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David Lloyd Dusenbury

# Platonic Legislations

An Essay on Legal  
Critique in Ancient  
Greece



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# Platonic Legislations

An Essay on Legal Critique in Ancient Greece

 Springer

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*In memory of  
Bernard Daly and Mary Etta Dusenbury  
Eugene Lloyd and Grace Lee Quillian*

neque dormitet qui custodit te

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# Abbreviations

AESCH. <i>Tim.</i>	Aeschines, <i>Against Timarchus</i>
ALB. <i>Eis.</i>	Albinus, <i>Eisagôgê</i> = <i>Introduction to the Book of Plato</i>
ALC. <i>Did.</i>	Alcinous, <i>Didaskolikos</i> = <i>Handbook of Platonism</i>
ANON. <i>Dial.</i>	Anonymous (6th-c. Constantinople), <i>Dialogue on Political Science</i>
ANT. <i>Truth</i>	Antiphon, <i>On Truth</i>
ARIST. <i>Ath.</i>	Aristotle(?), <i>The Athenian Constitution</i>
ARIST. <i>Met.</i>	Aristotle, <i>Metaphysics</i>
ARIST. <i>Mund.</i>	Pseudo-Aristotle, <i>De Mundo</i> = <i>On the Cosmos</i>
ARIST. <i>Nic. Eth.</i>	Aristotle, <i>Nicomachean Ethics</i>
ARIST. <i>Polit.</i>	Aristotle, <i>Politics</i>
ARISTOPH. <i>Clouds</i>	Aristophanes, <i>Clouds</i>
ARISTOPH. <i>Wasps</i>	Aristophanes, <i>Wasps</i>
AUG. <i>C. Acad.</i>	Augustine, <i>Contra Academicos</i> = <i>Against the Academics</i>
AUG. <i>Civ.</i>	Augustine, <i>De Civitate Dei</i> = <i>City of God against the Pagans</i>
AUL. GELL. <i>Noct.</i>	Aulus Gellius, <i>Noctae Atticae</i> = <i>Attic Nights</i>
CIC. <i>Acad.</i>	Cicero, <i>Academica</i> = <i>Academics</i>
CIC. <i>Inv.</i>	Cicero, <i>De Inventione</i> = <i>Two Books on Rhetoric</i>
CIC. <i>Laws</i>	Cicero, <i>On Laws</i>
CIC. <i>Nat. Deor.</i>	Cicero, <i>De Natura Deorum</i> = <i>On the Nature of Gods</i>
CIC. <i>Offic.</i>	Cicero, <i>De Officiis</i> = <i>On Duties</i>
CIC. <i>Pro Clu.</i>	Cicero, <i>Pro Cluentio</i> = <i>In Defence of Aulus Cluentius Habitus</i>
CIC. <i>Rep.</i>	Cicero, <i>On the Republic</i>
CIC. <i>Tusc.</i>	Cicero, <i>Tusculan Disputations</i>
DIO. LAER. <i>Lives</i>	Diogenes Laertius, <i>Lives of the Philosophers</i>
EUR. <i>Hipp.</i>	Euripides, <i>Hippolytus</i>
FLOR. <i>Epit.</i>	Florus, <i>Epitome of Roman History</i>
GRAT. <i>Decr.</i>	Gratian, <i>Decretum</i> = <i>Harmony of Inharmonious Canons</i>
HERAC. <i>Fr.</i>	Heraclitus, <i>Fragments</i>
HEROD. <i>Hist.</i>	Herodotus, <i>Histories</i>

HIPP. <i>Art</i>	Hippocrates(?), <i>The Art</i>
HIPP. <i>Law</i>	Pseudo-Hippocrates, <i>Law</i>
HOM. <i>Il.</i>	Homer, <i>Iliad</i>
HOM. <i>Od.</i>	Homer, <i>Odyssey</i>
ISOC. <i>Antid.</i>	Isocrates, <i>Antidosis</i>
ISOC. <i>Soph.</i>	Isocrates, <i>Against the Sophists</i>
LIVY <i>Hist.</i>	Livy, <i>History of Rome</i>
LUCR. <i>Rer. Nat.</i>	Lucretius, <i>De Rerum Natura = On the Nature of Things</i>
LXX	<i>Septuaginta = The Translation of the Seventy</i>
LYS. <i>Alc. I</i>	Lysias, <i>Against Alcibiades I</i>
LYS. <i>Alc. II</i>	Lysias, <i>Against Alcibiades II</i>
LYS. <i>Comm.</i>	Lysias, <i>For the Commander = For the Soldier</i>
LYS. <i>Epit.</i>	Lysias, <i>Epitaph = Funeral Oration</i>
LYS. <i>Erat.</i>	Lysias, <i>Against Eratosthenes</i>
LYS. <i>Mant.</i>	Lysias, <i>In Defence of Mantithetus at his Scrutiny</i>
LYS. <i>Phil.</i>	Lysias, <i>Against Philon</i>
MACR. <i>Sat.</i>	Macrobius, <i>Saturnalia</i>
MARC. AUR. <i>Med.</i>	Marcus Aurelius, <i>Meditations</i>
PL. <i>Apol.</i>	Plato, <i>Apology</i>
PL. <i>Crat.</i>	Plato, <i>Cratylus</i>
PL. <i>Crito</i>	Plato, <i>Crito</i>
PL. <i>Ep.</i>	Plato(?), <i>Epistles</i>
PL. <i>Epin.</i>	Plato(?), <i>Epinomis</i>
PL. <i>Euth.</i>	Plato, <i>Euthyphro</i>
PL. <i>Gorg.</i>	Plato, <i>Gorgias</i>
PL. <i>Hipp.</i>	Plato(?), <i>Hipparchus</i>
PL. <i>Lach.</i>	Plato, <i>Laches</i>
PL. <i>Laws</i>	Plato, <i>Laws</i>
PL. <i>Lys.</i>	Plato, <i>Lysis</i>
PL. <i>Parm.</i>	Plato, <i>Parmenides</i>
PL. <i>Ph.</i>	Plato, <i>Phaedo</i>
PL. <i>Phaed.</i>	Plato, <i>Phaedrus</i>
PL. <i>Pol.</i>	Plato, <i>Politicus = Statesman</i>
PL. <i>Prot.</i>	Plato, <i>Protagoras</i>
PL. <i>Rep.</i>	Plato, <i>Republic</i>
PL. <i>Soph.</i>	Plato, <i>Sophist</i>
PL. <i>Symp.</i>	Plato, <i>Symposium</i>
PL. <i>Theaet.</i>	Plato, <i>Theaetetus</i>
PL. <i>Tim.</i>	Plato, <i>Timaeus</i>
PLUT. <i>Envy</i>	Plutarch, <i>On Envy and Hate</i>
PLUT. <i>Gen. Socr.</i>	Plutarch, <i>De Genio Socratis = On the Sign of Socrates</i>
PORPH. <i>Vita Plot.</i>	Porphyry, <i>Vita Plotini = Life of Plotinus</i>
SEN. <i>Epist.</i>	Seneca, <i>Epistles</i>
SEN. <i>Prov.</i>	Seneca, <i>De Providencia = On Providence</i>
SOPH. <i>Antig.</i>	Sophocles, <i>Antigone</i>

THUC. <i>Pelop.</i>	Thucydides, <i>The Peloponnesian War</i>
XEN. <i>Cyro.</i>	Xenophon, <i>Cyropaedia</i>
XEN. <i>Hell.</i>	Xenophon, <i>Hellenica</i>
XEN. <i>Hier.</i>	Xenophon, <i>Hiero</i>
XEN. <i>Mem.</i>	Xenophon, <i>Memorabilia</i>
XEN. <i>Ways</i>	Xenophon, <i>Ways and Means</i>

# Prologue

Whoever does not want the existing legal regime to be changed is a good man and a good citizen.

—CAESAR AUGUSTUS, according to MACROBIUS' *Saturnalia*<sup>1</sup>

*Platonic Legislations* is an essay in legal philosophy. The Platonic dialogues occupy the foreground, but its horizon is contemporary.

The collapse of the Soviet Union ushered in a period of unprecedented 'legal convergence'.<sup>2</sup> There are signs that this period of post-Soviet convergence is passing—indeed, that we are witnessing the end of the post-war settlement *in toto*.<sup>3</sup> It has also been argued that the late twentieth-century 'legal state' is being eclipsed by the steady rise of a twenty-first-century 'security state'.<sup>4</sup> Without entering into these questions, it can be said that the global political culture is still marked by a

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<sup>1</sup>MACR. *Sat.* II 4.18: *quisquis praesentem statum civitatis commutari non volet et civis et vir bonus est.*

<sup>2</sup>Kagan 2007, 101.

<sup>3</sup>A conference titled 'The End of Postwar' was held at the Palace of the Academies in Brussels, in December 2015. This seemed at the time to announce something more than a bleak mood in the de facto capital of the European Union. Incredibly, by December 2016, *Die Zeit* could run a lead essay by Jan Zielonka—a professor of European politics at St Antony's College, Oxford—with the frantic title '*Alles kaputt: Nato, EU und auch der liberale Konsens*' (Zielonka 2016). Meanwhile, Wolfgang Münchau—an associate editor of the *Financial Times*—could publish a brief account of what he called 'the liberal elite's Marie Antoinette moment' (Münchau 2016).

<sup>4</sup>For the doctrines and institutions that differentiate the Anglo-American 'rule of law' model from a Continental 'legal state' (*Rechtsstaat, État de droit*), see the various contributions in Silkenat 2014. For the putative rise of a 'security state': Salas 2008.

strong tendency to legal convergence—‘monism is on the march’<sup>5</sup>—and by increasingly forceful counter-tendencies.<sup>6</sup>

Statal collapse is in process in vast, porously bordered sectors of the globe. Such collapse inevitably entails a subsidence of statal law, and its replacement by factional, tribal or sectarian law-codes. Notably, the last decades have been marked by the restoration of an archaic law-code—Islamic law—in a number of states and territories. This recrudescence of archaic laws in the global south and east could be interpreted, in part, as a mirror-effect of the promulgation of what could be termed *futurist* laws in the global north and west.

This is not the place for further description or analysis. But it is not contentious to suggest that ours is an intensive moment of what I will call, in this essay, the flux of law. The word ‘flux’ has been chosen precisely because it is capacious. Its imprecision is intended. It contains a suggestion of chaos and disorder, and any fundamental legal theory must take account of these phenomena. Plato’s does. ‘I was on the verge of saying that no human whatever legislates (*oudeis ouden nomothetei*)’, he writes in *Laws* IV, ‘but that chance ... legislates all things for us.’ Plato is certain that legal flux occurs. And he is certain that legal flux will necessarily occur, in the *longue durée*, regardless of our legal doctrines and designs. ‘For either it is a war that violently overturns regimes and changes the laws (*metebale nomous*)’, he clarifies in *Laws* IV, ‘or the stress of harsh poverty does it.’<sup>7</sup>

What the contemporary literature tends to call ‘legal change’ is often forced, stochastic, and destructive.<sup>8</sup> As *Laws* IV reminds us, legal change is often not a legal process. The term ‘flux’ is preferred over ‘change’, in this essay, because it carries something of the negative inflection—the undertone of dispersal, instability and loss—that the shifting of the laws tends to have in Plato’s corpus, even when it is Plato *himself* who is shifting the laws (see the revolutionist’s dictum at the head of the prologue).<sup>9</sup> This duplicity is perhaps the core point of *Platonic Legislations*, and marks its inevitably complex relevance to the contemporary practice and philosophy of law.

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<sup>5</sup>Lesaffer 2009, 509.

<sup>6</sup>The question of a ‘fragmentation of international law’ is put forward in Koskeniemi and Leino 2002. The thesis that international law is still ‘trending towards convergence’ is defended by most of the contributors to Andenas and Bjorge 2015. Of special note are Bjorge 2015, Palchetti 2015, and Webb 2015.

<sup>7</sup>Pl. *Laws* IV 708e–709b.

<sup>8</sup>Of particular note among broad studies of ‘legal change’ are Watson 1977, 1991, 1998. Studies of a culture of ‘legal change’ within the democratic regimes at ancient Athens are Schwartzberg 2004, 2007. Recent theoretical contributions—which have not influenced the writing of this essay—include Mitchell 2012; Samara 2014.

<sup>9</sup>Macrobius’ gloss on this dictum, at *MACR. Sat.* II 4.18, is worth including here: ‘A serious comment, to be sure, in praise of Cato—and also in Caesar’s self-interest, to discourage anyone from plotting a coup (*res novare*).’

Before proceeding, however, we should state that Plato's influence on European legal history—and thereby, on global history—has been incalculable.<sup>10</sup>

According to the late-antique poet Ausonius, it was Marcus Aurelius who 'introduced the ordinances of Plato (*scita Platonis*) to Roman power (*imperium*)' in the latter part second century CE.<sup>11</sup> In reality, however, the Platonic influence on Rome dates back to a senator, consul and jurist of the mid-first century BCE: Marcus Tullius Cicero.<sup>12</sup> By the first century of our era, Plato's influence in Rome had become so strong that the emperor Nero's confidant, Seneca, could call Platonic philosophy 'the law of life' (*vitae lex*) with direct reference to Plato's *Laws*.<sup>13</sup>

This line of influence seems to have peaked towards the close of the third century CE when Plotinus, a Platonic philosopher living in Rome, petitioned the emperor Gallienus and his wife Salonina for the right to found a city on the Italian peninsula. Our only record of this petition is obscure, but it suggests that a 'city of philosophers' had gone to ruin in Campania, near the Gulf of Cumae (the Bay of Naples).<sup>14</sup> Plotinus wanted to restore this city under the name of Platonopolis, and to bring Plato's *Laws* into force in it.<sup>15</sup> His petition failed due to the machinations of imperial courtiers,<sup>16</sup> and Platonopolis never materialized.<sup>17</sup>

In later centuries, Platonic legal principles<sup>18</sup>—often mediated by the Stoics—were incorporated into Christian manuals by 'senatorial bishops' such as Ambrose of Milan, Augustine of Hippo, and Isidore of Seville.<sup>19</sup> In this way, Plato became a

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<sup>10</sup>A highly original treatment of the diffusion of 'political Platonism' in Europe is Ada Neschke-Hentschke's *Platonisme politique et théorie du droit naturel. Contributions à une archéologie de la culture politique européenne* (Louvain, 1995); and an incomparable study of Plato's influence in the Byzantine sphere and Europe, from antiquity to the twentieth century, is František Novotný's *The Posthumous Life of Plato* (The Hague, 1977).

<sup>11</sup>AUSONIUS, *Carmina in Caesares Romanos* 17. (Cit. Novotný 1977, 89).

<sup>12</sup>Novotný 1977, 63–73. For a Platonic influence on Roman jurisprudence already in the second century BCE: Novotný 1977, 61–62. For a crisp report on Roman legal philosophy, from Cicero to Marcus Aurelius: Inwood and Miller 2007.

<sup>13</sup>SEN. *Epist.* 94.38–39.

<sup>14</sup>PORPH. *Vita Plot.* 12.4: *philosophôn tina polin*.

<sup>15</sup>PORPH. *Vita Plot.* 12.7–9: *nomois de chrêsthai tous katoikein mellontas tois Platônos*. The Greek is unclear. Porphyry's phrase can be taken to refer to 'Plato's laws' generically, or, as here, to 'Plato's *Laws*'. Most commentators incline towards the latter reading, and suppose that—in A.H. Armstrong's phrase—'the constitution of Platonopolis was to be that ... described in Plato's *Laws*'.

<sup>16</sup>PORPH. *Vita Plot.* 12.10–13.

<sup>17</sup>PORPH. *Vita Plot.* 12. Cf. Clay 2000, 280; O'Meara 2003, 15–16.

<sup>18</sup>Note, also, that Platonic legal principles apparently *become* metaphysical principles. Cf. Eliasson 2008, 12: 'The notion of providence (πρόνοια, *providentia*), seems to originally have been mainly a legal notion of forethought, or premeditation. As for the philosophical development of this notion into a more technical notion of divine providence, we only find elements of such a theory of providence in Plato, mainly in *Laws X*.'

<sup>19</sup>The term 'senatorial bishop' is from Mark F.M. Clavier (2014, 10).

universal authority in the increasingly symmetrical ‘oratorical theatres of the late Roman Empire: the church and the law court’.<sup>20</sup> Through a variety of channels—pagan and Christian—Platonic legal principles were transmitted to medieval Europe, where they commanded the utmost respect.<sup>21</sup> In the same centuries, the Platonic corpus extensively influenced legal thought in the Byzantine sphere,<sup>22</sup> while Platonic political ideas circulated in the Islamicate zone.<sup>23</sup>

It is emblematic of Plato’s post-classical influence in Europe—but astonishing to us—that Gratian’s *Decretum* (ca 1140),<sup>24</sup> a *fons iuris* of canon law (and thence of modern contract law),<sup>25</sup> cites Plato to authorize the canonist’s denial of property rights in a state of nature. ‘By natural law’, Gratian holds, ‘all things are common to all people.’<sup>26</sup> He then cites the *Republic*’s communist ideal, alongside *Acts of the Apostles* 4, as a marker of natural law.<sup>27</sup> ‘Plato lays out the order’, Gratian

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<sup>20</sup>Clavier 2014, 7.

<sup>21</sup>An indispensable study of Neoplatonic philosophy as a conduit of Platonic legal theory is O’Meara 2003.

<sup>22</sup>The positive tradition of *Plato Byzantinus* culminates in a colossal, neo-Hellenistic *Book of Laws* (*Nomôn syngraphê*), which was modelled on Plato’s *Laws* and written by Gemistos Plethon (d. 1452) in the decades before the fall of Constantinople. The most recent assessment of Plethon’s thought is Hladký 2014. There is also a negative tradition of *Plato Byzantinus*, however. The Turkish victory in 1453 created a fiercely anti-Hellenistic, anti-Platonic animus among certain Byzantine refugees, the most notable of whom is George of Trebizond (d. 1472/73). Drawing on patristic criticisms of Plato, Trebizond held Platonism responsible for Byzantine decadence and defeat. The definitive treatment of Trebizond’s immense—and immensely complex—oeuvre is Monfasani 1976.

<sup>23</sup>The sources of *Plato Arabicus* are still imperfectly known. Dimitri Gutas (2002, 25) gives some indication of this when he expresses a hope that ‘we will be in a position to write, in the twenty-second century, a serious history of Arabic philosophy’. In the meantime, an especially fascinating study is Alon 1991. Note that the paraphrases of Plato written by Galen of Pergamum (d. 216/17) underlie most of the Arabic reception. The Arabic translation of Galen’s *Synopsis of the Platonic Dialogues* (*Platōnikōn dialogōn synopsis*) was produced by a prolific Christian scholar, Hunain ibn Ishaq (d. 873/77). David Reisman (2004) has recently discovered a passage of the *Republic* in Arabic which preserves Plato’s dialogue form (unlike Galen’s prose paraphrase); he still doubts, however, that complete Arabic translations of dialogues were ever made. It finally deserves to be mentioned that the practice and influence of Christian philosophy in the Islamicate zone, including political philosophy, is a badly neglected topic. The context is drawn in Gutas 1998; recent contributions include Crone 2004; Watt 2004, 2013. (My thanks to a colleague at the University of Leuven, Samuel Noble, for bringing John Watt’s research to my attention).

<sup>24</sup>For a summary of the questions and conjectures regarding Gratian’s dates: Banchich, Marenbon and Reid 2007, 258. Anders Winroth posits two recensions of the *Decretum*, both of which were ‘completed in Bologna within [a] comparatively short timespan’, by ‘Gratian 1’ (ca 1139) and ‘Gratian 2’ (ca 1158). See Winroth 2000, 5–18, 122–145, here 144.

<sup>25</sup>A path-breaking study of canon law’s formative influence on European contract law is Decock 2013.

