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The *Laws*

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1 A singular work

The *Laws* can be considered the first work of genuine political philosophy in the Western tradition. Admittedly it was conceived within an already complex tradition of philosophical legislation and speculative constructions, in which the *Republic* holds an important place. But so far as we can judge, the *Laws*' combination of an investigation into the foundations of legislation with the concrete elaboration of detailed laws is without precedent. From this point of view, the *Republic* is at best a sketch, whereas the *Laws* breaks ground for future political thought.

Part of the work's importance lies in its having created a new genre, or rather two, by combining two approaches which posterity would come to distinguish. The *Laws* is at once an exposition of political principles (comparable to Rousseau's *Social Contract* or Hegel's *Principles of the Philosophy of Right*), and a treatise of applied legislation (comparable to the *Project for the Constitution of Corsica* or the proposal for a German Constitution). Moreover, several concepts elaborated in the *Laws* have proved of lasting value to political philosophy. The so-called principle of Lord Acton, that absolute power corrupts absolutely, is already formulated in the *Laws*. More positive philosophical ideas first articulated in the *Laws* include the 'mixed constitution', the 'rule of law', and last but not least the 'legislative preamble'. Plato himself presents this last item as his greatest legislative innovation (722e1–4).

Despite its historic importance, the work has been neglected, or even treated with contempt – by philosophers in particular.[1] Part of this reac-

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[1] Fundamental works on the *Laws* in English include the general study of Morrow 1960, and the work of Saunders, now synthesized in Saunders 1991, which focuses on the penal aspect of the *Laws* (see also his translation of the *Laws* (1970)). The creative studies of Bobonich 1991, 1994 will be integrated into a forthcoming book. In Germany, Hentschke 1971 represents substantial progress in understanding the dialogue. Schöpsdau 1994 is the first volume of a general commentary on the *Laws*, which will replace the outdated work by England 1921. It testifies to the renewal of interest in the *Laws*.

tion may be explained by the difficulties the work poses for the reader. The length of the work seems excessive, the material arid, and the style tortuous. Most off-putting of all is its organization, a tangle which seems to defy understanding. Yet independently of such formal considerations, there are three crucial reasons for the relative neglect the *Laws* has suffered.

(1) The influence of the *Laws*, important as it may be, has been largely indirect. The central idea of the 'mixed constitution', in particular, is more familiar from its reworking at the hands of Cicero and Polybius than from the *Laws* itself. This seeming contingency of intellectual transmission in fact manifests a certain logic. In Cicero, the Platonism of the *Laws* is integrated into a Stoic perspective (the theory of natural law); in Polybius, the mixed constitution is identified with the destiny of Rome. In both cases the breadth of the resulting orientation has eclipsed the original Platonic vision set out by the improbable avatars of a small Cretan colony.

(2) The second reason has to do with the history of reception of Plato's political thought. In the cultural milieu of speculative philosophy and the Protestant tradition, the *Laws* was simultaneously not 'philosophical' enough to command attention, and too 'catholic' to be above suspicion. Indeed, one could write a history of the comparison drawn between the organization of the Platonic city and that of the Roman Catholic church, both of which were seen as repressive and anti-individualistic. Unsurprisingly this comparison was made especially by thinkers in the Anglo-Saxon liberal tradition, moulded by John Stuart Mill's and George Grote's readings of Plato. In this context the *Laws* appears to accentuate, almost to the point of caricature, the most unfortunate tendencies of the *Republic*, and more precisely to prefigure authoritarian or even totalitarian regimes. In this regard nothing is more telling than Cornford's 1935 rewriting of the Dostoyevskian tale of the Grand Inquisitor in a Platonic vein: were Socrates to return to the city of the *Laws* to promote his principle of free discussion, he would be put to death – as surely as would a returning Christ by the Church which acts in his name.[2]

(3) To these two general reasons must be added the fact that the *Laws* occupies a singular position in the Platonic corpus (so much so that its authenticity was still questioned not so very long ago).[3] On the one hand

[2] Cornford 1950 (1935). The framework of Cornford's essay is found in Mill 1978 (1866), who went so far as to compare the Nocturnal Council (on which see below, section 5) with the Torquemadian Inquisition. The parallel between the Platonic city and the medieval Roman church stems from the Protestant theologian F. C. Baur. On his reception in England, cf. Turner 1981: 436. [3] Müller 1951.

the work's voluminous legislative codification is unique in Plato (hence its documentary importance for legal history). On the other hand, the actual philosophy in the work seems to have been reduced to a strictly subservient role ('philosophy' is referred to only twice in the whole work (857d2, 967c8), and is never discussed as such). Neither of these two features – which have wrongly been seen as complementary – sits well with the received image of 'Platonism'. Moreover, the *Seventh Letter*'s recounting of Plato's adventures in Sicily was long thought to invite a reading of the *Laws* as a document of political disappointment, a reading also thought necessary to explain why certain of its features apparently contradict the better-regarded *Republic*. A crucial question, then, is whether the *Laws* can claim any philosophical legitimacy whatsoever.

Before turning to this question, however, it will be useful to give an idea of the structure and the content of the work. Not only does the reader need guidance, but, as we shall see, the formal construction of the work is highly relevant to its political programme.[4]

2 The structure and content of the *Laws*

The *Laws* presents itself as a conversation about legislation among three old men: an anonymous Athenian, called the 'Stranger' by his interlocutors (since the conversation takes place in Crete he is indeed a stranger there); Megillus of Sparta; and Clinias, citizen of the Lacedaemonian colony of Knossos. The three old men discourse on 'constitutions and laws' – a diversion appropriate to their age (685a7ff., 769a1ff.) – while walking on the road from Knossos to the grotto of Zeus on Mount Ida (625b).

The walk is doubly linked to the theme. First, the route is the same one that Minos, the legendary lawgiver of Crete, followed every nine years to receive the teachings of Zeus (624a7–b3). Now 'the god' – the first word of the dialogue, as is often noted – will soon turn out to be the foundation of the Platonic legislation, as he is of the Doric laws.[5] Although Plato does not use the word 'theocratic', he is not far from coining it, as the following passage indicates: '[The actual constitutions] are named after the power that rules in each case. Now if that is the sort of name that must be given

[4] For a synoptic view of the whole work, see Saunders 1970: 5–14, and Schöpsdau 1994: 95–8. References to themes treated in various parts of the dialogue are usefully assembled at the beginning of each section of Stalley 1983.

[5] Crete and the Peloponnese had been invaded by the Dorians toward the end of the Mycenean period. They shared a common dialect and a culture which in important respects set them apart from other Greeks, especially the Ionians, to which Athens was felt to be historically linked by the Greeks (see Herodotus 1.56).

in our city, it should be called after the god who really does rule over men who are rational' (713a1–4).[6] Moreover, theological developments are in various ways central to Plato's political programme (see especially Books IV.713a–714b, 715c–718a, XII.966c–968a, and the whole of Book X).

Thus the walk taken by the three interlocutors represents the progression towards the first principle of legislation. But it also and more subtly symbolizes a space of leisure and liberty where the constraints of everyday life can be provisionally suspended. Taking one's time, making pauses, not being forced to do anything, are essential features of a walk through the countryside, even if a god is the destination. This formal freedom is relevant to the content of the dialogue, where it will become important to escape the urgency of actual legislating even as one speaks of legislation. That is because, for reasons to be seen, actual legislating is treated in the *Laws* mainly as the effect of a resented 'necessity' (see e.g. 857e10–858c1, cf. 859b7–c2).

The overall structure of the work can be sketched as follows. Books I–III raise two general questions about the principles of legislation: what is the purpose of the laws (I–II), and what are the conditions of their authority (III)? After the short development that places the legislative task under the guidance of the god, the rest of the first two books present a critical analysis of Doric institutions, arguing that the laws must be an instrument of complete virtue and not solely the single military virtue of courage (624a–632d, cf. 963a). The mode of exposition changes in the third book. That the division of powers and a mixed constitution can alone guarantee the authority of the laws is established by reference to the historical fate of the three Doric cities of Argos, Messene and Sparta – their story being embedded in the larger framework of the development of human civilization (677a).[7] While Sparta had been able to avoid tyranny by adopting a mixed constitution, Messene and Argos had not (682e–693d). The story of how Sparta defeated its former allies plays in the third book a role analogous to the critique of Doric institutions in the first two. This is why the third book, in contrast to the first, emphasizes the relative worth and suitability of Spartan institutions rather than their several weaknesses. This change of perspective is typical of the *Laws*, which artfully oscillates between praise and blame of Doric institutions. It should be noted from the outset, however, that despite a strongly marked Doric context, on the whole Athens is more of a paradigm for the

[6] The term 'theocracy' does not appear before Josephus *Contra Apion* II.16. On the relation between 'noocracy' and 'nomocracy', cf. below, p. 271.

[7] The assumption is that the history of man, like the history of the world, is cyclical.

Laws than Sparta (see below, section 5). Although this makes the *Laws* a delicate exercise in political balance, the will to achieve a synthesis of the two most important trends in Greek (political) culture (see above, n. 5) is as unmistakeable as it is bold.

