

## CHAPTER I

# *The Laws' two projects*

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### I. ARISTOTLE'S PUZZLE

Plato's *Laws* has probably been the most unpopular of all his dialogues. 'Not only', says the Loeb editor in his introduction, 'does it lack the charm and vigour of the earlier dialogues, but it is marked also by much uncouthness of style, and by a tendency to pedantry, tautology and discursive garrulity which seems to point to the failing powers of the author.'<sup>1</sup> It represents itself as the record of a rambling conversation, 'framed apparently on no artistic plan', between three elderly men, who get immersed in masses of detail often of little general philosophical interest. Damning remarks of this and other kinds can be found without difficulty in modern literature about Plato.<sup>2</sup>

On a first inspection Aristotle might appear to stand at the head of the queue of those thinkers who on reading the *Laws* have found little there to reward them. The last chapter of his *Nicomachean Ethics* is devoted to an explanation of why law is an essential instrument for shaping the characters and behaviour of citizens, and of what sort of knowledge and experience someone needs to become a good legislator. His concluding paragraph begins with the notorious comment (*EN* 10.9, 1181b12–14): 'Our predecessors have left the topic of legislation unresearched, so it would probably be better to study it instead ourselves.'<sup>3</sup> Aristotle's remark here

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<sup>1</sup> Bury (1926: I.vii).

<sup>2</sup> One further example may suffice. In his valedictory lecture as Laurence Professor at Cambridge, Myles Burnyeat concludes the paragraph he devotes to the *Laws* – commenting particularly on its pervasively repressive theocracy – with the observation (Burnyeat 1997: 9): 'It can hardly be an accident that the first word of this long and appalling work is *theos*, "God".'

<sup>3</sup> Perhaps he means: 'better than going through their writings seeing if we can find useful observations on the subject'. If so, this contrasts strikingly with the procedure he says he will adopt with

makes it sound as though he has temporarily forgotten even the existence of the *Laws*. For besides its mass of legislative detail, the *Laws* contains powerful general reflection on law: for example, the need for law to be the locus of supreme authority in the political community (4.712a–715d), the importance of prefacing the prescriptions which constitute law proper with explanatory preludes designed to persuade (4.719e–723d), the extent to which law once established should subsequently be modified or regarded as modifiable (5.745e–746d, 6.772a–d), the relation between written and ‘unwritten’ law (7.793a–d), and how the categories of the voluntary and the involuntary apply to acts of wrongdoing in which the law will need to take an interest (9.860a–864a). All that is left out of account by Aristotle’s sweeping assertion.

In the *Politics* there is one chapter of Book 2 specifically devoted to the *Laws*, as well as one or two other explicit references to the dialogue elsewhere in the treatise. This time one wonders not whether Aristotle has forgotten the existence of the dialogue, but whether he has been reading the same dialogue as we have. ‘All the discourses of Socrates’, he says, ‘have in them something extraordinary and clever and original and inquiring – but it’s perhaps difficult to get everything right’ (*Pol.* 2.6, 1265a10). On the surface this sounds complimentary, and indeed a shrewdly appreciative assessment of works of Plato in which Socrates leads the conversation, whether one thinks of the early ‘Socratic’ dialogues or of the *Republic* itself. But the adjectives are not the ones that first spring to the lips of most readers of the *Laws*. Its main speaker is anyway not Socrates, but an ‘Athenian Stranger’ who doesn’t even sound very like Socrates.

Should we infer that while Aristotle has decided to try to say something positive about the *Laws* at this point, he is so little focused on its overall intellectual project (as opposed to various particular topics in it that he has noted for criticism) that he has lost any sense of listening to the Stranger talking, or indeed of the dialogue as a dialogue at all? The only obvious alternative is to guess with Trevor Saunders that Aristotle here engages in ‘ironic jesting’.<sup>4</sup> In which case he would presumably want us to read his string of epithets as meaning something like their exact opposite in their application to the *Laws*.

Aristotle’s main interest in the *Laws* in the chapter he writes about it is not in its philosophy of law or the legal code it draws up, but in what it has

regard to the related and more fundamental study of *politeia*, ‘constitution’ or ‘social and political system’, where going through predecessors’ writings with this intent is precisely what he prescribes for himself (1181b15–17), and does indeed do in Book 2 of the *Politics*.