<sup>26</sup>GRAT. *Decr.* D. 8 *dicta Gratiani* §1 *ante c.* 1: *Nam jure naturali omnia sunt communia omnibus.*

<sup>27</sup>Aristotle, by way of contrast, cites this as a positive, ‘written law’ (*gegrammenon nomon*) of Plato’s—and as a bad one. Cf. ARIST. *Polit.* II 1.2 (1261a4–9). And the patristic reception of Plato’s *Republic* is by no means unmixd. In *Adversus Jovianum* II 7, for example, Jerome reports that certain northern European nations do not practice monogamy. ‘But as if they had read the



comments, ‘for a very just republic in which no one considers anything his own.’<sup>28</sup> The identification of Plato’s law with Christ’s law (*lex evangelica*) is even more striking in a thirteenth-century gloss on Gratian’s sentence. ‘Plato imagined a republic’, we read in the *Glossa Ordinaria*, ‘in which all things are common, and every person loved the other as himself.’<sup>29</sup> The *Republic* is cited, here, as a legal and political theorization of ‘the great commandment in the law’ (*mandatum magnum in lege*) according to Jesus—to love one’s ‘neighbour’ (*proximum*) as oneself.<sup>30</sup>

Nor was the assimilation of Platonic law to prophetic law only the work of Christians. It is highly suggestive that a pagan philosopher of Roman Syria, Numenius of Apamea,<sup>31</sup> could ask in the mid-second century CE: ‘What is Plato, but Moses speaking Attic (*attikizôn*)?’<sup>32</sup> Moses is invoked, here, as a non-Hellenic legislator whose principles could be harmonized with the Hellenic philosopher’s. This ancient hypothesis (or *pium desiderium*) persisted deep into the early modern period. As late as the 1680s, it was not uncommon for learned Europeans to coordinate the Mosaic and Platonic legislations. In his *Mœurs des Israelites* (Paris, 1681), for instance, Claude Fleury (d. 1723) claims that Plato’s law-codes were ‘founded upon the principles which Moses taught’, and that ancient Israel—which a number of early modern writers dubbed ‘the republic of the Hebrews’ (*respublica Hebraeorum*)<sup>33</sup>—‘really did practice what Plato proposes best in his *Republic* and in his *Laws*’.<sup>34</sup> Here again, Plato is held up as a legal theorist of the city of God.

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(Footnote 27 continued)

*Republic of Plato*’, he fumes, ‘there is no individual wife among them. As each pleases, they satisfy their lust in the manner of brutes.’ (Cit. Boas 1948, 131.)

<sup>28</sup>GRAT. *Decr. D. 8 dicta Gratiani* §1 ante c. 1: *Unde apud Platonem illa civitas justissime ordinata traditur, in qua quisque proprios nescit affectus.*

<sup>29</sup>GRAT. *Decr. D. 8 dicta Gratiani* §1 ante c. 1, gloss c. (I believe this gloss is from the hand of Johannes Teutonicus, ca 1218.)

<sup>30</sup>This gloss of course evokes the *secundum mandatum* issued by Jesus at *Matt. 22:39* = *Mark 12:31* ≈ *Luke 10:28*. The question posed to Jesus by ‘a doctor of the law’ (*legis doctor*) concerning the ‘great commandment in the law’ appears at *Matt. 22:35* ≈ *Mark 12:28* ≈ *Luke 10:25*. The English and Latin are both taken, here, from *The Vulgate Bible, Volume VI: The New Testament, Douay-Rheims Translation*, ed. A.M. Kinney, Cambridge, Mass.: Harvard University Press, 2013.

<sup>31</sup>For differing views on the sense and authenticity of this fragment: Edwards 1990; Sterling 2015.

<sup>32</sup>Cf. Cook 2004, 36–41; Stroumsa 2009, 64–65.

<sup>33</sup>Nelson 2010, 16–22.

<sup>34</sup>C. Fleury, *The Manners of the Israelites in Three Parts* (London, 1683), 212. (Cit. Nelson 2010, 86 n.) Note that I have very slightly modified Fleury’s text; the seventeenth-century English translation reads: ‘Plato studied several years in Egypt, and he makes *Socrates* speak so many excellent things, founded upon the Principles, which *Moses* taught, that we may conjecture, he had a knowledge of them. ... The *Jews* really did practice, what he [= *Plato*] proposes best in his *Common-wealth* and in his *Laws*.’

However Plato is received, his continent-spanning, regime-shaping influence is due, in part, to the fact that he *legislates*.<sup>35</sup> This is of course a very basic claim, yet legislation is an aspect of Plato's output which is most sharply observed by his pre-modern interpreters.<sup>36</sup> The pages of the most influential early modern legists—Jean Bodin (d. 1596), say, or Hugo Grotius (d. 1645)—bristle with statutory citations of Plato. Of special note, too, is the fact that Plato's *Republic* and *Laws* are decisive sources for Thomas More's *Utopia* (Louvain, 1516).<sup>37</sup> And a century on, Plato's influence is superabundantly clear in the political fiction of another Lord Chancellor of England, the *New Atlantis* of Francis Bacon (London, 1627).<sup>38</sup> It is Plato, therefore, who presides over the birth of the modern utopian genre—and with it, arguably, the birth of the modern political imaginary.

To return to our point, however: Plato legislates and his legislations have shaped the European—and thereby, the global—legal regimes in deep and enduring ways.

It is essential to this essay's argument that Plato legislates in the harsh light of his own *critique* of law. This critique is most elaborately argued in his late dialogue, *Politicus*, in which it becomes clear that Plato holds a basic and unshakeable conviction that 'law is not the most perfect right' (*ouk orthotaton ho nomos*).<sup>39</sup> One could say, therefore, that he legislates with a bad conscience.

Plato even seems to codify his sense of legislative guilt towards the end of his last dialogue, the *Laws*, in which he suggests that 'a kind of general legislative prelude be issued' in his hypothetical colony, Magnesia. In this—Plato's prelude to a colossal Platonic law-code—the legislator formally asks the forgiveness of those who will live under his laws. The Platonic colonists are asked, here, to '*forgive the legislator* since it is impossible for him, in his oversight of the common things, to provide at the same time for the private calamities of each citizen'.<sup>40</sup> The precise sense of this prelude cannot be gone into, but this petition in *Laws* XI shows that Platonic legislation internalizes the Platonic critique of law.

Of course, Plato's is not the only critique of law that survives his milieu. The sophist Antiphon's procedural critique of law—which is preserved, albeit in a lacunar form, in the *Oxyrhynchus Papyrus*—is still arresting.<sup>41</sup> Aristotle's critique

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<sup>35</sup>On Jean Bodin's reckoning, Plato composed 726 laws. Cf. Bodin 1583, 265: 'Je laisse sept cents vingt six lois qu'il a couchees par efcrit, pour le gouvernement de la Republique ...'

<sup>36</sup>Friedrich Nietzsche, however, sensed this with characteristic acuity—and expressed it forcefully: 'Plato is the incarnate wish to become the greatest lawgiver and founder of the state.' (Cit. Novotný 1977, 564.)

<sup>37</sup>Consult the original marginal references and critical apparatuses inprévost 1978.

<sup>38</sup>Consult the commentary in Bacon 1996.

<sup>39</sup>PL. *Pol.* 294c–d.

<sup>40</sup>PL. *Laws* XI 925e–926a.

<sup>41</sup>ANT. *Truth*, fr. 1 (in *Oxyrhynchus Papyrus* XI).

of ‘legal justice’ (*nomimou dikaiou*) in *Nicomachean Ethics* V is—in its pristine formality—as trenchant and precise as anything that appears in the current literature on law.<sup>42</sup> Similarly, it is my contention that the Platonic critique of law and his concomitant doctrine of the flux of law are, in Rimbaud’s phrase, ‘absolutely modern’.<sup>43</sup>

Plato’s legal critique is distilled in his categorical statement that ‘law is not the most perfect right’.<sup>44</sup> In the *Politicus*, he infers from this that no law-code—human or divine, present or future—could conceivably be perfect. He reasons in stringently formal terms to this conclusion from the fact that ‘none of the human things is ever at rest’.<sup>45</sup> When Cicero later stipulates that only an ‘infinite’ (*infinitum*) law-code could be ‘perfect’ or ‘complete’ (*perfectae*),<sup>46</sup> he is writing as a Platonist.<sup>47</sup> This is not a Borgesian conceit, but an authentic Platonic insight.

Plato therefore holds that the flux of *things* necessitates a flux of *law*. ‘No legal regime can remain perfect’, he reasons in *Laws* XII, unless it is authorized ‘to revise any laws that are deficient’.<sup>48</sup> Nevertheless, he believes that a law-code’s volatility is both a sign and cause of a law-state’s instability.<sup>49</sup> In *Republic* IV, for instance, Socrates mocks democratic law-states for ‘ceaselessly instituting and revising a host of statutes’.<sup>50</sup> The question of legal revision thus becomes salient in Plato’s late dialogues—and most visibly in his last dialogue, the *Laws*—precisely because it is a rational *necessity* which is a sign and cause of structural *instability*. Legal revision, like Platonic legislation, inculcates a legislator.

Ours is a century and a culture of unprecedented legal innovation. In Randall Lesaffer’s phrase, the global north and west seem to be caught up in a sort of ‘legislative frenzy’.<sup>51</sup> It could be useful for us, then, to reckon with Plato’s wariness. There is an intrinsic threat that legal revision can undermine the legal regime—national, or international—that it is meant to perfect.

*Platonic Legislations* was written in the summer of 2012. In the autumn of 2016, I revised the text and added a chapter on the drama of legal critique in Plato’s corpus.

<sup>42</sup>ARIST. *Nic. Eth.* V 10.3–7 (1137b12–33).

<sup>43</sup>A. Rimbaud, ‘Adieu’, *Une saison en enfer* (Brussels, 1873): ‘Il faut être absolument moderne.’

<sup>44</sup>PL. *Pol.* 294c–d.

<sup>45</sup>PL. *Pol.* 294b.

<sup>46</sup>CIC. *Laws* II 7.18: *leges autem a me edentur non perfectae (nam esset infinitum), sed ipsae summae rerum atque sententiae.*

<sup>47</sup>CIC. *Laws* I 5.15.

<sup>48</sup>PL. *Laws* XII 951c.

<sup>49</sup>I intend for ‘law-state’ to denote the sovereignty of code law in Plato’s hypothetical city-states—that is, the polities drafted in his *Republic* and *Laws*—as in many of the Greek city-states of Plato’s milieu. (Cf. Hansen 2006, 106–115.) It would be a mistake, however, to terminologically conflate ancient ‘law-states’—actual or hypothetical—with modern ‘legal states’.

<sup>50</sup>PL. *Rep.* IV 425e. Cf. Schwartzberg 2004, 2007.

<sup>51</sup>Lesaffer 2009, 510.

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I dedicate *Platonic Legislations* to the memory of my parents' parents. It is thanks to them that I know, in many incomparable ways, the joys of being a descendant.

Leuven, Belgium  
December 2016

David Lloyd Dusenbury

The law-guardians should ... supplement the laws as needs arise, and the same holds for all other matters the law-code might, in its uncertainty, omit.

—PLATO, *Laws IX*

The law-guardians should revise any laws that are deficient. For without this ... no legal regime can remain perfect.

—PLATO, *Laws XII*

I shall not set out my laws in a perfect form, for that would be an infinite task.

—CICERO, *Laws II*

# Chapter 1

## Argument

**Abstract** In his supremely influential corpus, Plato lays out a critique of what he calls, in *Laws IX*, ‘all presently existing legislation’. Since archaic law-codes in Greece were held to have been revealed to human legislators by the gods, a critique of divine legislation is necessarily one moment of the Platonic critique of law. Yet Plato is also unimpressed by democratic legislation. Platonic legislation is, thus, neither democratic nor divine. It is a result of what he calls ‘political technique’ (*politikê technê*). And one of Plato’s basic political convictions is that no law-code is perfect. Therefore, in order for any law-state to survive, it must allow for the supplementation, emendation and abrogation of its laws. The hypothetical law-states that Plato devises in his *Republic* and *Laws* provide for a non-democratic ‘flux of law’.

### 1.1 Plato ‘the Youngest’

Justus of Tiberias ... says that in the course of Socrates’ trial, Plato mounted the dais and said, ‘Though I am the youngest who ever mounted the dais to address you, men of Athens ...’ – at which the citizen-judges shouted, ‘Step down! Step down!’

—Diogenes Laertius, *Life of Socrates*<sup>1</sup>

We open with this image of Plato rising to speak in Socrates’ defence—to the displeasure of the Athenian citizen-judges.<sup>2</sup> The legality of this failed intervention

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<sup>1</sup>DIO. LAER. *Lives* II 5.41. There are parallel testimonies in Olympiodorus’ *Gorgias* commentary (41.6) and in the *Anonymous Prolegomena* (3.21–25). For full citations and descriptions, see Riginos (1976, 56–58), where she concludes that ‘it is not possible to say when [this] Platonic anecdote entered the biographical tradition’.

<sup>2</sup>The term ‘citizen-judges’ is preferred because the dicasts in Athenian law-courts were not only competent to issue a verdict, but to impose a penalty. S.C. Todd comments that ‘the *dikastai* comprised a mass jury of laymen who themselves fulfilled ... the functions that we would naturally associate with the judge’ (1993, 82). For the transition from archaic *dikastai* to citizen-judges: Ostwald (1986, 66–77); Papakonstantinou (2008, 87–99).

is not entirely clear. The outcry from the bench of course suggests that it is irregular for Plato to mount the dais, given his age. At the time of Socrates' trial in 399 BCE, Plato is not yet thirty years old—a threshold for the right to speak in Athenian law-courts.<sup>3</sup> He is accosted, here, by a typical cry—'Step down!' (*kataba*)—which citizen-judges used to deny speakers an occasion to address the court. Still, it is crucial to note that this outcry does not necessarily reflect Athenian law, or even the city's binding customs. As the young Loathecleon (*Bdelycleon*) drily remarks in Aristophanes' *Wasps*, 'That shout "Step down!" has fooled a great many people'.<sup>4</sup>

Regardless of its legality, there is no suggestion of this failed intervention in Xenophon's *Apology*.<sup>5</sup> In the Platonic *Apology*, Socrates gestures more than once to a young Plato who is with him in the law-court.<sup>6</sup> But Plato himself never speaks in his *Apology*—nor, of course, in any Platonic dialogue. It would perhaps be possible—in purely dramaturgical terms—to insert this incident into the Platonic *Apology*,<sup>7</sup> immediately before Socrates says that 'Plato here' has urged him to propose a fine as a counterpenalty to death.<sup>8</sup> We could speculate that Plato may have mounted the dais to submit a realistic counterpenalty on Socrates' behalf, after he had flaunted his plea for clemency in the last phase of his trial.<sup>9</sup> (The only *just* penalty, Socrates instructs the court, would be for the city to give him the right to dine in the city's Prytaneion complex for the rest of his natural life—a rare form of

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<sup>3</sup>Plato's birth is dated to 427 BCE, making him 28 at the time of Socrates' trial. One pertinent text is AESCH. *Tim.* 23, which gives thirty years as a threshold for speaking in court. Note also that while Justus' testimony has the citizen-judges shout Plato down for his youth, Plato's *Apology* has Socrates accuse one of his prosecutors, Meletus, of 'youthfulness' (*neotēti* ≈ rashness) (PL. *Apol.* 26e).

<sup>4</sup>ARISTOPH. *Wasps* 979–981. Cf. ISOC. *Antid.* 21–22: 'We take our solemn oath at the beginning of each year that we will impartially hear both accusers and accused, [yet] we so depart from this in practice, that when the accuser makes his charges we give ear to whatever he may say; but when the accused tries to refute them, *we sometimes do not endure even to hear his voice (mêde tēn phônēn akouontas anechesthai)*'; LYS. *Mant.* 20: 'I have noticed, councillors, that some of you are annoyed with me for attempting to speak before the people (*en tōi demōi*) on account of my youth (*neōteros*). But, in the first place, necessity compelled me to address the city (*dēmēgorēsai*) to protect my own interests ...'.

<sup>5</sup>Nor, for that matter, in Cicero's 'apology': CIC. *Tusc.* I 40. In the Xenophontic corpus, Plato is only named at XEN. *Mem.* III 6.1, while Plato never mentions Xenophon. (Cf. DIO. LAER. *Lives* III 34.) For recent analyses of the 'rivalry' between Xenophon and Plato, and possible cross-references in their corpora: Danzig (2003, 2005).

<sup>6</sup>PL. *Apol.* 34a, 38b. Cf. DIO. LAER. *Lives* III 19; Riginos (1976, 86–92).

<sup>7</sup>Pace Alice Riginos (1976, 57), who writes that 'this story of Plato's behavior at Socrates' trial ... contradicts his own account of the trial in the *Apology*'.

<sup>8</sup>Crito, Critobulus and Aristobulus are also named at PL. *Apol.* 38b, yet Plato appears to subtly underscore his own role.

<sup>9</sup>Compare the Platonic account of this phase of Socrates' trial with the testimonies in DIO. LAER. *Lives* II 5.41–42.

honour called 'Sitiesis'.<sup>10</sup> The fact remains, however, that Plato's audacity at the trial—unlike Socrates'—is sheer rumour.<sup>11</sup>

It is nevertheless a useful rumour—a sort of emblem (*paradeigma*). And not, of course, for whatever hagiographic potential it may possess.<sup>12</sup> (We tend to forget how fervidly, down the centuries, Plato was revered as 'a sort of god among the philosophers'.)<sup>13</sup> On the contrary, this presumably fictive act by a young Plato can be made to display for us, and can serve to reinforce, a very real set of conflicts that give rise to and forcefully, if gradually, shape the Platonic reflection on 'law' (*nomos*). (Note here that *nomos*—Plato's term of art for 'law'—is of very recent coinage when he begins to write.)<sup>14</sup> Namely, the following:

- (i) That the rigid observance of law (marked in this episode by the citizen-judges' outcry) inevitably results in politically obtuse and unjust decisions (here, that Plato cannot speak in defence of a cynically prosecuted man).<sup>15</sup>
- (ii) Consequently, that a concrete exercise of political insight, and a zeal for the ideal of justice,<sup>16</sup> inevitably result in law-breaking (in the present case, Plato breaks with the customs of the Athenian law-court).
- (iii) That as a form of generalized and mechanistic *pre*-decision, every law-code is constitutively imperfect (i.e., every law-code is not only imperfect qua code, but also qua law), and should anticipate a process of legislative supplementation, emendation, and outright abrogation—in a word: 'flux'.

It is not the task of the present section, but of this essay, to begin to elucidate these and other conflicts that affect the status of code law in the Platonic dialogues,<sup>17</sup> and in the end, to let us glimpse them in Justus of Tiberias' testimony. For Plato 'the youngest' will still have a complex relevance for the 'old boy' of his final dialogue, the *Laws*.<sup>18</sup> It is by no means uninteresting that Plato's Athenian

<sup>10</sup>Pl. *Apol.* 36d–37a. Cf. DIO. LAER. *Lives* II 5.42; Miller (1978, 7–9).

<sup>11</sup>On Socrates' 'proud tone' at the trial: Burnet (1924, 145–146), Slings (1994, 191–200). And for Socrates' sly insinuation that many of his judges, while not perhaps illiterate, were yet 'unskilled in letters' (*apeirous grammatôn*): Gagarin (2008, 178–179).

<sup>12</sup>Cf. Riginos (1976, 56–58).

<sup>13</sup>Cic. *Nat. Deor.* II 12.32: *quasi quendam deum philosophorum*. Cf. Cic. *Tusc.* I 32.79, where Cicero reports that the Stoic philosopher Panaetius (d. ca 109 BCE) called Plato 'the wisest' (*sapientissimum*), 'the holiest' (*sanctissimum*), and 'the Homer of philosophers' (*Homerum philosophorum*).

<sup>14</sup>*Nomos* only becomes 'entrenched in Athens as the proper term for 'statute' by 403/402 B.C.' (Ostwald 1969, 95, 10).

<sup>15</sup>Slings (1994, 86–100) reviews the indictment's legal basis.

<sup>16</sup>Cf. PL. *Rep.* IV 435b: *tês dikaiosunês eidos*.

<sup>17</sup>Here and throughout, the terms 'code law', 'law-code', and 'codify' must be taken *sensu lato*.

<sup>18</sup>PL. *Laws* IV 712b: *paides presbytai*.



legislator points out that he ‘happens to be’, of the *Laws*’ three senescent legislators, ‘the youngest’.<sup>19</sup>

## 1.2 The Flux of Law in Plato’s Corpus

Plato made two republics.

