

# THE NOCTURNAL COUNCIL IN PLATO'S *LAWS*\*

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No part of Plato's scheme of legislation in the *Laws* is more familiar than the institution of the Nocturnal Council, but perhaps none is more difficult to interpret. Plato introduces it only in the closing books, and indeed leaves the explicit discussion of its purpose and functioning to the end of the twelfth book, when his legislation is practically (σχεδόν) finished (960b). Its introduction thus late in the exposition has led some commentators to regard it as something of an appendage, if not an afterthought, tacked on — by Plato himself or by Philippus of Opus<sup>1</sup> — to a constitution and system of laws already complete. This interpretation is not impossible, but it should be accepted only as a last resort. On the other hand, if we respect the integrity of the *Laws* as it has been transmitted to us and regard the Nocturnal Council as a considered part of Plato's legislation, we may think its inclusion necessitates the denial, or at least the reconstruction, of much that has gone before<sup>2</sup>. Let us see whether this inference is justified.

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<sup>1</sup> For Philippus of Opus, see the Appendix.

<sup>2</sup> EDUARD ZELLER, *Plato and the Older Academy*, 539—540: "As the rest of the government is in no way based upon this council of the wise, and as the council itself is not incorporated into the organism of the state by any definite official sphere of action, there is a certain ambiguity and uncertainty about the whole scheme". GEORGE H. SABINE, *History of Political Theory*, New York 1937, 85: the Nocturnal Council "not only fails to articulate in any way with the other institutions of the state but also contradicts the purpose of planning a state in which the law is supreme". ERNEST BARKER, *Greek Political Theory*, London 1918, 349: the Nocturnal Council is to control, "in ways that are never explained, a system of political machinery into which [it is] never fitted". LEVINSON, *In Defense of Plato*, Cambridge (Mass.) 1953, 517 n. 38, thinks that this institution "introduced at the end of the *Laws*" engenders a contradiction in the entire fabric of Plato's state. GERHARD MÜLLER, *Studien zu den Platonischen Nomoi*, München 1951, 169—170: „Der nächtliche Rat fügt sich ... in die anderen Institutionen, die historischer Herkunft sind, nicht ein“.

At this point (960b) the legislation for the Cretan city is, in a sense, complete — with its assembly, council, guardians, euthynoi, and all the minor magistrates; its courts of justice and laws, covering at least the most important of the citizens' activities, which the magistrates and the courts will apply and enforce; its provisions for a form of education that will supplement the law through the development of character and intelligence, and for religious institutions to give the laws ideal guidance and sanction. What then is still needed to make our legislation actually complete? "We are never at the end of a task," says the Athenian, "when we have merely made something, or acquired it, or brought it into being; in the present case we shall not have done all that we should have done, and our work will be incomplete, if we have not found some device that will assure the preservation, in its perfection and through all time, of what we have brought into being." Of the three Fates, he recalls, Atropos is the "third and savior," because, as her name implies, she gives the quality of irreversibility<sup>3</sup> to the dooms assigned and ratified by her sisters (960cd). The clear implication is that in our state we have assigned and ratified the institutions and laws; what we now need is some means of assuring their "salvation" (σωτηρία)<sup>4</sup>.

Now the salvation of the laws implies something more than the preservation of a code rigidly and unthinkingly adhered to. Any legislator who has founded a city hopes that those who come after him will understand his purposes and interpret his provisions with the same insight that he has used in constructing them; otherwise his legislation, even though retaining its form, will have changed its spirit. Plato above all would have cause to be concerned lest his successors not be equipped to understand his law, for its foundations are based on a philosophical conception of the good, individual and political; it is the expression of a reason that transcends ordinary experience, and those who are to interpret it, or apply it, cannot do so properly unless they are equipped to understand the Reason (Nous) it contains. This conception is the ripe fruit of the Socratic doctrine that virtue is knowledge; and in expounding it to his Dorian companions the Athenian Stranger makes use of the familiar Socratic analogies. If legislation and statesmanship are arts,

<sup>3</sup> I. e. ἀτροπία; though Plato here uses a synonym, ἡ ἀμετάστροφος δύναμις.

<sup>4</sup> This interpretation of σχεδόν . . . τέλος ἂν ἔχοι (960b) is confirmed by the context of the parallel passage in 962b: εἴπερ μέλλει τέλος . . . εἶναι. Cf. *Rep.* 620e.

as we think they are, analogous to the arts of medicine, navigation, and generalship, and if it is characteristic of a good craftsman to have a clear conception of his end and of the means of attaining it, then any state that expects even to retain the wisdom of its founder must have some organ within it to keep alive the knowledge of the purpose of its laws and their dependence upon cosmic Reason, and to examine the way in which they are accomplishing or failing to accomplish this ideal purpose (961e—962c).

Even more will it need such an organ if it hopes to improve upon its founder. In this context we see the full meaning of a long passage in the sixth book (769a—771a). The Athenian Stranger there compares himself to a painter who seems never to tire of embellishing and improving what he has done and who, if he could, would leave behind him a successor with similar skill to keep watch over his picture, repair any damage to it, and even introduce improvements or correct defects in the original craftsmanship. So the legislator realizes that his own workmanship cannot reach the perfection that he wishes to attain and would like to leave successors behind him to correct his mistakes, in order that the constitution of his state may not deteriorate but always grow better (ἵνα μηδαμῇ χείρων, βελτίω δὲ ἡ πολιτεία . . . αἰεὶ γίγνηται).

