawgiving (neither the painter analogy nor the doctor analogy does so): νομοθετικὴ τέχνη would presumably have entailed connotations of expert knowledge that needed to be suppressed in this context.

This leaves open an important question: what is the basis for the outline itself and what kind of insight does the first (good) lawgiver possess? The painter analogy in *Laws* VI remains vague and is remarkable precisely in *suppressing* any suggestion, somewhat counterintuively, that the first lawgiver might have imitated some kind of model. The issue is furthermore obscured by the fact that what *is* said about the drafting of the outline is said in the context of the painter, that is, about the *analogon*, not about the lawgiver himself. On the place of the παράδειγμα in *Republic*, *Laws* leaves a 'blind spot'. And since in the dialogue we simply *witness* the process of formulating a first outline of a set of laws by the Athenian, little is said about the basis on which this is done. What therefore remains to be investigated is to see whether we can get any clarity as to the qualifications of the Athenian for lawgiving. The next chapter examines the Athenian in more detail. Yet it will also need to enquire after the role of the nocturnal council (are they lawgivers?): if we want to know where the laws in *Laws* ultimately derive from, we have to scrutinize the nocturnal council and the Athenian stranger more closely.

113 See Chapter Two, especially 2.1.1 and 2.2.3.2.

CHAPTER SIX

OUTSIDE THE LEGISLATION: THE NOCTURNAL COUNCIL AND THE ATHENIAN STRANGER

The present chapter targets the nocturnal council and the figure of the Athenian stranger. Both may seem to be candidates for the moral expert: in the scholarly literature, it has been supposed that the nocturnal council consists of philosopher-kings, while others have argued that the Athenian stranger frames a divine law code, based on his divine authority. Any study that challenges such claims thus needs to confront the question of the authority of these two agencies in *Laws*. Moreover, both are, in different ways, 'outside' the framing of the legislative material: the nocturnal council is introduced *after* the διέξοδος τῶν νόμων has been rounded off; the Athenian stranger is the one who formulates the legislative material and all considerations relating to their foundation in speech. The present chapter will therefore examine the nocturnal council and the Athenian as possible candidates for an expert authority. The first part will address the identity and function of the nocturnal council, investigating its role within the envisaged *polis* and within the overall composition of *Laws*. The second part will examine the figure of the Athenian stranger and inquire whether he is presented as a kind of moral expert or philosopher-king – and, if not, what his qualification might be.

There is also another reason for turning to the final part of Book XII. As we saw briefly in Chapter Three, there are obvious formal and thematic correspondences between the opening discourse (especially Books I–II) and the end of Book XII. These correspondences have provided sufficient reason for some 19th-century scholars to hypothesize that Books I–II and the end of Book XII once belonged to a separate work.[1] The end of Book XII is much more dialectical than the rest of the work and in this respect resembles the discourse of Books I–II in particular. Moreover, at the end of Book XII, the unity of the four virtues, a theme that was extensively discussed in Books I–II, resurfaces in the context of the discussion of the nocturnal council, after having disappeared from the conversation since the end of Book II. The end of *Laws* therefore in different ways deliberately recalls the beginning, creating a ring composition with the effect of closure. The present chapter will therefore also reflect on the deliberate echo of the beginning at the end of the dialogue.

1 See Chapter One, n. 21 on pp. 17–18.

6.1 THE IDENTITY AND FUNCTION OF THE NOCTURNAL COUNCIL

6.1.1 The σκοπός of the nocturnal council

In *Laws* XII, the διέξοδος τῶν νόμων is finished off (960b5). The legislation ends with regulations concerning *post mortem* rituals.[2] But there is a distinction between the διέξοδος τῶν νόμων, which is now complete, and the act of νομοθεσία, which is not finished yet (ὥστε σχεδὸν ἡ νομοθεσία τέλος ἂν ἡμῖν ἔχοι, 960b4–5).[3] For the latter to be finished, what is needed is a mechanism that secures the 'preservation' (σωτηρία) of the laws, 960b5–c1:

> τῶν πάντων δ᾽ ἑκάστοτε τέλος οὐ τὸ δρᾶσαί τι σχεδὸν οὐδὲ τὸ κτήσασθαι κατοικίσαι τ᾽ ἐστίν, ἀλλὰ τῷ γεννηθέντι σωτηρίαν ἐξευρόντα τελέως ἀεί, τότ᾽ ἤδη νομίζειν πᾶν ὅσον δεῖ πραχθῆναι πεπρᾶχθαι, πρότερον δ᾽ ἀτελὲς εἶναι τὸ ὅλον.
>
> 'But whatever the context, completion does not just mean doing a particular thing, or acquiring it and setting it up. No, only when we have found a way of keeping safe what has been brought into being can we then think that everything has been done, completely and for all time, which ought to have been done. Up to that point the thing as a whole is incomplete.' (Transl. Schofield & Griffith)

The Athenian goes on to explain that preservation (σωτηρία) is secured by 'the capacity for irreversibility' (ἡ ἀμετάστροφος … δύναμις, 960c9–d1, 960d5–6). In order to complete their legislative project, the interlocutors must now implement a mechanism that will ensure the irreversibility of the laws.

Cleinias inquires what the σωτηρία for their constitution and laws might be (τίς οὖν δή, φής, σωτηρία γίγνοιτ᾽ ἂν καὶ τίνα τρόπον πολιτείᾳ τε καὶ τοῖς νόμοις ἡμῖν; 960e9–11). The Athenian has in mind the σύλλογος that has come up in their discussion several times before.[4] The 'nocturnal council', as it has become known in the scholarly literature (νυκτερινὸς σύλλογος, 909a3–4, 968a7, or ὄρθριος σύλλογος, 961b6), is therefore explicitly introduced as the body ensuring σωτηρία for the *polis* and laws of the interlocutors. This explains why the nocturnal council is introduced

2 *Leg*. 958c7–960b1. The laws about the burial of the dead and other ways of disposing of the body (in case of parricides and temple robbers) have been stated before. The διέξοδος therefore ends with the rites accompanying the death of an individual. On a law code as following (roughly) the course of the human life, see also Chapter One, p. 32; Chapter Four, pp. 126–127.

3 Νομοθεσία thus entails more than simply making the laws – as we saw in Chapter Four, a discussion of necessary preliminaries and the magistrates (in Books IV–VI) is also part of νομοθεσία, yet not of the actual διέξοδος τῶν νόμων.

4 *Leg*. 961a1–2: Ἆρ᾽ οὐκ εἴπομεν ὅτι δεῖ σύλλογον ἡμῖν ἐν τῇ πόλει γίγνεσθαι τοιόνδε τινά; That the nocturnal council has been hinted at several times before Book XII is an important, but certainly not the only reason why it is an integral part of the argument of *Laws* and does not constitute a breach with ideas formulated earlier on. The previous references to the council are: *Leg*. 818a1–3 (the τινες ὀλίγοι who will receive a more thorough schooling in the three μαθήματα designated for free people); 908a3–909a5 (οἱ τοῦ νυκτερινοῦ συλλόγου are the only ones who are to come in contact with the atheists sent to the σωφρονιστήριον); 951d3–952b9 (it is the task of the council to scrutinize the observers). Morrow 1960, 502 also sees in 632c4–d1 a reference to the nocturnal council; cf. Guthrie 1978, 371, n. 1 and Schöpsdau 2011, 576 (with the φύλακες in 632c4 "unmißverständlich angekündigt").

after the διέξοδος τῶν νόμων: the mechanism meant to secure the preservation of an entity necessarily follows the act of its creation.[5] Yet in view of its introduction after, and hence outside, the διέξοδος τῶν νόμων proper, one might still wonder whether the council is not in fact a reintroduction of the philosopher-king, on whose authority the laws of the interlocutors are to be accepted as objectively good, parallel to what happens in *Republic*.[6] This section will therefore examine more closely the role and qualification of the nocturnal council.