—Jean Bodin, *Les six Livres de la République*<sup>20</sup>

In *Laws* IX, Plato has his Athenian legislator say this: ‘None of the previous attempts at legislation (*nomôn thesin*) has been perfectly (*orthôs*) worked out’.<sup>21</sup>

The Greek term *orthos* here, the superlative of which will appear in a moment,<sup>22</sup> could be rendered in a variety of ways (and is typically rendered ‘correct’). In the first pages of the *Laws*, Plato stipulates that only those laws are ‘perfect’ (*orthôs*) which ‘produce the happiness (*eudaimonas*) of those who observe them, by supplying them with all good things ... human and divine’.<sup>23</sup> And in his description of Plato’s *Laws*, Cicero seems to translate the term as ‘ideal’ or ‘optimal’ (*de optimis legibus*).<sup>24</sup>

However *orthos* is taken, this much is clear from the Athenian’s statement:

- (i) Plato’s Athenian legislator tacitly, yet categorically, impugns the divine legislators that open the dialogue—Crete’s Zeus (who revealed a law-code to Minos), and Sparta’s Apollo (who inspired the code of Lycurgus).<sup>25</sup> In this way, the Athenian ‘replaces’—as Seth Bernadete says blankly—the archaic Greek city-states’ divine legislators.<sup>26</sup>
- (ii) Plato’s Athenian legislator sharply dismisses the Greeks’ poetic legislators, ‘Homer and Tyrtæus and the rest’,<sup>27</sup> since they enshrine ‘base customs’ (*kakôs thesthai*).<sup>28</sup> This is, of course, an old complaint. Already in the fragments of Heraclitus, we hear that ‘Homer deserves to be ... beaten with a staff’.<sup>29</sup>

<sup>19</sup>PL. *Laws* X 892d.

<sup>20</sup>Bodin (1583, 264): ‘Platon fait deux Républiques’.

<sup>21</sup>PL. *Laws* IX 857c. Cf. PL. *Pol.* 295e–296a, 296c–d.

<sup>22</sup>And the superlative of *orthos*—namely, ‘most perfect right’ (*orthotaton*)—should be placed beside a later superlative, ‘truest’ (*alêthestatês*), at PL. *Pol.* 301e: ‘It becomes necessary—so it seems—for people to convene and to inscribe statutes (*synggrammata graphein*), chasing after the traces of the truest legal order (*alêthestatês politeias*)’.

<sup>23</sup>PL. *Laws* I 631b.

<sup>24</sup>IC. *Laws* I 5.15.

<sup>25</sup>Cf. PL. *Laws* I 624a–b.

<sup>26</sup>Bernadete (2000, 4).

<sup>27</sup>For Tyrtæus: PL. *Laws* I 629a–630d; Ostwald (1969, 81–82).

<sup>28</sup>PL. *Laws* IX 858e. Petraki (2011, 8–12) reviews the literature on poets in Plato’s *Republic*, and Debra Nails (2012, 11–12) revisits the question.

<sup>29</sup>HERAC. *Fr.* 42 (Diels).

- (iii) Plato's Athenian legislator disparages the 'perfection' of the law-states instituted by Lycurgus at Sparta,<sup>30</sup> by Solon at Athens,<sup>31</sup> and indeed, by 'all the legislators who have written' prior to Plato in his *Laws*.<sup>32</sup> His critique of the Greek law-states—and particularly, of the democratic law-state at Athens—is thus not purely reactionary. Plato is not merely a partisan of the *ancien régime*—or in Athenian terms, the ancestral laws (*patrioi nomoi*) and the original constitution (*patrios politeia*).

This is a significant clearing of the ground.<sup>33</sup> On his own reckoning, Plato's Athenian sweeps aside 'all presently existing legislation'.<sup>34</sup> But this is not all. For since the *Republic* is manifestly, however, hypothetical its form and intent,<sup>35</sup> a 'previous attempt at legislation':

- (iv) The Athenian legislator hereby suggests that Plato's first legislation has *itself* not 'been perfectly worked out'<sup>36</sup>—hence Plato's second legislation, the *Laws*.<sup>37</sup>

The very existence of Plato's *Laws*, then, elaborately attests to a 'flux of law' within the Platonic corpus.<sup>38</sup> Plato's dialogues internally reflect and repeatedly insist upon the fact that, as I have said, every law-code is *constitutively* imperfect.<sup>39</sup> It is because of this that the task of legislation per se is unfinished, and that Platonic

<sup>30</sup>And in this, he *resembles* Lycurgus: Ostwald (1969, 77).

<sup>31</sup>Hansen (2011) overlooks this criticism in his historical interpretation of the *Politicus*.

<sup>32</sup>Cf. PL. *Laws* IX 858e. To say that he disparages their 'perfection' is a specific reference to the sentence I have quoted at PL. *Laws* IX 857c. At *Laws* IX 858e, Plato praises Solon and Lycurgus relative to the poets. And Plato's feelings for Solon, in particular, are complex in the *Laws*: Morrow (1960, 78–86).

<sup>33</sup>Bernadete (2000, 182): 'The laws of the city are the impediment to the *Laws*'.

<sup>34</sup>PL. *Laws* IX 857c: *pantas tous nun nomothetoumenous*.

<sup>35</sup>Note that the term 'hypothetical' carries a different signification in a number of late-antique texts on Plato. Consider the very interesting distinction is made between Plato's 'hypothetical' law-state in the *Republic*, and his 'non-hypothetical' law-state in the *Laws*, in ALC. *Did.* (second or third century CE). Here, it merely denotes the fact that the Plato legislates for inexistent cities.

<sup>36</sup>Christopher Bobonich notes this apropos the *Laws*' use of legislative prologues: 'Such a practice, Plato believes, is an innovation: it is something that no lawgiver has ever thought of doing before (722b–e). And we have no reason to think that Plato is here excluding his earlier self, e.g. the Plato of the *Republic* and the *Politicus*, from this criticism' (1991, 365).

<sup>37</sup>Unlike André Laks, I accept that 'the *Laws* is meant to *replace* the *Politeia*' (1990, 212), while I nevertheless stress their kinship as Platonic legislations. The question of 'complementarity' is intricate, and it is helpful of Ferrary (1995, 48)—like Laks (1990, 211)—to remind us of a 'Ciceronian notion of the link between the two Platonic dialogues', which is then reflected in Cicero's *Republic* and *Laws*. Laks (1990, 225) falls closer towards the Ciceronian position than I will.

<sup>38</sup>I concur with Huntington Cairns that Plato's 'theory of law ... illumines and is illumined by the entire Platonic corpus' (1942, 359).

<sup>39</sup>Bernadete (2000, 332): 'The law resists being a whole [in the *Laws*] ... even though or just because it is meant for men as they live in time'.

legislation is observably in flux, from the *Republic* to the *Laws*.<sup>40</sup> And it is because of this that—in Jean Bodin’s phrase—‘Plato made two republics’.<sup>41</sup>

For this idea of the *constitutive* imperfection of legislation, we may glance at a late dialogue that prepares the *Laws*. In Plato’s *Politicus*, the decisive voice is not that of the *Laws*’ Athenian legislator,<sup>42</sup> nor of the *Republic*’s Socrates, but of a nameless persona from the Greek colony of Elea—a colony whose citizens included a number of philosophers, most notably Parmenides<sup>43</sup>—who asks at one point: ‘Why then is it necessary to lay down laws, since law is not the most perfect right (*ouk orthotaton ho nomos*)? We must ask the reason for this’.<sup>44</sup>

Now, Plato endorses legislation in the *Politicus* and heavily reinforces it in the *Laws*—or perhaps better, *with* the *Laws*. In the passage of the *Politicus* from which these sentences are taken, the Eleatic Stranger concedes that it is ‘necessary to lay down laws’ (*anankaion nomothetein*),<sup>45</sup> a phrase that we will later encounter—slightly modulated—in *Laws* IX (*nomous ... anankaion tithesthai*).<sup>46</sup> But it is precisely a *disaffected* necessity that lends the Eleatic Stranger’s question weight, and that occasions the present essay.

For if the law-state devised in Plato’s *Republic* is faulted in Plato’s *Laws* for its imperfections, so also the law-state set out in the *Laws* is destined to be criticized for its imperfections—most influentially, perhaps, in Aristotle’s *Politics*.<sup>47</sup> Plato is certain that his legislations surpass and supersede their predecessors, be they human or ‘divine’; and he strives for his law-codes to merit the descriptor, ‘perfect’ or ‘optimal’ (*orthos*). Yet Plato also believes that any law-code *as such* is fated to miscarry and betray the pure idea of justice. It is because of this that in Plato’s *Laws*, as Seth Bernadete noted, ‘legislation is never at an end’.<sup>48</sup>

In establishing and clarifying the Platonic imperative for legal revision, I claim the following, which roughly correspond to the essay’s core chapters:

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<sup>40</sup>Virginia Hunter notes that Plato appears to revise and ‘supersede’ his *Laws* IX theft-laws when he revisits the crime in *Laws* XI and XII, ‘for now he has quite a different perspective’, namely, ‘he proposes that the penalty for theft be proportionate to the theft’ (2009, 7). Within the *Laws* itself, then, we can observe Plato ‘becoming’ a legislator (*Laws* IX 859c), and see his law-code being revised even as it is being drafted.

<sup>41</sup>Bodin (1583, 264).

<sup>42</sup>On this Athenian legislator’s ‘voice’: Morrow (1960, 74–76).

<sup>43</sup>Cf. PL. *Soph.* 216a.

<sup>44</sup>PL. *Pol.* 294c–d.

<sup>45</sup>Cf. PL. *Pol.* 301e: ‘It becomes necessary—so it seems—for people to convene and to inscribe statutes (*dei dê synelthontas xyngrammata graphein*), chasing after the traces of the truest legal order (*alêthestatês politeias*)’.

<sup>46</sup>PL. *Laws* IX 874e–875a. See Sect. 4.1.2, below.

<sup>47</sup>ARIST. *Polit.* II 3.1–13 (1264b27–1266a30).

<sup>48</sup>Bernadete (2000, 179), where he also observes that ‘the legislator [of the *Laws*] ... needs a continuous line of successors to correct his mistakes, fill in his omissions, and restore his writings’. And more recently: Mayhew (2011, 312 n. 7, 319 n. 21). Mayhew cites Bobonich (2002, 384–385, 391–408).

- (i) In the Platonic corpus, a philosophical critique of the Greeks' archaic and democratic law-codes provides the original impetus for Plato's reflection on law.
- (ii) Platonic legislation is prepared by Plato's critique of the circulation of violence in despotic regimes, and the cultivation of flattery (i.e. sophistry) in democratic regimes.
- (iii) This impetus (legal critique) and imperative (legal revision) can be observed within both of the Platonic legislations, *Republic* and *Laws*.

If these claims are correct, then both Platonic legislations will reflect the constitutive imperfection of every law-code—qua code, and qua law.

# Chapter 2

## The Platonic Dialogues and Legal Critique

**Abstract** Plato’s corpus is not systematic, but dramatic. This chapter introduces the drama of legal critique in his dialogues. Following a brief introduction to Plato and his chronology, with a glance at Platonism in the *longue durée*, the motif of legal critique is then traced up the dialogues that concern us in later chapters. Plato’s dramatization of the trial and death of Socrates (*Euthyphro*, *Apology*, *Crito* and *Phaedo*); his sustained critique of legal positivism and his first law-code (*Gorgias* and *Republic*); and his formal critique of law and second law-code (*Politicus* and *Laws*) are introduced in concise, original résumés. This chapter therefore retraces the chronological arc of Plato’s dialogues—from the *Apology* to the *Laws*. It is proposed, in conclusion, that *Laws* XII ends with a dark coda. Socrates’ trial is chillingly reprised in the last pages that Plato ever penned.

### 2.1 Introducing the Platonic Dialogues

Plato said that the truth is the sweetest sound.

—DIOGENES LAERTIUS, *Life of Plato*<sup>1</sup>

The inconsistencies of Plato are a long story.

—CICERO, *De Natura Deorum*<sup>2</sup>

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<sup>1</sup>DIO. LAER. *Lives* III 39. Cf. XEN. *Hier.* 1.14: ‘Praise [is] the sweetest sound ... Abuse, on the contrary, is the most offensive of all sounds.’

<sup>2</sup>Cic. *Nat. Deor.* I 12.30: *de Platonis inconstantia longum est dicere*. Note that this sentence is voiced by an Epicurean—and as such, is polemical.

The Platonic dialogues are texts which were designed to be read out, and to be heard.<sup>3</sup> It must be underscored that Plato himself never speaks in these texts.<sup>4</sup> As Diogenes Laertius observes, he ‘puts everything into the mouth’ of *dramatis personae*.<sup>5</sup> This is not a minor point. Platonic philosophy survives as a drama in which Plato himself is silent.<sup>6</sup>

The dialogues feature dozens of Socrates’ friends and rivals, who are not infrequently the acquaintances—or even relatives—of a young Plato.<sup>7</sup> Many of these *personae* are drawn with great vividness. ‘I seem to have actually *lived* with them’, Cicero enthuses in *Academica*.<sup>8</sup> (He elsewhere compares Socrates’ wit to Plautus’ Roman comedies.)<sup>9</sup> Yet Plato himself is only mentioned in a couple of dialogues, very much in passing.<sup>10</sup> He is never Socrates’ interlocutor.<sup>11</sup>

<sup>3</sup>This is true of all philosophical texts in the Platonic milieu. Cf. PL. *Parm.* 127a–d: ‘Socrates and many others ... wanted to hear (*akousai*) Zeno’s writings (*grammatôn*) ... so they heard only a little that remained of the written works (*epakousai tôn grammatôn*); PL. *Ph.* 97b: ‘One day I heard (*akousas*) a man reading from a book (*ek bibliou*), as he said, by Anaxagoras’. Plato’s early dialogues exploit this to the full, however. He even acts as though the *Theaetetus* is worked up from shorthand notes that Socrates had a hand in editing. Cf. PL. *Theaet.* 142d–143c, here 143c: ‘While we are resting, the boy shall read aloud to us ... Here is the book [= Plato’s *Theaetetus*].’

<sup>4</sup>The extent of Plato’s authentic corpus is a vexed question. There is no consensus regarding the number of authentic dialogues or letters by Plato. In any case, the definition of a Platonic dialogue offered by Albinus in the second century CE, at ALB. *Eis.* 1, helps to sharpen our sense of his chosen genre: ‘[A Platonic dialogue] is nothing other than a discourse (*logos*) composed of question and answer, concerning some sort of political or philosophical topic, with an appropriate characterization (*êthopoiias*) of the persons taking part and the arrangement of their diction.’

<sup>5</sup>DIO. LAER. *Lives* II 5.45.

<sup>6</sup>The term is necessarily imprecise, and I am unable to deal here with the question of Plato’s *Epistles*. A fine study of this ‘silent philosopher’ is Diskin Clay’s *Platonic Questions*. Note especially his contrast of Plato with the magisterial voices of Heraclitus, Parmenides and Empedocles: Clay (2000, 80–83).

<sup>7</sup>Cf. Grote (1888), Nails (2002).

<sup>8</sup>CIC. *Acad.* II 74: *vixisse cum iis equidem videor* ... Note that Cicero is referring primarily to Socrates, as the dialogues’ protagonist. I include the other Platonic *personae* in this statement, but this is not much of a liberty. ‘Can I speak with more certain knowledge of any other persons?’ Cicero asks in a hyperbolic mood. ‘I seem to have actually *lived* with them, so many dialogues have been put in writing (*ita multi sermones perscripti sunt*) which make it impossible to doubt that Socrates held that nothing could be known.’

<sup>9</sup>CIC. *Offic.* I 29.104: ‘the books of Socratic philosophers’ (*philosophorum Socraticorum libri*) are full of ‘urbane, clever and witty’ (*urbanum, ingeniosum, facetum*) conversation, much like the plays by ‘our own Plautus and the Old Comedy of Athens’. There is a not dissimilar observation in ARIST. *Polit.* II 3.3: ‘All the discourses of Socrates (*tou Sôkratous logoi*) possess cleverness (*to kompson*), originality (*to kainotomon*) and keenness of inquiry (*to zêtêtikon*).’ Note that in both passages, Plato is referred to—but not by name, and not to the exclusion of other Socratic authors.

<sup>10</sup>Clay (2000, 11) points out that Xenophon ‘figures as a character in some of the [Socratic] dialogues of the *Memorabilia*’.

<sup>11</sup>In the *Republic*, by way of contrast, Plato’s brothers Adeimantus and Glaucon hold a protracted conversation with the philosopher. Cf. *Rep.* I 327a–c, etc.

In the *Apology*, as we have seen, Plato is one of those who stand by Socrates at his trial.<sup>12</sup> Then, in the *Phaedo*, he is noted for being one of Socrates' inner circle who is *not* present at his death in Athens' prison.<sup>13</sup> This is Plato's final appearance in the dialogues,<sup>14</sup> and it could just as well be called a disappearance.

No less striking than Plato's absence from Socrates' death-scene is the vagueness with which he registers it in the *Phaedo*. 'Plato was ill, *I think*', is the line he has this dialogue's narrator, Phaedo of Elis, speak to a Pythagorean interlocutor, Echecrates of Phlius.<sup>15</sup> If Plato will not tell us with any conviction where he was on the day of Socrates' death, how far can we trust him to tell us of Socrates' life?

This is an ancient question.<sup>16</sup> Diogenes Laertius reports a tradition in which Socrates, 'on hearing Plato read aloud from the *Lysis*, interjected: "Heracles! What a number of lies this youth is telling about me!"' Diogenes then clarifies: Plato had 'included in the dialogue much that Socrates never said'.<sup>17</sup> The question of Plato's truthfulness, however, is subtler and deeper than this—even in the *Lysis* tradition which Diogenes transmits. For the *Lysis* is a dialogue 'on friendship' (as its subtitle informs us), and Plato concludes the dialogue with a frank confession. 'We have not yet succeeded in discovering', he has Socrates say to a circle of handsome boys, 'what a friend is'.<sup>18</sup> Whatever the essence of friendship may be, it is surely not the place of one friend to 'tell lies about' (*katapseudesthai*) another. Yet this is exactly what Socrates—according to this tradition—accuses Plato of doing in the *Lysis*.<sup>19</sup>

Is Plato, then, a real friend of Socrates?<sup>20</sup> Is he an authentically 'Socratic' philosopher?<sup>21</sup> Are the Platonic dialogues—or at least, the early ones—inspired by

<sup>12</sup>PL. *Apol.* 33d–34b, 38b.

<sup>13</sup>PL. *Phaed.* 59b–c.

<sup>14</sup>Cf. DIO. LAER. *Lives* III 37: 'Nowhere in his writings does Plato mention himself by name, except in the dialogue *On the Soul* [= *Phaedo*] and the *Apology*.'

<sup>15</sup>PL. *Phaed.* 59b: *Platón de, oimai, êsthenei*. For Socrates' connection to Phaedo: DIO. LAER. *Lives* II 5.31.

<sup>16</sup>Consider for instance: AUL. GELL. *Noct.* XIV 3.1–6.

<sup>17</sup>DIO. LAER. *Lives* III 35. A.S. Riginos (1976, 55) writes of the *Lysis* episode: 'It is not unreasonable to suppose that such stories were circulated early in the tradition, perhaps even during Plato's own lifetime.' There is a parallel tradition regarding Plato's *Phaedo*. This time, it is not Socrates—whose death the *Phaedo* recounts—but Phaedo of Elis who objects to Plato's high-handed style: Riginos (1976, 108). And finally, there is a derivative tradition in which the rhetorician Gorgias of Leontini is scandalized on hearing Plato's *Gorgias* read aloud: Riginos (1976, 93–94). Unlike the *Lysis* and *Phaedo* traditions, this is chronologically impossible—and presumably, a late variation on the theme.

<sup>18</sup>PL. *Lys.* 223b.

<sup>19</sup>DIO. LAER. *Lives* III 35. Socrates' interjection is: *Hêrakis, eipein, hôs polla mou katapseudeth' ho neaniskos*.

<sup>20</sup>Clay (2000, 5) points out that 'Plato does not even figure' in Xenophon's catalogue of the 'true associates' (*hoi ekeinoi synêsan*) of Socrates at XEN. *Mem.* I 2.48.

<sup>21</sup>Cf. von Daniels (2014, 628): 'For the way Plato brought philosophy to the world, it is not an unhappy fact that Socrates was already dead at the time, but a necessary precondition. Even as

Socratic habits and convictions?<sup>22</sup> Socrates' shock at the *Lysis* is only a single, brief moment in a very long history of post-Platonic tradition.<sup>23</sup> The vast bulk of that tradition is now—like the vast bulk of all ancient philosophy—lost to us, and most of what survives can neither be corroborated nor refuted. It can only be received *as* tradition.<sup>24</sup> Regardless of its origins, then, the *Lysis* tradition shows that Plato's veracity—or, in modern terms, the dialogues' historicity—was held to be a *question* in antiquity. Plato is undeniably a disciple of Socrates—but even a disciple's kiss can be treacherous.<sup>25</sup>

### 2.1.1 Interpreting the Dialogues

It is hard to perceive Plato's convictions on crucial matters.