If anyone knew of a device to this end and could teach anyone else, by words or deeds, to understand in some degree how the laws are to be guarded and corrected, do you think he would leave off talking about it until he had brought it into being? 769de

The means that Plato eventually adopts are not fully described in the sequel to this passage. The Athenian Stranger merely declares that we must entrust this function to the guardians, who are to become νομοθέται as well as νομοφύλακες (770a; cf. 770c); and he addresses to them a general statement of the ends to which legislation is directed, enjoining them to keep these aims in mind, censuring the laws that are found from experience not to serve the purpose announced, and heartily accepting and enforcing those that do. Likewise we see the meaning of a still earlier passage in which the Athenian, after surveying the areas of life which a scientific legislator must try to regulate and the ends to which his laws should be directed, adds that “for all these laws he will appoint guardians, some guided by knowledge (φρόνησις), others by right opinion, in order that reason (νοῦς), binding the whole together, may exhibit them as in conformity with temperance and justice” (632c).

Throughout the *Laws*, then, Plato sees that the state he is constructing will require that some of its officials be equipped with philosophical and juristic intelligence to preserve, expound, and apply the principles on which the laws are based. It is the same requirement that is laid down in the *Republic*. If a good state, and the philosophical spirit that designed it, are to escape degeneration, says Socrates, "there must always be resident in it some element having the same conception (λόγος) of the constitution that you the legislator had in making your laws" (497cd). The Nocturnal Council is the means designed to satisfy this requirement in Plato's Cretan city. Hence these closing pages are as integral a part of the *Laws* as are Books VI and VII of the *Republic*. The Council will be the "head" of the state (961d, 964d, 969b) — to use the metaphor that occurs frequently here — the head in the sense that it contains the intelligence which apprehends the reason in the law and the source of this reason in the ordered cosmos. Let us see how Plato proposes to provide such a head for his state.

The constitution of the Nocturnal Council<sup>5</sup> is dealt with in two separate passages (951de, 961ab) which have some discrepancies, though on the main points they are in accord<sup>6</sup>. The Council is to consist of (1) the ten eldest νομοφύλακες; (2) the "priests who have

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<sup>5</sup> It is called νυκτερινὸς σύλλογος at 909a, 968a (cf. 908a); and once it is called the σύλλογος τῶν περὶ νόμους ἐποπτευόντων (951d), a cryptic formula whose meaning is discussed in Note 17. Σύλλογος is more correctly rendered "assembly"; but "Nocturnal Council" has been so generally used to designate this body that to avoid confusion I have retained it. — The requirement of daily meetings at dawn (951d) sounds rather grim; but then Plato was not one to make things easy for his chosen ones. The early hour probably would not seem so strange to Plato's readers as to us. The activities of the day began early in Greece. — The phrase συλλεγόμενος ἀπ' ὁρθρου μέχρι περ ἂν ἥλιος ἀνάσχη (951d) is puzzling if it is taken as prescribing the duration of their sessions. It probably should be taken as indicating the time at which they are to assemble.

<sup>6</sup> Bruns and Krieg (see Appendix) regard the σύλλογος described at 961ff. as the creation of Philippus of Opus; the genuine Platonic σύλλογος is the one mentioned in Book X (908a, 909a) and described in 951de, which is concerned only with practical knowledge about the laws, not the higher philosophical knowledge cultivated by the one described later (BRUNS, *op. cit.* 204; KRIEG, *op. cit.* 38). Again, according to these critics, the Platonic Council has only an advisory function and therefore is compatible with the functions of the magistrates already described; the Council of Philippus, however, has executive and judicial powers, and thus in effect supplants the Nomophylakes, just as it takes over their name (cf. οἱ ὄντως φύλακες τῶν νόμων, 966b). But it was evidently Philippus' intention, on this hypothesis, to make the two councils appear identical (cf. 962c, 961ab). Why then did he not make the constitution of his council

received awards of merit," which obviously includes the euthynoi (946b) and possibly others<sup>7</sup>; (3) the director of education and all his predecessors in the office<sup>8</sup>; (4) certain citizens who have travelled abroad and who on their return have been examined by the Council and adjudged worthy of membership<sup>9</sup>; and (5) perhaps other citizens who have received awards of merit<sup>10</sup>. Each member of this body is to associate with himself a younger citizen between the ages of thirty and forty, who if approved by the other members shall attend the meetings of the Council and engage in its discussions. These younger citizens are apparently not regarded as members in the same sense as their elders are. A younger man's association might cease with the death or retirement of his sponsor, and in any case would come to an end when he himself reaches the age of forty. This provision seems strange, but its meaning will be evident in the sequel.

The sessions of this body are first described in connection with the regulations regarding foreign travel. No city can be civilized, Plato says, if it is unacquainted with other men, both good and bad; nor can it preserve its own laws if it holds them only by habit and not by understanding as well (951b). Hence in addition to the embassies and contestants sent to the Panhellenic festivals at Delphi, Olympia, and the Isthmus, the city should also send out other qualified observers to make a more leisurely examination of foreign customs and carry on more extended conversations with the wise men of other lands.

identical with that of the one Plato describes? Or, if the slight differences that he introduces are significant for his purpose, why did he not revise Plato's account so as to bring it into accord with his own? Furthermore, the claim that this Council supplants the Nomophylakes cannot be established, as I think my exposition shows.