The Spartan constitution, however 'mixed' it may have been, remained profoundly defective. Just as Sparta's laws sought to promote the virtue of the citizens while being blind to virtue's true nature, so its division of powers made no reference to the only real 'god' that counts, namely, as 713a1–4 (quoted above) implies, 'intelligence' or 'reason' (*nous*). To owe the stability of one's institutions to the foresight of a god, as the Spartans do (691d8–e1), is not quite enough to make Sparta a 'theocracy' and even less a 'noocracy' – no doubt the most adequate characterization of what the Platonic state is meant to be.

Just as the present has a past, the past points to a possible future. Because they are what they are, the Doric institutions can be reshaped by taking into account the criteria they do not meet. At the end of Book III, Clinias reveals that he will soon be called, with nine others of his fellow citizens, to write the laws for a new Cretan colony (702c2–8), which in the course of the work (but not until 848d3) is several times referred to as 'the city of Magnesia'.[8] From his point of view it is pure luck that the conversation has turned to the theme of legislation (702b4–6). Clinias' satisfaction is shared by the Athenian. The projected foundation of a Doric colony presents a natural opportunity for adapting the principles sketched in the first three books. Not only do Doric cities cultivate virtue (if not the whole of virtue) and have a tradition of mixed constitutions, the foundation of a colony under appropriate conditions provides the best possible circumstances for the adoption of a new set of laws (708a–d). Not least among the benefits of legislating for a new colony is that the legislator will have to *talk* to the new colonists upon arriving at the site of the new city. This address, although first performed without comment on its rhetorical or political status, will turn out to be one of these 'preambles' whose importance has already been stressed – indeed, the most important preamble of the *Laws*. In brief, the projected city of Magnesia does much more than simply provide a particular case by which to test a model. It gives the Athenian the unexpected chance to develop the details of a legislative project conforming to his political ideas. However concrete and detailed its description of laws and however much Magnesia remains the frame of reference (cf. e.g. 752d–e), the *Laws* is not conceived for this par-

[8] Cf. 860e6, 919d3, 946b6, 969a5f. The last passage shows that the name is chosen *exempli gratia*.

ticular case. Conversely, the Athenian's proposals are only proposals. It will fall to the Cretans responsible for the colony to adopt them for their new land. Thus, the situation also exemplifies an important principle that recurs throughout the *Laws*: the legislator's dissociation from power (702d, 739b, 746c). Books IV to XII are devoted to elaborating the institutions of a Magnesia which, however imminent its foundation may be, remains an ideal Magnesia.

The major articulations within Books IV–XII, which encompass the proper legislative work, are on the whole clear, even if the reader must face a number of obscurities. It is important to distinguish between those obscurities that are contingent and those that could be called essential. Certain features of the *Laws*, especially disorder in the two last books, suggest that Plato died before he could put the final touches to his work.[9] Some of the obscurities, however, are due to 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. There are a variety of reasons for this postponement, some purely technical, some linked with Plato's conception of the law. While the latter are the most interesting philosophically (as we shall see), it is important to realize that they are already at work behind the other, seemingly more technical factors.

Postponement of the legislative work is, in the first place, a consequence of a strict definition of legislation as a kind of expert knowledge or art (*technē*). The task of legislation is twofold: first, it must specify a 'constitution' (*politeia*), which involves the establishment of magistracies and the definition of their powers. Second (to use the technical expression) it must 'give' the laws 'to' these magistracies. Laws are thus strictly speaking the prescriptions that the magistrates must enforce (735a5f., 751a5–b2). So the 'constitution' itself, according to this terminology, is not a law although it does fall within the field of the legislator's expertise. As we shall discover, this distinction between constitution and law is extremely important for Plato's project. It implies that there are things to be discussed from a legislative point of view even before one can talk about 'laws' – or, for that matter, 'constitution'. For legislation, insofar as it is an 'art', will want to define the conditions under which it is itself best exercised (709a–e).[10]

[9] It is generally assumed that Plato's pupil Philip of Opus edited the text after his death. On this, see Tarán 1975: 128ff.

[10] The distinction between 'conditions' and 'laws' is still important in Rousseau's *Contrat Social* (see book 2, chs. 8–10).

Books IV and V are devoted to these 'preconditions'. They are fairly heterogeneous, and deal with an ensemble of practical questions relating to geography, demography and economy. They also take up a series of theoretical (or meta-legislative) questions, such as the nature of the authorities by which the new constitution and laws will be adopted, the general form of the constitution (a section containing the passage on 'theocracy'), and the form of the law (which includes the theory of the preambles). The definition of legislation as expert knowledge is itself part of this development.[11] The first piece of 'legislation' proper concerns the regulations for marriage (IV.720e10–721e3). But these are introduced simply to illustrate the difference between a law and a preamble, and the next piece of actual legislation does not appear until Book VIII.

The last precondition, that dealing with preambles, is in a sense also the most important, for it bears on the overall form of the legislation. A law, in the strict or 'simple' sense, is an order accompanied by the threat of punishment in case of transgression (721b). The legislator's expertise, however, extends beyond this narrow specification of law. In addition to the threat of punishment, there is another form of legislative speech, whose function is to 'persuade' before such a threat and punishment are needed, namely the 'preamble' (see below, section 6). The legislative task is accordingly 'double', not 'simple' (721b4f.). In fact, the preamble, because it precedes the law, will contribute to a more drastic postponement of the laws themselves than does even the discussion of the necessary preconditions, or, for that matter, of the 'constitution'.

The theoretical explanation of the nature of a preamble occupies the end of Book IV. It is preceded by the first section of the so-called 'general preamble' of the laws, a call to respect the gods (715c–718a). The second section follows at the beginning of Book V and contains an exhortation regarding one's duties towards one's parents, friends, fellow-citizens, and, most importantly, towards one's own soul. This long address to the new Cretan colonists is an impressive sermon, occupying a great part of Book V (down to 734e). It is striking that this general preamble is not followed by any particular law, at least in the sense in which 'law' has been officially defined at the end of Book IV. For the legislator at the beginning of Book VI, having dealt with some further 'preconditions' at the end of Book V, turns to the 'constitution' or the establishment of the magistra-

[11] The two series intertwine in a complex way. The order is as follows: location of the city, 704a1–705b6; origin of the population, 707e1–708d9; nature of power under the authority to be established by the new laws, 709d10–712a7; general form of the constitution, 712b1–715e1; the form of legislation (the legislative preamble), 718d2–723d4; regulations for property and the possession of goods, 737c1–747e11.

cies (*katastasis archōn*, 751a5, cf. 735a5). The constitution itself can in a certain sense be described as 'laws'. Indeed, the Stranger does talk about 'constitutional laws' for the occasion (734e5), not without signalling a certain embarrassment. Setting up a system of magistracies is legislation only in an extended sense of the term, for 'laws', strictly speaking, already presuppose the existence of the magistrates (to whom they are 'given' for enforcement). Moreover, these constitutional laws are not penal laws of the kind discussed at the end of Book IV in connection with the definition of a 'preamble'. Thus, at the heart of the work we find a preamble without a law (the general preamble of Books IV and V) preceded by a quasi-law without corresponding preamble (the constitution). The confusion, however, is only apparent. For a citizen who obeys the persuasive instructions of the general preamble would thereby *ipso facto* anticipate and respect the content of the legislation that follows the organization of the magistracies.

One can thus understand why, aside from the 'constitutional laws', the legislative work does not begin until the end of Book VI (768d7–e3). It should immediately be added, however, that Book VII, which is for the most part devoted to laws about education (and which takes up the laws for marriage and procreation mentioned at the end of Book IV), employs the specific form of *unwritten* laws. Orality and tradition, obviously, work as a functional equivalent, indeed as a possible or perhaps even desirable substitute, for the persuasive, non-coercive preamble. Thus the successive postponements of the legislation, as well as the implicit changes in the scope of the word 'law', point to a conception of legislation itself as largely negative, in as much as it primarily involves penal coercion. Punishment is the last resort when the resources of persuasion – philosophical or otherwise – have been exhausted, even though the *Laws* actually suggests that punishment itself, including the death penalty, has a certain curative purpose.[12]

Contrary to what the reader might expect, the laws in the restricted sense of the term (the legal code) are not presented in connection with the magistracies to which they are attached. 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

[12] On this point, see Saunders 1991: 182f.

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).[13]

Discussion of the phases of the human life cycle continues from the end of Book VI until the first part of Book VIII and resumes intermittently in Books XI–XII. The corresponding regulations can be identified with the ensemble of laws which the Athenian, at the end of Book IX, had said were designed for the education of 'gentlemen' (*chrēstoi anthrōpoi*, 880d8). In strong contrast with these regulations, a second group of laws, distinguished by the importance of threat and penalties, furnishes the material for Books IX to X (and, in part, XI), which deals with the 'major' transgressions (853a5). These laws are paradigmatic, in that they are imposed by 'necessity', but this necessity is not – as with the agricultural laws – imposed by basic human needs. It signals rather a failure of education. This explains why this part of the legislative task takes place under the sign of 'shame' (853b4).

The arrangement of topics is further complicated by the presence of preambles. In some sense, preambles simply precede a law (or group of laws), in accordance with the function assigned to them in Book IV. Yet, because this amounts to suspending the law (temporarily at least), they also offer a further way to postpone it. Such is certainly the effect of the general preamble in Book V. Preambles can also metamorphose into discussions of principles (as in the case of the law against impiety in Book X), even as the future legislators of the Cretan colony replace the citizens as the natural audience of these 'introductions'. Space is thus allotted, at the very core of the legislative work, to meta-legislative reflection that calls into question the status of the legislative enterprise itself.