—AUGUSTINE OF HIPPO, *City of God against the Pagans*<sup>26</sup>

If it is unclear how Plato stands with regard Socrates' convictions,<sup>27</sup> it is also unclear how he stands with regard to his own. There is no doubt that truth—the innermost proportions of a divine eternity from which this temporal world is derived—is Plato's passion. Whether his passion for truth coalesces into a body of Platonic doctrines (*dogmata*), however, is very much in doubt.

A number of positions have been taken on this question—which is, in brief, the question of 'Platonism'—and they quite naturally affect the interpretation of Plato's dialogues. (Crucially, they also affect the *reception* of dialogues. Scholars may, or may not, receive a given dialogue as authentic, depending on how they treat the question of 'Platonism'.) In crude outline, it is possible to hold that:

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(Footnote 21 continued)

Plato wrote his dialogues, no one could ask the historical Socrates, "what do you think about this?" or "Plato wrote this, do you agree with it?"

<sup>22</sup>Cf. Cic. *Rep.* I 10.16: 'Since he [= Plato] had a singular affection for Socrates and wished to attribute everything to him (*cum Socratem unice dilexisset eique omnia tribuere voluisset*), he interwove Socrates' charm and subtlety in argument with the obscurity and ponderous learning of Pythagoras ...'.

<sup>23</sup>For one other *Lysis* testimony: Riginos (1976, 55).

<sup>24</sup>Cf. Cic. *Laws* I 1.3–4, here 1.3: *sic enim est traditum*.

<sup>25</sup>Or for a less extraneous image, see Riginos (1976, 54–55). She discusses, here, a dream which is reported in the mid-second century BCE by Athenaeus, and which visualizes Plato's 'bad character' (*kakoêtheia*). In Riginos's summary: 'Socrates dreamed that Plato became a crow, jumped onto his head, and began to peck at his bald spot and to croak.'

<sup>26</sup>AUG. *Civ.* VIII 4.

<sup>27</sup>According to a scheme sketched by Diogenes Laertius—to which a thousand later variants could be added—Plato 'mixed the doctrines of Heraclitus, the Pythagoreans, and Socrates'. His political philosophy derives from Socrates, his ontology of 'the intelligible' comes from the Pythagoreans, and his theory of 'the sensible' stems from Heraclitus: DIO. LAER. *Lives* III 8.



- (i) There is a static body of Platonic doctrine, and it is stated in Plato's dialogues. This is a dogmatic interpretation of Platonism, which gives a title to Alcinoüs' *Handbook of Platonic Doctrines* in the second century CE,<sup>28</sup> and is still the handbook interpretation of Platonism. Thus, for instance—as Alcinoüs puts it—Plato defines a *form* as 'an eternal model of things that are in accordance with nature'.<sup>29</sup> To be a Platonist is to believe in eternal forms.
- (ii) There is a static body of Platonic doctrine, but it is *not* stated in the dialogues. This is an esoteric theory of Platonism. On this theory, Plato only communicated his true convictions in speech—never in writing. The dialogues are therefore meant to lead towards, but not to reveal, the Platonic doctrines. It is Plato, after all, who swears in *Epistle VII* that 'there will never exist any treatise (*syngramma*)' which sets out 'the thing itself' (*to pragma auto*) that most concerns him.<sup>30</sup> He surely meant this. Thus, he never set down an open expression of his core convictions.<sup>31</sup>
- (iii) There is a *fluid* body of Platonic doctrine, and a flux of doctrine is perceptible once the dialogues have been chronologically ordered. This is a historicist theory of Platonism. It asserts that Plato held patiently defined beliefs, which he communicated in writing—but that they changed over time. It is therefore mistaken to assume that the 'Platonism' of the late dialogues will run in the same channels as the 'Platonism' of the early dialogues. To be sure, Plato introduces a theory of eternal forms, or 'self-subsisting entities', in his early and middle-period dialogues.<sup>32</sup> But he then offers a 'demolitionary' critique of that theory in his late dialogue, *Parmenides*.<sup>33</sup> The theory of forms is clearly not itself a Platonic form: Plato himself outlived it.

<sup>28</sup>For questions concerning this epitome's author, date, and title ('the balance of probability is in favour of *Didaskalikos tôn Platônos dogmatôn*'): Dillon (1993, xi–xiii).

<sup>29</sup>ALC. *Did.* 9.2.

<sup>30</sup>PL. *Ep.* VII (341a–e). But *is* it Plato who says this? The authenticity of *Epistle VII* is controverted. In any event, there is an incontestably Platonic passage in the *Phaedrus* which mirrors the strictures of *Epistle VII*. One who 'has knowledge of the just, the beautiful, and the good'—says Socrates—will not set down his knowledge in 'words which are powerless to defend themselves by argument, and powerless to pass on the truth effectively': PL. *Phaed.* 276b–278b, here 276c.

<sup>31</sup>But are the Platonic dialogues even covered by the generic term for 'treatises' (*syngrammata*) in this passage?

<sup>32</sup>For the expression 'self-subsisting entities': PL. *Tim.* 51b–c. Ostwald (1977, 46) reminds us that although the 'forms' are 'Plato's most revolutionary contribution to philosophy, [and] are usually referred to as "Forms", because Plato uses the Greek equivalents, εἶδος and ἰδέα, more frequently than any other expressions to describe them'; nevertheless, "'Form" never becomes a technical term in Plato. In many other cases, a number of different expressions, including "the just itself", "the good itself in its own terms", etc., are used to differentiate the absolutes.'

<sup>33</sup>Cf. Ryle (1966, 16–17).

- (iv) There is *no* body of Platonic doctrine, and a suspicion of doctrine is perceptible throughout the dialogues. This is an aporetic interpretation of Platonism.<sup>34</sup> A mood of discontent which pervades Plato's dialogues is taken to be the unmistakable sign of Socrates' influence. What Cicero later calls the 'confession of ignorance' is held to be the alpha and omega of Socratic philosophy.<sup>35</sup> Throughout his dialogues, Plato communicates a passion for truth—and for *precisely* that reason, he never asserts 'truths'. What is Plato's comment on the Delphic line about Socrates' wisdom?<sup>36</sup> 'Human wisdom is of little or no value'.<sup>37</sup> To be a Platonist is to accept this.

It is possible to say, very crudely, that (i) the dogmatic and (iv) the aporetic positions defined Platonism—or less anachronistically, 'the Academy'—in antiquity.

- (i) A dogmatic conception of Platonism was defended by the 'Old Academy'. In the early first century BCE dogmatic Platonism was reasserted by the Platonic scholar Antiochus of Ascalon. It was then brilliantly reconceived in the third century CE by the ascetic philosopher Plotinus and his successors—Porphyry of Tyre, Iamblichus of Chalcis, and many others who are now called 'Neoplatonists'. From late antiquity to the early modern period, in the Byzantine sphere and the Islamicate zone as in Europe, it is primarily dogmatic Platonism—heavily mediated by a certain number of pagan and Christian writers of late antiquity—which secured the continuity of Plato's influence. And indeed, to this day, it is hard for us *not* to think of Plato as a dogmatist. He is a firm believer in eternal forms, immortal souls, divine justice, and so on.

This has not always been the case, however. Skirting positions (ii) and (iii), for a moment:

- (iv) The 'New Academy' cultivated a non-dogmatic interpretation of Plato's dialogues. This aporetic interpretation was in the ascendancy for more than a century of the Hellenistic period—namely, in the period between the Platonic scholar Arcesilaus (d. ca 240 BCE) and Carneades (d. ca 130 BCE).<sup>38</sup> And as

<sup>34</sup>Cf. Opsomer (1998, 12): 'A more appropriate way [than "sceptical"] to characterise the philosophy of the New Academy ... is to call it "aporetic" or even better "zetetic": never satisfied with the obvious answers, the Academics undertook a continuing and open-minded *search* (ζήτησις) for truth.'

<sup>35</sup>Cic. *Acad.* I 12.44: *sed earum rerum obscuritate ... ad confessionem ignorationis adduxerant Socratem et iam ante Socratem Democritum, Anaxagoram, Empedoclem, omnes paene veteres ...* The patristic reception of aporetic Platonism and its 'confession of ignorance' is marked in Augustine of Hippo, especially in his *Confessions*: Dusenbury (2014, 73–80).

<sup>36</sup>Cf. *Pl. Apol.* 20d–21a.

<sup>37</sup>*Pl. Apol.* 23a: *anthrôpinê sophia oligou tinos axia estin kai oudenos.*

<sup>38</sup>For the survival of aporetic or 'New-Academic' tendencies after Antiochus' reform, in the so-called 'Middle Platonists': Opsomer (1998).

Cicero reminds us in *Academica*, this sort of terminology—‘old’ and ‘new’—is never wholly innocent:

They call this the ‘New Academy’. To me it seems old – at least, if we count Plato as a member of the ‘Old Academy’. In his books nothing is asserted (*nihil affirmatur*) ... all things are inquired into, and no dogmatic statement is made (*nihil certi dicitur*).<sup>39</sup>

According to Cicero, the Old Academy’s dogmatization of ‘Platonism’ marks a corruption of the tradition. The New Academy’s only doctrine, as it were, is that there is no Socratic–Platonic doctrine. Plato wrote dialogues, rather than treatises, precisely because he recognized that philosophical inquiry is interminable.

Thus, in the very last pages of *Laws XII*—and the last pages he ever wrote—Plato urges us to ‘proceed on the path along which the god, *perhaps* (*schedon*), is conducting us’.<sup>40</sup> Note the caveat; it is essential. He then concludes *Laws XII* by posing the question of the ‘formation’ (*paideia*) of his law-state’s councillors. This is a question, he says, which must ‘now be *taken up* in our dialogue’ (*tês nun au kekinêmenês tois logois*).<sup>41</sup> Plato closes this dialogue—and with it, his corpus—by opening a question. He ends with a new beginning. And what is more, he stresses in the *Laws*’ last sentences that this is a question on which ‘it is not yet possible ... to legislate’.<sup>42</sup> The luminous arc of the Platonic dialogues therefore ends in uncertainty (*aporia*).

Positions (ii) and (iii)—the esoteric and historicist positions—have only been taken up in a systematic way since the nineteenth century. It could nevertheless be argued that (ii) was staked out in antiquity, and that (iii) was at least dimly intimated by Aristotle. Consider the following:

- (ii) Augustine of Hippo, under the influence of Cicero,<sup>43</sup> writes in the early fifth century CE that ‘it is hard to perceive Plato’s own convictions on crucial matters’.<sup>44</sup> He attributes this to the fact that Plato, in the dialogues,<sup>45</sup> takes over the ‘defining habit’ (*notissimum morem*) of Socrates—namely, that of ‘concealing (*dissimulandae*) his own knowledge or opinions’.<sup>46</sup> *Dissimulatio*

<sup>39</sup>Cic. *Acad.* I 12.46.

<sup>40</sup>Pl. *Laws XII* 968b.

<sup>41</sup>Pl. *Laws XII* 969a.

<sup>42</sup>Pl. *Laws XII* 968c: *Ouketi nomous ... peri tôn toioutôn dynaton esti nomothetein*.

<sup>43</sup>Cf. Cic. *Acad.* I 4.15–16, I 12.45–46, II 74; *Tusc.* V 4.11, etc.

<sup>44</sup>Aug. *Civ.* VIII 4: *etiam ipsius Platonis de rebus magnis sententiae non facile perspici possint*.

<sup>45</sup>Augustine appears to differentiate between Plato’s direct voice in the epistles, and his indirect voice in the dialogues, at Aug. *Civ.* VIII 4: ‘Certain tenets which appear in his writings ... [were] recounted and written down by him as having been expressed by others (*ab aliis dicta*), and apparently approved by him (*sibi placita viderentur*).’

<sup>46</sup>Aug. *Civ.* VIII 4.

is Augustine's technical term for Socratic irony (*eirōneia*),<sup>47</sup> and this Latin term, like the Greek, denotes 'self-concealment' (or 'deception').<sup>48</sup> For Augustine, then, Plato's dialogues are an elaborate testament to Socrates' habit of self-concealment (or deception).

In the *Phaedo*, Crito asks Socrates, moments before he drains the poisoned cup: 'How shall we bury you?' Socrates' reply is: 'However you please'. But he then adds, laughing gently: 'If you can catch me, and I do not get away from you!'<sup>49</sup> There seems to have been a suspicion in antiquity—even in a late-antique author such as Augustine, whose knowledge of the dialogues is scant—that Socrates and Plato 'get away' from us. And it could be, of course, that we cannot 'catch' them because we are not meant to—at least, not in the dialogues.<sup>50</sup>

- (iii) The historicist optic of the nineteenth century is basically foreign to the pre-modern tradition, in which the tendency is to reify Plato's thought—and often, to harmonize it with Aristotle's<sup>51</sup>—rather than to temporize it. Still, it is interesting to note that when Aristotle introduces his comparison of Plato's *Republic* and *Laws*, he observes that they differ because the *Laws* were 'written later' (*hysteron graphentas*) than the *Republic*.<sup>52</sup> Similarly, on the topic of inequality, Aristotle refers to what 'Plato thought when writing the

<sup>47</sup>Augustine says that Socrates' habit was 'either to confess his ignorance (*confessa ignorantia*) or to conceal his knowledge (*dissimulata scientia*): AUG. *Civ.* VIII 3. Cicero is doubtless Augustine's authority for this Latin rendering of *eirōneia*. Cf. *Cic. Acad.* II 5.15: *Socrates ... libenter uti solitus est ea dissimulatione quam Graeci εἰρωνείαν vocant*; and *Offic.* I 30.108: *... in omni oratione simulatorem, quem εἰρωνᾶ Graeci nominarunt, Socratem accepimus*. The last passage is especially revealing, since Cicero then proceeds to contrast Socrates' cultivation of irony with those 'who think that nothing should be done by underhand means or treachery (*nihil ex occulto, nihil de insidiis*); they are lovers of truth, haters of fraud (*veritatis cultores, fraudis inimici*): *Cic. Offic.* I 30.109.

<sup>48</sup>An important discussion of *eirōneia* is Opsomer (1998, 105–126), here 112: 'It is a (chiefly linguistic) behaviour of dissembling, of simulating a certain attitude towards an utterance. ... The Greek εἰρωνεία maintains the ambiguity between irony and deception.'

<sup>49</sup>PL. *Ph.* 115c–d. Note, however, that in *Ph.* 115b, Plato has Socrates say to his inner circle that a sort of path has been indicated by his conversations with them, and that they should walk 'step by step' (*kat' ichnē*) in this path.

<sup>50</sup>Cf. *Cic. Acad.* (ed. post.) fr. 21 = AUG. *C. Acad.* III 20.43: '[Cicero] says that they had a habit of concealing their conviction (*occultandi sententiam suam*), and that their custom was not to disclose it (*aperire*) to anyone who had not lived with them right up to old age (*nisi qui secum ad senectutem usque vixissent*).'

<sup>51</sup>A hundred texts could be adduced here, but of particular interest—since Cicero is a New-Academic Platonist—is *Cic. Acad.* I 4.17: 'Originating with Plato, a thinker of manifold variety and fertility, there was established (*instituta*) a philosophy that, although it had two designations—Academic and Peripatetic—was really a single system (*una ... philosophiae forma*), differing in name but agreeing in substance (*rebus congruentes*).'

<sup>52</sup>ARIST. *Polit.* II 3.1 (1264b27–29).

*Laws*'.<sup>53</sup> The implicit contrast is to what he thought when writing the *Republic*.<sup>54</sup>

It is not necessary, here, to decide between these hermeneutical positions and traditions. They all illuminate aspects of Plato's corpus, and of this essay. It is necessary, however, to briefly introduce the dialogues that structure this essay—namely, the *Apology* and *Crito* (Chap. 3), *Gorgias* and *Republic* (Chap. 4), *Politicus* and *Laws* (Chap. 5)—and before that, to glance at the question of their chronology.

### 2.1.2 Dating the Dialogues

It is an ancient discourse (*palaion ... logon*), and I heard it from a man not young.

—PLATO, *Timaeus*<sup>55</sup>

Plato treats the *Timaeus* as a sequel to the *Republic*,<sup>56</sup> and Aristotle takes it as given that the *Laws* were 'written later' than the *Republic*.<sup>57</sup> Plato's *Republic* is therefore an earlier dialogue; the *Timaeus* and *Laws* are later dialogues. There is no reason to doubt this basic chronology, but it is also vague and radically incomplete. The dialogues' chronology is likely to remain that way. Most of Plato's dialogues—unlike the *Timaeus*—lack hard chronological markers which permit us to determine the order in which they were written, and Aristotle's comment on the *Laws* is exceptional. In fact, the preoccupation with dates and order of composition is a recent one.

Until the nineteenth century, the lack of a Platonic chronology was not even felt.<sup>58</sup> Conrad Ritter was the first to hazard a comprehensive periodization of Plato's dialogues into early, middle and late, in his *Untersuchungen über Platon* (1888).<sup>59</sup> Ritter argued from variations in the frequency of 'reply formulae' in the dialogues, drawing on earlier calculations made by Wilhelm Dittenberger and Morris Schanz in the philological journal *Hermes*.<sup>60</sup> Since then, a number of scholars have drawn

<sup>53</sup>ARIST. *Polit.* II 4.2 (1266b6–8): *Platôn de tous Nomous graphôn mechri men tinos ôieto dein ean ...*

<sup>54</sup>Cf. ARIST. *Polit.* II 2.1–9 (1262b37–1263b29).

<sup>55</sup>PL. *Tim.* 21a.

<sup>56</sup>PL. *Tim.* 17a–20c.

<sup>57</sup>ARIST. *Polit.* II 3.1 (1264b27–29).

<sup>58</sup>For a sense of how Plato's dialogues were organized in late antiquity, with a total disregard for the question of chronology: ALB. *Eis.* 3–4.

<sup>59</sup>For a brief critique of Ritter's methods: Keyser (1992, 63–64).

<sup>60</sup>For a report on the findings of Dittenberger and Schanz: Keyser (1992, 60–61).

up new periodizations.<sup>61</sup> And perhaps more significantly, the stylometric method underlying all the Platonic chronologies has been savaged in a fascinating article by classicist Paul Keyser.<sup>62</sup>

In the fine grain, Platonic chronology defies certainty. For our purposes here, though, and without entering into it further:

- i. It not controversial to treat the *Apology* and *Crito* as very early Platonic dialogues (as in Chap. 3).
- ii. The placement of Plato's *Gorgias* and *Republic* is more variable, but it is common to treat the *Gorgias* as an 'early-transitional' or middle-period dialogue, and the *Republic* as a middle-period dialogue (as in Chap. 4).<sup>63</sup>
- iii. Finally, there is a stable consensus that the *Politicus* and *Laws* are to be treated as very late dialogues (as in Chap. 5).

Thus, in broad outline, *Platonic Legislations* retraces the chronological arc of Plato's dialogues—from the *Apology* (very early), to the *Republic* (middle-period), to the *Laws* (very late).

It is by no means inessential to this essay's argument that the *Laws* postdates the *Republic*, and that the *Republic* postdates the *Apology*. It is asserted here that legislators must reckon with time, and that Plato's reflection on law encodes a reckoning with time—from the *Apology*, to the *Republic*, to the *Laws*. But this reckoning is not only chronological; Plato's reflection on law is intrinsically dramaturgical.<sup>64</sup> And it is therefore necessary to introduce the dramatic logic of the dialogues that underlie our argument.

## 2.2 The Drama of Platonic Legislation

### 2.2.1 Early Dialogues: *Apology and Crito*

Do you conclude (*iudicas*) that Socrates was mistreated because he drank the poison which the city-state had mixed for him as if it were a tincture of immorality, and discoursed on death up to the moment of his death?

—SENECA, *On Providence*<sup>65</sup>

The trial and death of Socrates structure a number of Plato's early dialogues. The *Apology* and *Crito* are linked, in dramatic terms, to the *Euthyphro* and *Phaedo*. It is

<sup>61</sup>Cf. Brandwood (1990). For a useful tabulation of Paul Friedländer's and Charles Kahn's proposals: Clay (2000, 285–286); and for Gilbert Ryle's 'timetable': Ryle (1966, 216–300).

<sup>62</sup>A strong argument for the *non liquet* is Keyser (1992). A more sanguine assessment is Kahn (2002).