<sup>7</sup> On awards of merit, see 829c, 922a.

<sup>8</sup> These are included in the earlier passage but omitted from the second; but the office is such an important one that it is not likely that Plato has changed his mind and decided to leave them out. Furthermore, election to this office seems to be the equivalent of an award of merit (cf. 766a). The statement in 961b is said to be a repetition of what was said earlier, so that Plato is not conscious of any change of intention.

<sup>9</sup> The provision for the inclusion of these θεωροί is explicit in the second passage and implied in the sequel (952bc) to the earlier one.

<sup>10</sup> Bergk (*Fünf Abhandlungen*, 94) thinks that 961a should be emended, after the analogy of 951d (τῶν ἱερέων τῶν τὰ ἀριστεία εἰληφότων), to read τοὺς δὲ <ἱερέας τοὺς> τὰριστεία εἰληφότας. If this emendation is accepted, there is no need to add the fifth category mentioned in my text; but though plausible it is by no means necessary, and I prefer to adhere to the received text.



There are always among the mass of men a few, not many, inspired ones (θεῖοι τινες) whose conversation is above price. They spring up indifferently in good and in badly ordered states. These men we must track down, if we live in a well ordered state, searching them out by sea and land, . . . in order to confirm those parts of our legislation that are well established and correct anything that is amiss. Without such observation (θεωρεῖα) and inquiry (ζήτησις) no city can ever remain in a state of perfection, nor can it if this inquiry is conducted badly. 951bc

These observers, or envoys — their designation θεωροί carries both meanings — must be between fifty and sixty years of age; they must be chosen as good ambassadors of their country's laws, and as persons not liable to corruption by what they see abroad. They may apparently go where they please and remain as long as they like within the ten years permitted them<sup>11</sup>. When one of them returns he is to go at once to the Nocturnal Council and report to them any wise saying (φήμη) he has heard about legislation or education, and any new ideas of his own that have come from his experiences (951d, 952b). At this point we have a brief statement — almost by way of digression — concernig the meetings of this Council.

Their conferences (συνουσία) and discussions (λόγοι) shall always be about laws — both the laws of their own city and any different laws that they may learn of elsewhere; and especially about any branches of learning (μαθήματα) which may seem to aid them in this inquiry by shedding light upon matters of law (τὰ περὶ νόμους). 951e—952a

From this passage it appears that the purpose of the Nocturnal Council is to help selected officers and distinguished citizens attain a deeper understanding of their laws, sharpened by comparison with the laws of other states, and enriched by insight into the nature of law in general. Further it is evident that for the understanding of these matters other studies are necessary. We are not here told what the μαθήματα are that will assist the members of the Council in gaining a clearer insight into law; but when the Nocturnal Council is taken up again ten pages later we have an account of the kind of inquiries with which this body will be concerned. The Athenian points out that if this Council is to be an adequate head — i. e. guiding intelligence — of the state, it must be able to apprehend clearly the political mark (σκοπός) to be aimed at in all legislation, and must know also how this end may be attained and

<sup>11</sup> This seems an echo of Plato's visit to the Pythagoreans in Italy and to other lands during his years of travel after the death of Socrates.

what laws and what men may best assist (συμβουλεύειν) in attaining it (962b). Now the end to which all laws should be directed is virtue (963a). But the knowledge of virtue is no simple matter, the Athenian shows. Moral goodness manifests itself traditionally in four main forms, courage, temperance, wisdom, and justice, yet these are somehow one (963c-e). To grasp the single principle that pervades them all while not destroying their differences; to understand their various powers and effects, their relationship to one another and to the Nous which stands above them; and to be able to expound them to the earnest inquirer — this requires that expertness in dialectic, in seeing the One in the Many, in “giving and receiving λόγους,” which had long been the heart of Plato’s philosophical method<sup>12</sup>. Furthermore, those who are to guard our laws must in the same fashion apprehend the truth on all matters of earnest inquiry (περὶ πάντων τῶν σπουδαίων), of which the most important are the nature of the soul, the movements of the heavenly bodies, and the existence of the gods (966b-e). Finally, there is at the end a reference to certain preliminary sciences (τὰ πρὸ τούτων ἀναγκαῖα μαθήματα, 967e), obviously mathematics and harmonics, which are necessary for the proper understanding of the high matters just mentioned. Thus Plato outlines for his Council a program of studies, beginning with the preliminary sciences last mentioned and proceeding (we cannot determine precisely in what order) through moral philosophy and dialectic to cosmology and theology<sup>13</sup>.

Are these the studies that will assist the inquirer in attaining a clearer understanding of law? We are not told this explicitly, nor can we see clearly how they could serve this function. But we can see how Plato thought they could, and this is enough to reveal his intention. Law, as we learn in the *Philebus*, results from the application of the Limit (πέρας) to an indefinitely varying qualitative continuum (ἄπειρον), and the Limit is conceived of as analogous to mathematical order<sup>14</sup>. The most striking illustration of its use is the production of harmony in a musical instrument through

<sup>12</sup> The familiar marks of Plato’s dialectic are numerous in this passage. Besides the problem of the one and the many (πρὸς μίαν ἰδέαν ἐκ τῶν πολλῶν καὶ ἀνομοίων, 965c; cf. 963c—964c), note ὄνομα καὶ λόγος, 964a; τὴν ἐνδείξιν... ἐνδείκνυσθαι, 966b; λόγῳ ἐρμηνεύειν, 966b; δοῦναι τὸν λόγον, 967e.