The *Laws* is thus knit together by digressions that vary from a few sentences to extended discussions and that possess a certain degree of autonomy in themselves.[14] This feature encourages a reading of the *Laws* as a sort of anthology. Such a reading is explicitly endorsed by the *Laws* itself, in that schoolmasters are invited to read excerpts from the dialogue with their pupils (811a). The degree of irony is difficult to assess here. There are good reasons to think that an overall interpretation of the *Laws* could proceed along similar lines. In any case, the most striking moments of the

[13] In order of decreasing gravity: offences against the public domain, homicide, aggression, *hubris* (including offences against the gods), crimes against property, thefts, misdemeanours relative to contracts and sales or to the judicial process.

[14] For example: 644d7–645c6 (the human marionette); 719e7–720e5 (medicine and legislation); 739a1–e7 (the three constitutions); 806d7–807d6 (the life of leisure); 857b3–864c11 (punishment and responsibility).

work are undeniably those when the immensity of the task undertaken is abruptly placed under the perspective of the ultimate questions about man and the meaning of his existence. Flashes of sublimity thus illuminate a work otherwise so densely textured as to have been censured as 'frigid' even in antiquity (Lucian, *Icaromenippus* 24). This is especially true of passages that underscore the contradictions and limits of the legislative enterprise, as, most famously, when the Athenian, talking about the restrictions that will be imposed on dramatic performances, assimilates his own constitution to 'the truest tragedy' (817b5). From this point of view, the *Laws* is not only without precedent but also without any later equivalent in the history of political thought. This is not the least interesting feature of the work.

3 Three models for interpreting the *Laws*: completion, revision, implementation

The interpretation of the *Laws* depends crucially on its relation to Plato's two other great political dialogues, the *Republic* and the *Politicus*. How is this relation to be understood? The *Laws* accomplishes three things in a single stroke. It completes a programme which had been sketched in the two preceding works; it revises the model of the state which they had drawn; and finally it portrays a practical realization of that model. While each of these three tasks reflects an essential purpose of the *Laws*, there is also a certain tension among them. Yet this tension does not threaten the coherence of the overall project. For the *Laws* itself aims at articulating a certain tension, one which mirrors the radical and irreducible polarity between the human and the divine.

3.1 Completion

The task of completion is in a way the most obvious of the three. The *Republic* and the *Politicus* are little more than outlines of political philosophy. They present programmes of relatively high generality with little detail about political mechanisms. Apart from the fact that the true politics in the *Republic* is in the soul, of which the city is the 'image' (cf. what is said about justice in 443c–d), there are two further reasons explaining why this work deliberately leaves aside the greater part of its particular legislation (426e4–427a7). First, the political theory of the *Republic* is almost exclusively concerned with the highest magistrates. More importantly, they are considered less as administrators of the city than as potential philosophers, that is to say, in a capacity that is precisely not that of

administering the city. The *Republic* focuses less upon the city than upon a certain tension between the city and philosophy.

This tension still persists in the *Politicus*, albeit in a different guise. Instead of the conflict, so typical of the *Republic*, between the aspiration to a theoretical life and the requirements of government, in the *Politicus* we find a philosophical devaluation of politics: the search for the true statesman is a purely dialectical exercise (285c–286b). For the rest, the *Politicus* concentrates even more than the *Republic* on an ultimate source of power: the 'monarch' of the *Politicus* may well have better claim to the title of philosopher king than his counterpart in the *Republic*, since his power is subject to no principle of alternation. Although the dialogue already contains some of the conceptual resources that will be developed in the *Laws* (for example, the ideas of mixture and measure), there is only marginal treatment of the specific content of the laws.[15]

By contrast with the *Republic* and the *Politicus*, the *Laws* is political from beginning to end, resolutely and without procrastination, even though it stresses the difficulties of the legislative task and indulges in a certain degree of existential despair (803b3–5: human affairs are unworthy of great attention despite the necessity of taking an interest in them). Within these limits, one might describe the *Laws* as marking a 'politicization' of Platonic political philosophy.

One of the *Laws*' most striking features is its traversing of the entire spectrum from the specification of fundamental political principles to their most detailed instantiation: we have socio-economic classes and professions described, we know how the citizens spend their days (which are full to the point that the highest organ of government, the Nocturnal Council, must meet at dawn), we know they are concerned with participating in assemblies and religious festivals, sending their children to school, engaging in legal proceedings, providing for the water supply, drafting their wills – in brief, conducting all the business of life. One could on the basis of the *Laws* write a study on 'daily life in the Platonic city' – a project which, manifestly, neither the *Republic* nor the *Politicus* could support. In this respect also, the *Laws* is less 'frigid' than one might think.

So detailed are the institutions of the *Laws*' city that one can draw specific comparison with actual institutions. In fact one crucial task for interpretation is to understand the strange correspondence between principles of Platonic philosophy and some contemporary, even local, realities. Morrow's fundamental study has made clear how much the institutions

[15] See Rowe, in Ch. 11 section 3 above.

of the *Laws* owe to historical Athenian institutions.[16] From an Hegelian or Marxist perspective it might be said that such a construction, in which differences from and similarities to actual institutions are intertwined, testifies to the limits imposed on philosophy by given socio-historical circumstances: despite, or rather due to, its professed project of reform, the *Laws* provides one of the best philosophical images we have of the Greek city. Yet it is equally striking that this intertwining can be related (indeed demands to be related) to the basic concepts of Platonic philosophy itself. At this point the two further perspectives of revision and implementation, to some degree complementary, come into play.

3.2 Revision

Although the *Laws* may be seen as completing the political programmes indicated in the *Republic* and the *Politicus*, this movement towards closure is accompanied by a significant movement away from these earlier works. The *Laws* is dominated by a certain pattern of 'retreat' that Plato compares to a move on a chessboard when one player, whether under compulsion or for tactical reasons, must withdraw his pieces from a line called 'sacred' (739a1–5). Such retreats are characterized in the *Laws* by means of two contrasts. On the one hand, the city of the *Laws* is frequently said to occupy 'the second rank', in contrast with the 'best' that holds the first rank (739a4f.; 739b3; 739e4; 875d3). On the other, its institutions are specifically presented as destined for men, in contrast with others that apply to the gods (732e; 853c3–8; 874e–875d; cf. 691c–692a and 713e–714a). The two contrasts do not always appear together, but they are functionally equivalent. Thus, the 'first' or best city and the 'second-best' are not to be thought of as both located within the human sphere but as referring to two orders that are in principle radically different (though as we will see in a moment, the situation is made more involved by the complexity of the relation between 'humanity' and 'divinity').

The various retreats in the *Laws* take four main forms which together constitute the encompassing framework for the legislative work:

(1) There is to be some allowance for private property, to satisfy the distinctively human egocentric impulse (739e6–740a2; cf. 731de, 736e–737b).
(2) A rule of law rather than of individual rulers is to be established so that men do not abuse power (713e3–714a2; 874e8–875d5).[17]

[16] Morrow 1960.
[17] In this sense, the constitution of the *Laws* is a 'nomocracy'. On the relationship between this 'nomocracy' and the 'noocracy' it claims to be (see above, p. 260–1 with n.6), see below, p. 271 with n.20.

(3) There is to be a 'mixed' constitution, for much the same reason (691c–692a; at 756e8–757a5 a different argument is given).
(4) 'Human' forms of praise, involving an appeal to personal pleasure, are to be instituted in contrast to other forms of praise appealing to 'honour' and 'reputation', and thus qualifying as divine (732e7–733a4).

These four basic tenets can be ranked according to their degree of relevance to political life. At the bottom, the possession of property concerns production and so sheer survival (which, strictly speaking, falls outside the scope of 'politics'). At the top, the constitutional regime and the rule of the law define the very form of the government. Between these two levels, human praise represents the commonest form of political communication within the political body. As the *Laws* fleshes out this general framework through detailed legislation, the contrast between a first and second rank, between divine and human, is constantly at work, although most of the time it remains implicit. The treatment of laws pertaining to sex (837a–842a) is an exception – but an understandable one, since erotic desire, as an especially virulent form of *human* desire, has no direct counterpart in divine existence. This suggests the possibility of deciphering the particular legislative decrees of the 'second city' by asking, in each case, what their purported analogues would be in the 'first city'.

One special, and especially interesting, case of 'second-best' concerns the question of the new legislation's enforcement. This question is, of course, not itself institutional, but rather relates to the very possibility of institutions. The problem was already raised in the *Republic*: in order for the realization to be as close as possible to the model, the material must be of the most malleable kind possible. The *Republic* describes, at the end of Book VII, the rustication of all citizens and children older than ten years. The status of this rustication has been much discussed by commentators. One can argue that Plato is quite realistically referring to procedures that were not unknown in the Greek world.[18] In any case, it would be somewhat strange to credit such a device to a city of gods. Be that as it may, it is difficult to escape the impression that the *Laws* adopts a more 'human' procedure than the *Republic*. Instead of the ideal blank slate on which the philosopher king of the *Republic* would be able to draw the ideal city, the working hypothesis of the *Laws* is that of a new colony, certainly a less radical way of starting afresh, but one quite common in the context of Greek political culture.