<sup>63</sup>Cf. Ledger (1989, 85, 212, 222–225), Brandwood (1990).

<sup>64</sup>Cf. Folch (2015), Peponi (2013).

<sup>65</sup>SEN. *Prov.* 3.12.

reasonable, then, to introduce Plato's account of the last days of Socrates in this cluster of dialogues, rather than to isolate the *Apology* and *Crito* (as in Chap. 3).

The *Euthyphro* takes place in the shadow of the Porch of the King-Archon, the law-court in which capital cases were tried at Athens.<sup>66</sup> Socrates is waiting there to fight the charges that have been brought against him by 'a young and unknown (*agnôs*) person'—in other words, a punk—by the name of Meletus.<sup>67</sup> Socrates tells his zealous young interlocutor, Euthyphro, that he hopes to pass his time in court with 'jests and laughter' (*paizontas kai gelôntas*). He suspects, however, that his accusers will take themselves 'seriously' (*spoudasontai*).<sup>68</sup> Unfortunately, he is right.

Plato's *Apology* is set within the Porch of the King-Archon. It is a stylized reconstruction (or re-conception) of Socrates' speeches during his one-day trial in 399 BCE. The *Apology* can be read as a monologue in several acts, but it is nevertheless a sort of dialogue. Socrates' accusers, judges, and supporters figure decisively in his speeches—not least, in his cross-examination of Meletus.<sup>69</sup> Socrates returns in the *Apology* to his premonitions in the *Euthyphro*. He now calls Meletus' accusation a 'serious joke'.<sup>70</sup> (The idea is not much changed in our phrase 'frivolous lawsuit'.) However, there is not much laughter in the *Apology*. Socrates senses that the democratic regime at Athens has turned on him, and he abrasively tells the bench that he is on trial because of 'the mistrust and hostility of the multitude (*tôn pollôn*)'.<sup>71</sup>

In democratic Athens, even the bench is a 'multitude'; and predictably, Socrates is convicted by the court's 500 or 501 citizen-judges.<sup>72</sup> Later the same day, during the trial's sentencing phase, the citizen-judges vote to put him to death. Capital sentences in Athens tended to be met with tears and wild lamentations.<sup>73</sup> The bench liked to see histrionics.<sup>74</sup> ('You would have liked to hear me shrieking and moaning', Socrates tells his judges.)<sup>75</sup> Convicts had the right to plead for a less

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<sup>66</sup>For the precise location of this structure ('the Stoa of the Basileus'), in front of which 'the revised code of [Athenian] laws was displayed' at the dramatic date of the *Euthyphro*: Rhodes (1981, 134–135).

<sup>67</sup>PL. *Euth.* 2a–3e, 15e–16a.

<sup>68</sup>PL. *Euth.* 3d–e.

<sup>69</sup>PL. *Apol.* 24c–28a. A subtle commentary on this part of the *Apology* is Reid Smith (1995).

<sup>70</sup>PL. *Apol.* 24c: ... *adikein phêmi Melêton, hoti spoudêi charientizetai, rhaidiôs eis agôna kathistas anthrôpous* ...

<sup>71</sup>PL. *Apol.* 28a.

<sup>72</sup>MacDowell (1978, 202).

<sup>73</sup>This Athenian legal custom is condemned at PL. *Laws* XII 949b.

<sup>74</sup>PL. *Apol.* 34b–c, 38d–39b. Harris (2017, 230) convincingly shows that 'the theatrical expression of emotion arouses suspicions of insincerity' in Athenian law-courts during this period. But forensic psychology was—and is—so complex that a taste for histrionics, and a distrust of it, can be attributed to the same legal culture without contradiction.

<sup>75</sup>PL. *Apol.* 38d–e.

severe penalty.<sup>76</sup> Instead, Socrates urges the court that there would be fewer innocents killed in Athens ‘if you had a law ... that cases involving death should not be decided in a single day’.<sup>77</sup> Needless to say, the court is unimpressed. It is not the place of a convict to emend the laws under which he has been convicted. The *Apology* ends with Socrates being committed to custody.<sup>78</sup>

The *Crito* is set in Socrates’ prison cell. It becomes clear in the *Crito*’s opening scene that a ship which the Athenians sent every year to the city of Delos is making its return crossing.<sup>79</sup> ‘It is a law (*nomos*) of the Athenians’, as Plato clarifies in the *Phaedo*, that ‘that no one may be executed by the city-state (*dēmosiai*) until the ship has crossed to Delos and back’.<sup>80</sup> A priest of Apollo consecrated this ship on the day before Socrates’ trial,<sup>81</sup> and a stay of execution is in place until its solemn crossing is complete. Socrates will die when the Delos ship is docked at Athens.

During Socrates’ trial, his friend Crito had joined Plato in proposing a fine as a counterpenalty to death.<sup>82</sup> In the *Apology*, the court refused this offer. And in the days following his condemnation, Crito had arranged—in concert with certain ‘foreigners’ (*xenoi*)<sup>83</sup>—to spirit Socrates out of prison and to convey him to Thessaly.<sup>84</sup> In the *Crito*, Socrates refuses this offer. He points out that Thessaly is a city-state which is notorious for ‘disorder’ (*ataxia*).<sup>85</sup> He has no desire to live in a decadent polity. More conclusive, however, is Socrates’ argument in a long propopoeia of ‘the Athenian Laws and the City-State’ (*hoi nomoi kai to koinon tēs poleôs*).<sup>86</sup> By ventriloquizing his Laws and City-State, Socrates contrives to show

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<sup>76</sup>Cf. PL. *Apol.* 37b–e. In one of his court-room speeches, Lysias points out that death is ‘the most extreme penalty (*eschatên dikên*) that we have the power to inflict’: Lys. *Erat.* 37. According to Plato’s mature penal theory, however, death is both the harshest punishment and ‘the least of evils’ (*elachiston tōn kakōn*) that a convict can suffer: PL. *Laws* V 735e, IX 854e, IX 862e–863a.

<sup>77</sup>PL. *Apol.* 37a–b.

<sup>78</sup>PL. *Apol.* 42a.

<sup>79</sup>PL. *Crito* 43c–44b.

<sup>80</sup>PL. *Ph.* 58a–c.

<sup>81</sup>PL. *Ph.* 58a.

<sup>82</sup>PL. *Apol.* 38b: ‘Plato here, men of Athens, and Crito, Critobulus, and Apollodorus tell me to propose a fine of thirty minas, saying that they are sureties for it.’ Cf. PL. *Ph.* 115d–e: ‘Give security for me to Crito’, says Socrates to his inner circle, in the moments before his death, ‘the opposite of that which he gave the judges at my trial. For Crito gave security that I would remain [in Athens], but you must give security that I shall *not* remain when I die, but shall go away ...’.

<sup>83</sup>PL. *Crito* 45b; cf. *Ph.* 59c: ‘Were any foreigners (*xenoi*) present [= at Socrates’ death-scene]?’ ‘Yes, Simmias and Cebes of Thebes, and Phaenonides—and from Megara, Euclid and Therpsion.’ Montuori (1981, 189) takes this as a confirmation of Socrates’ anti-democratic politics: ‘Even young men from cities at war with Athens were attracted to [Socrates]’, he writes, citing a number of young aristocrats from Thebes, Megara, Sparta and Crete who were ‘opposed to the democratic principle of quantity over quality, mathematics over geometry.’

<sup>84</sup>PL. *Crito* 44b–45c.

<sup>85</sup>PL. *Crito* 53d–54b.

<sup>86</sup>PL. *Crito* 50a–54d.



Crito that it would be immoral for him to leave Athens—or indeed, to leave his prison cell—‘without the consent of the Athenians’.<sup>87</sup>

Crucial to my interpretation of the *Crito*, in Chap. 3, is Socrates’ singular attachment to his city. This is commented upon in a number of Plato’s dialogues. ‘You strike me as the *strangest* person (*atopôtatos*)’, a charming youth says to Socrates in the *Phaedrus*. ‘You *never* leave the city’—i.e. Athens—‘and it seems to me that you never even venture beyond the city walls’.<sup>88</sup> Having situated himself immovably within Athens, Socrates believes—and argues in the *Crito*—that he must submit to the fate the city has imposed on him. Socrates reiterates this with great clarity in the *Phaedo*, shortly before the city’s poisoner comes to him:

The real cause [of my present circumstance] is that the Athenians have decided that it was better (*beltion*) to condemn me, and therefore I have decided that it was better (*beltion*) for me to sit here, and that it is more just for me to stay and to suffer whatever penalty they impose. ... These sinews and bones of mine would have gone off to Megara or Boeotia long before now, conveyed there by an opinion of what was best (*tou beltistou*), if I did not think it was more just ... to suffer any penalty the city may inflict, rather than to flee (*pheugein*).<sup>89</sup>

The question of flight—including flight from the truth, in order to survive in a law-court, or flight from the punishment imposed by a law-court—lies at the centre of Chap. 3, and of ancient Greek legal culture. ‘The avoidance of [a] verdict by flight was accepted and almost codified by Attic law’, as Mario Montuori reminds us. Moreover, Montuori convincingly argues that Socrates’ accusers and judges—that is, the democratic regime at Athens—had *wanted* him to flee, ‘just as Anaxagoras and Protagoras had done before him’. Instead, Socrates ‘*refused* to avoid the verdict of the judges’ (in Plato’s *Apology*), and then ‘*refused* to the avoid the punishment’ imposed by the judges (in his *Crito*).<sup>90</sup> The Platonic dialogues concerning Socrates’ trial and imprisonment are therefore, in a salient sense—like the dialogue concerning his death—a Platonic account of Socrates’ *choice* to be condemned, and to die.

Like the *Crito*, the *Phaedo* is a prison-house dialogue. Plato alerts us in the *Phaedo*’s first sentence that it contains a narration of ‘the day when Socrates drank the poison’.<sup>91</sup> We will recall that Plato was ill that day<sup>92</sup>; he therefore creates an

<sup>87</sup>Pl. *Crito* 48e.

<sup>88</sup>Pl. *Phaed.* 230c–d.

<sup>89</sup>Pl. *Ph.* 98e–99a.

<sup>90</sup>Montuori (1981, 197–199). Note that Montuori makes a number of radical—and highly questionable—claims, but that this is not one of them. The unexcitable Bury (1900, 580) says precisely the same: ‘The penalty proposed [for Socrates] was death; but the accusers had no desire to inflict it; they expected that, when the charge was lodged in the archon’s office, Socrates would leave Attica, and no one would have hindered him from doing so.’

<sup>91</sup>Pl. *Ph.* 57a.

<sup>92</sup>Pl. *Ph.* 59b.

‘eyewitness’ account by Phaedo of Elis (who himself authored dialogues).<sup>93</sup> The *Phaedo* concludes with Socrates’ last words—a subtle theological joke—and with the moment of his death. It is Crito, we are told, who closes Socrates’ eyes.<sup>94</sup>

Early on in the *Phaedo*, Socrates asks one of his disciples, Simmias: ‘Do we think that death exists (*ti ton thanaton einai*)?’ Simmias replies: ‘Certainly’. Socrates then defines death as ‘the state in which the body is separated from the soul and exists alone by itself (*auto kath’ auto*)’.<sup>95</sup> A corpse is a body shorn of its soul. And Socrates’ question in the *Phaedo* is whether a philosopher—‘a *real* philosopher’<sup>96</sup>—can believe that the soul, after death, ‘will exist alone by itself (*autê kath’ autên*), separated from the body’.<sup>97</sup> In other words, is the soul immortal?

One of Socrates’ circle reminds him that ‘humans are prone to unbelief (*apistian*)’. ‘They fear that when the soul leaves the body’—this comment is made by Cebes—it flies away and is no longer anywhere, scattering like a breath or smoke (*hôsper pneuma ê kapnos*).<sup>98</sup> The Roman materialist Lucretius (d. 55 BCE) will later return to this image in his attack on the hopes and fears of human immortality. In his relentless brief for ‘mortal life’ and ‘immortal death’,<sup>99</sup> Lucretius writes that the soul, at death, pours out of the body like ‘mist and smoke’ (*nebula ac fumus*); it then dissolves into the elements.<sup>100</sup> Socrates, however, is unconvinced. He hopes and believes—though he never asserts—that the soul outlives the body.<sup>101</sup> And the *Phaedo* is his—or rather, Plato’s—luminous brief for immortality.

It is important to note that the *Phaedo* is linked to the *Apology* by more than dramatic chronology. When he introduces the *Phaedo*’s line of reasoning on the soul, Socrates says to his friends, in a jocular vein: ‘I will try to make a more convincing defence (*apologêsasthai*) before you than I did before the citizen-judges’.<sup>102</sup> He later reiterates his desire to be ‘more persuasive in convincing you by my defence (*apologiai*), than I was in convincing the Athenian

<sup>93</sup>The *Phaedo*’s narrator says emphatically, ‘I was there myself’: PL. *Ph.* 57a. The dialogues of Phaedo are not extant, but it cannot be ruled out that Plato may have drawn on them—including, perhaps, Phaedo’s account of Socrates’ last hours—in writing his own. Cf. Boys-Stones (2004).

<sup>94</sup>PL. *Ph.* 118.

<sup>95</sup>PL. *Ph.* 64c.

<sup>96</sup>PL. *Ph.* 64e: *hôs alêthôs philosophos*.

<sup>97</sup>PL. *Ph.* 66e–67a.

<sup>98</sup>PL. *Ph.* 69e–70a.

<sup>99</sup>Cf. LUCR. *Rer. Nat.* III 869: ... *mortalem vitam mors cum immortalis ademit*.

<sup>100</sup>LUCR. *Rer. Nat.* III 425–444, here 436. The same image appears in *Wisdom of Solomon* (*Sophia Salômônos*), a book redolent of Hellenistic philosophy (and most approvingly, of Platonism), which seems to have been written at Alexandria in the first century BCE. (It is roughly contemporaneous with Lucretius, then.) In *Wisdom* 2:1–5 (LXX), pseudo-Solomon warns that one who ‘reasons erroneously’ (*logisamenoi ouk orthôs*)—i.e. an Epicurean or a Sadducee—will conclude that ‘the breath in our nostrils is like smoke’ (*hoti kapnos hê pnoê en rhîsin hêmon*), and that our souls vanish into the sky at death ‘like the trace of a cloud’ (*hôs ichnê nephelês*).

<sup>101</sup>PL. *Ph.* 63b–c; cf. *Apol.* 40c–41c.

<sup>102</sup>PL. *Ph.* 63b.

citizen-judges'.<sup>103</sup> And further on in the dialogue, he interrupts himself, self-mockingly: 'I seem to be speaking like a legal brief (*syngraphikós*)!'<sup>104</sup> Plato evidently conceives of the *Phaedo* as a sort of Socratic apology. It is a reflection *in extremis* on the philosopher's relation to law, and to judgement.

Are there obligations which extend beyond 'this time which we call life'—that is, to 'all time'?<sup>105</sup> Are there judgements which occur, and penalties which may be imposed on the soul, once the body is dead?<sup>106</sup> In the *Apology*, Socrates suggests that there are<sup>107</sup>; and in the *Phaedo*, he defends this belief. The question of immortality is not thematised in this essay, but it should be kept in mind that the afterlife is a constitutive horizon Plato's hypothetical legislations—in the *Republic*, and in the *Laws*.<sup>108</sup>

## 2.2.2 Middle-Period Dialogues: Gorgias and Republic

Beautiful laws subordinate the bestial elements of our nature to the human.

—PLATO, *Republic*<sup>109</sup>

Plato's *Gorgias* is a dialogue on rhetoric, but rhetoric has its origins in the first forays of Greek democracy.<sup>110</sup> In a democratic regime, it is rhetoric that 'preserves us in the law-courts'<sup>111</sup>; and ultimately, it is rhetoric that steers a democratic law-state. Rhetoric is therefore the decisive technique of democratic governance. It is 'a manufacturer of persuasion' (*peithous dêmiourgos*).<sup>112</sup> Precisely because the *Gorgias* sets out a vigorous critique of rhetoric, it mounts a critique of Athenian legal culture. Socrates' death is on the horizon throughout the dialogue, because

<sup>103</sup>Pl. *Ph.* 69e.

<sup>104</sup>Pl. *Ph.* 102d. The context gives *syngraphikós* its legal colouring, here. The word's legal signification derives from the office of *syngraphês*, a 'commissioner appointed to draw up legal measures': Liddell and Scott (1996, 1661), s.v. συγγραφεύς.

<sup>105</sup>Pl. *Ph.* 107c: ... *eiper hê psychê athanatos, epimeleias dê deitai ouk hyper tou chronou toutou monon, en hoi kaloumen to zên, all' hyper tou pantos* ...

<sup>106</sup>Pl. *Ph.* 113d–114c.

<sup>107</sup>*Apol.* 40c–41c.

<sup>108</sup>Cf. Pl. *Laws* XII 959a–b, 966d–968b.

<sup>109</sup>Pl. *Rep.* IX 589c–d.

<sup>110</sup>Cf. Detienne (1996, 117): 'Sophistry is indissociable from rhetoric. The latter first appeared in Magna Graecia, also in a political context—either in relation to deliberations on early "democracy" or in association with the workings of argued justice. ... Sophistry and rhetoric, products of the same political culture, thus encouraged indissociable mental techniques.'

<sup>111</sup>Pl. *Gorg.* 511b–c.

<sup>112</sup>Pl. *Gorg.* 453a. Cf. Detienne (1996, 118): 'The aim of sophistry, like rhetoric, is persuasion (*peithô*), trickery (*apatê*). In a fundamentally ambiguous world, these mental techniques allowed the domination of men through the power of ambiguity itself. ... Plato was correct to regard them as masters of illusion.'

Plato's contemporaries know that rhetoric will not preserve *him* in Athens' law-courts.<sup>113</sup>

This dialogue features and takes its name from Gorgias of Leontini (d. 376 BCE), a rhetorician from a Greek colony on the island of Sicily.<sup>114</sup> A number of ancient sources claim Gorgias as a disciple of the philosopher Empedocles of Acragas (d. 433 BCE).<sup>115</sup> In any case, he became one of the most distinguished purveyors of the 'sophistic' culture that emerged in Athens and other Greek city-states in the fifth century BCE. Socrates jokes in the *Symposium* that if he ever came face to face with 'the eloquent Gorgias' head—a play on the Gorgon's head in Homer's *Odyssey*—he would be stunned into silence.<sup>116</sup> In the first phase of this dialogue, however—in which Socrates faces Gorgias in person—he is garrulous. His interrogation of the elderly rhetorician is high-spirited, and has the feel of a 'satire' (*diakômôdein*).<sup>117</sup>

Polus of Acragas is one of Gorgias' protégés, and in the second phase of the *Gorgias*, Socrates converses with him. Socrates admits that he has read Polus' handbook on rhetoric,<sup>118</sup> but he is not yet convinced that rhetoric is a genuine technique (*technê*). Irreverently, Socrates classifies rhetoric as a 'branch of flattery'.<sup>119</sup> Since flattery is the operative mode of discourse in a corrupt political regime (a point we will return to in Chap. 4), he later calls rhetoric the 'simulacrum (*eidôlon*) of a branch of political technique'.<sup>120</sup> Rhetoric is spin, smooth talk, posturing that passes as rational political discourse.

The *Gorgias* is set in the house of a brash aristocrat, Callicles of Acharnae,<sup>121</sup> and in the third phase of the dialogue Socrates takes the fight to his host. (Significantly, the *Gorgias*' first word is *polemos*—'war'.) Callicles is a hot-headed advocate of a radically 'sophistic' politics. To his mind, immoralism is the logical core of legal positivism, and legal positivism is the formal link between tyranny and democracy. The multitude, like the tyrant, imposes by diktat what it feels to be just. This—and nothing but this—is the essence of positive law. Politics is imposition, and law is a modality of violence. In the city, as in the wild, justice is sovereign violence. The sophist's task is to steer that violence; Socrates' task is to refute the sophist. It is only after this refutation has been made that Platonic legislation can begin, and it begins in the *Republic*.

<sup>113</sup>Cf. Pl. *Gorg.* 454a–b, 471e–472c, 473e–474b, 486a–c, 508a–e, 521b–522e.

<sup>114</sup>Cf. Pl. *Gorg.* 449a, where Socrates dubs Gorgias—with his consent—a 'rhetorician' (*rhêtora*).