<sup>13</sup> For the most part this course of higher studies parallels that laid down for the guardians in *Rep.* VII. The astronomy, the theology, and the doctrine of the soul are additions.

<sup>14</sup> *Phil.* 23c—26b.

the imposing of mathematical ratios upon the indefinite possibilities of tension in its various strings. Moral order in the soul, and justice in the state, were both thought of in Platonic circles as analogous modes of attunement through the introduction of the required ratios and proportions<sup>15</sup>. The use of mathematics in the latest period of Plato's thought was evidently much more extensive than anything revealed to us in the dialogues; we know from ancient testimony that his famous lectures on the Good were disconcertingly mathematical in content<sup>16</sup>. And the discovery of the precise mathematical character of the apparently confused motions of the heavenly bodies was for Plato an unexpected revelation of orderliness in the heavens, which then became for him a visible image of that orderliness that he had always known to exist in the intelligible world. There may be a reference to the illuminating effect of such studies in the striking designation of the Council as the σύλλογος τῶν περὶ νόμους ἐποπτευόντων<sup>17</sup>. There is no reason to doubt, then, that the studies described in the later passage are those that Plato prescribes in the earlier one as helpful in assisting the Councillors to attain insight into the nature of law.

The implication is that whatever else the Council may be, it is first of all an institution for the higher education of its members. This is confirmed later (968ab) when the Athenian formally proposes that this Council, "having gone through all the education we have described" (παιδείας ὁπόσης διεληλύθαμεν κοινωνὸν γενόμενον), shall be legally established as the guardian and savior of

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<sup>15</sup> Recall Aristotle's mathematical discussion of the Mean in *Nic. Eth.* Bk. II and of Justice in Bk. V.

<sup>16</sup> ARISTOXENUS, *Harm. El.* II, 30. 16—31. 3. Aristotle's testimony in the *Metaphysics* to the later mathematical stage of the theory of Ideas certainly applies, in part at least, to Plato. On the contents of the famous lecture (or lectures) on the Good see the interpretation of PAUL WILPERT, *Zwei Aristotelische Frühschriften über die Ideenlehre*, Regensburg 1949, 121—221.

<sup>17</sup> 951d. The verb ἐποπτεύω is poetic, and its meaning here is not easy to fix precisely; it can mean 'supervise', 'meditate upon', or 'contemplate'. It is used in one of the most eloquent passages in the *Phaedrus* (205c) to describe the relation of the soul to the shining visions of the invisible world (cf. τὰ δὲ τέλεα καὶ ἐποπτικά, *Symp.* 210a). An ἐπόπτης in the mysteries was one who had been initiated into the highest grade. We may perhaps take this word as indicating Plato's belief that the kind of study here proposed would result, not merely in enlightenment, but also in illumination (cf. the designation θεῖος σύλλογος, 969b). — The *Epinomis* describes at some length the higher studies of the Nocturnal Council (cf. 992d). This is probably not Plato's work, but at least it shows what Philippus thought Plato intended.



the state. (This participial clause, as England<sup>18</sup> sees, contains the most important point in the Athenian's pronouncement.) In another passage (965b) the studies pursued in the Council are attached to the account of education given in the seventh book. At the end of the prescriptions regarding the study of mathematics there is mention of a "certain few" who are to pursue these studies with greater thoroughness and exactness (σύμπαντα ὡς ἀκριβείας ἔχόμενα διαπονεῖν, 818a); the studies of the Nocturnal Council are here said to be a "more exact education" (ἀκριβεστέρα παιδεία) than that described earlier; these "certain few," then, are obviously the members of the Council. But the promise made in that earlier passage to deal with the program of studies in detail is not fulfilled; the order in which these inquiries are to be taken up and the time to be devoted to each will vary with individuals, the Athenian Stranger here says, and can best be left to the Council itself after it has been established<sup>19</sup>; though he adds that he will be willing to help, and can also find other helpers if they are needed, in setting up such an institution in the new colony (968b). This remark at the end of the *Laws* is Plato's signature to the work he has completed, and the "other helpers" are his colleagues in the Academy.

It is now clear why the Council includes junior as well as senior members. One of its purposes evidently is to provide this higher education to the more promising of the younger citizens, to those who are likely in time to become officers themselves. These junior members are presumably the persons mentioned in 968d as "fitted by age, intellectual powers, and moral character and conduct for becoming guardians." Their admission to association with the Council is carefully controlled. A candidate must first be proposed by one of the Councillors as a man who, by nature and training (φύσει καὶ τροφῇ, 961b), is worthy of this junior membership, and this proposal must receive the assent of the other members. (Plato adds that if a man is rejected, no word of it must get out, least of all to the man himself; and furthermore, that if after being accepted a man proves to be unworthy, his sponsor shall receive the rebuke of the Council.) These junior members are to study diligently whatever matters their seniors deem appropriate (952a), and the other citizens are to watch them carefully and honor them if they

<sup>18</sup> *The Laws of Plato*, Manchester 1921 — an indispensable commentary on the text.