As we have seen above, the *Laws* is in some way a continuation of both

[18] Myles Burnyeat once adduced (orally) the case of Mantinea, whose citizens were sent to 'villages' after being defeated by Sparta in 386/5 BC (Xenophon *Hellenica* V.2.7).

the *Republic* and the *Politicus*. As far as revision is concerned, the status of these two dialogues is different. The changes with respect to the *Republic* are obvious, for the community of goods, the possibility of a philosopher king, the necessity of a radical new beginning, from which the *Laws* 'retreat', featured prominently in that dialogue. By contrast, the *Politicus* already suggests that a human monarch might be wishful thinking (though this is not asserted: 301c–e), and for the first time emphasizes a distinction between intellect and law that paves the way for the *Laws*, even if the notion of 'second-best' at 300c is not strictly that which will be at work in the *Laws*.[19]

One should be wary, however, of treating the *Politicus* as simply heralding the revisions of the *Laws*. Alongside clear reprises of the *Politicus* in the *Laws* there is also a critique, and this on the very issue where the two would seem to stand in common contrast to the *Republic*, namely in their shared interest in the role of 'laws'. First, whereas the *Politicus* treats the law either as a useful expedient in the hands of the expert statesman or as a mindless second best that is our most hopeful option if no true statesman is available, law is in the *Laws* an embodiment of divine reason: 'we should . . . obey whatever share of immortality we have in us in running our households and our cities, giving the name of "law" (*nomos*) to the distribution of intelligence (*nous*)' (713e8–714a2).[20] This embodiment of reason in law accounts for the difficulty in determining whether the constitution of the *Laws* is more a nomocracy or a noocracy.

Second, and equally important, there is a new emphasis on the crucial element of the form of the law. While the *Politicus* is mainly interested in the 'substitutive' aspect of the law (laws stand in when the monarch is absent), the *Laws* concentrates on the implications of law's 'epitactic' dimension (the laws are orders addressed to someone). This change in perspective entails a major displacement, such that the *Laws* ends up adopting a position regarding political 'persuasion' very different from that officially defended in the *Politicus* (or for that matter the *Gorgias*).[21] The agreement of the citizens – and not just the achievement of the Good –

[19] On this, see Rowe, in Ch. 11 section 3 above.

[20] The same *Cratylus*-like 'etymology' linking *nomos* with *nous* recurs in Book XII, 957c5–7: the future judge, who more than anybody else should learn in order to become better, must study the laws, provided that they are correctly set up, 'or it is in vain that our divine and prodigious law would possess a name fitted to reason'.

[21] I say 'officially', because this is the argument developed at 296a–297b. In fact, the *Politicus* does need 'persuasion' to distinguish between monarch and tyrant (291e). It is consistent, then, that 'rhetoric' should be made one of the three main 'auxiliaries' of the true ruler at 304a–e. But this means that, as far as persuasion is concerned, there is a tension within the *Politicus* between two strains of thought, a tension from which the *Laws* tries to escape.

appears henceforth as an integral part of the political art (compare *Plt.* 293a9–c4 and *Gorg.* 521e6–522a3 with e.g. *Laws* IV.722d2–723d4).[22] It is true that criticism of the *Politicus* remains for the most part implicit in the *Laws* and is in any case less provocative than the rescissions of the *Republic*, whose formulations are in some cases echoed almost word for word (711e–712a, on the coincidence of power and wisdom; 739c, on the community of goods and families). However, the significance of the disappearance of the *Politicus*' notion of law as essentially 'substitutive' in a work entitled *Laws* can scarcely be underestimated.

The dynamic of distancing functions in the *Laws* not only in relation to the *Republic* and the *Politicus*, but also in relation to a model which is in some way internal to the *Laws* itself. For instance, 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' (739c1f.), whereas the *Republic* explicitly limits communism to the guardians alone. This internal distancing becomes still more evident when one turns to the topic of 'persuasion'. According to a crucial passage in Book IX, it turns out that the 'preambles' introduced at the end of Book IV are not necessarily meant to be rhetorical pieces based on praise and blame (as one would have thought), but rather should – under ideal circumstances – take the form of quasi-philosophical discussions carried out by means of rational argument (see below, section 6). This utopia of rational discussion between the legislator and the citizens, in comparison with which rhetorical persuasion of the sort we often see at work in the *Laws* appears to be only a 'second best', has no counterpart whatsoever in either the *Republic* or the *Politicus*.

Finally, revision is in some cases milder than one would expect, or even so mild that it becomes difficult to assess. Here, the situation is different for each of the four basic political features listed above. The first revision we hear of in the *Laws*, the substitution of a regime of private property for communism, is deep and irreversible. However, as we have seen, this is less a piece of legislation than a precondition of legislation in general. At the top level, on the other hand, it is much less clear to what extent the Nocturnal Council essentially differs from the philosopher kings of the *Republic*. One might suggest that the sole difference consists in the substitution of collegiality, as a minimal form of control, for alternation in

[22] Laks 1991: 423f.

power, in circumstances where the aspiration to the theoretical life is no longer available as a guarantee against the temptations of power.[23]

Thus, if there is a critique of the *Republic* and of the *Politicus* in the Laws (as there surely is), it is tempered to the extent that the ideals of these two dialogues have been integrated into an 'ideal' city reconstructed within the *Laws* itself which may or may not coincide exactly with the earlier ideal. The 'relational' aspect of the *Laws*, so striking at first glance, is in this way somewhat complicated. Such complexity in no way precludes the claim that 'distance' must be considered a fundamental category for interpretation of the *Laws*. Quite the contrary, not only is distance the consequence of retreat from any ideal, it is also a necessary condition for the implementation of a political model.

3.3 Implementation

From one point of view the two perspectives so far considered, completion and revision, are not opposite but complementary. This holds good to the extent that the *Laws* is supposed to be, if not the practical implementation of a model, at least the first stage (still theoretical in nature) of such an implementation. For if implementation means embedding a model in material to which it is not necessarily suited, and which will consequently prove resistant, it will imply both completion and revision. Such a perspective recommends itself for at least two reasons. Generally speaking, it fits well with Platonic paradigmatism; more specifically, it allows one to view the *Laws* as occupying a position in the domain of politics analogous to that occupied by the *Timaeus* in the domain of cosmo-physiology.[24] Both dialogues rely on a similar pattern. The 'model' to which the craftsman-demiurge looks in the *Timaeus* (the Forms) has its analogue in the *Laws* in the political model of the 'first city'; to the *Timaeus*' material 'receptacle' (the *chōra*), out of which the elementary triangles and the four elements will emerge, corresponds the human material that the legislator must shape into a political body. Even more striking is the fact that the material *chōra* of the *Timaeus* is identified with 'necessity', for the legislator of the *Laws* must also grapple with necessity (e.g. 857e10–858a6), which marks the limit of his actions.[25]

[23] See also below, section 5.

[24] The *Timaeus* also has a political aspect since it is, as a whole, conceived as an introduction to the *Critias* (see Rowe, in Ch. 11 section 5 above). Note, however, that the emphasis in the *Critias* is not on political institutions, and that ancient Athens belongs (with Atlantis) to a remote past, which makes it closer to the first city of the *Republic* than to the *Laws*.

[25] On the parallel between the *Timaeus* and the *Laws*, see Laks 1990.

The differences between the *Laws* and the *Timaeus* are no less instructive than the analogies. Especially significant is the importance accorded in the *Laws* to the length of time past and the indeterminacy of the future, as well as to the existence of degrees of possibility. In contrast with the *Timaeus*' demiurge, the legislators of the *Laws* are human beings who do not possess the straightforward 'goodness' of the demiurge (*Tim.* 29e), and who must remain 'prudent'. As for the material they must work with, far from having the relative simplicity of 'matter' in the *Timaeus*, it consists of the complex deposit of an already lengthy history, of which Book III gives such a vivid picture. Above all, while the world itself is one, there are numerous cities on earth. It is in this context that one must understand the mention, alongside the first two cities (the best and the second-best), of a 'third city' (739e5), to which Plato never reverts and which has occasioned much puzzlement. There are good reasons to think this third city is identical with the city of Magnesia that will be established by the Cretan legislative body once the discussion in the *Laws* is completed. But at the same time, this third city stands for the open series of all cities that would be willing to engage in self-reform, whether they are colonies or not. These cities, of course, would differ greatly from one another, depending on a variety of circumstances which Plato does not spell out.

The *Laws* can thus be read, from the point of view of conditions of implementation, as reflecting the differences between nature and history. The treatment of the question of possibility is in this regard significant. Compared with the *Timaeus*, the centre of interest in the *Laws* is displaced: it is not the implementation of the model as such but rather the conditions of its realization. Whereas formally this links the *Laws* to the *Republic*, as there the philosopher king is first introduced as the condition of possibility for the realization of the just city (473c–d), it also points to the fact that only the *Laws* gives full attention to the concatenation of 'human' factors which the *Republic* had deliberately neglected.

Although the notion of implementation does take account of certain important aspects of the *Laws* and offers a consistent and elegant way of understanding the relation between the *Laws* and the *Republic*, nonetheless it does not do full justice to its complexity. After all, the *Laws* presents itself less as an implementation of a model than as a model of another kind. Its discussion remains theoretical. The real legislation will come later (702d). If strict communism must be discarded, this is because it is appropriate for gods but not for men. The distance between god and man is precisely what makes revision indispensable. This does not mean that

the *Laws* gives up the paradigm of the first city: on the contrary, the second city will keep 'as close as possible' to the first one (739e2).