<sup>115</sup>Cf. Dillon and Gergel (2003, 47): 'There seems [to be] no reason to doubt that he [= Gorgias] was at least acquainted with him [= Empedocles]. His own pupil Polus hailed from Acragas, giving further evidence of contact.' Note that Acragas and Leontini were both Sicilian cities.

<sup>116</sup>Pl. *Symp.* 198c.

<sup>117</sup>Pl. *Gorg.* 462e.

<sup>118</sup>Pl. *Gorg.* 462c.

<sup>119</sup>Pl. *Gorg.* 463a–c.

<sup>120</sup>Pl. *Gorg.* 463c–d.

<sup>121</sup>Allen (1984, 190): 'We know nothing of him beyond what Plato tells us, but there is no adequate reason to think that he is fictional: his deme is mentioned.'

Plato's *Republic* is set during the feast of a non-Athenian goddess, Bendis<sup>122</sup>; in the house of a non-Athenian weapons manufacturer, Polemarchus; and in the port city of Athens, the Piraeus.<sup>123</sup> The setting of the *Republic* is intentionally liminal. Plato situates his most impolitic dialogue on Athens' borderlines.

The presence of Polemarchus' younger brother, Lysias (d. ca 380 BCE), should be noted.<sup>124</sup> Lysias will become a highly paid forensic orator or 'speech-writer' in Athens<sup>125</sup>—thirty-five of his speeches still survive—and in the *Phaedrus*, Socrates calls him 'the cleverest writer of our day'.<sup>126</sup> (Since the *Phaedrus* is a sustained critique of writing, this is a set-up.)<sup>127</sup> Socrates' most forceful interlocutor in *Republic* I is a sophist, Thrasymachus of Chalcedon (b. ca 460 BCE), whose immoralism and legal positivism recollect Callicles' in the *Gorgias*.<sup>128</sup> (*Republic* I may be roughly contemporaneous with the *Gorgias*.) Beginning in *Republic* II, Socrates converses with Glaucon and Adeimantus, both of whom are 'sons of Ariston'—which is to say, brothers of Plato. Thus, it is not exactly self-deprecatory when Plato inserts a poetic line into *Republic* II which hails his brothers' descent from a 'divine race' (*theon genos*).<sup>129</sup> (Since *Republic* II introduces Plato's attack on poetic theology, however, the line's effect is ironical.) Beyond this, it is not possible to schematize the dramatic logic of the *Republic*. My curt precis of the dialogue, in Chap. 4, is abstracted from its setting.

What cannot go unremarked, here, is that Socrates becomes a legislator in the *Republic*.<sup>130</sup> He extracts from Thrasymachus, in *Republic* I, the concession that 'in attempting to legislate, some laws are correct (*orthôs*) and some incorrect (*ouk orthôs*)'. Once the sophist has granted this—and with it, has granted that legislators are not 'infallible'—the culture of legal positivism that he represents is laid open to Socrates' critique.<sup>131</sup> By *Republic* II, Socrates is himself 'attempting to legislate'. He rapidly deconstructs the political theology that Athenians have derived 'from the

<sup>122</sup>Pl. *Rep.* I 354a.

<sup>123</sup>Pl. *Rep.* I 327a–328c.

<sup>124</sup>Pl. *Rep.* I 328b.

<sup>125</sup>Note that 'speech-writer' is an oxymoronic term; it may have originated as a term of abuse. In the *Phaedrus*, Plato indicates that Lysias had come under attack from an Athenian politician, and that 'all through his abusive speech he kept calling Lysias a "speech-writer" (*logographos*)': Pl. *Phaed.* 257c, cf. 277a–b.

<sup>126</sup>Pl. *Phaed.* 228a: *deinotatos on ton nun graphein*.

<sup>127</sup>Plato's ferocious critique of Lysias in the *Phaedo* should be set in light of the ancient tradition that Lysias wrote a defence for Socrates before his trial, reportedly titled *Sokratous apologia estochasmenê ton dikastôn*. Socrates declined to recite Lysias' speech in court. Cf. Montuori (1981, 206–207, 213–214), here 207: '[Lysias' *Apology*] was in circulation even before [Socrates'] death, and it was certainly not withdrawn from circulation after the unfortunate outcome of the trial.'

<sup>128</sup>Cf. Pl. *Rep.* I 338e–339a.

<sup>129</sup>Pl. *Rep.* II 367e–368a.

<sup>130</sup>Any number of passages could be cited here. Socrates is often styled a 'legislator' (*nomothetês*). So are his interlocutors.

<sup>131</sup>Pl. *Rep.* I 339c.

laws (*nomôn*) and the poets',<sup>132</sup> and he institutes new 'laws (*nomôn*) and models concerning the gods'.<sup>133</sup>

The gravity of this 'rejection of poetical theology', in Montuori's phrase, should not be diminished. The Greek poets' chronicles of the gods functioned as the 'gospels' of the Athenian masses; to denigrate them is therefore to attack 'the spiritual structure of the Athenian people'.<sup>134</sup> In spite of this, Adeimantus closes *Republic* II by saying that he would like to see Socrates' critique promulgated 'as laws' (*hôs nomois*).<sup>135</sup> As this indicates, the *Republic* is a hypothetical legislation.<sup>136</sup> Socrates is not merely theorizing the 'optimal regime' in the *Republic*; he is legislating for it.<sup>137</sup>

Plato states this unmistakably in book V of the *Laws*. The regime that is traced out in the *Republic*, he writes there, is optimal precisely in so far as it possesses 'optimal laws' (*nomoi aristoi*).<sup>138</sup> Socrates' task, in the *Republic*, is to draft those laws. Where the existing Greek law-codes are 'against nature' (*para physin*), his new hypothetical law-code must be 'in keeping with nature' (*kata physin*).<sup>139</sup> Hypothetical legislation—which is to say, Platonic legislation—is therefore a form of overt legal critique. It seeks to identify 'whatever is dysfunctional in presently existing regimes', and to alter it.<sup>140</sup>

Plato recognizes that legal critique engenders legal revision. Book IV of the *Republic* shows that Socrates' law-code has an immovable core of fundamental laws.<sup>141</sup> Nevertheless, Socrates is aware that his code is not remotely comprehensive. His optimal laws institute an optimal city in the *Republic*, but this city is authorized to subtilize and ramify its laws in future. Legislation will therefore be ongoing in the first Platonic law-state. Socrates says that his laws are not only to be 'observed' (*peithomenous tois nomois*), but also 'imitated' (*mimoumenous*).<sup>142</sup> What this 'imitation' of fundamental law means—in the *Republic*, and later in the *Laws*—is that the city will, in time, produce new laws. In other words, Platonic legislation envisions post-Platonic legislation.<sup>143</sup>

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<sup>132</sup>Pl. *Rep.* II 365d–e.

<sup>133</sup>Pl. *Rep.* II 380c.

<sup>134</sup>Montuori (1981, 194). Where Montuori evokes the Christian gospels, Havelock (1963, 61–86) writes of a 'Homeric encyclopedia'.

<sup>135</sup>Pl. *Rep.* II 383c. Compare this to *Rep.* II 380c, where Adeimantus says to Socrates: 'I agree with you over that law' (*sympêsêphos soi eîmi, ephê, toutou tou nomou*).

<sup>136</sup>Cf. Pl. *Laws* XII 941c: 'The legislator ... knows better than the whole tribe of poets.'

<sup>137</sup>Pl. *Laws* V 739a: *tên aristên politeian*.

<sup>138</sup>Pl. *Laws* V 739a–e.

<sup>139</sup>Pl. *Rep.* V 456b–c.

<sup>140</sup>Pl. *Rep.* V 473b: *ti pote nun kakôs en tais polesi prattetai*.

<sup>141</sup>Cf. Pl. *Rep.* IV 445d–e.

<sup>142</sup>Cf. Pl. *Rep.* V 458b–c.

<sup>143</sup>Cf. *Rep.* IV 425d–e, 427a.

### 2.2.3 *Late Dialogues: Politicus and Laws*

Our city's sovereign: the law.

—Plato, *Symposium*<sup>144</sup>

The *Politicus* is a stark—or perhaps, a ‘weary’ and ‘ugly’—dialogue.<sup>145</sup> There is no setting. It simply occurs. The presence of a mathematician, Theodorus of Cyrene,<sup>146</sup> together with a nameless philosopher from the colony of Elea,<sup>147</sup> links the *Politicus* to Plato's *Theaetetus* and *Sophist*. But apart from the fact that the *Theaetetus* is set in the last days before Socrates' trial, the dramatic effect of this linkage is minimal.<sup>148</sup>

Socrates is himself a supernumerary in the *Politicus*.<sup>149</sup> Plato's ideal legislator in the *Republic* only speaks here to justify his silence. The Eleatic Stranger takes over Socrates' role as the dialogue's protagonist—and weirdly, his interlocutor is a Younger Socrates (*Sōkratēs ho neōteros*). There is no reason to accept Evanthia Speliotis's claim that this boy-child Socrates has ‘no relation to Plato's philosopher’.<sup>150</sup> On the contrary, Socrates opens the dialogue by pointing out that the boy is ‘related to me (*emoi syngeneian*) after a fashion’, adding that he ‘has the same name and appellation, which implies some sort of kinship (*tina oikeiotēta*)’.<sup>151</sup> Plato therefore wishes us to associate Socrates and the Younger Socrates, and he later dramatizes this ‘kinship’ in a crucial passage of the dialogue, in which the Eleatic painstakingly leads the Younger Socrates to concede that the principle of the ‘sovereignty of law’—to lift a phrase from a court-room speech of Lysias<sup>152</sup>—will necessitate the trial of Socrates in 399 BCE.<sup>153</sup> The logic of this scene could hardly be heavier. Plato is forcing a Younger Socrates to consent, as a partisan of the Greek ‘law-state’ ideal, to the *legal necessity* of Socrates' death. We will return more than once to this scene.

Taken on the whole, the *Politicus* is a logical inquiry into sovereignty. The Eleatic Stranger believes that the rational technique (*technē*) of sovereignty is a

<sup>144</sup>Pl. *Symp.* 196c: *hoi poleōs basilēs nomoi*.

<sup>145</sup>Ryle (1966, 285): ‘This weary dialogue ...’; Strauss (2013, 278) (letter to A. Kojève dated 28 May 1957): ‘Generally the *Statesman* is ugly.’

<sup>146</sup>Cyrene was a Greek colony on the African littoral. Note Theodorus' invocation of the Libyan—and later, Egyptian—deity Ammon, at Pl. *Pol.* 257b (And cf. *Theaet.* 143d–e.).

<sup>147</sup>Cf. Pl. *Soph.* 216a: ‘He is a stranger from Elea, one of the disciples (*hetairôn*) of both Parmenides and Zeno, a real philosopher (*mala de andra philosophon*).’

<sup>148</sup>Pl. *Theat.* 210d.

<sup>149</sup>Pl. *Pol.* 257a–258a.

<sup>150</sup>Speliotis (2011, 295).

<sup>151</sup>Pl. *Pol.* 257d.

<sup>152</sup>Lys. *Epit.* 19: *nomou ... basileuomenous*.

<sup>153</sup>Pl. *Pol.* 299b–c.

‘purely intellectual’ one.<sup>154</sup> He splits the genus of *intellectual technique* into a pair of subaltern genera; there are techniques of *judgement*, he says, and techniques of *command*. Sovereignty, he concludes, is a ‘technique of command’ (*epitaktikên ... technên*).<sup>155</sup> Contrary to appearances, there is only one genuine technique of command, which is common to monarchs, oligarchs and democratic politicians.<sup>156</sup> The question of forms of governance—monarchy, oligarchy, democracy—a popular obsession in antiquity, as in modernity—is therefore inessential.<sup>157</sup> The Eleatic—and doubtless, through him, Plato—disparages democracy and justifies his preference for monarchy or oligarchy.<sup>158</sup> Nevertheless, what ultimately matters in the *Politicus* is to not whether one is governed by a certain number of persons (including, or not including oneself), nor whether one is governed according to written laws and procedures (however they may have been drawn up), but whether one is governed by the genuine technique of command.<sup>159</sup> The Eleatic is therefore, in a highly idiosyncratic sense, an advocate of technocracy. Good governance, in the *Politicus*, is governance by those with systematic insight into how to human beings ought to be governed.<sup>160</sup> This is not a tautology, but a deeply contentious hypothesis.

The Eleatic then reasons that this technique of command is human—not divine—on the strength of a myth which will be recounted in Chap. 5. The basic idea conveyed by this myth in the *Politicus* is that the human city is ‘deprived of the care of the deity (*daimonos*)’.<sup>161</sup> The Eleatic is not hereby denying divine providence<sup>162</sup>; he is criticizing the political theology of archaic city-states, in which the king is revered as a suzerain (or a son) of the gods. Francis Dvornik observes that the fifth-century BCE office of king-archon (*archon basileus*) at Athens is still ‘the heir of the Mycenaean priest-king’<sup>163</sup>; and Plato’s Eleatic severely denigrates the archaic priest-king template in the *Politicus*.<sup>164</sup> His myth implies that human

<sup>154</sup>Pl. *Pol.* 259b: *tên technên autên basilikos*; 258e: *tên de monon gnôstikên*. Cf. *Pol.* 259c–260c.

<sup>155</sup>Pl. *Pol.* 260c, cf. 267a–c.

<sup>156</sup>Cf. Pl. *Pol.* 258e, 259d, 267c, 289c–d, etc. The Eleatic Stranger stipulates at *Pol.* 291e that ‘monarchy’ (*monarcheia*) is a generic term which can be resolved into ‘tyranny’ (*tyrannis*) and ‘royalty’ (*basileia*).

<sup>157</sup>Pl. *Pol.* 292c.

<sup>158</sup>Cf. Pl. *Pol.* 293a, 300e–301a, etc.

<sup>159</sup>Pl. *Pol.* 260c.

<sup>160</sup>Pl. *Pol.* 292d: *epistêmê ... peri anthrôpôn archês*.

<sup>161</sup>Pl. *Pol.* 274b.

<sup>162</sup>*Pace* Leo Strauss in a letter to Alexandre Kojève, in which he suggests that the ‘massive meaning’ of the *Politicus* myth is the ‘denial of Providence’: Strauss (2013, 278) (letter dated 28 May 1957).

<sup>163</sup>Dvornik (1966), I:138–157, here 155.

<sup>164</sup>Pl. *Pol.* 290c–e. It should be remembered that this ‘priest-king template’ outlived Plato by many centuries. It reached new heights in the Hellenistic world-order, and informed—perhaps most momentously—the pivotal reign of Constantine I and the Christianization of the Roman empire: Dvornik (1966), II:635–646.



sovereignty cannot be deflected to the gods. In ‘the present epoch’, he suggests, it is an error to ascribe sovereignty—*de jure* political sovereignty—to ‘a god, and not to a mortal creature’.<sup>165</sup>

This mythic critique of theocracy leads into a formal critique of the law-state’s highest principle: ‘the sovereignty of law’.<sup>166</sup> The Eleatic—and doubtless, through him, Plato—insists that ‘it is *not* best for the laws to be sovereign’.<sup>167</sup> The legal critique that follows is formal in that it seeks to lay bare the imperfections of law qua law. It is not a historical or material critique, but concerns what Plato later calls ‘the form of a law’ (*schêmati nomou*).<sup>168</sup> In a sustained argument (see *Politicus* 291e–302b), the Eleatic elicits from the Younger Socrates a concession that injustice is not only a consequence of the enforcement of *bad* laws; injustice is instead a necessary consequence of governance by *laws*. The ‘form of a law’ is incommensurate with the ideal of perfect justice. To the precise extent that democracy is conceived as a form of governance by laws (and not by humans),<sup>169</sup> this argument doubles as a critique of democracy. The imperfections of law qua law will of course vitiate any form of governance by laws—but most visibly, in Plato’s milieu, the governance of democratic city-states.

‘It is not best (*ariston*) for the laws to be sovereign’, the Eleatic reasons, because positive law is ‘not the most perfect right (*orthotaton*)’.<sup>170</sup> He bases the latter proposition on a set of incontrovertible, yet seemingly inconsequential facts. Positive laws, he reminds the Younger Socrates, are issued in *time* and extend in *space*.

- (i) *Time*. In contrast to a decree (*psephisma*), the duration of which is limited, the formal pretension of a law (*nomos*) is that it should remain in force ‘for all time’ (*epi panta ton chronon*).<sup>171</sup> In other words, law is promulgated as a *permanent* norm.<sup>172</sup> The Eleatic’s critique of this pretension is disarmingly simple: ‘None of the human things is ever at rest’.<sup>173</sup> To his mind, the flux of human things reveals positive law to be incommensurate with law’s ideal.

<sup>165</sup>Pl. *Pol.* 274e–275a. Note that at *Pol.* 303a–b, the Eleatic Stranger warns that real theocracy—that is, direct governance by God—cannot even be inscribed on his table of the six forms of human governance (monarchy, oligarchy, and so on). He clarifies: ‘It must be set apart from all the other forms of governance, as God is set apart from humankind (*hoion theon ex anthrôpôn*).’

<sup>166</sup>Lys. *Epit.* 19.

<sup>167</sup>Pl. *Pol.* 294a.

<sup>168</sup>Pl. *Laws* IV 718b–c.

<sup>169</sup>Note in this connection that the twentieth-century jurist Hans Kelsen often returned to the Latin maxim, *non sub homine, sed sub lege*: Kelsen (1942, 66; 1945, 36), etc.

<sup>170</sup>Pl. *Pol.* 294a–d.

<sup>171</sup>Pl. *Pol.* 294b: *epi panta ton chronon*.

<sup>172</sup>Cf. Canevaro (2015, 2016). His sharp description of *nomoi* as ‘general permanent norms’ and *psephismata* as ‘ad hoc enactments’ informs my reconstruction, here, of the Eleatic’s reasoning—in which, note, there is no mention of *psephismata*. The distinction between *nomos* and *psephisma* helps to sharpen the *Politicus*, but is extraneous.

<sup>173</sup>Pl. *Pol.* 294b.

Justice is timeless, and therefore never obsolete. The enforcement of archaic laws, however, can eo ipso constitute a gross injustice. Positive law is therefore not the most perfect right. The law-state defines itself by a temporal instrument—positive law—which time itself renders obsolete.<sup>174</sup>

- (ii) *Space*. In contrast to a decree (*psephisma*), the logic for which is ad hoc and the applicability of which may be tightly circumscribed, the formal pretension of a law (*nomos*) is that it should extend to ‘all things’ (*peri hapantôn*) designated in its statute and present within the law-state’s territory.<sup>175</sup> In other words, law is a *general* norm. Again, the Eleatic’s critique is very basic. He merely gestures towards ‘the dissimilarities (*anomoiotêtes*) of human persons and their actions’, and then denies that any ‘unitary rule’—which is to say, any law or code of laws—could conceivably satisfy the subtlest demands of justice.<sup>176</sup> Positive law, he argues, necessarily betrays the citizen-subjects of a law-state in their ‘singularity’ or ‘dissimilarity’ (*anomoiotês*). Positive law is therefore not the most perfect right. The law-state defines itself by a general instrument—positive law—which its citizen-subjects, in their singularity and dissimilarity, elude.

Plato’s formal critique of law in the *Politicus* is therefore grounded in the formal pretensions of ancient Greek legislation—to permanence, and to generality. The Eleatic Stranger nevertheless ends his provocative critique by conceding to the Younger Socrates that ‘we are obliged ... to compose written laws’.<sup>177</sup> Crucially, this concession—which signals, in context, the need for *Plato* to compose written laws—is coupled with a passage which can be read as a call for the systematic, non-democratic revision of ancient Greek law-codes.<sup>178</sup> This is the task that *Plato* takes up in his last—and longest—dialogue: *Laws*.<sup>179</sup>

Unlike the *Politicus*, which has no backcloth, the setting of *Plato*’s *Laws* is salient and symbolic. The dialogue is set on the island of Crete, which the Greeks regarded as ‘the cradle of legislation and codified law’.<sup>180</sup> What is more, the archaic

<sup>174</sup>‘Let this be the law (*nomos*)’, says the Athenian legislator in the last book of the *Laws*. He then continues: ‘Expenditure on [a Magnesian citizen’s] funeral cannot exceed five minas for a member of the highest property-class’, and so on. Even a slight fluctuation in currency values would of course begin to distance this positive law from the ideal of justice which it is meant to reflect: *PL. Laws* XII 959d.

<sup>175</sup>*PL. Pol.* 294b: *peri hapantôn kai epi panta ton chronon*.

<sup>176</sup>*PL. Pol.* 294b.