<sup>19</sup> This at least is my interpretation of the τῶν τοιούτων in 968c 3. On this difficult text see below, n. 22.

acquit themselves well. The Nocturnal Council cannot of itself assure their later election to office, though it might facilitate it through the exercise of the scrutiny, which comes directly or indirectly under the authority of the guardians; but membership in the Council would of itself bring considerable prestige to a gifted young citizen. Here also we see the meaning of the curious provision limiting a junior's membership to the period before his fortieth year. At this age public duties will no doubt claim him, and his retirement from the Council will make room for another young citizen to profit from association in its studies; later if he becomes a guardian or a euthynos, or receives an award of merit, he may reënter as a senior member. These provisions of the *Laws* recall the program laid down in the *Republic* whereby a period of higher study is followed by service in administrative posts, and this again followed by alternate periods of study and public office.

There is another more picturesque reason why this Council may best be a "mixture of young and old" (951d). Its purpose is not merely the study of law and justice in the abstract, but the observation, protection, and improvement of the particular laws under which they all live (962b). Since the Council is to be the head of the state (to revert to the metaphor that is in the background of Plato's thought throughout), and since a head requires keen sense-organs as well as memory and intelligence if it is to be an adequate "savior," we need younger men in the Council to serve as its eyes and ears, and to report to the older men what they see around them in the state. Together they will then take counsel as to the meaning of these reports and the means necessary for protecting the state (961d, 964e).

There is no parallel to this Council in the government of any historical Greek city that we know of<sup>20</sup>. But the actual institution from which Plato's imaginary Council is derived is not hard to find. Its studies bear an unmistakable resemblance to those cultivated in Plato's Academy, and the purpose they are intended to serve

<sup>20</sup> Gernet (cvi) points out the existence of a νυκτερινὸς σύλλογος in Cyme in Aeolia that exercised jurisdiction over the "kings" (PLUT., *Quaestiones Graecae* 2) but adds that the expression may be the choice of Plutarch the Platonist. Rivaud (*Histoire de la Philosophie*, I, 209) says that this body appears in the *Critias*, and suggests that it is an institution taken from the Cretans; but no references are given in support of either statement, and I can find no substantiation for them. All the aristocratic councils that we know of lacked what is essential in the Platonic institution, viz. its pre-occupation with the theory or science of law.

is identical with one important end to which the Academy was dedicated — perhaps its most important end in Plato's eyes — viz. to apply philosophy to the city-state. Like the Academy it will have wise men from abroad associated with it from time to time; for Plato prescribes that when a *theoros* comes from another land, interested “like our own *theoroi*” in observing and learning, he shall be received by the educator, or by someone else who has been awarded *aristeia*; and associating with men of this group (*συνῶν τούτων τισίν*) he shall be both a teacher and a learner, apparently for as long a time as he sees fit (953cd). Among the courtesies extended to such a distinguished visitor would undoubtedly be admission to the morning meetings of the Council. Plato's Nocturnal Council will differ from his Academy in that its members will be primarily important officers of government, an indication, no doubt, that at Athens Plato would have liked to see a closer connection between the wise men in his group and the statesmen who held power. His Council also provides for the inclusion of the nonpolitical *theoros*, the man who, like Plato himself, has travelled widely and has much to contribute to public counsels. We have seen that a *theoros* who has observed foreign laws and customs may be able to correct something amiss in the laws of his own country. Thus Plato in constructing his model state makes provision for the establishment of something like the Academy, to which he has devoted the greater part of his life, in a form which he thinks will most effectively assure its influence upon public affairs.

No procedure is mentioned whereby the Nocturnal Council is to make its insight and intelligence effective in the state. Yet it is clearly intended to exert influence, both in criticizing and making amendments and supplements to the laws, and in evaluating the persons who are to exercise authority (962b). In an earlier passage (952bc) it is empowered to hear and judge the reports of *theoroi* who return from foreign travel, to commend them, and to decree special honors for them if they have brought back something of value to the state. On the other hand, if a *theoros* appears to have been corrupted by his experiences abroad they may require him to retire to private life (*ιδιώτης ζήτω*), making no pretence to teach his fellowmen (*μηδενὶ συγγιγνέσθω . . . προσποιούμενος εἶναι σοφός*). This judgment is a command which the returned *theoros* must obey or be subject to prosecution. In a still earlier passage (909a) the Councillors are appointed to instruct and admonish a person who has been imprisoned for atheism, and they will presumably

have authority to judge whether or not he is to be released at the end of his five-year sentence. These are the only explicit responsibilities assigned to the Council, and they are obviously of minor importance. This absence of legal powers commensurate with the functions which the Council is designed to accomplish is indeed puzzling and is the basis of the criticism frequently made that it is a useless appendage to Plato's construction<sup>21</sup>.

Yet a little reflection will show us that there are many ways whereby the Council could influence public policy in an interpretative and advisory capacity. We have already seen how it could assist promising young men to become leaders in the state by selecting them for associate membership. Since its members will include all the euthynoi and the ten senior guardians, its influence upon both these bodies would surely be considerable, even though neither of them should be legally bound to follow its lead. Any formal proposals for revision of the laws — such proposals would be submitted by the guardians, we may fairly assume, to the council and assembly — would be influenced both in form and substance by the studies of the Nocturnal Council. Its influence would likewise be great in the day-by-day administrative interpretation and expansion of the law. No statute can ever prescribe for all conceivable contingencies, as Plato recognizes in the *Politicus*, and an officer might well need guidance in the exercise of the discretion left to him; or a guardian or a euthynos might be in doubt whether to proceed against an inferior officer for abuse of his discretion. In such cases the Nocturnal Council, with its daily meetings, could readily be consulted.