In some sense, then, between the *Republic* and the *Laws* there is neither 'revision' nor 'implementation', but only change from one level (the divine) to another (the human). For things to be otherwise, the city of the *Republic* would have to be taken not simply as an ideal model but as a political programme meant to be 'possible' as it is. The *Republic* is notoriously ambiguous in this regard: it can be (and has been) read both as a utopia and as a blueprint for political action. By opting for the latter interpretation – there would be no point of speaking about 'retreat' otherwise – the *Laws* itself represents the first attempt to achieve clarification on this matter. This is no mean merit. By so resolutely taking into account the human factor, 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*.

4 Man and god: the anthropology of the *Laws*

If the *Laws* elaborates the institutions of a city that is 'second-best' insofar as human beings are second-best in comparison with gods, one should conclude that these institutions are, so far as humans are concerned, the best possible. This must be emphasized. It also makes it all the more important to understand what it is, according to the *Laws*, to be a human being and in what respects humans are different from gods. Finding an adequate answer to this question is made difficult by the fact that the gods, in this context, are described as men of a certain kind, namely as men who would be capable of living in the first city (739d6–e1). Of these godlike men the *Laws* tells us little except negatively. One can nonetheless get a sense of who they are by assimilating them to the ideal citizens of the *Republic* (even though, for reasons given above in section 3, the two cannot be completely identified).

The nature of the difference between the godlike men of the *Republic* and the human men of the *Laws* is not to be found in the nature of their psychological make-up. In the *Laws* as in the *Republic*, man is a complex unity in whom rational and irrational elements coexist. Although the irrational element is itself composite, it is in the end reducible to what engages in the search for pleasure and, symmetrically, the flight from pain. The rational part, on the other hand, is directed not towards pleasure but towards the good. If there is a difference between godlike men and mere humans (as there surely is), then it is to be located in the kind of relation

that obtains between these constituents, rather than in the constituents themselves.

The relation depends upon the respective force or intensity of the constituents. From the vantage point of the *Laws*, the *Republic*, in subordinating the guardians to communism and in entrusting power to the most accomplished guardians (the philosophers), has ignored the facts of human nature, and simultaneously overestimated the power of the rational part while underestimating that of the irrational part. The retreat embodied in the framework of the second city reflects a reassessment of the situation. If praise is to persuade by promising pleasures, this is because 'that which is by nature the most human are the pleasures, pains and desires, from which every mortal animal is of necessity utterly suspended, as it were, and caught up by the most intense engagements' (732e4–7). Power must be limited by the double device of the rule of law and the division of powers, because 'human nature, which impels the irrational flight from pain and search for pleasure, will always urge him [the hypothetical monarch] to strive for more and act egoistically' (875b6–8, cf. 713c6–8).

The same kind of considerations apply to the endorsement of private property, which, as it comes just before the proper legislative work begins, emblematically represents all the other changes. To the extent that pleasure and pain make up what man properly is, property is the paradigmatic source of pleasure.[26] The 'retreat from the sacred line' consists, in the most general formulation, in knowing how to deal with what is 'properly' human even at the cost of a certain compromise. At issue is understanding what, exactly, is the nature of this compromise. This is the sole criterion by which to measure the distance between the 'second-best' city of the *Laws* and its first city.

The question is complicated (and so made even more interesting) by the fact that although the man of the *Laws* is not a god, he is nevertheless not merely man. On the contrary, man is what he is because there is something divine in him – and this is true even of his pleasure. Without this divine element he would be less than a man: a wild beast (766a3f., cf. 808d4f.). But if a bestial propensity always remains inscribed in him, man's essential nature is, rather, that of a tame animal – the divine form, as one might say, of animality (765e3–766a4).

This dual nature is made clear in the 'anthropological' passage of Book 1, which comes in connection with an analysis of human motivation

[26] Plato is obviously playing with the double meaning of the word *idion*.

(644c1–645c8). Man is there compared to a 'marionette' (*thauma*, 644d7), under the joint control of the golden thread of reason, which is precious but weak, and the strong iron threads of the irrational impulses. The analogy is famous, but its meaning is often misunderstood. The 'marionette' image lends itself to a pessimistic, even tragic, interpretation, which the Athenian himself might at first sight seem to endorse when he remarks in Book VII that 'man has been devised as a toy for god' (803e4f.). The marionette, however, is a rather exceptional thing, a prodigy or object of 'astonishment' (the primary meaning of the word *thauma*). The human marionette is astonishing in its capacity for harmony in spite of its being controlled by disparate elements (reflecting precisely the conflict between the rational and the irrational elements). Gold and iron can in certain circumstances move in the same direction.

The prime example of such harmony is the pleasure of dance, present from earliest childhood, which can develop (with proper training) into the joy of participating in the choral processions of the religious festivals – one of the main activities in the Platonic city, in the time left over from agriculture and politics (803e). In the dance, the conflict between contrary influences is resolved in a peaceful way, for the pleasure in dance is a pleasure in order and hence a rational pleasure (664e–665a). Thus dance stands for all other possible mediations between the rational and the irrational elements. The irrational pleasures that escape mediation can be considered either as the properly human part of man or, from another perspective, as what remains in him of the beast, just as the god whom men honour can be identified with their own reason.

The human prodigy would not be so prodigious if he were more commonly encountered. As things are, irrational desires are so tenacious as to be in the end ineradicable. This is why a distinctively human city must be devised. There are two ways in which the 'second' city deals with the chronic conflict between rational and irrational forces: compromise and constraint. Of its four basic features, two at least – the division of land and the allowance of 'human' arguments based on pleasure – are clearly on the side of compromise, while the mixed constitution (in its principal aspects) and the subjection of magistrates to the law represent moderated forms of constraint. The degree of constraint varies (depending on the degree of irrationality involved) in the formulation of particular laws. Indeed the strict concept of law treats law as a form of violence imposed by reason on the irrationality of the desires. The violence involved in a law is measured not simply by the amount of threat it contains (719e9, 890b5), but by the degree to which orders are 'mixed' or

'unmixed' (722e7–723a4; cf. 722b4-c2). All the same, it should be stressed that the two complementary aspects of compromise and constraint are conceived by the *Laws* as residual elements. The *Laws* is most interested in the possibility of a convergence between the rational and the irrational – in most cases a cultivated rather than spontaneous convergence (dance is probably the only example of such spontaneity). In this regard, the dialogue can be seen as undertaking a systematic exploration of the possible manifestations of the human prodigy. Hence the interest displayed in phenomena like rational emotions (among which a central place is given to 'shame', *aidōs*), non-argumentative forms of discourse (in particular, praise and blame, representing the most important features of the preambles), myths and public opinion (especially regarding the existence of gods, cf. 886a and 887d), and, last but not least, the entrenched political mechanisms of Sparta and even more of Athens. In this respect, the mixed constitution of the *Laws* is just such an *institutional* prodigy.

5 Political institutions[27]

The 'constitutional laws' of Book VI are specified by reference to two symmetrical forms of political irrationality: autocratic despotism on the one hand, unchecked democracy on the other. Though opposed in form, despotism and democracy are to a great extent similar in their effects. The despotic exercise of power can only stimulate the irrational desires of the monarch and his 'striving for having more' (*pleonexia*, 875b6). These very same desires are left free to flourish in the hearts of all the citizens by a democratic regime, which is essentially characterized by licence and striving after pleasure (cf. the critique of democracy as 'theatrocracy', 700d–701b).

The relation between these two regimes is identical to that obtaining between two opposed Aristotelian vices. Both extremes are due to excess of a certain element (power in one case, freedom in the other), whose right measure is found in the 'mean'. Licence must be rationally controlled if genuine freedom is to be possible, just as power must be limited if real authority is to be exercised. This is what political mediation is all about. Book III mentions two historical paradigms of such mediation, the (good) monarchy, represented by the Persia of Cyrus, and the good democracy, represented by Athens under the ancestral constitution (693dff.). One

[27] This section is greatly indebted to Morrow 1960, which should be consulted for questions regarding institutional detail (the wonderful index to his book facilitates any such search).

could say that these two regimes are, at the historical or phylogenetic level, functionally equivalent to what dance is at the individual or ontogenetic level.

The 'mixed' – or better, 'mean' – constitution of the *Laws* is the most accomplished form of political mediation between democracy and monarchy yet to be achieved. It is, as it were, a mediation of mediations. As the mediation progresses, the terms 'democracy' and 'monarchy' acquire new senses. Genuinely 'democratic' institutions are now those which assure the effective *participation* and *representation* of citizens in political life; genuinely monarchical ones, those which guarantee the exercise of *competence* (the gulf between this and modern – as well as ancient – usage is obvious). While these two demands remain potentially opposed, they nevertheless tend to blend together – which is precisely what successful mediation is supposed to achieve.