The preserving function of the council is compared to an 'anchor' of the whole city (οἷον ἄγκυραν πᾶσης τῆς πόλεως, 961c5). The metaphor of the council as anchor of the *polis* is subsequently continued with the comparison of the *polis*' endeavour to secure its own preservation to the discipline of the κυβερνήτης. The *polis* itself is in turn compared to a ζῷον. Though this may at first sight seem to recall the analogy between πόλις and ζῷον in *Republic*, it soon becomes clear that the purport of the ζῷον analogy in *Laws* XII is significantly different. For in this context, the philosophical pertinence of the image of the ζῷον consists in that of a 'living animal' (rather than an organic unity), possessing a faculty that ensures its survival. In fact, the preservation of a ζῷον here depends on two faculties: on the ἀρετή of the soul and on the ἀρετή of its head (ἡ τούτοιν ἀρετὴ δήπου παντὶ παρέχει ζῴῳ σωτηρίαν, 961d5). The ἀρετή of the soul is νοῦς; the ἀρετή of the head are the two 'sense perceptions' (αἰσθήσεις), 'sight' (ὄψις) and 'hearing' (ἀκοή). The nocturnal council combines the ἀρετή of the soul with the ἀρετή of the head: it is νοῦς *in combination with* the αἰσθήσεις of sight and hearing that preserves the *polis* as a ζῷον, and the κυβερνήτης *ἅμα καὶ* ναῦται (and it is thus not the qualification of the helmsman alone upon which the preservation of the city depends). The faculty of νοῦς is 'mixed with' the most beautiful sense perceptions of sight and hearing.[7]

The goal of this mixed νοῦς, its σκοπός, is σωτηρία. Every professional, whether a steersman, military general, or doctor, 'aims at' (στοχάζοιτ' ἄν) a particular kind of σωτηρία.[8] The goal of the steersman with νοῦς is the salvation of his ship in all

5 Concerns about the incompatibility of the nocturnal council with the supremacy of law (e. g. Brunt 1993, 250, "an afterthought"; see also the references in Schöpsdau 2011, 576) are therefore misguided. Cf. Schöpsdau 2011, 581. The view that the nocturnal council is an "afterthought" has been criticized by Stalley 1983, 112.

6 See Chapter Two, section 2.2.3.4, for the philosopher-kings as in a way 'outside' the *polis*: in their role of philosophers as opposed to rulers.

7 *Leg*. 961d8–10: συλλήβδην δὲ νοῦς μετὰ τῶν καλλίστων αἰσθήσεων κραθείς, γενόμενός τε εἰς ἕν, σωτηρία ἑκάστων δικαιότατ' ἂν εἴη καλουμένη. In other words, σωτηρία is the best name for the mixed νοῦς that is directed at a single object. Cf. 961e1–5: ἀλλ' ὁ περὶ τί νοῦς μετ' αἰσθήσεων κραθεὶς σωτηρία πλοίων ἔν γε χειμῶσιν καὶ ἐν εὐδίαις γίγνοιτ' ἄν; ἆρ' οὐκ ἐν νηὶ κυβερνήτης ἅμα καὶ ναῦται τὰς αἰσθήσεις τῷ κυβερνητικῷ νῷ συγκερασάμενοι σῴζουσιν αὑτούς τε καὶ τὰ περὶ τὴν ναῦν; 'But reason applied to what, in combination with the senses? Take the saving of boats, for example, in storms or fair weather. Isn't it that, in a ship, the helmsman together with the sailors combine the senses with the reason exercised by the helmsman, and in that way keep themselves and everything to do with the ship safe?' (Transl. Schofield & Griffith)

8 *Leg*. 961e7–962a3. Cf. *Leg*. 963a11–b7. Schöpsdau 2011, *ad* 961e8 ff.: "Jede Techne erfordert eine spezielle Vernunft (νοῦς), die sich auf diese Techne versteht und deren spezifisches Ziel kennt; so gibt es je nach Fachgebiet einen κυβερνητικὸς, ἰατρικὸς, στρατηγικὸς und einen

circumstances,[9] that of the general with νοῦς victory over his enemies, and that of the doctor with νοῦς a healthy bodily constitution.[10] This argument is supposed to demonstrate the intrinsic connection between νοῦς and σωτηρία: the natural object of νοῦς is σωτηρία; and conversely, aiming for σωτηρία requires νοῦς. This is the function of the nocturnal council.[11]

The νοῦς of the council mixed with the most beautiful senses has a single object. The νοῦς is γενόμενος … εἰς ἕν (961d9–10; cf. ὁ περὶ τί νοῦς, 961e1). This 'one thing' (ἕν) on which the nocturnal council focuses is: πᾶσα ἀρετή (962d2) – and here, at long last, the major theme from the opening discourse resurges. Since σωτηρία requires having a single focus, Cleinias can now conclude that they must have been correct to state that all laws need to 'look at' a single thing, virtue: πρὸς γὰρ ἓν ἔφαμεν δεῖν ἀεὶ πάνθ' ἡμῖν τὰ τῶν νόμων βλέποντ' εἶναι, τοῦτο δ' ἀρετήν που συνεχωροῦμεν πάνυ ὀρθῶς λέγεσθαι (963a2–4).[12] When, in the wake of the introduction of the nocturnal council, its goal is brought up for discussion, this turns out to be exactly that very virtue which was discussed in Books I–II. This echo once more confirms that the terms and principles elucidated in *Laws* itself constitute the framework within which the discussion of the ἀρεταί in Book XII ought to be explained. The reference to πᾶσα ἀρετή and its being one is therefore not to be understood as an oblique reference to the Idea of the Good, as has sometimes been assumed.[13] It is the very notion of virtue discussed in the opening discourse that

πολιτικὸς νοῦς (961e1, 962b7, 963a-b)" (589), with the caveat that, although the steersman and the general are often examples of τέχναι (on the τέχναι, see Chapter Two, section 2.1.1, especially pp. 40–44), here the term τέχνη is actually not used. The choice of these examples, the steersman and the military general, recalls the analogies in Book I, see p. 85.

9 *Leg*. 961e2.

10 *Leg*. 961e8–962a3 (text of the Budé edition): ἀλλ' οἷον περὶ στρατοπέδων νοήσωμεν ἢ σωμάτων τινὰ θέμενοι στρατηγοὶ σκοπὸν καὶ ἰατρικὴ ὑπηρεσία πᾶσα στοχάζοιτ' ἂν τῆς σωτηρίας ὀρθῶς. ἆρ' οὐχ ἡ μὲν νίκην καὶ κράτος πολεμίων, ἡ δὲ ἰατρῶν τε καὶ ὑπηρετῶν ὑγιείας σώματι παρασκευήν; '(…), but let's think about armies, say, or the human body: as far as security is concerned, what would be the right mark for a general to give himself to aim at? Or for the medical profession, taken as a whole? Wouldn't it be, in the one case, victory and power over the enemy, whereas for doctors and their assistants it would be the provision of health to the body?' (Transl. Schofield & Griffith).

11 In order to secure its own preservation, a *polis* needs an element that knows (τι τὸ γιγνῶσκον, 962b5) the following objects: (1) the goal, whatever the political goal may be (cf. Schöpsdau 2011, 151, "was auch immer dieses Ziel des Staatsmannes für uns sein mag"); (2) in what manner the *polis* may partake in this goal; (3) and who or which (a) of the laws themselves and (b) of the citizens gives right or wrong counsel. *Leg*. 962b6–9: (…) πρῶτον μὲν τοῦτο ὃ λέγομεν, τὸν σκοπόν, ὅστις ποτὲ ὁ πολιτικὸς ὢν ἡμῖν τυγχάνει, ἔπειτα ὄντινα τρόπον δεῖ μετασχεῖν τούτου καὶ τίς αὐτῷ καλῶς ἢ μὴ συμβουλεύει, τῶν νόμων αὐτῶν πρῶτον, ἔπειτα ἀνθρώπων·

12 See Rowe 2012, 332, for the argument that the nocturnal council "*more Socratico*" partakes in a discussion on the unity of virtue.

13 E. g. Barker 1918; Festugière 1936, 442–445; Popper 2006, 215, n. 26; Cherniss 1944: "From among the earliest of the dialogues on through the last – and this means, then, to the very end of Plato's life – the doctrine of ideas is the cornerstone of his thought"; Cherniss 1953, 375–376, and 1980, 60; Jaeger 1945, 260–262 considers the unity of the virtues the "old Socratic phrase" for the Idea of the Good; Bluck 1947, 104, n. 77: even "*Philebus* and the *Laws* defend

now turns out to be the focus of the nocturnal council, suggesting that all the while the laws have been formulated consistent with this purpose.

Upon the Athenian's affirmation, Cleinias cautiously reintroduces the flip side of the coin: they also previously stated that virtue consisted of four things (τὴν δὲ ἀρετὴν τέτταρα ἔθεμέν που, 963a6).[14] He recalls that νοῦς is superior to the other three virtues, echoing the Athenian's statement at the beginning of the discussion that νοῦς/φρόνησις is the 'leader' (ἡγέμων) of the four virtues (963a8–9).[15] The Athenian recalls the distinction between ἀνδρεία and φρόνησις in Book II. It is not hard to explain how these two ἀρεταί differ from each other, he says in 963e1–8, in a deliberate echo of Book II, 653a5–c4:

> Ἐρώτησόν με τί ποτε ἓν προσαγορεύοντες ἀρετὴν ἀμφότερα, δύο πάλιν αὐτὰ προσείπομεν, τὸ μὲν ἀνδρείαν, τὸ δὲ φρόνησιν. ἐρῶ γάρ σοι τὴν αἰτίαν, ὅτι τὸ μέν ἐστιν περὶ φόβον, οὗ καὶ τὰ θηρία μετέχει, τῆς ἀνδρείας, καὶ τά γε τῶν παίδων ἤθη τῶν πάνυ νέων· ἄνευ γὰρ λόγου καὶ

the theory of Ideas"; Görgemanns 1960, 223; Morrow 1960, 573, n. 1 finds "clear references" to the Ideas "in the closing pages (965c)" and recognizes in the nocturnal council the philosopher-rulers of *Republic*; Guthrie 1978, 378–381 (with references); Pierris 1998; Klosko 2006, 184 (and 235); Lewis 1998, 6 and *ibid*. n. 15 finds references to the Forms in 965d2, 836d7 and 966a5 (see also his note 16, pp. 6–7); Schöpsdau 2011, 592. For the absence of the theory of Forms, see: Zeller 1938, esp. 37–43; Laks 2010, 221, and n. 19 *ibid*.: "The appearance of the phrase *pros hen blepein* (12.962d4, 963a2–3) is hardly enough to mandate its presence [*sc*. of the theory of Forms]".