Furthermore it is hardly correct to regard the Nocturnal Council as a superfluous appendage when we realize that its function, as we have examined it in detail in the preceding pages, appears to be quite distinct from that assigned to any of the boards of officers. Its function is not adjudication, nor administration, nor deliberation and decision on matters of public policy, but education and inquiry; and the distinctness of this function remains, even though most of its members will themselves be administrators or judges, and even though the ultimate purpose of their studies is the wise conduct of public affairs. Thus the Council provides for something additional to what has been set up, an addition clearly necessary if one believes, as Plato does — and as most civilized societies after him have done

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<sup>21</sup> See the criticisms cited in n. 2 above.

— that there should be provision for advanced studies in law and government. Nor is it correct to say that the Council does not articulate with Plato's other institutions; one might better say that it articulates all too well. The chief criticism that one could make is that it would be difficult for it to carry on disinterested inquiry when most of its members have important political responsibilities, and when the ultimate purpose of such inquiry is so clearly defined by the moral interests of the society. It would be better to have less of this kind of articulation. From the perspective of today it appears probable that Plato's Academy, poorly articulated as it was with the government of Athens, served its city far better in the long run than an institution of this sort could have done.

If we keep the distinctness of this function in mind we shall be better able to deal with another criticism often advanced. Some interpreters have understood the absence of any legal determination of the powers of the Nocturnal Council as implying a grant of omnicompetence. If this is true, then the Council is above the law, and its introduction here at the end contradicts Plato's purpose of establishing a state in which law is sovereign. There is indeed a passage on the very last page that suggests this extreme interpretation.

If, my dear friends, our divine Council really should come into being, we must put the city in its hands (παραδοτέον τούτω τὴν πόλιν). None of our legislators of the present, I think I can say, would dispute this. We shall have brought into living reality what a short time ago in our discussion we apprehended only as a dream, . . . if we have chosen these men with care, instructed them appropriately, and when instructed have established them in the acropolis of our land, to become finished guardians of our safety, such as we have never seen the like of before. 969bc

Here we are back at the *Republic*, one is inclined to say, the philosopher-guardians installed in the acropolis, the city completely in their hands. In terms of the usual interpretation of the *Republic* as advocating the rule of a select few, untrammelled by laws or customs or traditions, this would indeed be a complete repudiation of the substance of what Plato has been laboring to establish in all the previous work. Rather than hang such a momentous and inherently implausible conclusion upon a single passage, it would be better to see if another interpretation is possible.

This passage is a kind of peroration, and one should recognize that a peroration does not always contain the most precise statement



of a speaker's or writer's thought. Παραδοτέον τούτῳ τὴν πόλιν is obviously too vague to support an inference as to the legal powers of the Nocturnal Council; it may simply express Plato's conviction of the importance of philosophical inquiry and insight, and of this Council as the body designed to provide the wisdom needed to prevent his state from deteriorating. I have already shown how it could provide such philosophical guidance without being invested with legal sovereignty, and the παραδοτέον passage is quite compatible with the assumption that the Council is not intended to upset the rule of law. Except for this passage there is nothing in the *Laws* to warrant the contrary interpretation, nor any evidence that Plato intends to give it power to override the law. Its members, most of them office-holders, are always subject to the numerous checks that Plato's law provides. It has no power to impose penalties. For example, the theoros whom it thinks corrupted by his experience abroad is to live without penalty, provided that he does not meddle with education and legislation; if he does his case is to come before the courts for judgment by the regular processes of justice (952cd). This prescription looks as if it were definitely intended to forestall a possible misinterpretation of the Council's powers. Again if the atheist whom the Council has been appointed to admonish has not been reformed but offends against the law after being released, he has to be convicted again in court (ἐὰν . . . ὀφείλῃ αὖθις τὴν τοιαύτην δίκην, 909a) before being punished. These details indicate that it is Plato's intention to have the Council act within the laws already laid down, or those to be established regarding it (968c)<sup>22</sup>. Is it possible that on the very last page Plato completely reverses himself and repudiates not only what he has just said, but also the funda-

<sup>22</sup> 968c is certainly cryptic and possibly corrupt: οὐκέτι νόμους . . . περὶ τῶν τοιούτων δυνατόν ἐστιν νομοθετεῖν πρὶν ἂν κοσμηθῇ — τότε δὲ κυρίου ὦν αὐτοῦς δεῖ γίγνεσθαι νομοθετεῖν — ἀλλὰ κτλ. Τῶν τοιούτων refers, I am sure, to the organization of the higher studies of the Council, the matter on which the Athenian himself has just offered to give assistance and of which he says he has had much experience (968b). It obviously refers to the same thing as τὰ τοιαῦτα two lines later, where it is said that to arrange such matters properly would involve διδασχὴ μετὰ συνουσίας πολλῆς, i. e. just that joint study and inquiry which the Council itself, after it has been established, is to pursue. In other words, the Council must already have been engaged in these studies before any rules can be laid down concerning the order in which they are to pursue them — a paradoxical situation that is well reflected in the puzzling syntax of the passage. For a similar interpretation, see HAROLD CHERNISS in *Gnomon* 25 (1953) 373—374. — But most translators and commentators have strangely taken τῶν τοιούτων as referring to the general powers of the Council. Some, i. e. Ritter

mental principles he has insisted upon in three hundred forty-five previous pages of text? To assume this is to violate all sound criteria of interpretation.