Authority does not simply tolerate the liberty of the citizens but rather constitutes its condition of possibility. That is, true liberty depends on submission to a single legitimate power, that of the law (here we find a particularly strong prefiguration of ideas which will recur in Rousseau). The magistrate of the 'mean' constitution of the *Laws* is not a tyrant whose power must be limited but rather a ruler who incorporates the necessary limits in the very exercise of his functions. (This does not mean that he does not have to account for the way he discharges his duties, for the possibility of abuse is inscribed in human nature.) Conversely, the democratic assembly is not simply an Athenian assembly shorn of some of its prerogatives. The liberty of the *Laws*' democratic assembly is not the negative liberty of licence, but the positive liberty to strive for the good. This explains, at least in part, why 'freedom' counts as one of the three declared ends of legislation alongside 'wisdom' and 'concord' (693b4, 701d7f.).[28]

The logic of mediation demands that liberty should be no more the exclusive possession of the people than wisdom should be confined to the magistrates. In other words, a mixture is required not simply between the ingredients (external mixture) but also within them (internal mixture). There is a democratic aspect to the 'monarchical' (= competent) magistrate, who looks after the interests of the community, as the tyrant fails to do; and there is a monarchical aspect to the 'democratic' assembly, which selects most of the magistrates. In the city of the *Laws* the competence of the assembly is extensive, and liberty itself belongs to all. As a site of concord and friendship, the city of the *Laws* is justified in claiming that it is

[28] The term 'freedom' is overdetermined, in that it certainly also refers to 'political' freedom or the independence of the city.

the sole genuinely constitutional regime, in comparison with which other regimes have 'non-constitutions' (832b10–c3).

Its political institutions resemble those of a Greek (democratic) city. There are two types of governmental bodies. The first type is the assembly, of which there are three instances: the assembly itself (*ekklēsia*), the council (*boulē*), and the Nocturnal assembly (to which one may add the popular judicial courts). The second kind is the magistracy. Magistracies are defined by their functions, which are, in order of appearance: maintenance of the law (37 law-guardians), defence (military officers: 3 generals, 2 hipparchs, 10 taxiarchs and 10 phylarchs), religion (priests, indeterminate in number), economics (60 *agronomoi* – 5 per tribe – responsible for rural life, 3 *astunomoi* responsible for the city, 5 *agoranomoi*, responsible for the markets), education (one officer only, the sole case of non-collegiality), accounts and audits (the *euthunoi*, doubtless more than 12), and justice (selected judges of the high court).[29]

The complementary principles of representation and competence may guide analysis of these institutions.

(a) *Representation*. The principle of representation operates, on the one hand, in the composition and functions of the assembly, and on the other hand in the method for selecting magistrates and the council.

(1) The assembly (*ekklēsia*) is, on all counts, a democratic institution *par excellence*, because it consists in the entire body of citizens (women probably included). Its main tasks are to assign the magistracies (except for the 'superior judges' and the minister for education) and to elect the members of the council. It is thus granted the authority to select the city's authorities. Its other tasks have to do with the common good. The assembly judges public crimes in the first instance (767e–768e); involves itself in the regulation of festivals and sacrifices, which by definition concern the entire community (cf. 772c–d); decides whether to extend rights to strangers who have rendered service to the city (850b–c); and awards, in the name of the city, its supreme honours (921e, 943c). The *ekklēsia* thus serves as the legitimate expression of the constitutive citizens of the community.

(2) Three types of representation can be distinguished: administrative, economic, and political. If administrative representation (by tribes) plays only a minor role, being confined mainly to the rural magistracies, economic representation is more important. Its privileged location is within the council, which was in the corresponding Athenian institution elected by the tribes. This is because inequality of wealth, however restricted it

[29] For a useful summary of the distribution and functions of the various magistracies, see Stalley 1983: 187–91.

may be in the Platonic city, is a potential source of civil conflict. It is thus important that the different classes be reflected in the sphere of institutions. The uniquely complicated system of elections designed to ensure this shows the importance which Plato attaches to this problem.[30] But by far the greatest attention is paid to political representation, which is also philosophically the most interesting case. The care Plato takes over this issue is evident in the fact that nearly all the magistrates are chosen through elections involving the entire citizen-body.

The scheme is elaborate. It combines a phase of 'nominations' open to all citizens with a final selection by vote. The more important the officers who are to be entrusted with power, the more guarantees are installed against haste. Most remarkable are the mechanisms for choosing the guardians of the law (the 37 *nomophulakes*) and those responsible for auditing the accounts (the *euthunoi*, whom we may call the 'auditors'). In the case of the guardians of the law, each citizen writes on a tablet the name of the candidate he judges most qualified to discharge the office (he must be over the age of 50). These names are submitted to public deliberation for three days. Objections can be made and names retracted, while the 300 names most often cited in discussion are retained. These are then reduced to 100 in a second round and finally to the number of those required to serve (753b–d). The selection of the auditors is less involved. Each citizen proposes the name of one person (again, a nominee must be over 50); the 50 per cent of nominees named most often are retained; and this process is repeated until the necessary number of auditors has been selected (945e–946c).

Such institutional mechanisms make the constitution of the *Laws* look like a democracy oriented toward the selection of persons competent to hold authority. Its procedures sound somewhat more democratic than the formula used in the *Menexenus* to label the ancestral constitution of Athens ('aristocracy with the approbation of the people'), which Morrow uses to characterize the *Laws*. True, one would not want to say that, in the *Laws*, the people govern. Nor, for that matter, are they sovereign, since the only element in the *Laws*' theory that properly counts as sovereign is *nous*.[31] Still, the citizens do choose their magistrates.

(b) *Competence*. If the principle of representation is mainly expressed in

[30] The fact that voting is not obligatory for the very poor is better explained as a concern to avoid elections themselves harming economic activity, than by a secret oligarchical design to give greater weight to the richer voters. The latter was the interpretation offered by Aristotle, *Pol.* 1266a14ff.

[31] 'Noocracy' is the constitution of the *Laws*, see above, pp. 260f., 271. For the distinction between sovereignty and government, see Rousseau, *Social Contract*, Book III, ch. 1.

the procedures for selecting officials, the complementary principle of competence is guaranteed in two different ways: first, eligibility to serve as magistrates depends upon certain requirements; second, and more important, there are different levels of magistracies and assemblies. The greater the understanding of the law an office requires, the more developed must be the candidates' knowledge and education. Thus the principle of competence is epitomized in the Nocturnal assembly, whose role is precisely to preserve and deepen understanding of the law (951e–952a).

The majority of magistrates are chosen by the assembly without any conditions for eligibility other than age. In two cases, however, there is a second tier of eligibility and election. The minister of education is to be chosen for a five year term from the existing guardians of the law by a secret vote of all the magistrates (766b). The entire body of magistrates (apparently together with the members of the council) are responsible for the annual election of the members of the high court (767c–e). Such contraction of the electorate depends upon the nature and responsibilities of the posts involved. In this respect, the minister of education and the high court occupy positions that are to some extent symmetrical. The ministry of education is the most important magistracy in the city (765e1ff.), for the education of children is the foundation for everything else, including in particular obedience to law. Conversely, the function of the high court, which is the court of last resort for judging all crimes and the only court for judging crimes against the community, is to correct failures of the educational system.

All the magistrates, whether chosen by the assembly or by their peers, are subjected to a preliminary examination (*dokimasia*) conducted either by the council or by the *nomophulakes*. This procedure was characteristic of ancient Athens, and Plato gives few details about it, implying that he accepts current practice, which involved verifying compliance with formal conditions (age, citizenship, etc.), as well as the candidate's good character. Where procedural details are given, an emphasis is placed on possession of specific competences, a feature which departs somewhat from Athenian practice.

The body which in modern accounts of the *Laws* is usually called the 'Nocturnal Council' (because of 962c10), but which should really be called the 'Dawn Council' (after its time of meeting, 951d and 961b), is the most important institution in the *Laws*' city (its 'soul' and 'head', according to 961d2f.). It is also the institution farthest removed from existing institutions, Athenian or otherwise. Interpretation of the dialogue has long suffered from the belief that this dawn assembly is an 'appendix' that

is badly integrated into a constitution already complete without it (it is not even mentioned until Book XII). Some even declared the Nocturnal Council an instance of human authority set 'above' the law. Morrow has already done justice to these essentially superficial interpretations.[32] That a body like the Nocturnal Council should be indispensable to the Platonic city, founded as it is on education, would seem self-evident. A few passages in the preceding books announce or presuppose such an institution.[33] That it should be fully discussed only in the final book is not only rhetorically effective (in the order of discourse, the head comes last), but also logically proper: the 'auditors' themselves do not appear until Book XII, for their magistracy presupposes all the others – they are 'magistrates of magistrates' (945c1). By the same token, those who study the law come after the law has been completed. In some sense, then, the Nocturnal Council cannot but be 'external' to the other institutions, since it is the instrument of their preservation. The problem it resolves is symmetrical to the one that related to the founding of the city, with the important difference that it is by definition impossible to institutionalize the inception of a political regime.

The construction of the Nocturnal Council corresponds to the requirement, formulated in the *Republic* (497c8–d2), that the city include within itself 'an element having the same conception of the constitution as you, the legislator, had in formulating its laws' – a circumlocution seeming to imply a philosophical institution. The Nocturnal Council is just such a quasi-philosophical institution, even if its concerns are more immediately oriented towards politics and the law than are those of the philosophers in the *Republic*. The study of the law requires extensive knowledge. The sciences useful for clarifying problems about the laws (952a) include kinetics (on which the refutation of atheism in Book X is founded) and mathematical knowledge, to which this same book makes a somewhat cryptic allusion (894a).

Since the Nocturnal Council does not govern (it exercises no magistracy), it cannot put itself 'above the law'. Its power lies in its intellectual and moral authority. If it is the head of the city, it is no more than that: the city's golden thread, as it were, which needs external 'help' to enforce its views (cf. 645a5ff.). Still, it would be a mistake to think here of separation of powers. The Nocturnal Council does include some of the key magistrates of the city: the ten eldest *nomophulakes*, a certain number of priests

[32] Morrow 1960: 512.