14 *Leg*. 963a8–9: Νοῦν δέ γε πάντων τούτων ἡγέμονα, πρὸς ὃν δὴ τά τε ἄλλα πάντα καὶ τούτων τὰ τρία δεῖ βλέπειν. Cleinias here recapitulates 631d5–6; cf. 631c5–6, where φρόνησις is said to be the leader of the divine goods. See Schöpsdau *ad loc*. for the suggestion that 963a8–9 could also be understood as a reference to 967d-e.

15 Those who have argued for the identity of the nocturnal council with the philosopher-king have often done so on the basis of the presumed similarities between their objects of study (cf. Arist. *Pol*. II, 1265a7, παιδείαν τὴν αὐτήν): Barker 1918, 406–410; Taylor 1926 for the claim that the members of the council are dialecticians; Morrow 1960, 573–584; Guthrie 1978, especially 368–375: the education of the council seems to be "a revision of that of *Republic* 7", 375 (cf. Pelosi 2010, 116, n. 1: *Leg*. 967d4–968a1 is a condensed expression of the link between musical, cosmological, and ethical harmony of *Resp*. VII and *Tim*.); Klosko 1988 assigns the council the same powers as the philosopher-kings; its introduction "creates a fundamental break in the argument of the *Laws*" (85), the contrary view is argued by Lewis 1998; Brunt 1993 argues that the nocturnal council is a return to the "autocratic rule of true philosophers" (250–251); Lisi 1998 argues that the rule of law is temporary and lasts until the philosophers of the council have completed their education and can take over; Nightingale 1999*a*, 104, n. 14, assumes that its members receive a philosophical education, which however does not entail that the members are above the law. See also the literature summed up in Lewis 1998, 2, n. 1. Others have emphasised the distinctions between the council and philosophers of *Republic*: Saunders 1992, 468; Cohen 1993 speaks of a "radical break" (301) between *Republic* and *Laws*. Klosko 2006, 252–258 argues for an informal, advisory role of the council in contrast to the "legislative authority" of the philosophers; cf. Bobonich 2002, 391–395: Plato does not have to be explicit about the exact powers of the council because *Laws* is not to be understood as a blueprint: "We should thus allow for a range of ways in which the outline of Magnesia sketched above can be realized. They will fall between excluding the nocturnal council from any political role at all and seeing its members as philosopher kings in disguise" (395). Also Zuckert 2009, 132, n. 137.

> φύσει γίγνεται ἀνδρεία ψυχή, ἄνευ δὲ αὖ λόγου ψυχὴ φρόνιμός τε καὶ νοῦν ἔχουσα οὔτ' ἐγένετο πώποτε οὔτ' ἔστιν οὐδ' αὖθίς ποτε γενήσεται, ὡς ὄντος ἑτέρου.
>
> 'You have to ask me why exactly, despite saying that the two of them were a single thing – goodness – we then went back to giving them two names, one of them being courage, the other wisdom. Then I shall tell you the explanation, which is that one of them has to do with fear – this is the one, courage, which even wild animals have a share of – and it is the disposition of very young children, since a soul can be naturally brave without the help of reason; whereas without the help of reason no soul ever has been, ever is, or ever will be in the future, wise or possessed of mind; it would be something different.' (Transl. Schofield & Griffith)[16]

In line with the definition of *paideia* in Book II, λόγος is a necessary condition for φρόνησις. In Book II, ἀνδρεία is the ἀρετή of the youngest children, referring to their early sense of rhythm and harmony in music. The ἀρετή of φρόνησις was reserved for people of advanced age; we saw that older people did not necessarily automatically acquire φρόνησις, but that age was a necessary condition for its acquisition. We also saw that it was precisely the fact that the Athenian identified the two virtues at the extremes of the age spectrum (ἀνδρεία on one extreme and φρόνησις on the other) that removed the necessity of having to be exact and explicit about the differences between the four virtues. The suggestion created by the ascription of ἀνδρεία to children and φρόνησις to the elderly, and the subsequent introduction of the four age groups (the three choruses plus the most senior citizens) was that the four virtues became associated with these four age groups. The nocturnal council now needs to keep its gaze fixed on all of these if the *polis* and the laws are to be preserved. That Book XII defines the function of the nocturnal council as aiming at complete virtue thus confirms the association of the four virtues with the four age groups. The claim that the nocturnal council can preserve the laws gains its credibility from the fact that the object of their νοῦς is complete virtue, which was identified as the goal of legislation in Books I–II.

6.1.2 The qualifications of the nocturnal council

But the council must not only have complete virtue as its aim; it must also *possess* complete virtue (δεῖ δὴ τοῦτον … πᾶσαν ἀρετὴν ἔχειν, 962d1–3) if it is to aim at

16 ἕτερον (not ἄλλον), so 'a different one of the same kind'. Hence an εἶδος of ἀρετή (φρόνησις) differs from another εἶδος of ἀρετή (ἀνδρεία). England assumes that ὡς ὄντος ἑτέρου refers to φρόνησις and paraphrases, "'for wisdom is a different thing'; i. e. it is not an *inborn*, *physical quality*, but a *mental acquirement*" (emphasis in original), and is followed by Schöpsdau 2011, 593 ("φρόνησις und νοῦς"). Cf. Susemihl: "ein so ganz anderes Ding ist die Weisheit". Ritter 1859 on the other hand connects ὡς ὄντος ἑτέρου with λόγου and takes it to bear only upon the second part of the sentence: "ohne λόγος, als ob dieser etwas von φρόνησις und νοῦς Verschiedenes wäre, gibt es keine φρόνιμος ψυχή" (355). In *Laches* 197a6 ff. (referred to by England) Nicias denies that animals and little children can be properly called courageous on the ground that their fearlessness is μετὰ ἀπρομηθίας καὶ ἀγνοίας. In *Laws*, by contrast, the absence of something 'prudential' or 'moderate' is inherent in ἀνδρεία, and animals and children can possess this virtue; λόγος is precisely the criterion on the basis of which ἀνδρεία and φρόνησις are distinguished.

σωτηρία.[17] For the leading principle of complete virtue is that one 'looks' and 'aims at' a single object, that is, complete ἀρετή.[18] The composition of the council is such that it unites νοῦς and the two senses and thus, *as a whole*, possesses complete virtue. Its members are the following: (1) the ten most senior lawguards (961a2–3, cf. 951d8–e1); (2) all the prize-winners of distinctions in virtue (961a3–4, cf. 951d7–8);[19] (3) the observers (after they have been scrutinized on their return from abroad) (961a4–8); and (4) a number of promising young men between the ages of 30 and 40, to be selected and introduced by the aforementioned members, one by each of them (961a8–b4, cf. 951e3–5).[20] If a junior is found to be adequate (ἐπάξιος) in both nature and education (φύσει καὶ τροφῇ), he is henceforth allowed to attend the meetings of the council. These νέοι represent the sense perceptions in the council, while its older members represent the faculty of νοῦς, 964e1–965a4:

> Δῆλον ὡς αὐτῆς μὲν τῆς πόλεως οὔσης τοῦ κύτους, τῶν δὲ φυλάκων τοὺς μὲν νέους οἷον ἐν ἄκρᾳ κορυφῇ, ἀπειλεγμένους τοὺς εὐφυεστάτους, ὀξύτητας ἐν πάσῃ τῇ ψυχῇ ἔχοντας, περὶ ὅλην κύκλῳ τὴν πόλιν ὁρᾶν, φρουροῦντας δὲ παραδιδόναι μὲν τὰς αἰσθήσεις ταῖς μνήμαις, τοῖς πρεσβυτέροις δὲ ἐξαγγέλους γίγνεσθαι πάντων τῶν κατὰ πόλιν, τοὺς δὲ νῷ ἀπηκασμένους τῷ πολλὰ καὶ ἄξια λόγου διαφερόντως φρονεῖν, τοὺς γέροντας, βουλεύεσθαι, καὶ ὑπηρέταις χρωμένους μετὰ συμβουλίας τοῖς νέοις, οὕτω δὴ κοινῇ σῴζειν ἀμφοτέρους ὄντως τὴν πόλιν ὅλην.
>
> 'The city itself is obviously the torso, and its guardians – well, at the very top, as it were, are the young among them, selected for their natural abilities and general mental acuteness, surveying the whole city on every side; and as they keep watch, transmitting their perceptions to those who are the memory – i. e. acting as messengers to the older guardians in connection with everything that goes on in the city. Those who in this comparison represent the power of reason, by virtue of their exceptional wisdom in many important areas – I mean the old – take counsel, with the young guardians as assistants and fellow-counsellors; and in this way the two groups, acting together, really are the salvation of the city as a whole.' (Transl. Schofield & Griffith)