Far from being inconsistent with the rule of law, the Nocturnal Council seems to be essential for the maintenance of that principle. Every society in which the sovereignty of law is affirmed has to provide some method for interpreting and expanding its inherited rules. Instead of the *ad hoc* legislative commissions set up at Athens whenever the need of revision was felt, and as an alternative to the jurisdiction of the popular courts over administrative interpretation, Plato would set up a standing body of experienced and learned persons to act as a permanent agency for the study of laws<sup>23</sup>. The Athenian practices are a tribute to the versatility of the average citizen at Athens; but, as Sir Henry Maine remarked, "no durable system of jurisprudence could be developed in this way"<sup>24</sup>. In setting up his Nocturnal Council and in giving it something of the character of a learned body, Plato is providing a remedy for what modern students generally recognize as a glaring defect in Greek law. If Plato's intentions are realized, the members of the Nocturnal Council will be not mere empiricists, but scientific and philosophical students of the law. Something like the function he here assigns to them was discharged in later antiquity by the jurisconsults under the Roman emperors. We might plausibly argue that Plato's *Laws*, through its influence upon the Stoics and Cicero, was an important factor in the rise of this class of professional jurists at Rome.

This institution is one of Plato's most striking inventions. In the combination it proposes to bring about between philosophical insight and legal concepts and practices, nothing that we know of can be compared with it in Greek law and politics. It springs not only from Plato's conviction of the importance of philosophy as the guide of life, but also from a perception — which has not often

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(*Kommentar*, 364) and Bury, think the Council itself is to determine what authority it is to have, evidently taking κυρίους ὧν αὐτοὺς κτλ as the subject of the following νομοθετεῖν; while Jowett, Apelt, England, Diès and Robin — either taking νομοθετεῖν as an imperative, or supposing ἡμῶς to be understood as its subject — read only that further legislation will be necessary as to the powers the Council is to have. — Whatever its precise meaning, this passage, with its use of νόμους and its repetition of νομοθετεῖν, indicates that Plato was to the last concerned with the rule of law.

<sup>23</sup> Cf. SIDGWICK's proposal for a Law Council; *Elements of Politics*, 482.

<sup>24</sup> *Ancient Law*, 44 (Everyman's Library ed.).

been credited to him — that philosophical reason must be employed not in the void, but upon the concepts and principles of the law, which are matters of historical experience, not *a priori* inventions<sup>25</sup>. This is the way Plato himself proceeds in his own legislation, and it is the way he wishes his successors to follow. Just as Plato's Academy has been the prototype of countless later institutions of higher learning, so his Nocturnal Council can be regarded as the first of the long series of learned bodies of jurists, commissions of experts, and law councils that have been set up in later western history to act as guides to legislators. "If you frame your state aright," says the Athenian Stranger after having demonstrated the need for such a Council, "you will achieve high renown, or at least will gain the reputation of being the boldest of your successors"<sup>26</sup>.

#### Appendix. Philippus of Opus

According to Diogenes Laertius, some persons in his day said that Philippus of Opus τοὺς Νόμους μετέγραψεν, ὄντας ἐν κηρῷ (III, 37). This Philippus is apparently the same as the philosopher referred to in Suidas (s. v. φιλόσοφος) who divided the *Laws* into twelve books (adding a thirteenth, i. e. the *Epinomis*, said to be his own composition) and is probably also identical with the Philippus from Medma mentioned by Stephanus of Byzantium (s. v. Μέδμη), and also with Φίλιππος ὁ Μενδαῖος (or Μεδναῖος) described by Proclus (*Com. on Euclid*, 67f., Friedlein) as a mathematician and a pupil of Plato's. (For these identifications see VON FRITZ, in PAULY-WISSOWA, s. v. Philippus, 2351ff.) He has also been identified with the ἀστρολόγος mentioned in the *Academicorum Index Herculanenseum* (ed. MEKLER, 13) as having been Plato's pupil and secretary at the end of Plato's life.

If these identifications are accepted, Philippus is revealed as the author of numerous works ranging from mathematics and natural science to ethics and theology. But the nature and extent of the editorial work he did on the *Laws* is left uncertain. The μετέγραψεν in the Diogenes Laertius passage may mean either "copied" or "revised." Likewise the significance of ἐν κηρῷ ("in wax") is not clear. Is that a metaphorical way of saying that the work was in process of composition, or that it was essentially finished, like the wax-covered model in a studio ready to be cast in bronze as suggested by Bergk (*op. cit. infra*, 44)? Olympiodorus (*Prol. in Plat.* 25) quotes Proclus as saying that Plato did not have time to correct (διορθώσασθαι) the *Laws* before his death; and in the previous chapter Olympiodorus says that Plato left the *Laws* ἀδιορθώτους καὶ συγκεχυμένους,

<sup>25</sup> See the penetrating remarks of LOUIS GERNET, *Introd. to the Budé edition of the Laws*, ccv—ccvi.