[33] The talk of a 'short education' (735a4) presupposes a programme of higher education, and this is announced as something yet to be developed at 818a1–3.

and 'auditors' who have achieved a high reputation, and the minister of education. The other members may be former magistrates (including all the former ministers of education) or particularly meritorious citizens who have accumulated valuable experience, especially if they have travelled outside the city (951d–e, 961a–b). Each of the senior members is matched by a junior member, aged between thirty and forty. Besides the help which the juniors render their seniors (they lend them their eyes and ears, 964e–965a), this arrangement clearly reflects the pedagogical vocation of the Nocturnal Council. While devoting themselves to the advanced study of scientific disciplines in relation to the law, the members of the council also train their successors.

(c) *Control and Compromise*. The two basic forms of political institution, the assembly and the magistracy, embody at different levels the two basic principles of representation and competence. The degree of mediation achieved by these institutions, however, should not obscure their limitations. These limits are revealed by the place granted to constraint (the mildest form of which is control) and to compromise.

The exercise of offices is subjected to a series of formal, institutionalized controls, which are, as it were, a minimal trace of the 'threat' remaining within a system largely dominated by the principles of representation and competence. Such controls aim above all to prevent corruption, the possibility of which is inherent in human nature. Tenure of magistracies, for example, is limited, and individuals are not eligible for reappointment. In the judicial realm control is assured by the existence of an appeal mechanism, for public crimes (it seems) as well as private ones, and by legal guarantees. For instance, the death penalty can be pronounced only in exceptional circumstances and by an extraordinary joint sitting of the high court and the *nomophulakes* (855c). But the most important control is the auditing of accounts, to which all magistrates (including the auditors themselves) are subjected. All magistrates, high and low, are presumed potentially liable to corruption, even though this is far from inevitable (contrast the case of absolute power) and indeed is supposed to remain exceptional.

Just as they must make room for threat, however residually, the political institutions must also acknowledge a minimal form of compromise. This is because, while the procedures regulating the selection of magistrates in effect must be accepted by the citizens (since they involve all citizens' participation), this acceptance cannot be taken for granted. This is nowhere so clear as in the famous passage in Book VI about the two kinds of 'equality'.

According to an 'ancient adage' (Pythagorean), friendship is founded on 'equality' (757a5f.). What is involved is not 'arithmetical' equality, in which each citizen is worth the same as any other, but that 'truer and better' (757b5f.) geometrical or proportional equality which Socrates had already recommended to Callicles in the *Gorgias* (508a4–8). One cannot, however, simply substitute one for the other. Because the term 'equality' is ambiguous, it requires interpretation. Now most people will take it in an arithmetical, egalitarian sense. Appeal to geometrical equality will then tend to reproduce, at a higher level, the very disagreement which it was meant to prevent. This is why some limited scope must be granted to the lesser form of equality (i.e. the arithmetical), by institutionalizing the democratic choice by lot which is its characteristic political expression.

Although the democratic choice by lot is usually presented as a concession made to human nature, it is also interpreted, more positively, as the expression of 'divine chance' (*theia tuchē*). Accordingly, it is used for assigning the annual religious offices (759b–c). It also plays a role in the composition of the courts for popular justice (768b) and in deciding between the last few surviving candidates in an election (763d, on *astunomoi*).

The introduction of an egalitarian principle at the constitutional level may be seen as the counterpart of the allowance for private property at the economic level (see above, section 3.2). Popular misunderstanding of true equality, like the impossibility of total communism, sets the limits of the human prodigy. But despite this parallel there is an important difference. No man, simply as man, can renounce personal possessions. Hence the radical step taken in Book v. By contrast, it would seem possible that a majority of citizens, if properly educated, should eventually be able to acknowledge the superiority of geometrical equality over arithmetical equality: the *Laws*' pedagogical programme insists on training in elementary mathematics (818b–e). This may well explain why selection by lot (which relies on arithmetical equality) plays only a marginal and largely symbolic role in the procedure for distributing offices.

6 The forms of political speech: what is a preamble?

The polarity between control and compromise in the field of political institutions relates to a larger question, that of the limits of education (*paideia*), taken in the restricted sense given to this term in Book I (education as 'education to virtue', 643e4, cf. 653b). Indeed, education is where

the *Laws*' constitutive tension between ideal and reality features most prominently. Just as human institutions must, in order to satisfy human nature, make allowance for private property (and, for that matter, arithmetical equality) and must also include mechanisms of control to prevent abuses, so education is limited on one hand by rhetorical persuasion and on the other by legal constraint.

What is at stake here is the extent to which persuasion, in itself a nonviolent procedure (in as much as its medium is speech), can also be made uncompromisingly rational. Can legislative (and more generally political) speech in principle eliminate penal violence, and can compromise be eliminated from legislative speech? These questions, although they are not explicitly treated in the dialogue but must be reconstructed on the basis of evidence scattered through the whole work, constitute much of its philosophical interest.

As we have seen, the *Laws* gives the laws a foundation that is theological or 'noetic' (intellectual).[34] Yet one of the most striking features of the work is its reserve about the promulgation of laws. Not only can the legislator not content himself with producing laws (719e7–720a2), but, in some sense, making laws is not his priority: his real task is 'to educate the citizens, not to legislate' (857e4–5). The overall composition of the work reflects this attitude. When Aristotle says that the *Laws* contains practically nothing but laws (*Pol.*1265a1f.), he has in mind the distinction between the laws and the constitution, which Plato deals with only in Book VI. In fact the approach to the laws in the *Laws* is conceptually dominated by a *critique* of the law. This would not be possible unless different senses of the word 'law' were involved when the law is being given a theological foundation and when it is being criticized. Thus the very title of the work names a problem.

What must a law be, then, if we are to make sense of the idea that the legislator goes beyond legislating and even gladly renounces it? This question concerns both the scope of the law and the definition of its form.

The task of the Platonic legislator is to state 'what one must do with regard to the beautiful, the just, and all the other great notions . . . relevant to virtue and vice' (890b7–c3; cf. *Rep.* 484d1–3 and *Plt.* 309c5–d4). This all-encompassing description implies that the whole of human life can potentially become the object of legislative attention. Because the human prodigy is so fragile, Plato has every reason to exploit this potential for broad legislative scrutiny. The attention devoted to the details of behaviour is one of the most striking features of Platonic legislation. This atten-

[34] Above, pp. 26of.

tion makes it in some ways similar to the great religious codes and to wisdom literature. In particular, everything pertaining to 'private' life is to be strictly regulated, for what we call 'private' is actually the scaffold of the entire legislative edifice (793c, cf.780a1–7).

Now the point where the Platonic legislation is broadest in scope, as far as content is concerned, is also where the form of the law becomes most problematic. There are actually two reasons why law is ill-adapted to the private sphere. The first is contingent. To regulate and regiment private life is to undertake a potentially infinite task. It would be extremely difficult (and would even provoke laughter, 789e) to conceive a code of laws covering every detail of daily life. The second reason goes deeper. A law, in the strictest sense, is more than a simple prescriptive statement; it is a coercive prescription (773c6, e4), stipulating penalties in the case of transgression (789e4, 790a1f.). But there is no way that the punishment of domestic crimes (provided that it is adapted to the relative insignificance of the deed, which Plato assumes) can prevail over the immediate interests or fancies of those concerned. The legislator who would legislate in this domain would simply expose himself to the anger of his subjects, especially that of women (cf. 773c7, 789d8–790a7).

The legislator thus confronts a dilemma. He cannot restrict his legislation to the sphere of the political community properly speaking, for the so-called 'private' sphere is not really private. On the other hand, it is impossible to have recourse to the law in this sphere: not only would this be 'neither appropriate nor decent' (788b5f.), it would also prove ineffective. To resolve the dilemma would require the legislator to produce statements that would be functionally equivalent to laws without, however, being laws. What to call statements of this kind is an open question. Plato can refer to them as 'unwritten laws' (793a9f., cf. 773e3) or as 'an intermediate between admonition and law' (822d6f.). Most often they are presented as a discourse of praise and blame (see e.g. 730b5–7; 773e2–4; 824a10f.). Clearly, these descriptions correspond to the function assigned in Book IV to the preambles to the laws, although the emphasis is more specific – at stake is the philosophical relevance of 'mores' (Hegel's *Sitte*). In this respect, it is remarkable that women's resistance to the idea of (domestic) laws, far from being an obstacle to the legislative enterprise, as it might at first seem, in fact fosters a legislative project that is essentially committed to reduce the extension of the law. This is because the law, in the *Laws*, represents a certain kind of violence (*bia*, 722b7). But the law is violent in two rather different senses.