By its very composition, the nocturnal council comprises the most beautiful αἰσθήσεις and νοῦς, the two faculties upon which the σωτηρία of the *polis* as a

17 *Leg*. 962d1–5: (…) καὶ δεῖ δὴ τοῦτον, ὡς ὁ νῦν παρεστηκὼς ἡμῖν λόγος μηνύει, πᾶσαν ἀρετὴν ἔχειν· ἧς ἄρχει τὸ μὴ πλανᾶσθαι πρὸς πόλλα στοχαζόμενον, ἀλλ' εἰς ἓν βλέποντα πρὸς τοῦτο ἀεὶ τὰ πάντα οἷον βέλη ἀφιέναι. 'This body, as our present discussion indicates, will need to manifest human excellence in all its fullness – and that means, above all, not being all over the place as it aims at one thing after another, but keeping its eye fixed on a single target and consistently aiming all its shafts at that' (Transl. Schofield & Griffith). *Leg*. 963a1–4 recapitulates 631b3 ff. (πάλαι τιθέμενον), which is also taken up in 705d6–706a4 and ἧν δὲ ἡ συγχώρησις ἕν ἔχουσα κεφάλαιον in 770c7 (συνεχωροῦμεν). On the συγχώρησις of the interlocutors to aim at complete virtue in 770c7, see Chapter Four, p. 125.

18 *Leg*. 962d3–5: ἧς [*sc*. πάσης ἀρετῆς] ἄρχει τὸ μὴ πλανᾶσθαι πρὸς πολλὰ στοχαζόμενον, ἀλλ' εἰς ἓν βλέποντα πρὸς τοῦτο ἀεὶ τὰ πάντα οἷον βέλη ἀφιέναι. Cf. 963a2–3, 963a11–b7.

19 For the prize-winners in virtue contests, see also *Leg*. 829c2, 919e4–5.

20 The two passages that describe the composition of the nocturnal council, 951d5–e5 and 961a1–b6, are not entirely parallel: see Schöpsdau 2011, 576–579: "Die Diskrepanzen betreffen nur kleinere Details und lassen sich zwanglos damit erklären, daß der Athener aus dem Gedächtnis rekapituliert, wobei er selber eine gewisse Ungenauigkeit der Rekapitulation einräumt (vgl. 961b8)", 577; see also the further references *ibid*. Cf. Guthrie 1978, 370, n. 2.

whole depends.[21] Νοῦς is informed by the senses: ὄψις, embodied probably by the θεωροί, and the ὄψις and ἀκοή of the younger members.[22] The talented younger members (εὐφυέστατοι, 964e3) will receive a kind of *paideia* under the direction of the council that will also prepare them to attend the council once they are older. In further notable contrast to the philosopher-kings, the council receives reports from the 'observers' (θεωροί). Virtue consists in *paideia* and experience, but what virtue substantially amounts to is determined by the laws of the city. The nocturnal council will need a more accurate discernment of virtue (τοὺς φύλακας ἀκριβεστέρους, 964d3–4) than the majority of the citizens, and the people singled out for the council will receive a more thorough education in the disciplines arithmetic, geometry and astronomy than the other citizens, who will not study these μαθήματα in all their intricacies.[23]

Book XII also echoes the terminology of 'mixing' the virtues of Book I, which has become more understandable through the way in which the composition of the nocturnal council ensures that it combines the virtues. In Book I, the Athenian stated that the second virtue is the self-restrained disposition of the soul 'together with' νοῦς (δεύτερον δὲ *μετὰ νοῦ* σώφρων ψυχῆς ἕξις, 631c6–7), and from these 'mixed together with' ἀνδρεία derives justice (*ἐκ δὲ τούτων* μετ' ἀνδρείας *κραθέντων* τρίτον ἂν εἴη δικαιοσύνη, 631c7–8). Retrospectively, these remarks may be taken to anticipate the nocturnal council, which saves the *polis* through νοῦς together with the finest perceptual faculties (συλλήβδην δὲ νοῦς μετὰ τῶν καλλίστων αἰσθήσεων κραθείς, … σωτηρία ἑκάστων δικαιότατ' ἂν εἴη καλουμένη, 961d8–10).[24]

Not surprisingly after what we have seen in Chapter Three about the four age groups, the nocturnal council, in which the most senior citizens (those over 60) are allowed a seat, embodies νοῦς. It is now also clear why the Athenian spoke of φρόνησις in Book II, whereas in the context of Book XII he speaks of νοῦς: φρόνησις denotes the supreme ἀρετή as the final stage of *paideia*; νοῦς refers to the supreme ἀρετή as self-referential. It denotes the reflexivity that is created by the application of the four virtues to the age groups in the *polis* and the characterization of the highest virtue itself as consisting in looking at virtue as a whole. The suggestion is that the nocturnal council embodies νοῦς in the *polis* and therefore preserves the four citizen groups (including itself) by overseeing the life of the citizens and their advancement through different stages of virtue. In this way, the phrase 'looking at the whole of virtue' acquires a new meaning: securing the preservation of the *polis*.

The kind of knowledge that is implied in the description of the council suggests experience, aggregated knowledge, and possibly – in view of the mixture of the virtues and the council being informed by its youngest members and by the

21 Cf. *Leg*. 967d8–968a1.

22 Cf. Schöpsdau 2011, 580. Cf. also Müller 1968, 23, n. 1: "Geist und scharfe Wahrnehmung werden hier fast gleichgeordnet: ihre Mischung bringt die Rettung (961d). (…) Mögen sie dann auch nur dienende Funktion haben, so ist doch die Bedeutung, die die Wahrnehmung auf solche Weise bekommt, schon ein Hinweis, daß der Geist nicht mehr der das Eidos schauende Geist ist."

23 *Leg*. 817e5–818a3.

24 Cf. *Leg*. 964e5–965a4 cited above.

observers who return from abroad – shared deliberation.[25] There is no suggestion that the council possesses expert knowledge of transcendent objects, or that the performance of its protective function (φυλακτήριον, 962c7) and the steering of the *polis* (κυβερνητική) requires such knowledge. (If anything, the suggestion is that empirical knowledge is indispensable.) The members are selected through procedures within the city on the basis of their outstanding merit (the lawguards, the prize-winners, the observers, the promising young men). They are judged and, if of the right age, selected and appointed as magistrates or awarded a prize for their virtue within the frame of the *polis*. In contrast to the philosopher-rulers, who were qualified to rule on the basis of their knowledge of the Ideas, the members of the nocturnal council are a *polis*-internal authority: its members have been selected in the process, and for reasons of, their virtuous life in the *polis*.

6.2 THE ATHENIAN STRANGER

Having argued that the nocturnal council does not reintroduce moral expert authority (in the sense described in Chapter Two), a final authority figure remains to be investigated: the Athenian stranger. He is the character who proposes the laws – if *Laws* operates with the idea of the philosopher-king, the Athenian stranger seems to be the only candidate left. Before we examine the Athenian's role, we should note that the figure of the lawgiver himself is not a topic extensively discussed by the interlocutors. Of course, *someone* has to lay down laws, but nothing specific is said about what qualifies someone as a lawgiver, and 'the lawgiver' remains a mere argumentative presence in the process of legislation that we witness in *Laws*.[26] This already forms a notable contrast to the philosopher-king in *Republic*, whose qualifications, education and, to the extent possible, object of knowledge receive an elaborate discussion.

The identity of the Athenian has been the object of some speculation. He is presented as an anonymous 'stranger' (ξένος) from Athens.[27] Some interpreters, including Aristotle, assumed that the anonymous Athenian is in fact Socrates.[28]

25 *Contra* those scholars who have asserted that the nocturnal council possesses transcendent knowledge: e. g., Saunders 1962, 54, their task is to attain an "understanding of the metaphysical basis of the laws"; cf. Guthrie 1978, 370–371, the guidance of the nocturnal council is based on "genuine knowledge". Brisson 2005: *Laws* and *Republic* have the same objective: "to give power to those who possess knowledge" (*contra* Bobonich 2002), cf. Pradeau 2004, 123. See also note 15 above.

26 The interlocutors reason about what 'the lawgiver' or 'the sensible lawgiver' is likely to do. See Chapter Four, p. 141, n. 104. This sensible lawgiver is a point of departure for their own reasoning, not a final authority to whom they attribute their proposals.