<sup>4</sup> Saunders (1995a: 128).

to say on the subject of the *politeia*, the social and political system or constitution it envisages – understandably enough, given that this is the general subject of Book 2 of the *Politics*, and the main topic of the treatise as a whole. Here he comments that the dialogue actually contains relatively little on the *politeia*, but consists mostly of laws.<sup>5</sup> And that little, he says, is not really very different at the end of the day from the ideal articulated in the *Republic*, even though the original intention of the *Laws* was to institute a form of political system ‘more common’ to cities: presumably ‘more capable of being generally adopted’ by political communities generally, not just ones deliberately constructed as ideal, like the *Republic*’s Kallipolis, whose principal social and political arrangements he has just subjected to an extended and unremittingly harsh critique (*Pol.* 2.2–5). Thus he comments (*Pol.* 2.6, 1265a4–8): ‘Except for holding women and property communally, he makes everything the same in both systems: the same education, life to be free from menial tasks, the same provisions for common meals.’ After these general remarks, Aristotle turns for the rest of the chapter to detailed criticism of political proposals unique to the *Laws*. As Richard Stalley puts it in his notes to Ernest Barker’s English translation of the dialogue: ‘His main concern is to point to what he sees as faulty in Plato’s treatment rather than to engage in constructive discussion.’<sup>6</sup>

The paradox is that when we look elsewhere in the *Politics*, we find Aristotle making extensive, albeit mostly unacknowledged use of the *Laws*. In fact Books 7 and 8 of the *Politics* read at times like nothing so much as Aristotle’s own abbreviated version of the *Laws*’ prescription for an ideal political community. Barker gives a useful list of parallels between the *Politics* and the *Laws*, noting that those with Books 7 and 8 are ‘too numerous to be mentioned’ (he selects just a few examples). One example he doesn’t mention is the focus on music in Book 8: without the *Laws*’ treatment of musical performance as the key shaping influence on character (especially as developed in *Laws* Book 2, to which particularly Chapter 5 of *Politics* Book 8 is heavily indebted), Aristotle’s decision to devote virtually an entire book of the *Politics* to music would be unintelligible. Certainly in Books 7 and 8 there is force in Barker’s verdict: ‘If Aristotle wrote the *Politics*, and arranged the content under the categories and in the scheme of his own philosophy, Plato supplied a great part of

<sup>5</sup> Aristotle is either exaggerating or adopting a much narrower definition of *politeia* (constitution strictly conceived as design of organs of government) than the more generous conception of social and political organisation he often operates with, not least in Book 2 of the *Politics* itself.

<sup>6</sup> Barker (1995: 340).

the content.<sup>7</sup> Whether this is because these books constitute a stratum of the *Politics* earlier than Book 2, or because Aristotle does criticism and construction in entirely different modes, almost as if they had nothing to do with each other, is a question to which one might return on another occasion. For the moment it will be instructive to focus on a point I have reproduced above from the critical treatment of the dialogue in Book 2.

So far as I can see, scholars have not had much to say about Aristotle's suggestion at *Pol.* 2.6, 1265a3–4 that Plato's original intention in the *Laws* was to propose a 'more common' form of political system, from which he subsequently deviated. The same kind of issue recurs later in the chapter, where he writes as follows (1265b26–33):

The tendency of the whole system is to be neither democracy nor oligarchy, but midway between them. People call it 'polity', because it consists of those who qualify as heavy-armed infantry [i.e., in the community's citizen army]. Now if he is framing this constitution for cities as the one which of all constitutions is most common [i.e., most capable of being generally adopted], perhaps the proposal he has made is a good one; but not if he meant it as the best after the primary constitution [i.e., the ideal of the *Republic*] – for one might rather commend the Laconians' [i.e., the Spartan constitution], or some other with a more aristocratic leaning [e.g., perhaps Aristotle's own in Book 7].

Here the idea that the political system to be worked out in the *Laws* is intended as 'most common' is put more hypothetically, and on a par with an alternative: that it is meant to be second-best after the city of the *Republic*. This isn't really inconsistent with the earlier statement (1265a3–4) that the political system advocated in the *Laws* is 'gradually brought back round to the other constitution' (i.e., from the 'more common' form of *politeia* to the system of the *Republic* Aristotle has just been discussing). Aristotle is now simply wanting to be more cautious and accurate in his formulations. And when we reflect further, we can see that in finding two rather different political projects in the dialogue, he has noticed something very interesting about the progress of the argument of the *Laws*, and indeed has exposed rather acutely something initially puzzling about Plato's whole enterprise in the dialogue.

## 2. THE LAWS' TWO PROJECTS

There is no difficulty in identifying the parts of Plato's text where it looks as though he is attempting to construct a 'second-best' to the ideal city of the *Republic*, approximating to more and more of the institutions of

<sup>7</sup> Barker (1918: 382).