<sup>177</sup>*PL. Pol.* 301d–e.

<sup>178</sup>*PL. Pol.* 300b–301a.

<sup>179</sup>André Laks (2005, 263) writes that ‘certain features of the *Laws* ... suggest that *Plato* died before he could put the finishing touches to his work’, and that ‘it is generally assumed that *Plato*’s pupil Philip of Opus edited the text after his death’. The authorship of the *Laws*’ supplement (or ‘thirteenth book’) *Epinomis* is still contested, but since antiquity it has been attributed, with some consistency, to the same Philip of Opus who edited the *Laws*. Cf. *DIO. LAER. Lives* III 37.

<sup>180</sup>Hölkeskamp (1992, 52).

Greek legislators ‘were invariably believed to have been divinely inspired’.<sup>181</sup> In Plato’s day, as he reminds us in the *Laws*’ first lines (citing Homer),<sup>182</sup> the Cretans claimed that their ancestral laws had been revealed by Zeus to a prophetic legislator, Minos, who had met with the god in a cave on Mount Ida. According to myth, Minos had gone out from the city of Cnossus every ninth year and climbed to the god’s cave, where he had received new laws in oracular form.<sup>183</sup> It is on the road from Cnossus to Mount Ida—which is to say, in the footsteps of Minos—that Plato sets his *Laws*.

Socrates is not present in the *Laws*, and his name does not appear in the dialogue’s twelve books. (Plato has by no means forgotten him, however.) The dialogue has three interlocutors: a citizen of Cnossus named Clinias; a Spartan named Megillus; and a nameless Athenian whom the others call ‘stranger’ (*xenos*). Clinias represents the law-code of Crete (revealed by Zeus to Minos); Megillus the law-code of Sparta (revealed by Apollo to Lycurgus)<sup>184</sup>; and the Athenian a more complex legal tradition exemplified by Solon (who proudly composed his own *thesmoi* in verse).<sup>185</sup> Crudely put, Clinias and Megillus speak for the legal culture of archaic Greece. The Athenian legislator is fiercely anti-democratic and intensely critical of the culture of legal innovation that produced democracy in the fifth century BCE,<sup>186</sup> yet his critical approach to ancestral laws (*patrioi nomoi*) and his willingness to alter fundamental institutions (*patrios politeia*) nevertheless reflect his Athenian origins. A reactionary in Athens, he is a visionary on Crete. Most commentators believe that the Athenian legislator speaks for Plato.

Throughout the *Laws* these ‘old boys’ (*paides presbytai*),<sup>187</sup> as Plato lightly calls them,<sup>188</sup> are climbing towards the cave of Zeus. They converse, along the way, ‘about forms of governance and about laws’.<sup>189</sup> As they converse, they also legislate, in a hypothetical mode, for a new colony which they call Magnesia.<sup>190</sup> It is

<sup>181</sup>Hölkeskamp (1992, 53). Cf. Camassa (2013), Hölkeskamp (1999, 44–59).

<sup>182</sup>Cf. Pl. *Laws* I 624a–b; Hom. *Od.* XIX 178–179.

<sup>183</sup>Pl. *Laws* I 624a–625b.

<sup>184</sup>Cf. Montuori (1981, 184): ‘The Spartan εὐνομία ... was not [held to be] the work of men, but of god and of the Delphic Apollo himself who dictated it to Lycurgus. Hence the veneration of Apollo, the wise legislator, and the praise of Lycurgus for having made the Spartans obedient to laws received from the god.’

<sup>185</sup>It is worth noting, here, that Cicero will later echo a Roman tradition which links ‘the laws written by Lycurgus and Solon’ to the XII Tables (*duodecim tabulas nostras*): Cic. *Acad.* II 44.136. However weak this link may be in historical terms, it takes on a measure of reality—which is to say, real force and influence—in the Roman legal tradition.

<sup>186</sup>Cf. Camassa (2012), Canevaro (2015), Schwartzberg (2004).

<sup>187</sup>Pl. *Laws* IV 712b.

<sup>188</sup>Antonio Capizzi (1990, 372) suggests that ‘the Athenian character of Plato’s *Laws* ... thinks rather like the comics of the preceding century’—i.e. the poets of Attic Old Comedy. To pivot from Capizzi’s thought, there is perhaps more wry humour in the *Laws* than is commonly believed.

<sup>189</sup>Pl. *Laws* I 625a: *peri te politeias ... kai nomôn*.

<sup>190</sup>The name appears very late in the dialogue: Pl. *Laws* VIII 848d, IX 860e, XI 919d, XII 946b, XII 969a.

important to recall, here, that Plato is ‘heir to a period of colonization’,<sup>191</sup> and that Greek colonization (*apoikismos*) in this period involved ‘not only the choice of a site but the creation *ex novo* of a new society’.<sup>192</sup> The *Laws*’ Athenian, Cretan and Spartan legislators are engaged in tracing out—with great patience, and in unparalleled detail—the legal and institutional contours of a new society in the ancient Mediterranean.

Plato’s legislators never reach the cave of Zeus. This means that the twelve books of Plato’s *Laws* contain a *human* law-code.<sup>193</sup> It is not the work of an immortal, but of a ‘mortal legislator’.<sup>194</sup> To be sure, Plato’s legislators call upon Zeus to bless their labours.<sup>195</sup> They invoke the god, however, precisely because he is not perceptible to them—as he had been to Crete’s prophetic legislator in his cave. Plato legislates ‘outside the cave’, we might say—and the symbolism of this, in his *Laws*, is precisely the inverse of the cave-imagery of his *Republic*. In the *Republic*, to be ‘outside the cave’ is to behold the light of god; whereas, in the *Laws*, to be ‘outside the cave’ is to lack the god’s discernible presence. ‘We are humans’, the Athenian legislator underscores in *Laws* IX, ‘and we are legislating now for the offspring of humans’.<sup>196</sup> Set on Crete, outside the cave of Zeus, Plato’s *Laws* lay out a deeply pious,<sup>197</sup> but a rigorously demystified,<sup>198</sup> law-code which institutionalizes legal critique and revision.

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<sup>191</sup>Goldman (2009, 448).

<sup>192</sup>Malkin (1989, 136).

<sup>193</sup>Even Karl-Joachim Hölkeskamp, who has reservations about using the term ‘code’ (and derivatives) to describe *nomoi* in Plato’s period, refers to the *Laws* as a “‘Gesetzeskodex’ oder *Gesetzbuch*”: Hölkeskamp (1999, 34). And that Plato occasionally gives his law-code and its institutions the epithet ‘divine’—see PL. *Laws* XII 957c (*ho theios hēmin kai thaumastos nomos*), XII 965c (*tēs theias politeias*), XII 969b (*ho theios ... syllogos*)—should not mislead us. He himself states that a positive law (*nomos*) or code of laws is ‘divine’ insofar as it reflects and inculcates reason (*nous*). This is a distinctly Platonic sense of ‘divine’, which naturally draws upon a more common Greek sense of the term—see ARIST. *Nic. Eth.* VII 3 (1145a28–33), for instance—without, however, intersecting with the archaic tradition of ‘divine’ legislation symbolized by the dialogue’s Cretan locale.

<sup>194</sup>PL. *Laws* IX 873a: ... *tou thnētou nomothetou nomos*.

<sup>195</sup>PL. *Laws* IV 712b.

<sup>196</sup>PL. *Laws* IX 853c: *anthrōpoi te kai anthrōpōn spermasi nomothetoumen ta nun*.

<sup>197</sup>PL. *Laws* XII 966c–968a.

<sup>198</sup>Plato’s Athenian legislator expresses a measure of contempt for Greece’s ‘divine’ law-codes in the first pages of *Laws* I. ‘I could have wished (and I wish it still)’, the Athenian says, ‘that you had explained how all these regulations’—that is, the *nomoi* which can be derived from and systematized by ‘reason’ (PL. *Laws* I 632c)—‘are inherent in the reputed laws of Zeus and in those of the Pythian Apollo which were ordained by Minos and Lycurgus, and how their systematic arrangement (*taxin*) is so evident to him who ... is an expert in law, although it is by no means obvious to the rest of us’ (PL. *Laws* I 632d). Soon after this, however, at PL. *Laws* I 634d, the Athenian pays his respects to ‘the Laconian and Cretan polities’, whose ‘laws are drawn up in a circumspect way’, while Plato makes use of a precept of ‘that noble man’—and Plato’s ancestor—Solon, at PL. *Laws* XI 913c–d, etc.

‘Our legislation is nearly perfect (*telos*)’, the Athenian legislator says in the *Laws*’ final pages; but he then immediately reminds the Cretan and Spartan legislators that ‘our whole law-code is imperfect (*ateles*)’.<sup>199</sup> There is no contradiction here, and this is no great confession for Plato to make at the end of his literary and legislative output. For Plato believes that law-codes are constitutively imperfect—qua code, and qua law. At the close of *Laws* XII, therefore, it is at once true that the law-code *drafted* by Plato is ‘perfect’ and ‘complete’ (*telos*), and that the law-code *introduced* by him is ‘imperfect’ and ‘incomplete’ (*atelês*). Plato is finished legislating, but his legislation is necessarily unfinished.

### 2.3 The Vicious Circle of Plato’s Laws

No one, they say, should be wiser than the laws.

—PLATO, *Politicus*<sup>200</sup>

Law is a deaf and inexorable thing.

—IMMANUEL KANT, quoting LIVY’s *History of Rome*<sup>201</sup>

It will be suggested at the close of this essay that the Platonic legislations—and indeed, the Platonic dialogues—form a vicious circle. This suggestion derives from a new reading of Plato’s statute in *Laws* XII concerning Magnesia’s envoys (*theôroi*), citizens who are sent out to observe ‘the legal institutions of other peoples’ and then report back to the colony.<sup>202</sup> Since this reading seems to constitute a *novum* in the history of Plato-interpretation, and can only be briefly stated in Chap. 5, there is reason to introduce it here.

#### 2.3.1 The Last Pages of Plato’s Corpus

In Plato’s *Laws*, legal critique is not a citizen’s prerogative. Free speech (*parrhêsia*) is never permitted to touch Magnesia’s laws and institutions. Nevertheless, provision is made for legal critique and revision in the city. Because Plato’s law-code is

<sup>199</sup>PL. *Laws* XII 960b–c: *schedon hê nomothesia telos an hêmin echoi ... proteron d’ ateles einai to holon.*

<sup>200</sup>PL. *Pol.* 299c.

<sup>201</sup>LIVY *Hist.* II 3.4: *leges rem surdam, inexorabilem esse.* Quoted by Kant (1968, 338) in his 1794 essay, ‘The End of All Things’: ‘lex est res surda et inexorabilis. Livius.’

<sup>202</sup>PL. *Laws* XII 952b.

not divine, it can be criticized and revised; because his polity is not democratic, there is no right to criticize this law-code in the open. Magnesia has envoys who are tasked with recommending new laws to a closed-door deliberative body,<sup>203</sup> the Nocturnal Council of Rulers (*archontôn nykterinon syllogon*).<sup>204</sup> This Nocturnal Council is Plato's last, unrealized institution. As Glenn Morrow observes in *Plato's Cretan City*, 'there is no parallel to this Council in the government of any historical Greek city'.<sup>205</sup> Reflecting the Council's novelty, Plato calls it a sort of 'dream-state' (*oneiratos*) assembly.<sup>206</sup>

Hastily sketched in the last pages of *Laws XII*—and thus, of Plato's corpus—the Nocturnal Council is an oligarchical body with considerable *sui generis* powers. The Athenian legislator cautions that 'it is not possible ... to impose laws on such a body before it has been duly formed (*kosmêthêi*)'. It is only in the future—which is to say, in a *post-Platonic* future—that the Council's powers could be formally delineated by law. And crucially, it is the Council itself that Plato tasks with delineating its powers. 'The councillors must themselves legislate', the Athenian concludes, 'concerning the powers (*kyrious*) they should possess'.<sup>207</sup>

Whatever powers the Council may obtain in this hypothetical future, its vital function in the *Laws* is to supplement and emend Plato's law-code. The Council's *raison d'être* is to preside over the deliberate and indefinite flux of Platonic law. Shockingly, however, the Athenian legislator states in *Laws XII* that this Council should put to death free-speaking critics of Magnesia's law-code—and the figure he evokes is that of Socrates. The free-speaking Athenian whose condemnation inspires the Platonic reflection on law (Chap. 3), and who drafts a law-code in Plato's middle-period *Republic* (Chap. 4), is himself condemned to death, *post mortem*, by one of the last statutes in Plato's *Laws* (Chap. 5).<sup>208</sup> How could this be? What could this mean? And how could Plato's commentators have failed to notice it?

The last question cannot detain us. The staid George Grote *sensed* this tragic shadowplay in the 1880s, when he compared Plato in the *Laws* to Socrates'

<sup>203</sup>Pl. *Laws XII* 950d–952d. Cf. Dareste (1893, 148): '... un conseil spécial, chargé de la surveillance et du perfectionnement des lois.'

<sup>204</sup>Pl. *Laws XII* 968a, cf. XII 961a–c, 964e–965a, 968a–969c. At Pl. *Rep.* V 463a, Glaucon notes that democratic regimes use the term 'rulers' (*archontas*) where oligarchies and monarchies use 'masters' (*despotas*).

<sup>205</sup>Morrow (1960, 509).

<sup>206</sup>For 'dream-state': Pl. *Laws XII* 969b.

<sup>207</sup>Cf. Pl. *Laws XII* 968c: 'It is not possible ... to impose laws on such a body before it has been duly formed (*kosmêthêi*). Once it has been formed, the councillors must *themselves* legislate concerning the powers (*kyrious*) they should possess.'

<sup>208</sup>See Sect. 5.5 and Supplement 3.

accusers in the *Apology*.<sup>209</sup> (Other commentators have been less perceptive.)<sup>210</sup> Still, Grote missed the specificity of Plato's indictment in his statute concerning envoys.<sup>211</sup> The Athenian legislator is not merely indicting a sophistic figure like Socrates in *Laws XII*; he is indicting *Socrates*.

### 2.3.2 *Magnesia's Socrates*

The evidence for this is not hard to muster:

- (i) In his statute concerning a 'corrupted' (*diephtharmenos*) envoy in *Laws XII* 952c–d, the Athenian legislator distinctly echoes *Politicus* 299b–c. (See Supplement 3a, at the back of the volume.)

This echo has gone unregistered in the literature. Most commentators, however, recognize that:

- (ii) At *Politicus* 299b–c there is a 'perfectly plain' echo of the charges levelled against Socrates, and of his conviction in the *Apology*.<sup>212</sup> (See Supplement 3b.)

It is therefore reasonable to conclude, on the strength (i) of the *Laws*' recollection of the *Politicus*, and (ii) of the *Politicus*' recollection of the *Apology*, that:

- (iii) There is a conscious recollection in *Laws XII* 952c–d of Socrates' legal ordeal in the *Apology*—and ultimately, of his execution—by way of *Politicus* 299b–c.

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<sup>209</sup>In his remarks on Pl. *Laws XI* 937e–938c, Grote (1888, IV:411) writes this: 'The vague and undefined character of this offence, for which Plato denounces capital punishment, shows how much his penal laws are discharges of ethical antipathy and hostility ... On this matter the Athenian public had the same ethical antipathy as himself; and Melétus took full advantage of it, when he brought his accusation against Sokrates. ... Both Aristophanes and Melétus would have sympathised warmly with the Platonic law. If there had been any Solonian law to the same effect, which Melétus could have quoted in his accusatory speech, his case against Sokrates would have been materially strengthened.'

<sup>210</sup>For less than this: Dareste (1893, 148); Ritter (1896, 344); England (1921, II:595); Morrow (1960, 500–515); Diès and Gernet (1968), cc–ccii; Friedländer (1969), III:440–444; Piérart (1973), 213–216; Mackenzie (1981, 195–204); Bertrand (1999, 392–394); Clay (2000, 274–279); Rowe (2001, 63–76); Mouze (2005, 346–347, 347 n. 220); Schöpsdau (2011, 550–552); Lutz (2012, 171–182).

<sup>211</sup>Grote (1888), IV:414. Similarly, in the last paragraphs of his 1935 essay on 'Plato's Commonwealth', F.M. Cornford (1967, 66–67) conjures a scene in which Socrates is brought 'for a second trial before the Nocturnal Council'. Plato is his accuser. There is no indication, however, that Cornford takes his inspiration from *Laws XII*.

<sup>212</sup>Cf. Rowe (1995, 230), Ricken (2008, 198). The phrase quoted here is from Harold Fowler's marginal note to his 1925 translation of the *Politicus*: 'This passage obviously refers to the trial of Socrates ... and the reference of the words διαφθείροντα ἄλλους νεωτέρους to the accusation brought against him by Miletus, Anytus, and Lycon ... is perfectly plain.'

What is shocking is not, of course, that Plato would recollect Socrates' trial and death in the last book of the *Laws*. That could be predicted. What makes this coda to the Platonic legislations—and corpus—distressing is its parricidal aspect. The Athenian legislator—and through him, Plato—*sanctions* the trial and death of Socrates. An exhaustive interpretation of this coda is out of the question. The meanings and possible meanings of Magnesia's Socrates call for a book-length investigation of their own. Plato is a writer of tremendous subtlety and studied elusiveness. As Grote once remarked, he is a philosopher who 'loves to dive'.<sup>213</sup> This is nowhere more true than in Plato's final pages.

The first of many complications facing a parricidal reading of *Politicus* 299b–c and *Laws* XII 952c–d is that Socrates is innocent of the charges on which he is condemned in the *Apology*.<sup>214</sup> In the *Politicus* and *Laws* XII, on the contrary, it is argued that one who is *guilty* of Socrates' charges should be executed. A further complication is presented by Plato's *Euthyphro* (by all accounts, one of his earliest dialogues), whose plot centres on a young zealot who is charging his father with murder (just as a young Meletus is charging Socrates with 'making innovations in divine matters').<sup>215</sup> In the *Euthyphro*, Socrates—which is to say, the young Plato—presses the dialogue's namesake: 'Are you not afraid of doing something unholy (*anosion*) in prosecuting your father?'<sup>216</sup> Surely Plato would have felt that he risked 'doing something unholy' by plotting the judicial murder of Socrates.<sup>217</sup>

### 2.3.3 *The Legal Necessity of Injustice*

The dramaturgical and psychological complexities of Socrates' condemnation in *Politicus* 299b–c and *Laws* XII 952c–d are less interesting than the legal-judicial principle that underlies it. This principle is sharply articulated in Plato's *Politicus*: 'No one should be wiser (*sophôteron*) than the laws'.<sup>218</sup> It is important not to gloss over this principle in the *Politicus* and its implications for the *Laws*, since it is—to

<sup>213</sup>Quoted (or paraphrased) from memory. The source is Grote's three-volume study of *Plato, and the Other Companions of Sokrates* (London, 1888).

<sup>214</sup>It is of course possible to deny Socrates' innocence. In a nineteenth-century essay, *Apologia Socratis contra Meliti redivivi calumniam* (Groningen, 1838), the Belgian philologist Petrus van Limburg Brouwer writes flamboyantly that 'no judgement more legal was ever given in a more legal court than that which firstly found Socrates guilty of not believing in the gods of the state and of corrupting the young, and then sentenced him to death' (cit. Montuori 1981, 39). And in the late twentieth century, Montuori (1981, 245) relitigates the case in hopes of discrediting the Platonic 'myth of the just man condemned'. For Plato, however, Socrates' innocence is never in doubt.

<sup>215</sup>Pl. *Euth.* 3b: *kainotomountos ... peri ta theia*.

<sup>216</sup>Pl. *Euth.* 3e–4e.

<sup>217</sup>Cf. Pl. *Laws* IX 877b–c: 'If a son ... deliberately wounds his parents ... death shall be the penalty.'

<sup>218</sup>Pl. *Pol.* 299c.



Plato's mind—the highest and decisive principle of the law-state ideal. It is also important not to fall back on 'contemporary liberal convictions', but to face 'the philosophical problems left over by Plato', as Detlef von Daniels insists in a different connection.<sup>219</sup>

The right to criticize fundamental laws and institutions in a law-state is a thorny problem of Platonic legal theory, and for that matter, of contemporary legal theory.<sup>220</sup> However 'unholy' Plato's statute in *Laws XII*—and in Chap. 5 the stress will fall on this, in order to correlate the statute's queasy brutality with the Platonic imperative for legal revision—it is nevertheless inspired by this intractable problem. Plato's question in *Laws XII* is how to identify an 'enemy (*polemion*) of well-formulated, established laws',<sup>221</sup> and how to treat 'those who corrupt (*diaphtheirontôn*) the laws with the intent to overthrow the existing legal regime'.<sup>222</sup> His statute condemning a 'corrupted' envoy is intended to halt the erosion of Magnesia's laws.