27 See Chapter Three, p. 78, n. 7.

28 See Arist. *Pol*. II, 1265a10. Pangle 1980, 378–379: "nameless old Athenian philosopher who acts and talks in a manner reminiscent of Socrates"; Planinc 1991, 26, says that both *Republic* and *Laws* describe Socrates; Rowe 2007*a*, 90, n. 20 "Socrates replying"; See also Zuckert 2009, 52, n. 5, 58–62, 84–85, 135–136 ("The Athenian (…) sounds very much like Socrates", 135). The main thesis of Zuckert is that *Laws* 'predates' Platonic philosophy. *Laws* presents incom-

Others, by contrast, have drawn attention to the differences between Socrates and the Athenian; most notably, Socrates never left Athens, and it seems that part of the effect of the Cretan setting is to suggest that we are in a different conceptual realm. An often encountered assumption is that the Athenian stranger is a spokesman for Plato himself.[29]

However, the Athenian is a fictional character in an imaginary setting.[30] Even if he expresses views to which the historical Plato might have subscribed, we still need to examine his role and position in the literary construction. Though the Athenian's procedure in Books I and II is in some respects reminiscent of the Socrates of the early dialogues, a specific identification of the Athenian as either Socrates or Plato does not furnish insights into the qualifications that underlie his role as persona in the dialogue. Such an identification does not tell us anything about the *status* of the laws that Plato puts in his mouth. We therefore need to ask how the role and qualification of the Athenian are presented.

To begin with, we may have a closer look at the role of the Athenian as a spokesperson in the dialogue. His long monologues have been interpreted as a sign of Plato's waning faith in the dialectical method.[31] Yet the whole of *Laws* is set up as a dialectical conversation: this effect is also created by its overtly dialectical beginning and end.[32] The role of the Athenian as main speaker is explicitly motivated in the dialogue. At a turning point in the conversation about the *symposia*, the Athenian offers his interlocutors a choice.[33] They can discuss the utility of intoxica-

patible views of the universe: the naturalistic of Presocratic philosophy and the (Socratic) unity of the virtues; it thus creates the room for *Platonic* political philosophy to present a worldview that integrated the two (see especially 144–146). Rowe 2007*b* sees correspondences between the Athenian and the Socrates of *Republic*. Cf. also *ibid*., 255, n. 2. Rowe attributes the absence of Socrates from *Laws* to the fact that "the design of the dialogue demands a figure of some authority" (257). In Rowe 2012 he argues that Socrates is also present in *Laws* in a certain sense.

29 Cicero seems to imply this in his *De legibus* 1.5.15 (with Dyck 2004, 99). Gadamer 1985, 71, "A figure in whom more than anyone Plato has most obviously hidden himself"; Klosko 2006, 198: "probably a stand-in for Plato himself"; Saunders 1992, 469, "clearly Plato himself"; Schofield 1997, "the figure who displaces the philosopher in the Stranger's account is the lawgiver: to be interpreted (…) as a sort of projection of Plato's own authorship of the legislative project of the dialogue" (236; cf. 232); Bobonich 2002, 8: "Plato's spokesman in the *Laws*" (cf. *id.* 1996, 254–255, 260). Rowe 2007*b*, 20, n. 57, notes that he had long thought the Athenian was "a thinly disguised Plato", but (persuaded by Malcolm Schofield) came to believe that "in terms of tone" he resembles the Visitor from Elea in *Sophist* and *Statesman*. D. L. III.52 rejects the identification of the Athenian with Plato, but does take him to state Plato's views, as do the figures of Socrates, Timaeus, and the Eleatic Stranger.

30 For this point, cf. Dyck 2004, 99.

31 Wilamowitz 1919 (see Chapter One, p. 28, n. 61); Bobonich 1996, 259: "(…) even when [Cleinias and Megillus] are present and do assent, there is little effort to show how their beliefs commit them to the laws' provisions". In note 19 *ibid*. he hypothesizes that this may partly be due to the unfinished state of the text (also p. 250) but that, even if acts of assent would be less sporadic, this would not help to show how the interlocutors' beliefs commit them to the laws' provisions.

32 Cf. above, pp. 77, 128.

33 See also Chapter Three, n. 117, p. 103.

tion, but this will require an extensive discussion, since a discussion in accordance with nature (ἡ κατὰ φύσιν αὐτοῦ διόρθωσις, 642a3) requires discussing musical correctness, which in turn cannot be discussed without dealing with the whole of *paideia* (642a3–6). The Athenian stresses once more that this requires a very long discussion (ταῦτα δὲ παμπόλλων ἐστὶν λόγων, 642a6–7). Alternatively, they can leave that topic aside, and proceed to another legal topic. Faced with this choice, both Megillus and Cleinias are eager to hear what the Athenian has to say on the topic that they have been discussing, and encourage him to say all that he wishes (Megillus: θαρρῶν δὲ ἐμοῦ γε ἕνεκα λέγοις ἂν τοσαῦτα ὁπόσα σοι φίλων, 642d1–2; Cleinias: καὶ μήν, ὦ ξένε, καὶ τὸν παρ' ἐμοῦ λόγον ἀκούσας τε καὶ ἀποδεξάμενος, θαρρῶν ὁπόσα βούλει λέγε 642d3–4). The παρρησία granted the Athenian is insisted upon later on in the discussion, when the Athenian is critical of Spartan laws (again), in 806a7–d1. It is therefore the wish of his interlocutors, who want to hear what the Athenian has to say about lawgiving, expressed at the beginning of their conversation, that is the dramatic justification for the prominent role of the Athenian in the rest of the dialogue. Their minor role should thus not be taken as evidence for their inability to participate in a philosophical discussion – quite apart from the fact that, as we have seen in Chapter Four, that was never the goal of their legislation. The most philosophical part of *Laws*' discussion *is precisely Books I–II*; and it is *there* that the interlocutors do have a prominent role. The rest of the discussion served, as we have seen, 'merely' to test the validity of their philosophical principles.

Both interlocutors motivate their willingness to give the Athenian παρρησία by referring to their benevolence towards the Athenian as a result of their family connections with Athenians,[34] 642c5–d1:

> (…) καί μοι νῦν ἥ τε φωνὴ προσφιλὴς ὑμῶν, τό τε ὑπὸ πολλῶν λεγόμενον, ὡς ὅσοι Ἀθηναίων εἰσὶν ἀγαθοὶ διαφερόντως εἰσὶν τοιοῦτοι, δοκεῖ ἀληθέστατα λέγεσθαι· μόνοι γὰρ ἄνευ ἀνάγκης αὐτοφυῶς, θείᾳ μοίρᾳ ἀληθῶς καὶ οὔτι πλαστῶς εἰσιν ἀγαθοί.
>
> '(…); I love the Athenian accent, and the generally held view that 'good Athenians, when you find them, are good in a rather special way' is in my view absolutely true. It's because they are the only people who by some divine dispensation are good naturally, and not by compulsion; truly, not artificially.' (Transl. Schofield & Griffith)

Plato uses a fictive association of Athenians with a natural goodness (possibly as opposed to acquired goodness) as the motivation in the framework of the conversation. This natural goodness is expressed in a threefold way: (1) it is not the result of 'necessity' (ἀνάγκη) but springs from nature (φύσις) itself; (2) it comes about 'by

34 It is only a specific argument in Book X that the Athenian thinks is beyond Cleinias and Megillus, as he says in 892d2–893a7. In that case, the Athenian briefly proceeds alone and does the asking and answering himself (in 893b1–894a8), before he addresses (ὦ φίλοι) his two interlocutors again (894a8–b1). His motivation for proceeding on his own is twofold: first, he claims to have more experience than Cleinias and Megillus with currents (πολλῶν ἔμπειρος ῥευμάτων, 892d7–8). He recognizes a risky λόγος and is competent to assess the risk: confronting people with a λόγος that is beyond them may cost them their life. The second motivation is his age: being the youngest of the three, he will go ahead to see whether it is safe for the other two to cross.

divine dispensation' (θεία μοίρα), and (3) it is goodness 'in a true way' (ἀληθῶς), 'not fabricated' (οὔτι πλαστῶς). A number of considerations are relevant here. That the Athenian is called ἀγαθὸς αὐτοφυῶς may suggest that he does not need laws himself. He may be the person who, in terms of the puppet analogy, is the one who possesses insight into the in the λόγος ἀληθής about the pullings of the cords.[35] Furthermore, it is worth noting that θεία μοῖρα is something that is markedly different from expert knowledge (τέχνη or ἐπιστήμη).[36] Something ascribed to θεία μοῖρα is beyond the realm of humans' insight into what is due to divine dispensation. It may be recalled that Socrates in *Apology* attributes his awareness of the existence of truth to θεία μοῖρα, where the same phrase is part of an enumeration that suggests that his awareness stems from sources over which he has no control.[37]

On the level of the dialogue, the Athenian succeeds in getting his interlocutors on his side. As we have seen in Chapter Three, the Athenian defends a view to which neither Cleinias nor Megillus are likely to agree. Yet, by the end of Book II, they are persuaded that the *symposion* is beneficial and have thereby admitted that the Spartan and Cretan conception of ἀρετή is defective.[38] An important function of the opening discourse (Books I–II) is thus to create a setting in which the Athenian is granted the permission to speak and is able to get his interlocutors to go along with him. It is especially through the fact that the interlocutors give up their initial resistance to his argument (about the benefit of *symposia*) that the Athenian is suggested to have an exceptional ability to persuade.