Kallipolis as the discussion goes on. In the great introductory monologue (occupying the whole of Book 5) that prefaces the detailed exposition of his specific legislative proposals, the Athenian Stranger reaches a point (739a–e) where he judges it appropriate to acknowledge that ‘reasoning and experience’ indicate that the organisation of a city (i.e., the sort of city under discussion) will turn out to be ‘second’ against the standard of the best. In consequence the right plan is to describe political systems in order of excellence: first, second, third. A brief sketch of the ‘first’ then follows. It is clearly a version of the communist society of the guards expounded in (mostly) Book 5 of the *Republic*. The Stranger’s verdict is that this is a system suitable for ‘gods or children of gods’. So – given that what is now being looked for is something more practicable – the discussants will certainly need to keep a hold on the ‘first’ as paradigm, but search now for the one that approximates to it as nearly as possible: the ‘second’. Perhaps they will explore the ‘third’ later.

In the pages that follow (5.739e–745e), it becomes clear how the programme just articulated will be implemented. The abolition of private land-ownership and housing proposed for the guards at the end of Book 3 of the *Republic* is revoked. Marriage as conventionally conceived and the nuclear family (similarly abolished in *Republic* Book 5) are restored. Finally, the use of money, forbidden the guards in *Republic* 3 (416e–417a), is permitted for one or two circumscribed, non-mercantile purposes. None the less the ideals of community, equality and friendship are still guiding principles. The *Laws* seeks to regulate the economic system in such a way as to minimise the differentials in wealth usually associated with the family, for instance by providing that all landholdings are equal in size and unalienable, as well as by debarring those who are to count as citizens from commercial activity, with no gold or silver permitted in the city at all. The economic class of the *Republic* is now excluded from citizenship altogether, in fact, and the communistic agenda of the *Republic* rewritten in the account of what the *Laws* calls the ‘first’ *politeia* as a prescription which will apply to ‘the whole city’ so far as possible.<sup>8</sup> None the less the ‘second’ city of the *Laws* is not itself communist. That is the most obvious way in which its political system is ‘second’, not ‘first’ (cf. also 7.807b–c).<sup>9</sup>

Aristotle is right, however, that as the exposition of the institutions of the city further develops, it gradually gets to sound more and more like the *Republic*. As evidence he mentions in the first instance the provisions

<sup>8</sup> On this latter point see Schofield (2006: 223 and n. 87).

<sup>9</sup> See further Schofield (2006: 231–4).

for education, to which all of Book 7 is devoted. These do indeed flesh out in detail and at length the sketch in Books 2 and 3 of the *Republic*, with control of the use of poetry reaffirmed, and the role of suitable musical performance (already given extended treatment in Book 2) assigned particular emphasis, notably choral dancing and the singing of hymns in religious ritual. This is the general context in which leisure and its proper use are discussed (7.806d–807d; cf. 803c–804b) – another topic Aristotle mentions, and one which will become the guiding theme from *Politics* 7.14, 1330a14 to the rest of the treatise. Towards the end of the account of education mathematics, too, is discussed. As in the *Republic*, advanced study is restricted to an elite, although the basics of arithmetic, geometry and astronomy are to be taught to everyone, in the case of astronomy so that blasphemous opinions about the heavens are avoided (7.817e–822c).

The final item on Aristotle's list of parallels with the *Republic*, the institution of common meals, seems as if it is added just for good measure. The Athenian Stranger has already discussed the topic before he launches into education, in Book 6 (779e–783c), although (as Aristotle suggests) after other communistic institutions have been jettisoned in Book 5. One striking similarity with the *Republic* that Aristotle might have stressed is the insistence that the educational programme (like the common meals regime) will apply to females as well as males. In both these contexts the Athenian conducts a vigorous assault on contemporary social and political arrangements that confine women to the home, not least as a waste of half the human resource available to a political community (7.805a–d).

So much, then, on how the project of discussing a second-best *politeia* gradually comes to resemble a detailed specification for the *Republic's* ideal city, once communism is abandoned. But Aristotle implies that the *Laws'* initial project, before discussion of any of the material we have just been considering, had a quite different objective: to institute a political system 'more common' than that of an ideal community – more capable of being generally adopted. Here he employs language he will use in the strategic opening chapter of Book 4 of the *Politics*, in categorising the different intellectual enterprises that belong to the single science of politics. First mentioned is consideration of what would be the best system if there were no external obstacles to the realisation of our hopes (or in Aristotle's words, our 'prayer'). This is the sort of theorising he sees as undertaken in the treatment of the 'second' city in Books 5 to 7 of the *Laws* (where the impracticability of the 'first' city is a matter of what human nature will stand, not external circumstances). He then lists three other kinds of project. These are examination of what system fits particular circumstances (e.g., if the

ratio of poor to wealthy citizens is high); what system is desirable given a certain basic premiss (e.g., that political freedom is to be maximised, or that wealth is what must carry the greatest weight in constitutional provisions); and finally, ‘the system that is most suited to all cities’ – a question most writers on *politeia* ignore, Aristotle says, and in so doing ‘miss out on what is useful’ (*Pol.* 4.1, 1288b21–37).