<sup>26</sup> 969ab. Bury's translation.

i. e. not only uncorrected (which might mean lacking only the final touches) but confused (which implies something different). "If the work now seems properly organized, that is due not to Plato, but to a certain Philippus of Opus, who later became head (διάδοχος) of Plato's school." One suspects that Olympiodorus, apart from a bit of misinformation about Philippus (he was never διάδοχος of the Academy), merely gives an incoherent embellishment of what he found in Proclus. (See VAN-HOUTTE, *La Philosophie Politique de Platon dans les Lois*, 3—4.) From this evidence we cannot say whether Philippus simply prepared a corrected edition — which is what διόρθωσις would mean, and which corresponds to what Cicero (*Att.* XIII, 21,5) says was the custom with regard to the publication of Plato's dialogues — or whether his work involved revision and reorganization.

The latter alternative was once widely accepted by Platonic scholars, probably as a result of Zeller's attitude towards the *Laws*. Though in later life Zeller retracted his early judgment that the *Laws* was spurious, he continued to regard it as puzzlingly different in style and content from the rest of the dialogues, and treated it as a sort of appendage to Plato's philosophy. The acceptance of the revisionist hypothesis invited further speculation regarding the nature and extent of the modifications introduced by Philippus. Ivor Bruns (*Plato's Gesetze vor und nach ihrer Herausgabe durch Philippos von Opus*, 1880) supposed that Philippus found, in addition to the almost completed work dealing with the Cretan colony, fragments of another more 'idealistic' treatment of a similar theme by Plato, and that the similarity of the material tempted him to make them into one work. The account of the Cretan colony, according to Bruns, embraced what we now have from the beginning of Book III to 960b in Book XII; the fragments of the earlier idealistic work are to be found in Book I (from the beginning to 632d) and in Book XII (960b to the end); whereas the remainder of Book I and all of Book II consist of Philippus' own work, with extensive use of material that was originally connected with the account of education in Book VII. Three years after Bruns' work, and admittedly stimulated by it, Theodor Bergk put forward an even more extravagant hypothesis (in *Fünf Abhandlungen zur Geschichte der griechischen Philosophie und Astronomie*, 41—116). Taking his departure from 739a—e, where Plato declares his intention to describe the constitution not only of a second-best but also of a third-best state, Bergk supposed that this intention was in fact carried out, but that the account of the second-best constitution, the one nearest the ideal, was almost completely destroyed through some "unfortunate accident," and that what we have is in the main the second part of Plato's project; Philippus, not knowing Plato's larger intention, took the second part as the whole and fitted into it and around it the surviving fragments of the lost earlier part. Praetorius (*De Legibus Platonicis a Philippo Opuntio Retractatis*, 1883) attributed to Philippus a thorough-

going revision and alteration of Plato's work, such that "almost every page betrays the hand of Philippus" and "nowhere will we find the words of Plato himself." Max Krieg (*Die Überarbeitung der Platonischen Gesetze durch Philipp von Opus*, 1896) took issue with Praetorius and reasserted the more modest hypothesis of Bruns, which he followed with minor reservations.

These speculations, particularly those of Bruns and Bergk, were subjected to a thorough examination by Theodor Gomperz (in *Platonische Aufsätze*, III, 1902), who showed so clearly the lack of any evidence to support the special hypotheses they require, and the questionable character of the critical principles relied upon by their authors, that no attempt has since been made to revive them. At the same time Gomperz adduced impressive evidence of the unity of the *Laws*, in the multitude of its cross-references from one part to another (all of them, with minor exceptions, accurate) and in the occasional passages of retrospect and anticipation which reveal that the author had his whole plan firmly in view. It is incredible that such a pervasive and deep-seated unity could have been produced by an editor working on disjointed and confused fragments. Evidence that Philippus respected the integrity of Plato's text as he found it is that he retained certain contradictions (such as that between the legal marriage age as stated in 772d and that given in 721b and 785b) which could hardly have escaped his notice and would have been very easy to remove. Another striking instance is his retention of two versions of the first election of the guardians at the beginning of Book VI (see WILAMOWITZ, in *Hermes* XLV, 1910, 398ff.) There are numerous other minor incoherencies in the *Laws* which would have been easy to remove; they suggest that the work lacked final revision by its author, but seem to preclude any thoroughgoing revision by a later editor.

The prevailing view at present, among those who have studied the *Laws* with care, is that the work as we have it comes from Plato. This is admitted by the severest of its recent critics, Gerhard Müller (*Studien zu den Platonischen Nomoi*, 1951), who regards as an interpolation only a short section (732d8 to 734e2) which contains a theory of the relation of virtue to pleasure that he cannot regard as genuinely Platonic. But to exclude altogether the hand of Philippus is probably an opposite extreme of error. Ancient literary conventions would have required that an editor fill up any lacunae as best he could, and add sentences of transition between separate parts if Plato had not already supplied them; and there are occasional signs of such editorial touches (e. g. in the sentence introducing Book III, and in the sentence connecting the two versions of the election of the guardians in Book VI, 753b 1—4). Nevertheless the "axiom that every word comes from Plato" (as von Fritz puts it, *op. cit.* 2359) is an excellent heuristic principle, forcing us to try to explain any obscurities we may find through a more penetrating understanding of Plato's intentions, rather than by recourse to a posthumous editor.