There is another important characteristic of the Athenian. This is left more implicit and becomes apparent from the interaction in the dialogue. The Athenian in fact has a special talent for reconstructing a lawgiver's intention on the basis of his laws – the interlocutors who have been raised under these laws[39] marvel at the insight of their companion and say that he speaks like a 'diviner' (μάντις).[40] He has

35 See Chapter Three, pp. 91–92. In this respect, it may be significant that he claims to know how *symposia* ought to be conducted in a correct way, even though he has personally only seen *symposia* that are badly regulated, 639d5–e3.

36 Pl. *Men*. 99e6, 100b2–3; *Ion* 536c2, d3 (on which see Kube 1969, 127), 542a4; cf. [Pl.] *Epist*. II, 313b5.

37 Chapter Two, pp. 57–58.

38 See Chapter Three, p. 112.

39 "Das Aufwachsen in einer solchen Ordnung macht sie zu kompetenten Gesprächspartnern, die über ihre eigene Staatsordnung am besten Auskunft geben können (vgl. den Hinweis auf die Gewöhnung als Voraussetzung zum Verständnis einer Gesetzgebung 632d6)", Schöpsdau 1994, 155, *ad* 625a5.

40 *Leg*. 634e7–635a2 (Cleinias): Ὀρθότατα γε, ὦ ξένε, λέγεις, καὶ καθάπερ μάντις, ἀπὼν τῆς τότε διανοίας τοῦ τιθέντος αὐτά, νῦν ἐπιεικῶς μοι δοκεῖς ἐστοχάσθαι καὶ σφόδρα ἀληθῆ λέγειν. Cf. Chapter Three, p. 79, n. 15. Socrates is also associated with μαντεύεσθαι, and this is therefore not an absolute point of distinction between the Athenian stranger and Socrates: *Crat.* 411b4; *Phdr*. 278e10–279a1; *Charm*. 169b4–5; *Lys*. 216d5. We find it especially often in *Resp*.: 349a4 (Thrasymachus about Socrates); 394d5, 431e7, 505e2, 506a6, 506a8 (Adeimantus about Socrates), 523a8, 531d4, 538a9, 538b7. Cf. furthermore *Hipp. maior* 292a3; *Plt.* 289c5 (the stranger of himself). But Socrates himself claims to be μαντεύεσθαι, apparently in cases where he cannot fully account for the truth of his claim, but nevertheless insists that it is true. In *Laws*, Cleinias' amazement at the Athenian's μάντις-like interpretative abilities has a function on the

profound insight into political affairs: even though he has never seen a *symposion* that was run correctly, he claims to know that it has a tremendous benefit for attaining virtue (639d5–e3). The Athenian also has the ability to derive insight from historical analysis.[41] He uses the term μαντεύεσθαι to refer to his own statements, and both he and his interlocutors label his explanations 'oracles'.[42]

His characterization as a μάντις should not lead us to think that the Athenian's qualification is similar to that of the philosopher-king in *Republic*. The expert knowledge of the μάντις is a τέχνη of a radically different kind than the divine wisdom of the philosopher-king. Prophecy is a τέχνη, but it is not a τέχνη that can 'give an account' (διδόναι λόγον) of its own procedures, or of how the τέχνη may be acquired; nor does it have at its object a μάθημα that can be studied and discussed by the people who have acquired it.[43] It is perhaps not entirely coincidental that the Athenian is characterized as a μάντις considering that μάντεις were involved in the founding of colonies.[44] The labelling of the Athenian as a μάντις by his interlocutors carries the conventional association of the μάντις as a practical consultant and a "von außerhalb herbeigerufen[er]" specialist,[45] yet at the same time activates the association with μανία and divine inspiration.[46] The reference to the μάντις may therefore suggest some kind of unaccountable, divine authority; yet this is more akin to the kind of authority of Socrates' elusive *daimonion* than to the expert authority of the philosopher-kings.

These three aspects of the Athenians' indirect characterization – being granted free speech by his interlocutors, the fact that he is able to win his interlocutors over, the terms in which the interlocutors characterize the Athenian (such as μάντις-like) – are all part of the dialogue. In this way *Laws* 'solves' the problem of the

dramatic level of the dialogue rather than asserting the truth status of a statement: it is part of the reason why Cleinias and Megillus agree with the Athenian and are willing to go along with him (despite the discrepancy between the Athenian's proposals and their own cultural tradition).

41 In *Leg*. 694c5 ff., the Athenian divines why the Persian empire was ruined under Cyrus while it was saved under Darius; cf. οἷον μαντείᾳ (…) χρώμεθα, 694c2; in 885c3 he divines what the atheists will say to them when they call their views misapprehensions.

42 *Leg*. 712a4: ταῦτὰ μὲν οὖν καθαπερεὶ μῦθός τις λεχθεὶς κεχρησμῳδήσθω (the Athenian about his own preceding words).

43 Nightingale 1993, arguing that the Athenian from the very beginning construes an ideal lawgiver (above, p. 140), claims that the Athenian must speak for this ideal lawgiver "but he tries to avoid identifying himself with this figure". "By deflecting the authorship of the laws away from the Athenian, Plato makes his lawcode appear objective, impersonal, and timeless. It is perhaps for the same reason that he decided to leave the Athenian nameless: if a particular individual had unveiled this code, it would have been less impersonal" (284, with n. 24). The laws are thus "divinely authorized" (285).

44 Cic. *De div*. 1.95; 5.10. See also Malkin 1987, 8–9, and Chapter 2; Ziehen in *RE s. v.* Mantis.

45 Cf. Isocr. 19, 6. The *Neue Pauly s. v.* Mantis lists Teisamenos and Aristandros as historical examples of "importierten rel. Experten". On the μάντις, see Bouché-Leclerq 1879–1880, Halliday 1913, Parker 2005. In the context of my argument, it should be emphasized that in everyday (Athenian) life, a μάντις is a religious professional rather than an inspired, prophetic figure. The μάντις could be consulted for advice on very practical questions, see Van Straten 1995, 121–122. For the areas of consultation, see Parker 2005, 118, n. 11; Flower 2008, 100–103. Cf. Chapter One, n. 45, pp. 46–47.

46 Μαντική accrues to one 'by divine dispensation' θείᾳ μοῖρᾳ, *Phdr.* 244c3, *Ion* 536c2.

authority of good laws by having one of the interlocutors formulate them – in that way keeping the lawgiver out of view. The role of the Athenian as lawgiver in the dialogue thus conforms to a pattern we have seen more often in the course of the argument of this book. The lawgiver himself and his qualification are never a topic of discussion. The lawgiver always remains in the limelight: the vague and indirect reference in the context of the myth of virtue to the person who legislates (Chapter Three), the unproblematic references to 'a sensible lawgiver' whose reasoning is taken to be obvious (Chapter Four), and the outright silence about the original lawgiver in the context of the painter analogy (Chapter Five): all of these push the lawgiver and the question of his qualification beyond our sight.

6.3 CONCLUSION

This chapter has examined two agencies outside the διέξοδος τῶν νόμων proper: the nocturnal council, part of the act of νομοθεσία, and the anonymous Athenian, the main speaker in *Laws*, who formulates the laws to test the outcome of the discussion in Books I–III. It has been argued that neither of these two authorities introduces an objectifying perspective that is similar to that of the philosopher-king.