This last sort of enterprise is the one he has in mind when he characterises the original project of the *Laws* as aiming to institute a ‘more common’ system. He goes on to say this of his fourth and last category of project (*Pol.* 4.1, 1288b37–9): ‘For it is important to consider not only the best, but also the possible, and likewise also the one that is easier and more common for all.’ Once again, ‘more common’ must mean ‘more capable of being adopted’ by cities in general. What could have led Aristotle to read the *Laws* as embarked – initially, before the search for something that approximates the ideal begins in Book 5 – on that kind of more practical inquiry?

I suggest that the beginnings of an answer are to be found in the title Ernest Barker gave to Book 3 of the *Laws*: ‘The Lessons of History’.<sup>10</sup> After the discussion of the fundamental aims of legislation in the opening books, the third book makes a fresh start (3.676a–b):

- ATHENIAN: So much for that, then. But what are we to say of the origin of *politeia*? Wouldn’t *this* be the easiest and finest vantage point for someone to observe it from?
- CLEINIAS: What vantage point?
- ATHENIAN: The one that has always to be adopted if we are to study the advance of cities to virtue or vice during the process of time.
- CLEINIAS: What do you mean by that?
- ATHENIAN: I suppose taking an indefinitely long duration of time and the changes that occur in such a period.

Cleinias still needs more explanation, until he appreciates that a survey of the growth and decline of regimes, and their improvement and deterioration, is what the Athenian has in mind.

In short, Plato proposes a historical survey, designed to discover basic principles of *politeia* construction which have to be observed if a political community is to achieve health and stability. The bulk of Book 3 is accordingly devoted to a highly selective history of Greece, from the flood – what the Greeks conceived of as Deucalion’s flood – and a speculative account of the primitive isolated communities which will have formed subsequently to the inundation, through the period described by Homer, and

<sup>10</sup> Barker (1918: 307).

on to more recent times, with a particular focus on the rise of Sparta. The book closes with parallel accounts of the histories of Persia and Athens. The narrative starts in each case with a period (under Cyrus in the sixth century BC for Persia, and for Athens the time of the Persian invasion at the beginning of the fifth) when each enjoyed a well-balanced constitution, but culminates for both in terminal decline into opposite excesses: in Persia, tyranny; in Athens, the lawlessness of extreme freedom.

It is from Sparta and its success as a state in the classical period (in contrast with its neighbours Argos and Messene) that the Athenian Stranger draws the chief moral for *politeia* design that Book 3 teaches. After a review of the different bases on which those who rule over others claim their authority (3.689e–690e), he propounds the view that a principal cause of internal faction and ultimate self-destruction for a city is the arrogance bred in someone whose rule is absolute. He observes that neglect of due measure in any area of life brings disaster of various sorts. There follows a striking passage (3.691c–d):

What are we getting at? Just this: my dear friends, there does not exist a mortal soul whose nature will ever be able to cope with the greatest ruling position to be attained among humans, when young and unaccountable, without being filled in his thinking with that greatest of diseases, folly, and earning the hatred of his closest friends. And when this happens, it quickly ruins the soul and annihilates its entire power. To take precautions against this by discerning the due measure is the task of great lawgivers.

The Athenian then documents the way this feat was successfully achieved at Sparta, in Persia and at Athens. At Sparta Lycurgus' ingenious prescriptions for the division of powers between a dual kingship, a body of elders, and the annually elected ephors (five officials who exercised a degree of control over the kings as well as executive and judicial functions of their own) made of kingship a mixed constitution exhibiting measure, and thereby ensured both its stability and the stability of the political community in general (3.691d–692b). The contribution of the elders to the mixture is seen as wisdom ('power prudent with age'), whereas the ephors constituted a democratic element in the system ('a power which came very close to being held by lot'). Subsequently these ingredients in a measured constitution will be specifically identified as the attributes of wisdom (*phronêsis*) and freedom (*eleutheria*), associated symbolically with monarchy and democracy respectively. A third attribute alongside these is friendship (*philia*), which seems to be a way of articulating the harmony in society that is generated in a system which properly blends wisdom and freedom in the functions that are exercised by different agencies within it,



although the Athenian couples it particularly with the equality that goes with political freedom in these circumstances (693b–694b; cf. 701d).