In the case of penal laws the violence involved is clear. Such laws represent a juridical conception of the law as embodied in existing legislative

codes. From this perspective a law involves two distinct elements, a command and a threat, as can be illustrated with Plato's own example: 'When somebody reaches the age of thirty, let him be married, before he reaches thirty-five. If not, he will be punished with a fine and a dishonour, a fine of such and such amount, a dishonour of such and such kind' (721b1–3). Like every other legislative code, the *Laws* regularly stipulates the penalties, or threats (890b5; cf. 719e9), to be imposed in case of transgression, such as death, blows, confiscation of goods, or exile.[35]

But this conception of the juridical threat is deepened by an analysis (which remains largely implicit) of the command itself. Taken by itself, an order is no less violent than a threat, in as much as it does not give reasons. From this perspective, coercion is only the extension of a violence already present in the 'imperative' with which Plato, in at least one passage, identifies the law (723a5). One could go so far as to suggest that the command is in some respects even more 'violent' than penal violence. The threat is only relatively violent – it is not, by definition, the execution of the punishment but rather a specific form of persuasion, namely dissuasion. A command, however, to the extent to which it is accompanied by no reason at all (even dissuasive), is naked violence: this is why Plato calls the 'unmixed law' (unmixed, that is, with the persuasive preamble) a 'tyrannical order' (722e7–723a2). Be that as it may, whether the law is considered as a simple command or as a penal law, its inherent 'violence' induces a redescription of the legislator's task as an enterprise of persuasion. The site of this persuasion is not the law itself but the 'preamble', which is the generic form of all the para-legislative statements. Although the preamble should officially precede the law (723a2–4; cf. 720d6–e2), in many cases Plato gives a looser meaning to the term 'law' such that the preamble itself becomes part of the law (cf. the expression 'unmixed law'), or the entire reasoned prescription is called 'law' (as is often the case).

This explains why the elaboration of the laws, in the *Laws*, is accompanied by an impulse to reach beyond the law. We have already seen how this is reflected, at the level of composition, in the repeated postponement of the work of legislation (see above, section 2). But this formal feature has a substantive counterpart. Part of the philosophical programme of the *Laws* is to *reduce* the law (as far as its form is concerned), so that dialogue can become the ideal form of the legislative discourse.

This move, probably one of the most puzzling features of the work, is

[35] Plato's penal system, which in important respects is more progressive than the legislation of his time, is thoroughly analysed in Saunders 1991.

directly linked to the difficult question of the status of persuasion in the *Laws*. Against the tendentious but widespread interpretation which reduces the preamble to an exercise in manipulative rhetoric, some commentators have recently insisted that the persuasion at issue in the work is in principle rational.[36] Now it is true that the two passages of the *Laws* which come closest to explaining the nature of a preamble give a major role to argument. But it is important to realize how argumentation comes in. The framework is provided by an extended analogy between the legislator and a doctor (719e7–720e5 and 857c4–e6). The way Plato develops the medical analogy, which is frequent in the Platonic corpus, is entirely new. Two kinds of medical practices are distinguished. The good or 'free' doctor is one who, unlike the 'slave' doctor, is not content to simply give his patient the appropriate medicine but, in the Hippocratic tradition, involves the patient in his own cure through verbal exchange.[37] The patient's state is an object of discussion. The *Laws* even goes so far as to picture the doctor 'going back to the general nature of bodies' in his quasi-philosophical discussion with his patient (857d). The hyperbole is evident, but so is the reason for it: the Socratic model of a dialectical conversation constitutes the horizon within which the theory of legislative preamble must be situated. This is the more remarkable, of course, in that the *Laws* has been read as Plato's ultimate treason against Socrates (see above, section 1).

This is not to say, of course, that a Platonic preamble is a Socratic dialogue. On the contrary, the distance between the theoretical conception of preambles emerging from the passages of Books IV and IX under consideration and the actual preambles which one actually finds in Books V–XII is striking. Certainly, the long preamble which constitutes the major part of Book X, in which Plato gives us the final version of his kinetics, has a nicely argumentative flavour (although the argument is hardly dialectical, given the fact that, past a certain point, Clinias and Megillus are unable to follow what the Stranger is saying: cf. 893a). But this is the exception. For the most part, preambles are speeches of praise and blame. One may well ask just where these forms of address get their persuasive force (a general question which the *Laws* invites, although it does not explicitly deal with it), but it is in any case much more a matter of 'rhetoric' than of properly 'rational' procedures.[38] Indeed, if actual lying is not practised (as it is in

[36] Hentschke 1971, Bobonich 1991.
[37] *Epidemics* 1.5: 'The patient must oppose himself, with the doctor, to the illness.' On the medical analogy, cf. Jouanna 1978 and Laks 1991: 422f.
[38] Cf. Stalley 1994, criticizing Bobonich 1991.

the *Republic*), its potential usefulness is explicitly invoked (663d6–664a7). Moreover, the ancestral myths of retribution, which figure in most of the preambles attached to criminal laws, strangely if interestingly blur the contrast between persuasion and threat. Even though dissuasion may well be considered a kind of 'persuasion', it also remains essentially a threat and hence a kind of violence.

The distance between theory and practice, however, should not worry us. Rather the reverse, for not only does the medical analogy, if properly construed, imply the recognition that legislative discourse will not be able to follow the medical model of free discussion,[39] but the gulf between theory and practice, ideal and reality, runs through the *Laws* as a whole. The contrast between the paradigmatic notion of a preamble and its 'approximate' realizations (often a far cry from the alleged model) not only reminds us that we are in a second city, made for humans, but also implies that humanity is not itself homogeneous. The whole gamut from beast to god can be found among the citizens of the second city. The astounding variety of preambles that the legislator must employ is only the consequence of this diversity.

One of the most paradoxical aspects of the work, in this respect, is that the famous preamble of Book x, which is closest to discursive speech and thus (one might think) to the paradigm of Socratic discussion suggested by the medical analogy, is not presented as an ideal at all. The crime which it seeks to deter is the worst of all, for atheism by definition calls into question the very possibility of theologically founded legislation. The nature of the adversary explains the reticence with which the Athenian develops his argument based upon physical theory to establish the rationality of the universe. Recourse to such argument is imposed on him, against his will, by the complicity between Presocratic physics, which makes nature the principle of everything, and the sophistic critique of human conventions (889b–890a). Conversely, common sense is praised for finding in the ordered arrangement of the heavens enough of an argument to prove the existence of the gods (887d–e). This praise of common sense, which might surprise one coming from Plato's pen, shows that the preamble of Book x is not so close to the model of rational discussion sketched in Book iv as one might have thought. It also confirms Plato's attention, in his late political work, to what one might call the spontaneous manifestations of rationality of the 'human prodigy'.

[39] To show this in detail would exceed the scope of this chapter. Unfortunately, no adequate analysis of the two highly complex passages and their relationship is available.

7 Conclusion

Plato's last and longest work is an impressive document not only of Platonic political philosophy, but of Platonic philosophy in general. Posidonius the Stoic, although a great admirer of Plato, must have found the work too Platonic for even his taste, for he vigorously rejected the theory of preambles on the grounds that a law should 'be brief, so that the unskilled may grasp it more easily': its goal, he insisted, was to 'order, not argue' (*iubeat lex, non disputet*) – a formula that would eventually find its way into a sixteenth-century commentary on the Digest.[40] Plato, on the contrary (if Clinias can be taken as his mouthpiece, which seems to be the case in this context), claimed that 'refusing to facilitate explanations [concerning the law] as best as possible' amounted to an act of 'impiety' (891a5–7).

Precisely because the work is so deeply Platonic, one should not be surprised if it happens not always to square exactly with other Platonic dialogues, even the 'late' ones: for all the continuity in the corpus, most Platonic dialogues begin from scratch, and the *Laws* is no exception in this respect. Admittedly, some of the doctrinal 'changes' that feature so prominently in the *Laws* have a very special status, as I have argued (above, section 3). One may also wonder about other items that could not be analysed here, such as Plato's treatment of the Socratic principle 'nobody does wrong voluntarily' within a conceptual framework that implicitly rejects the identification of virtue with knowledge,[41] or the startling rehabilitation of the written word, put in the very language that had served to condemn it in the *Phaedrus*: 'and in some sense a legislation relying on insight (*phronēsis*) draws its strongest help from the fact that legal instructions, once put in writing, do not move at all . . .' (890e6–891a2).[42]

Most striking in the *Laws*, however, in comparison with the rest of the corpus, is the new emphasis placed on 'god' in the conduct of human affairs, and more generally on piety. Not that concerns for god and piety are not to be found in other dialogues, such as, to name only a few obvious instances, the *Euthyphro*, the *Symposium*, the *Phaedrus* and the *Republic*. But it is fair to say, I think, that only in Plato's *Laws* does god possess such a centrality. The way the task is set in Book 1, the theodicy in Book x, the very idea of law as an expression of divine reason, show that the *Laws* endorses, and is meant to be a commentary on, the famous Orphic line

[40] F. Duaren (in *Digest.* 1.3). The source for Posidonius' views on the *Laws*, and for the formula, is Seneca's *Letter* 94.38 (= F178 Kidd).

[41] Cf. 859c–864b, on which see Saunders 1968, and 691a5–7.

[42] Cf. *Phaedrus* 275d.

quoted at a crucial juncture in the general preamble of Book IV: god 'has the beginning, the end and the middle of all that is' (715e7–716a1). In this respect, Plato's *Laws* is not only the first work in genuine political philosophy, as I have argued above, but also the first theologico-political treatise. This makes it all the more important, for the better and for the worse, in the history of political thought, but also explains why, in spite of its insistence on the 'human factor', the work remains so distant from Aristotle, in the very moment where it seems to pave the way for him. This is because it is, in its fundamental orientation, an anti-Protagorean treatise: god, not man, is the measure of political order.[43]

[43] 716c4–6.