The nocturnal council is introduced under the heading of σωτηρία for the *polis* and laws of the interlocutors. In the context of the discussion of the nocturnal council, the complex theme of the unity and plurality of the four virtues is resumed. Νοῦς mixed with the αἰσθήσεις is vital for being able to aim at σωτηρία. The council's constitution, a combination of the most virtuous elderly citizens (νοῦς) and younger citizens (αἰσθήσεις), contains both elements. In virtue of this, the council is able to aim at, or 'look at', virtue as a whole, πᾶσα ἀρετή. The claim that the nocturnal council is qualified to guarantee the preservation of the *polis* and laws of the interlocutors thus gains its credibility from the fact that it looks at, and possesses, the very complete virtue that was the topic of discussion in Books I–II. The echoing of the terminology of complete virtue and the four virtues in Book XII, after their absence in the other Books, thus serves to confirm the claim that the laws aim at virtue as a whole, as was explicitly proclaimed both in Book V and in the speech of the interlocutors to the lawguards in Book VI.[47]

This leaves us with the Athenian, who formulates the laws in *Laws*. The qualification of the Athenian remains vague – and *Laws* does not reveal much about what qualifies a good lawgiver. We hear what the interlocutors think about him – apparently, they deem him qualified to discuss the subject and lay down laws. This qualification receives expression in their assessment of the Athenian's insights as those of a μάντις. But the association of the Athenian with a μάντις is the interlocutors' impression. The authority of the Athenian is established in the context of the conversation reported in *Laws* because he is persuasive. Authority in *Laws* is therefore of an entirely different kind than the authority of the moral expert hypothesized in a number of other Platonic texts. This is in line with *Laws*' relatively pragmatic

47 See above, Chapter Four, section 4.1.2.

perspective on lawgiving: the lawgiver is the one who, in a particular situation and setting, is able to formulate laws that others find appealing. It is the fact that the Athenian is able to get his initially sceptical interlocutors to go along with him that establishes his authority on the dramatic level. Suggestive about his persuasiveness is that precisely Megillus, who was so hostile to the Athenian's argument at the beginning, at the end urges Cleinias to have the Athenian participate in the real foundation of the Cretan colony. And it seems that the fact that Plato has left it open whether the Athenian will consent – *Laws* ends with Megillus' assent to participate in the legislation for Magnesia – confirms his exceptional status.

CHAPTER SEVEN

CONCLUSION: PLATO'S PRAGMATIC PROJECT

This study focused on the complexities of the composition of Plato's *Laws*. Its composition is remarkable because it embeds the activity of framing laws within a dialectical conversation. This raises the question of the status of the legislative project: one expects laws in a Platonic text to be based on the notion of absolute justice, which receives its most elaborate treatment in Plato's *Republic*. In view of the paramount importance of δικαιοσύνη throughout a large part of the Platonic corpus, most of all *Republic*, the question arises whether the laws in *Laws* are based on δικαιοσύνη and whether they reflect the idea that there exists an absolute moral standard. Yet δικαιοσύνη is strikingly non-prominent in a Platonic text on laws. Moreover, the fact that the legislative material is marked as provisional both by its conversational context and in other ways suggests that this is not a definitive law code, and even seems to entail that no definitive law code is possible.

The debate about Plato's *Laws* usually disregards its composition and the way in which the legislation takes shape in the dialogue. This book has offered a reading of Plato's *Laws* that treats its form as an integral part of its philosophy, and asked what the way in which Plato's legislative project is given shape in the text suggests about the status of that project. It has argued that the legislative project is strikingly pragmatic for a work of Platonic philosophy and should therefore be understood in its own terms. Rather than laying down a definitive law code for a new colony (Magnesia) that is based on, or at least in some way presupposes, a metaphysical norm, Plato's last work creates its own moral framework, in which lawgiving provides a convenient practical test for a notion of virtue understood as social conditioning.

What creates the bewildering effect of *Laws* is that the text presents a body of moral thought at odds with core tenets of Platonic philosophy, yet does so using part of the familiar philosophical idiom – the same idiom which Plato in other texts used to construct his particular ('Platonic') understanding of philosophy (that is, distinct from the conceptions of philosophy advocated by the sophists and by his main contemporary rival, Isocrates). *Laws*' terminology, conceptual apparatus, dialectical method, its mode of procedure: all of these are reminiscent of and recall especially the earlier Platonic dialogues, thus creating the expectation that the project of *Laws* is conducted under the same philosophical banner as the quests for truth via dialectics portrayed by Plato elsewhere in his oeuvre. On closer inspection, however, it turns out that the moral perspective of *Laws* departs from a standard assumption of Plato's thought – the idea that morality has its basis in metaphysical truth; *Laws* should therefore not be understood as part of the old philosophical endeavour of

pursuing ἐπιστήμη τοῦ ἀγαθοῦ.[1] It seems that Plato re-appropriates his own philosophical vocabulary and the mannerisms of his Socrates, while they *de facto* are applied in the service of a project that is at odds with the philosophical principles for which this vocabulary and method were originally coined.

All of this has consequences for the status of dialectic in *Laws*.[2] The interlocutors do not proceed on the basis of the assumption that there exists a fixed, higher truth (as the Socrates in *Apology*, *Crito* and *Republic* does, Chapter Two). The 'dialectic' in *Laws* is not a search in order to map out the truth, though formally exhibiting similarities with it. The method which aimed to map out the truth is thus likewise bereft of its familiar metaphysical underpinnings. To the extent that there is a truth at play in *Laws*, it is a truth of sorts.

This new moral perspective – at least, new in a Platonic text – is couched in familiar Socratic-Platonic terminology, genre, and argumentative structures. The legislation is embedded in the framework of a dialectical conversation. This embedding framework are Books I–II and the end of Book XII: they manifest strong thematic and formal parallels, creating the effect of a ring composition. These parts of Plato's last work are highly reminiscent of the Socratic or early Platonic dialogues and seem deliberately designed to recall this type of conversation. The theme and argument of *Laws* Books I–II – the formally dialectical structure of the conversation, the four ἀρεταί, the theme of the unity and plurality of the ἀρεταί, the Athenian's use of τέχνη language in talking about *paideia* and about the good ἄρχων, his use of examples of τεχνικοί in his argument, his implicit assumption of an analogy between body and soul, his insistence on the need for an ἔλεγχος – all of these recall the *modus operandi* of the Socrates of the so-called early and middle dialogues. Yet the first impressions are deceiving. For although the familiarity of the topic (ἀνδρεία and soon thereafter the other three virtues follow) may among readers versed in the Platonic texts foster the expectation that the discussion will proceed along the familiar Platonic track, it soon becomes apparent that virtue differs radically from Socratic ἀρετή as modelled on expert knowledge, and is incompatible with the concept of δικαιοσύνη set out in *Republic*.

This new moral perspective – again, in a *Platonic* text – has here been called 'pragmatic': in *Laws* Plato creates a context for a legislative project that does not appeal to a metaphysical norm, and the standard, or rather standards, that take its place are more diffuse and dynamic. Plato does not have his interlocutors design a *polis* on the basis of a single *a priori* norm (δικαιοσύνη in *Republic*) and as a result its moral framework is much less unified than that of *Republic*. The legislation that Plato presents in *Laws* is not a law code *for Magnesia*. The legislative project serves to put to the test of legislation the normative principles that were established in the previous discourse (occupying *Laws* Books I–III). The question is to *test whether* these are *practically viable in the first place*: that is, whether they lead to satisfactory laws. The goal of the discussion is thus distinctly practical and leaves the metaphysical out of consideration (of course, if it is accepted, as has been ar-

1 Whereby the Good is assumed to be a metaphysical given.
2 See Chapter One, pp. 14–16.

gued, that complete virtue in Books I–II does not involve a metaphysical norm). The interlocutors keep their gaze fixed on the principles of their earlier discussion – which they always hint at in a strikingly vague way.[3]

Laws as a whole also manifests a more optimistic attitude towards the human potential to be virtuous than *Republic*, insofar as it assumes that all human beings have an inborn sense of virtue that can be further developed. This is a corollary of the fact that the concept of virtue itself has undergone a profound change: virtue is described in terms of moderation, self-restraint and deference motivated by various considerations, including the fear to incur shame, embarrassment or disgrace, and is not defined as expert knowledge limited to a very small group of exceptionally qualified people. The claim is that the different aspects of virtue, from the inborn sensitivity to musical rhythm and harmony in children to the law-conformity of senior citizens (they have to become 'of the same character' as the laws, συνήθεις), are essentially manifestations of the same capacity – virtue. The four virtues are associated with four age groups and for each of these virtue manifests itself differently. This suggests that the underlying nature of the virtue is conceived of in a relatively formal way.[4]

The scenario of the *symposion* as a form of χορεία suggests that ἀρετή consists in a process of socialization and in coming voluntarily to accept the norms of society. The goal is at all times to eliminate or at least to minimize social tensions and resentment by redressing any harm done and neutralizing bitterness to prevent future clashes. This explains why considerations about human psychology and character types are so prominent in the discussion (for example, susceptibility to anger): the question is always whether it can be reasonably expected that a particular person with a particular character in a particular situation will obey this (or a similar) prescription.

Yet what has been subsumed under the umbrella of 'pragmatic' considerations is only part of the picture (although it is the largest part of *Laws*' focus). The normative worldview of *Laws* is *relatively* pragmatic. Now that we have reviewed what *can* be seen in *Laws*, we need to pause on what *cannot* be seen. For what takes the place of the idea of δικαιοσύνη and a uniform, transcendent Idea of the Good? Some kind of norm is implied, but since the lawgiver himself remains out of focus we hear very little about his qualification and, therefore, about the norm underlying the laws. (It may be recalled that in *Republic*, it is only in the context of the education of the philosopher-kings in the digression of Books V–VII that the Idea of the Good is discussed.) The interlocutors discuss several scenarios of virtue – from correct perception in children to self-discipline in the discussion of the *symposion*. But although the claim is maintained that the four widely different virtues are one, we never hear what this one is. It is as if in *Republic* δικαιοσύνη were described, but without the digression in which the Idea of the Good makes its appearance.