It was because Persia in its long-past golden era under Cyrus embodied this trio of attributes in its political system that it ‘made progress’. The account of Athenian history is more nuanced. The Stranger refers only briefly and without naming him to the Athens of its great lawgiver, Solon. His narrative focuses on Athenian resistance to the Persian invasion in 490 and 480 BC, a century after Solon’s reforms. He stresses the role of respect for law and fear of the enemy as the key to their maintaining the solidarity and friendship that enabled them to defeat superior Persian forces (3.698a–699d). The terse formula ‘voluntary slavery to the laws’ (700a) is the way the elements of freedom (‘voluntary’), on the one side, and wisdom (‘laws’), on the other, are apparently being conceived in the case of Athens as integrating to produce social cohesion.

Following this short summary of what were the main lessons Plato wanted his readers to draw from history, we are now in a position to return to Aristotle’s discussion of the *Laws* in *Politics* 2.6, and to suggest why he may have thought the dialogue’s initial constitutional project aimed to specify a political system ‘more common’ to cities. The historical reflections of Book 3 of the *Laws* are indeed devised with a view to prescribing for the sort of system capable of being generally adopted by political communities. What works – Plato is saying – is a constitution which by virtue of its measured balance of wise authority and popular freedom achieves social harmony. The evidence is supplied by Sparta, Persia and Athens, at the times when these three major states were at their most successful (at any rate as judged in terms of their military achievements). Each had a political system which embodied wisdom, freedom and friendship in a balanced system.

Interestingly, the mode in which wisdom and freedom were mixed differed in each case. At Sparta it was a matter of division of constitutional powers in such a way as to ensure that both a form of popular representation and the voice of wisdom and experience were given effect. In Persia it was more a case of enlightened despotism, with the monarch encouraging free speech and the opportunity for anyone to contribute of their own wisdom in public discussion. At Athens it was no more than voluntary obedience to the law, in straitened circumstances where any other way of behaving would obviously have been suicidal.<sup>11</sup> Presumably there would have been corresponding variation in the quality of social cohesion produced under the three systems – which from the point of view of

<sup>11</sup> On the fear that is represented as the Athenians’ predominant motivation, see Rowe (2007a).

freedom we might characterise as representative democracy, direct democracy and legal democracy. Plato is obviously enjoying making both Sparta and especially his highly fictive Persia look more genuinely participatory than Athens. His Cyrus sounds very like Thucydides' Pericles (see the Funeral Speech, especially 2.37–40),<sup>12</sup> whereas his Athens more resembles the Sparta its deposed king Demaratus describes, when precisely at the time of the Persian expedition against Greece of 480 BC he says to Xerxes (Herodotus 7.164.4):

When the Spartans fight individually, they are second to none, but when they fight in a body they are best of all. The reason is that though they are free, they are not completely so, because they have a master over them – the law – which they fear more than your subjects fear you.

Whatever the basis for the variations in the formula for the Stranger's mixture, it is plainly important for recommending his project for *politeia* design that there *be* such variations. The recipe for success – wisdom, freedom, friendship – will be the more persuasive the more flexibly it can be applied within political communities in widely differing sorts of historical circumstances.

### 3. MARRYING THE TWO PROJECTS

In the previous section I have tried to work out why Aristotle might have found two quite distinct constitutional projects in the *Laws*: the original one, designed to identify a system generally applicable to cities (with no presumption that these will be 'ideal' from an ethical point of view), which then turns into something much more resembling the attempt to construct the best city previously undertaken in the *Republic*. Book 3 of the *Laws* does indeed fit Aristotle's notion of the original project. Books 5 to 7 – in the sections we have considered – do indeed 'keep a hold' on the 'first' city of the *Republic* as paradigm, and specify provisions for social organisation and education that approximate it as closely as possible, once granted the jettisoning of communism as too great a strain on human nature.

The two theoretical enterprises clearly are different. The Book 3 project sees political system building as the attempt to strike a compromise which will recognise both political freedom for the citizens and the authority of wisdom in constitutional provisions. The Book 5 project is focused much more directly on community and on virtue and happiness (the chief topic

<sup>12</sup> But Plato did not believe in the wise Pericles portrayed by Thucydides: see *Gorgias* 515c–519b, with Schofield (2006: 67–74, 211–12).

of the long ‘prelude’ which launches the book: 726a–734e), and on the institutions needed to promote these within the basic framework of private property and the family. Of course, both projects share a general aim, of producing a system in which there is ‘friendship’ among the citizens. This was already explicit in the formulations of the non-ideal project I cited from the latter part of Book 3. But it is likewise explicitly articulated in the project of approximating the ideal initiated in Book 5. Not only is the Pythagorean maxim ‘friends share what they have’ the keynote of the ideal city which is conceived as the paradigm (739c), but a little later – à propos of the second-best system – the Athenian says: ‘The premiss on which our laws depend was the imperative to ensure that the citizens should be as happy as possible, and friends to each other in the highest degree’ (743c). Yet the use of the superlative here is indicative. The non-ideal project looks for social and political cohesion, the project of approximating the ideal for *maximal* social cohesion.

The presence of the two projects within one and the same dialogue reflects a deeper tension. Is it the *Laws*’ ambition to explain the kind of social and political system needed if we are to bring out the best in people, and give them the best possible chance of achieving virtue and happiness? Or is the dialogue more interested in taking the citizenry of any political community more or less as the human beings they actually are, and putting in place laws and institutions which (in the terms of Book 3) constrain freedom with wisdom? The first objective seems to be strongly implied in the prefatory first book (e.g., 1.630d–632e, 644e–645b), and to be reaffirmed at the very end of the dialogue in Book 12 (12.863a). But the focus on the extensive legal code worked out in the later books, with its elaborate penology, suggests that for much of the dialogue Plato is devising a system to deal with people whose appetite for virtue is limited, and where constraint has to be the main order of the day.

There are a number of passages in which he has the Athenian comment on this last issue. They might be read as reflections on the problem of how the idealising and more pragmatic projects Aristotle diagnoses in the *Laws* are related in the mind of the author. Two are particularly worth a brief look, since they occur at strategic junctures in the argument of the dialogue as a whole. Both contrast the ambition to promote virtue with the human material the legislator will actually have to work with. The first comes in Book 4, at a point where the Athenian is beginning to explain his theory of the dual nature of legislation – its combination of persuasive preamble with coercive content. ‘I would want people’, he says (4.718c), ‘to be as easy to persuade towards virtue as possible; and this is evidently

what the legislator will try to achieve in all his legislation.' This statement shows that the idealising project is alive and well. But realism forces a qualification. Persuasion must count as a success if it accomplishes something much more limited: making people more amenable – 'a trifle easier to handle, and so that much easier to teach'. There just isn't much supply of persons eager to be as good as possible as fast as possible (718d). It could not be more plainly stated that the *Laws* envisages itself as trying to cope with human beings as they actually are.

In Book 9 the Athenian makes a shift in direction, and takes up the subject of crime, and the legislative provision for tackling it. This turn in the exposition makes renewed discussion of the human material the legislator must deal with particularly well motivated. The Athenian starts with the reflection that there is something shameful in proposing laws on crime, in a city 'which we are saying will be well managed, and where the provisions for promoting virtue are thoroughly sound' (9.853b). Even to think that there will be anyone in it as wholly depraved as in other cities – rendering necessary appropriate laws and forms of punishment – is shameful. But (853c–d):

Unlike the ancient legislators, we are not framing laws for heroes and sons of gods. The lawgivers of that age, according to the story told nowadays, were descended from gods and legislated for people of similar stock. But we are human beings, legislating in the world today for the children of human beings, and we shall give no offence by our fear that one of our citizens will turn out to be, so to speak, a 'tough egg', whose character will be so 'hard-boiled' as to resist softening; powerful as our laws are, they may not be able to tame such people, just as heat has no effect on tough beans.

In the light of a passage such as this, it is now possible to see not only that the two projects identified by Aristotle are there in the text, but that Plato has a rationale for both, and implies an indication of how they are connected. The fundamental enterprise of the dialogue is the idealising project which he relates to the political philosophy of the *Republic* in Book 5: the attempt to approximate to the best ideal system so far as possible, in order to promote maximal happiness and friendship. Had Aristotle in *Politics* 2.6 started his account of how thinking about *politeia* is developed with Book 1 of the *Laws*, and its preoccupation with virtue and education, not with Book 3, he might have recognised that himself. The project introduced in Book 3, on the other hand, turns out to be *subordinate* to the idealising project. On further reading and reflection, it will appear that the historical narrative of Book 3 is laying foundations for some principles that can be used to deal with ordinary human nature within the overall

context of the idealising project, and with its resistance to or lack of interest in the life of virtue with which the idealising project is concerned. One of Plato's reasons for resorting to *history* at this point in the *Laws* is presumably to emphasise that thinking about *politeia* needs to deal with the contingent and the empirical as well as the ideal.<sup>13</sup>