From the absence of a single, absolute norm of the Good follows the particular interpretation of lawgiving as a discipline without end (Chapter Five). We have seen

3 Book III, 702d1–2; Book IV, 705d3–706a4; Book VI, 770c5–7; Book VII, 811c7–10.

4 Cf. Müller 1968, 26: "Das gesuchte ἕν in den heterogenen Vier, das ja nie gefunden zu werden scheint, könnte nur ein τὶ ἐν τῇ ψυχῇ oder ἕξις ψυχῆς sein, also etwas bloßes Formales".

that the two-phased conception of lawgiving introduced by means of the painter analogy in Book VI is prompted by the awareness that good laws need to be made in consultation with reality. The Athenian stipulates a period (not always specified, but at one point set to ten years) in which laws can be tested, amendments can be made, and lacunae can be filled in. *Laws* explicitly acknowledges the difficulties that confront the second generation of lawgivers: the Athenian repeatedly dwells on the impossibility of foreseeing all that *may* happen in all its details and of acquiring certainty beforehand about how particular regulations will work out in practice. This is why the relevant magistrates' experience with similar cases is the main source of knowledge for the later phases of lawgiving (combined with insight from the observers who visit other *poleis*). By contrast, we hear almost nothing about the lawgiver (or painter) who made the original sketch. The person who knows about the λόγος ἀληθής in the myth of virtue, the original painter: all of these remain dim figures on the margins of the conversation. Little is revealed about the kind of knowledge or insight that allows them to lay down laws.

The shadiness of the figure of the lawgiver is mirrored on the dramatic level. Ultimately, it is the Athenian stranger who puts forward the laws, but it is not clear what kind of insight or knowledge he bases them on. Precisely because one of the interlocutors is given the opportunity to frame laws (in the dialectical discussion with his fellows), *Laws* as itself *an exercise in lawgiving* does not need to reflect on *who makes* the laws. At the same time, the presentation of the laws as the result of the dialectical conversation supplies the answer to the question of where the laws in *Laws* come from. The dialectical presentation in *Laws* thus dramatically 'solves' the philosophical problem of the first lawgiver that we glimpse in the text.

The issue of the qualification of the main lawgiver in *Laws*, the Athenian, is further obscured by a partial dis-analogy. In Chapter Five, we saw that *Laws* suggests a parallel between the painter analogy and the lawgiving of the interlocutors (and their envisaged successors). Yet whereas the analogy mentions one original lawgiver who makes his sketch on a blank slate, the framing conversation depicts an act of lawgiving (or rather, an exercise in lawgiving) of three legislating interlocutors whose laws are to some extent informed by the circumstances of the planned new Cretan colony whose foundation lies ahead. In the dialogue, the legislation is the product of the dialectical exchange between the interlocutors. The various textual mechanisms analysed in Chapter Four support this impression. Apart from the clear ring composition of the text, this effect is created by the way in which the legislative discourse takes shape, indissolubly connected with the conversation of the interlocutors. The legislative discourse itself is highly discursive, and in many cases, it is far from clear where laws and preambles begin and where they end. Even though the laws and preambles are formulated as if they were directly addressed to their appropriate addressee, these discourses often seamlessly flow over into wider considerations (Chapter Four). The fact that the interlocutors explicitly renounce the status of lawgivers and are presented as conceiving of their legislative project as 'not yet' a real law code clearly characterizes it as an exercise (Chapter Four, Chapter Five). *Laws* does not present a law code that can easily be extracted from the text.

The Athenian receives *carte blanche* from his interlocutors to speak candidly (Chapter Six). Part of the purpose of the discussion in Books I–II is to motivate the interlocutors' willingness to hear the Athenian out, despite his criticism of their own laws. They grant him παρρησία on the basis of their benevolence towards Athens and Athenians as a result of family connections. Book II ends with Cleinias' and Megillus' agreement to the previously fiercely resisted claim (especially on the part of Megillus) that the *symposion* benefits *paideia*. The interlocutors are impressed with his insight into the intentions of ancient lawgivers, and call him a 'seer' (μάντις). Although his position as main speaker in the dialogue is thus motivated in dialectical terms, this does not answer the question of wherefrom he gets his insight. What kind of knowledge enables the Athenian to criticize the Spartan and Cretan law codes, to formulate the elaborate preambles, and to make the assessments about human nature and human character types? As we have seen in Chapter Two, Socrates attributes his 'knowledge' to 'the god' and to his *daimonion*. With the exception of suggesting that the Athenian possesses a μάντις-like quality, we do not hear much about the *kind* of insight the Athenian possesses. But in any case, the specialism of the μάντις is not knowledge of the kind that the moral expert / the philosopher-king has, who can offer a rational account of his discipline and his knowledge. The insight of the Athenian, characterized as a kind of intuition, finds its closest parallel in Socrates' *daimonion* of anything in the Platonic corpus.[5]

Interpretations are the products of the choices we make. This book has taken the approach of a text-oriented kind of charity, giving priority to the internal consistency and cogency of the text. There are, of course, various kinds of interpretive charity. Interpreters who emphasize the continuity of Plato's thought have made another choice; yet such approaches tend to overstress the similarities of *Laws* to other Platonic texts. Moreover, existing approaches (both developmentalists and unitarians, as they are usually referred to) fail to observe the real reason why the interlocutors embark on making laws in the first place, and omit to pay due attention to the particular way in which the preambles and laws are embedded in the conversation. Too often, passages that are widely separated are connected without paying due attention to the context and the phase of the text of which they are part. My focus on the composition of *Laws* goes hand in hand with a relatively text-internal approach. An attempt has been made to explain the peculiarities of the composition of Plato's last work in a way that makes it compatible with the kind of philosophical project that is performed in the text. The peculiarities of Plato's *Laws* are of such a nature that the text demands to be understood in its own terms rather than through elucidation with the help of other Platonic texts. The profound chasm that separates the thought of *Republic* from that of *Laws*, as already suggested by the striking non-prominence of justice in a Platonic text on laws, vindicated this approach over one that emphasizes apparent continuities. An interpretation in which consistency between texts comes

5 The *daimonion*, of course, only dissuades. But it should be stressed that Plato characterizes the Athenian's insight as of an intuitive nature.

at the price of sacrificing the subtleties of the argument or ignoring major aspects of one of the texts runs the risk of overstating similarities.

The interpretative strategy adopted here is not undermined by the fact that it leaves us with a major question: why has Plato in *Laws*, his last work, embarked on a project so fundamentally at odds with the core principles of his own philosophy? The reading advocated here presupposes that this shift is a much more fundamental one than the shift detected by developmentalist theory, or by more unitarian explanations according to which Plato in *Laws* set out to both clarify and modify what he had previously sketched in *Republic*. I do not mean to suggest that *Laws* proves that Plato gave up his conviction that there exists a metaphysical truth. What has been argued is that the legislative project of *Laws* in no way betrays an assumption that good laws need to be formulated on that basis and that other considerations take its place. This suggests that we ought to see *Laws* as firmly rooted in its contemporary intellectual context. *Laws* was written in the mid-fourth century B. C.; Plato died in 347 B. C. and, according to ancient reports, left the work without having made the final edit (διόρθωσις). As has been suggested at various points in the argument, a number of ideas that are characteristic of *Laws* but militate against core principles of Plato's own philosophy in other works in fact strongly resemble aspects of the philosophical discourse of Aristotle in particular (and, somewhat further removed in time, also that of Protagoras, to whom Aristotle in many ways is heavily indebted). Both Aristotle's naturalistic ethics, his idea of man as a political animal and of virtue understood as a disposition that constitutes a mean between extremes,[6] and his idea that lawgiving is necessarily incomplete and in need of later correction are closer to *Laws*' construction of ἀρετή and to lawgiving as a protracted, dynamic process, than to much that we find elsewhere in Plato's oeuvre. Thus, rather than forcibly trying to reconcile *Laws* with other Platonic material, we should rather view *Laws* as a document of its time, firmly embedded in the 4th century intellectual climate. With its forward-looking admonitions to a future lawgiver and to future magistrates, and its breaking off at the moment that the interlocutors are ready for lawgiving ἔργῳ, it is not inconceivable that *Laws* was meant to offer suggestions for contemporary lawgivers.[7] Despite some Socratic-Platonic appearances, *Laws*' notions of morality and lawgiving are more of a kind with those of Aristotle, a rival intellectual also active around the middle of the 4th century, than with Plato's own Platonism.

6 I am not the first to note that *Laws* exhibits some very striking similarities with Aristotle's views. See e. g. Bobonich 2002, Chapter 5.

7 For the involvement of members of the Academy in lawgiving, see Trampedach 1994.

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