The empirical as Plato understands it in the *Laws* is not exclusively or straightforwardly a matter of how much or little ordinary humanity is disposed towards a life of virtue. He acknowledges empirical constraints in handling other – even if ultimately related – matters too. A notable example, which illustrates with great clarity the way the pragmatic project of Book 3 relates to the *Laws*' primary idealising project, is supplied by the Athenian Stranger's treatment of property. The idealising project takes great pains to regulate the ownership of land, so as to ensure that (though communism is not enforced) there is as much equality in landholding, and in general in financial resources, as possible. Division between rich and poor remains for Plato as great a threat to a city as it did in the *Republic* (5.736c–738a, 739e–744a; cf. *Rep.* 4.421c–423a). But realism requires qualification of the ideal (744b–c):

It would have been good if each person, on joining the colony, had all else equal as well [i.e., as well as the equal landholding now allocated to every householder]. Since this is not possible, and one person will come with more money, another with less, it is necessary for many reasons, and for the sake of equalising opportunities in public life, to ensure that offices and taxes are distributed on the basis of what someone is worth. It is not just his personal virtues or his ancestors', nor his physical strength or good looks that should be taken into account, but use of wealth or poverty.

Equality of landholdings did mean equality. 'Equalising' political opportunities means distributing them in *proportion* to property. A complex connection with virtue is made, notably through assessing *use* of wealth (or its opposite). But it is easy to understand why Aristotle objects that the *politeia* of the *Laws* is a mixture of oligarchy and democracy, with a bias towards oligarchy (*Pol.* 2.6, 1266a5–28). For as he notes, proportionality supports a highly complicated system of election to the city's governing council, albeit involving limited and indeed grudging use of the lot as well as arrangements designed (as Plato himself puts it) 'to confer high recognition on virtue, but less on those weaker in virtue and education' (*Laws* 6.757c). The objective as Plato sees it is accordingly *not* oligarchy.

<sup>13</sup> Samaras (2002: 219) proposes: 'In the *Laws*, this type of experience [i.e., historical] becomes the main informing principle of Plato's political philosophy.' See also Morrow (1960: Part I).

Because there is recognition of both virtue, doubtless taken to include wisdom, and the equality of the lot, which the Greeks associated with democratic freedom, the goal is something 'midway between a monarchical and a democratic constitution, as should always be the case with the constitution' (756e) – an explicit reference to the principles of political system building enunciated in Book 3.

I suspect it is no accident that the last of the historical embodiments of the balance between wisdom and freedom (or monarchy and democracy) the Stranger discusses in Book 3 is the voluntary slavery to the laws that characterises Athens at the moment of the Persian invasion. The theme of voluntary slavery to law is to be sustained in the theory of law and the dual nature of legislation spelled out in Book 4, which will then constitute the overarching framework taken for granted in all the subsequent development of law in the dialogue. This theory might therefore be considered the guiding thread followed throughout the implementation of what I am calling Plato's subordinate project. According to Book 4 (which after the historical Book 3 is devoted to placing the study of *politeia* on theological foundations), the final authority in a *politeia* that deserves the name is law, conceived of as public reason (4.713e–714a), an idea appropriated from this section of the *Laws* without acknowledgement by Aristotle (*Pol.* 3.16, 1287a28–32). Unless its authority is respected in a city, ruin lies round the corner. When the rulers are slaves of the law, on the other hand, and law is their master, 'I see salvation and all the good things gods bestow upon cities' (715d).

But the political freedom that citizens enjoy as citizens is the counterbalancing element Book 3 has discerned as essential to a healthy constitution. Freedom is enshrined within it not simply or primarily by provisions making the *politeia* a matter of government by participating citizens, chosen for the job according to the terms of a principled electoral process.<sup>14</sup> Freedom will be given due respect only if the lawgiver attempts to persuade the entire citizen population of the appropriateness of his legislation, so that they voluntarily accept its provisions. There is no denying that the great body of law developed in the later books of the *Laws*<sup>15</sup> is designed to exercise a high degree of control over the lives of the citizens. None the less the *voluntariness* of their submission to law is of paramount importance. This is the principal ingredient in the dialogue's conception of political freedom. The connection between freedom and voluntary compliance with

<sup>14</sup> On citizen government in the *Laws*, see Bobonich (2002: ch. v).

<sup>15</sup> The subject of a masterly treatment in Saunders (1991).

law is all but explicit in Plato's development – in the final section of Book 4 – of the notion of a preamble or prelude to a law. In the famous analogy which he draws between the *modus operandi* of a slave doctor and the procedure of a free-born doctor, dictating medical prescriptions without explanation or persuasion (as the slave doctor does) and without voluntary acceptance by the patient is branded 'tyrannical' (720c; cf. 722e–723a). The free-born doctor's method of explanation and persuasion, employed as it usually is in dealings with free-born patients, shows him to be a better doctor (720e), and the lawgiver who does likewise in his preambles to laws reveals himself as someone who is not legislating so much as 'educating the citizens' (9.857e).<sup>16</sup>

#### 4. CONCLUSION

I began this chapter with a brief reminder of the harsh criticism of the *Laws* familiar in modern comment on the dialogue, and of some of Aristotle's strictures too. I have been in effect attempting to respond to just two of the charges made against the dialogue: the Loeb editor's complaint that it follows no apparent plan, and Aristotle's that it seems to be attempting two quite different projects, which are not convincingly related to one another. The plan may not be articulated as such, but a detectable plan there certainly is. It does indeed involve two distinct projects, one idealising, the other more pragmatic, which, however, are connected to each other in a way that Plato himself indicates at crucial junctures as a clearly expressed rationale.

Book 1 introduces the main enterprise: constructing a social and political system that will best enable citizens to achieve virtue and happiness. This project is further advanced and described in Book 5, which launches the substantive business of the dialogue after the different kinds of further preparatory discussion undertaken in Books 2 to 4. Key here is the Athenian Stranger's introduction of the notion of the search for a second-best *politeia* that will approximate the ideal of the *Republic*, and deliver on the promise of the enterprise articulated in Book 1. It will be implemented above all in the provisions for social organisation and education developed in Books 5 to 7 (and where education is concerned – the overriding preoccupation of the whole dialogue – anticipated in important ways in Book 2). It is reaffirmed at the end of Book 12, which returns

<sup>16</sup> On the doctor analogy see the classic study of Bobonich (1991); also Schofield (2006: 84–8, 319–21).

to the theme of education. However, Plato recognises that if the *politeia* is going to be realisable in communities consisting mostly of unregenerate humanity, another project – subordinate to the first – must be undertaken. Education for virtue and happiness is not enough. The coercion of law is also required. How to balance and relate these two requirements is the great challenge the *Laws* attempts to meet, with its distinctive theory of the 'double' nature of law: law is of its very nature coercive, but it must be made educative too.

Plato's subordinate project needs to encapsulate reflection on human nature as it is, not just as it could be.<sup>17</sup> Hence the historical narrative that constitutes the fresh start in Book 3, which develops ultimately into a theoretical proposal. Experience shows that successful states are those where, through a balance between wisdom (a 'monarchical' principle) and freedom (a 'democratic' one), friendship or social cohesion is secured. This proposal is one conceived as having a general validity for the circumstances of all actual political communities. What follows in Book 4 is the beginning of Plato's attempt to theorise the monarchical and democratic principles further, as the doctrine of the rule of law on the one hand, and the idea of preambles to legislation on the other. In other words, the idea of the dual nature of law should be read as the major ingredient in Plato's own recipe for capitalising on political experience (as evidenced in Book 3) and striking the balance it dictates.

The need for wisdom to govern will be recognised above all by assigning ultimate authority to the rule of law (although later books will embed wisdom and virtue also in particular bodies, such as the various boards and councils to be established in the city, and in the end most importantly in the Nocturnal Council described in Book 12 – which is to be charged with reviewing the city's laws and keeping them in a sound state of preservation: 12.960b–969d). The need for the free status of the citizens to be respected is to be met principally by providing that law is to have a dual nature: with a persuasive and educational, as well as a coercive function. This subsidiary project is what is mostly being worked out in the later books of the dialogue (Books 8 to 12 especially), but as we have seen is already under way in the rules for property classes in Book 5 itself, and for appointment of officials and administrative and other bodies in Book 6.

<sup>17</sup> 'By so resolutely taking into account the human factor,' says Laks (2000: 275), 'the *Laws*, in its specific and still very Platonic way, opens the path to Aristotle. One might even go so far as to wonder whether there is already something truly Aristotelian in the *Laws*.'



The subsidiary project is indeed (as Aristotle puts it) ‘more common’. Plato’s ideas for a comprehensive legal code, worked out in detail, and for a variety of regulatory bodies ensuring that its provisions are respected, constitute a blueprint for an ordered citizen society that has quite general applicability, not confined to the particular ideal system envisaged in the *Laws*’ construction of Magnesia. In so far as law is educative, not merely coercive, however, it always has the potential to contribute to the higher goal of the dialogue’s main project: realising a community of the virtuous.