In Magnesia, the law-code is a despot (*nomos ... despotês*) and the officeholders are its slaves (*douloi tou nomou*).<sup>223</sup> To Plato's mind, this is what constitutes a law-state as a law-state. A free-speaking critic of the laws, however, is not a slave of the law. A free-speaking critic relates to the laws, in a limited and formal sense, like a tyrant. The legal critic is not bound by the laws, even if they observe them. The legal critic is therefore (qua critic), like the tyrant (qua tyrant), *legibus solutus*: 'freed from the laws'.

Now, *legibus solutus* monarchy is Plato's hypothetical ideal. This is argued with great patience in the *Politicus*.<sup>224</sup> His hypothetical ideal is governance by political technique, which for him means that the powers of state must be concentrated in the hands of the one who possesses that technique. (It is axiomatic that a multitude cannot possess it.)<sup>225</sup> In theory, therefore, Plato rejects the ideal of the law-state. On the theoretical plane, he is opposed to governance by laws. His highest political

<sup>219</sup>Von Daniels (2014, 631).

<sup>220</sup>The current form of Plato's problem is the Weimar conundrum, which has come to the fore in a number of recent European debates. The conundrum is this: To the precise extent that a legal state protects the right of citizens and politicians to openly and persistently criticize its fundamental laws, it declines to protect itself (and indirectly, its citizen-partisans). Of course, the whole drama implicit in this conundrum is rarely played out within a single generation (the Weimar Republic is an exception), and is not invariably played out within a single state (thus London and Geneva shelter Lenin, who effects a coup in Russia; Baghdad and Paris host Khomeini, who effects a coup in Iran). A recent treatment of this conundrum, in terms of 'militant democracy' and the 'Weimar fallacy', is Heinze (2016).

<sup>221</sup>Pl. *Laws IX* 860b: *ton tôn eu keimenôn nomôn polemion*.

<sup>222</sup>Pl. *Laws IX* 864d: *tôn tous nomous diaphtheirontôn epi katalyseî tês parousês politeias*.

<sup>223</sup>Pl. *Laws IV* 715d.

<sup>224</sup>Pl. *Pol.* 293c–d, etc.

<sup>225</sup>In a city of 1000 male citizens, the Eleatic specifies, it is impossible that even 50 could possess 'political technique', for a city of 1000 will never produce 50 front-rank draught-players: Pl. *Pol.* 292e–293a.

ideal can be stated very succinctly; it is governance without laws by one who is ‘wiser than the laws’ (*tôn nomôn ... sophôteron*).<sup>226</sup>

The *Politicus* reveals, however, that this high Platonic ideal is a purely hypothetical one. This is because, in history, governance without laws never proves to be governance by real political technique.<sup>227</sup> On the contrary, governance without laws invariably proves to be tyranny.<sup>228</sup> This is why Plato concludes, in the *Politicus*, that although:

- (i) Law is ‘not the most perfect right’.

And although, as a consequence:

- (ii) ‘It is *not* best for the laws to be sovereign’.<sup>229</sup>

Nevertheless:

- (iii) It is necessary ‘to compose written laws’ (*xyngrammata graphein*).<sup>230</sup>

The *Politicus* is therefore a dialogue which proceeds from an unflattering critique of law to an unflinching defence of the law-state. It is in the latter phase of the dialogue, at *Politicus* 299b–c, that the chilling reprise of Socrates’ trial occurs, and it is only within the dialogue’s disjunctive structure that its logic can be grasped.

Plato’s hypothetical ideal is governance without laws by one who is wiser than the laws; his real ideal, however, is governance by laws and a complex machinery of offices. A ferocious critic of democratic and sophistic legal culture, Plato still ultimately echoes a sophist of Gorgias’ circle, Alcidas of Elaea (d. ca 360 BCE), who hails law as the city’s ‘sovereign’ (*basilês*). (This line is quoted in Plato’s *Symposium*.)<sup>231</sup> In a Platonic law-state, law is the undisputed sovereign. A corollary of the sovereignty of law, in the *Politicus*, is that no one may *arrogate the right* to be wiser than the laws. This corollary binds a citizen who *is* wiser than the laws (such as Socrates or Plato), no less than it binds a citizen who is *not* wiser than the laws (such as Gorgias or Alcidas).

Recall here that according to the Pythian oracle in the *Apology*, there is ‘no one wiser’ than Socrates in the Greek city-states.<sup>232</sup> Socrates testifies in court that he is wiser than Athens’ democratic legislators, which makes him wiser, *a fortiori*, than

<sup>226</sup>Pl. *Pol.* 299c.

<sup>227</sup>Pl. *Pol.* 292a: *kai meta grammatôn kai aneu nomôn*.

<sup>228</sup>Pl. *Pol.* 292a: *heni kai oligois kai pollois*. Cf. Pl. *Pol.* 291e–292a, 302b–303b.

<sup>229</sup>Pl. *Pol.* 294a–d.

<sup>230</sup>Pl. *Pol.* 301e.

<sup>231</sup>Pl. *Symp.* 196c: *hoi poleôs basilês nomoi*. Alcidas’ *testimonia* and fragments are collected in Dillon and Gergel (2003, 283–309). Agathon, who quotes Alcidas’ line, is a tragedian—and the *Symposium*’s host.

<sup>232</sup>Pl. *Apol.* 20d–23b, here 21a: ‘The Pythian replied that there is no one wiser (*mêdena sophôteron einai*).’

their laws.<sup>233</sup> That Socrates then in the same breath denies that he is 'a wise man' only intensifies his contempt *in facie curiae*.<sup>234</sup> What Plato recognizes in his later dialogues is that before the law there is no difference between Socrates and a sophistic critic of the laws. Insofar as Socrates persists in the illicit critique of laws, he is *legally indistinct* from a sophist, or indeed from a corrupt politician or a thug who persists in illicit critique of 'well-formulated, established laws'.<sup>235</sup> Underlying the Platonic law-state is the unforgiving principle that no one—not a multitude, not a tyrant, not a philosopher—may arrogate the right to be wiser than the laws.<sup>236</sup>

Plato's conception of the sovereignty of law never entails a ban on legal critique *tout court*.<sup>237</sup> What it entails is a ban, in the *Politicus* and in the *Laws*, on illicit and contemptuous legal critique. On Plato's conception, it is the legislator's prerogative to dictate the precise circumstances in which legal critique will be licit. No one in a law-state is freed of the laws (*legibus solutus*), and this includes the Platonic philosopher. A citizen who *is* wiser than the laws is still bound to observe them, and this includes the statutes that restrict free speech and legal critique. Illicit critique of the laws must be punished because it is 'against the laws' (*para tous nomous*).<sup>238</sup> It must be punished even when the critic is Socrates.

Plato never suggests that the punishment of Socrates is just. The reprise of Socrates' trial and death in the *Politicus* and *Laws* is not an ordeal of justice, but of legal necessity. Plato stipulates that he must be punished because he persists in a form of legal critique which is 'against the laws and the statutes' (*para tous nomous kai ta gegrammena*).<sup>239</sup> It is the illegality of Socratic critique, and not its illegitimacy, which necessitates punishment. The condemnation of Socrates in the *Politicus* and *Laws* is therefore a legal-judicial necessity; it is emphatically not a determination of justice. The *Politicus* contains a laborious demonstration that governance by laws is a cause of injustice,<sup>240</sup> and Socrates' trial and death in the late Platonic dialogues is a symbol of that injustice. Plato believes that a philosophical legislator must reckon with the legal necessity of such injustice.

However dark the drama of *Politicus* 299b–c and *Laws* XII 952c–d, Plato's logic must be reckoned with. Nor is this logic totally lacking a connection to his earliest dialogues, in which Socrates refuses to slip out of Athens with the connivance of the democratic regime. In Plato's *Crito*, Socrates insists on suffering the unjust but legally binding penalty handed down by some 500 citizen-judges in the Porch of the

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<sup>233</sup>Pl. *Apol.* 21c–e.

<sup>234</sup>Pl. *Apol.* 38c.

<sup>235</sup>Pl. *Laws* IX 860b: *ton tôn eu keimenôn nomôn polemion*.

<sup>236</sup>Cf. Pl. *Pol.* 299c, 300b–c, 300e–301a.

<sup>237</sup>Cf. Pl. *Pol.* 296a, 300d, etc.

<sup>238</sup>Pl. *Pol.* 300b–c.

<sup>239</sup>Pl. *Pol.* 299c.

<sup>240</sup>Pl. *Pol.* 301e–302a, etc.

King-Archon.<sup>241</sup> Socrates reasons there that it is only a convict's death which could prove that he is not a 'corrupter of the laws' and a 'corrupter of the youth'.<sup>242</sup> It is conceivably this reasoning, *mutatis mutandis*, which informs the reprise of Socrates' trial in the last pages of Plato's corpus.

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<sup>241</sup>Cf. Bury (1900, 580), Montuori (1981, 197–199).

<sup>242</sup>Pl. *Crito* 53b–c: *diaphthorea ... tôn nomôn ... nomôn diaphthoreus ... neon ge kai anoêtôn anthrôpôn diaphthoreus*.

# Chapter 3

## Socrates' Execution and Platonic Legislation

**Abstract** Platonic legislation has its origins in the Athenian law-court in which Socrates was condemned to death, in 399 BCE. A young Plato was present at his trial. The injustice of the judgement against Socrates, which was handed down by some 500 citizen-judges at the conclusion of a procedurally valid trial, deepened Plato's hostility to the democratic law-state at Athens. Yet Plato neither disavows the idea of a law-state, nor begins to act as a partisan of Greece's archaic, non-democratic law-states (such as Crete and Sparta). Rather, he begins to forge a new legal-philosophical genre, which I will call 'hypothetical legislation'. In this chapter, I detect the first promise of Plato's colossal, hypothetical law-codes—the *Republic* and *Laws*—in a neglected comment that appears in his one of his earliest dialogues, the *Apology*. 'If you had a law ...', Socrates says to his judges. This is the conditional mood in which all Platonic legislation will be written.

### 3.1 *Apology I: Injustice and Illegality*

In the *Histories*, Herodotus has Xerxes gaze back at his vast legions as they cross into Europe, 'under the lash'.<sup>1</sup> As Plato puts it in *Laws* III, the Persian army is composed of 'peoples the Persians ... tyrannize over'.<sup>2</sup> Among Xerxes' retinue, however, is a Spartan exile, Demaratus, who is summoned once the king's legions have been 'numbered and marshalled' on the Thracian coast.<sup>3</sup> Xerxes' question to Demaratus is simple: Will the Greeks resist?<sup>4</sup>

Demaratus responds to the Great King with a subtler question: Why is Xerxes consulting him? Is he seeking pleasure, or the truth? The king urges Demaratus to speak the truth, and assures him that he will not suffer as a result.<sup>5</sup> Demaratus

<sup>1</sup>HEROD. *Hist.* VII 56. And for 'the lash' as a politicized motif in this section of the *Histories*: Forsdyke 2001, 347–354.

<sup>2</sup>Pl. *Laws* III 693a.

<sup>3</sup>HEROD. *Hist.* VII 100.

<sup>4</sup>Sara Forsdyke takes this to be a rhetorical question: 'Xerxes answers his own question in the negative on the basis of the Greeks' insufficient numbers' (2001, 343).

<sup>5</sup>HEROD. *Hist.* VII 101.

declines to speak for other Dorian tribes, but the Spartans, he says, will meet the Persian onslaught. They will never consent to live under a despot,<sup>6</sup> because they have been hardened by 'strong laws'.<sup>7</sup> Demaratus tells Xerxes precisely what this means:

Law is their despot (*despotês nomos*), whom they fear much more than your men fear you. Whatever he commands they do. And his command is always the same – that they must never flee in battle, whatever their enemies' numbers, but must stand firm where they are stationed, and there, either conquer or die.<sup>8</sup>

On hearing this, Xerxes laughs.<sup>9</sup> Demaratus will remind him of his laughter on the eve of the battle of Thermopylae.<sup>10</sup> Needless to say, this 'prophecy' of Demaratus' is Herodotus' incipit to that battle.<sup>11</sup>

Yet we could also take Demaratus' formulation here, 'law is their despot' (*despotês nomos*),<sup>12</sup> to be a fore-echo of Plato's use of the phrase 'law is despot' (*nomos ... despotês*) in a formalized 'prophecy' in *Laws IV*,<sup>13</sup> where the Athenian legislator says this:

Wherever law is servile and impotent, there I see ruin impending. But wherever law is despot (*nomos ... despotês*) over the rulers, and the rulers are slaves to the laws,<sup>14</sup> there I foresee salvation and all the blessings which the gods bestow on cities.<sup>15</sup>

Demaratus' peroration on the Spartan law-code has a far more immediate significance for us, however. It provides the necessary contrast with—if not, as seems

<sup>6</sup>Cf. THUC. *Pelop.* I 18.1 on Sparta's claim to have 'always been free from tyrants' (*aiei atyran-neutos ên*).

<sup>7</sup>HEROD. *Hist.* VII 102. And cf. HEROD. *Hist.* VII 132–136, where Xerxes' satrap Hydarnes asks the Spartan sacrificial victims, Sperthius and Bulis, why the Spartans refuse to be 'friends with the king'. They reply: 'You know how to be a slave (*doulos*), but you, who have never tasted freedom, do not know whether or not it is sweet'. Xerxes later releases Sperthius and Bulis, though the Spartans have disregarded 'all human laws' (*pantôn anthrôpôn nomima*) by killing his emissaries.

<sup>8</sup>HEROD. *Hist.* VII 104. Note that Tyrtaeus' fr. 9 has relevance for this *nomos*: Pearson (1962, 231 n. 8).

<sup>9</sup>HEROD. *Hist.* VII 105.

<sup>10</sup>HEROD. *Hist.* VII 208–209.

<sup>11</sup>Thommen (1996, 138–141).

<sup>12</sup>Joanne Waugh remarks that 'Laws are ... described as *basileus*, *despotes*, *tyrannos*, *hegemon*, and *archon*, beginning in the fifth century' (2001, 28–29). I am not convinced by Ellen Millender's ideological reading of Demaratus' speech. In her 'Νόμος Δεσπότης: Spartan Obedience and Athenian Lawfulness in Fifth-Century Greek Thought', Millender seeks to expose a 'powerful nexus of tyranny, illegality, and compulsion' in Demaratus' words, which 'enabled Herodotus to locate the Spartans in the conceptualized world of barbarian autocracy' (2002, 57).

<sup>13</sup>See supplement 2b, at the back of the volume.

<sup>14</sup>Which we still hear in Cicero—for instance, at CIC. *Pro Clu.* 146: 'We are all slaves to the law precisely so that we may be free men' (*legum ... idcirco omnesservi sumus ut liberi esse possimus*).

<sup>15</sup>PL. *Laws IV* 715d.

possible to me, a source for<sup>16</sup>—one of Socrates' statements in the *Apology*, a statement that at once reflects and obscures a *duplicity* without which that dialogue is drained of its intensity.

### 3.1.1 *Demaratus' Law and Socrates' Truth*

There is no reference to Herodotus in Plato's dialogues,<sup>17</sup> and in the *Apology*—unlike the *Crito*, *Republic* and *Laws*—there is no reference to the Spartan laws. Yet when Socrates appeals in the *Apology* to his fortitude in a series of Athenian mobilizations against Spartan satellite cities,<sup>18</sup> in the course of the Peloponnesian War, he prefaces his remark in this way:

For thus it is, men of Athens, in truth: wherever a man stations himself, holding that to be best, or is stationed by his ruler, there he must, as it seems to me, stand firm and run the risks, giving thought to neither death nor any other thing except disgrace.<sup>19</sup>

This truth of Socrates' appears to reproduce, with a certain precision, Demaratus' law. Wherever a man has been stationed (*taxi* | *taxêi*), there he must stand fast (*menontas* | *menonta*), facing death (*apollusthai* | *thanaton*).<sup>20</sup> This near-repetition is itself of some interest. But it is, rather, a supplement to Demaratus' law that should arrest us. It is what Socrates will die for.<sup>21</sup> Allow me to clarify.

Demaratus' despot-law is singular, unvarying, and martial: 'his command is always the same—Spartans must never flee in battle'. Plato will open the *Laws* with a sustained critique of this last aspect of the Dorian law-states,<sup>22</sup> namely, that—as

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<sup>16</sup>The resemblances are suggestive and productive, but not conclusive. I by no means insist on a Herodotean–Platonic interface. Other interesting parallels could be adduced—for instance, THUC. *Pelop.* II 42.4 (of Athenians); and LYS. *Epit.* 31 (of Spartans): 'The Spartans, showing no failure of spirit, but deceived as to the numbers ... of those with whom they had to contend, were destroyed (*diephtharêsan*), not having been worsted by their adversaries, but slain where they had been stationed for battle (*all' apothanontes houpper etachthêsan machesthai*)'. Cf. also LYS. *Alc. I* 15: '[You, Athens' citizen-judges,] were far more afraid of the city's laws (*polu mallon ephobeisthe tous tês poleôs nomous*) than of the danger of facing the enemy in battle'.

<sup>17</sup>Homer, not Herodotus, is invoked at PL. *Apol.* 28b–d.

<sup>18</sup>PL. *Apol.* 28e: 'Potidaea and Amphipolis and Delium'. While this is the only Platonic reference to Amphipolis (422 BCE), Plato has Alcibiades praise Socrates' valour at Potidaea (432/31), and cool head during the Athenian retreat at Delium (424/23). Cf. PL. *Symp.* 219d–221c; Wolf (1954, III.1:11).

<sup>19</sup>PL. *Apol.* 28d. Cf. Slings (1994, 133): 'This section (28d10–30c1) is the central part of the *Apology*'.

<sup>20</sup>See Supplement 1a, at the back of the volume.

<sup>21</sup>For brevity and ease—but not naïvely—I will omit the obvious caveats: 'on Plato's telling of it', etc.

<sup>22</sup>PL. *Laws* I 625d–632d.

Plato has his Cretan legislator concede—the Dorian laws are ‘all adapted for war’.<sup>23</sup> For our present purposes and in light of *Laws* I, we could say that a Dorian citizen is solely in thrall to his law-state,<sup>24</sup> and that his law-code is solely organized by the exigencies of war (*polemos*).<sup>25</sup> Demaratus' principle, ‘law is despot’ (*despotês nomos*), threatens to reduce to ‘war is despot’ (*despotês polemos*).<sup>26</sup>

Socrates, we will recall, introduces his ‘truth’ in connexion with the Peloponnesian War.<sup>27</sup> And what is more, he reintroduces this ‘truth’ in his final speech to the Athenian citizen-judges, using it to link a citizen's behaviour in the law-courts (*en dikêi*) and in war (*en polemôi*).<sup>28</sup> For Socrates, then, law is no stranger to war. The contrast of Socrates' truth with Demaratus' law is more fundamental than the question—as in *Laws* I—of Spartan bellicism and Athenian irenicism. Socrates' supplement to the Spartans' law here illuminates, rather, what it is that a ‘free man’—and he also suggests, a ‘philosopher’—is finally in thrall to.<sup>29</sup> And it is not a law-state, or a codified law (*nomos*). It is, however, like Demaratus' despot-law, *singular*. Socrates says that his highest ideal is solitary and alone (*monos*).<sup>30</sup>

Socrates states this very clearly at *Apology* 28b, before he delivers his ‘truth’ to the citizen-judges of Athens, at 28d, where—again recall—a man should ‘give thought to neither death nor any other thing except disgrace (*aischrou*)’. At 28b, Socrates puts a citizen-judge's question to himself: ‘Are you not ashamed (*aischunêi*), Socrates?’ Regardless of the law-court's verdict, which has yet to be

<sup>23</sup>Pl. *Laws* I 625d. Hall (1956, 198) glosses the point similarly. And though Clinias, a Cretan legislator, is the Athenian's interlocutor in this section of *Laws* I, the Spartan legislator, Megillus, identifies with the Cretan regime in this regard—viz., bellicism—at Pl. *Laws* I 626c.

<sup>24</sup>For ‘Dorian’, see the Athenian legislator's historical prologue to his account of Dorieus—the patriarch of the *ethnos*—and the Dorian regime. He says here that ‘Sparta ... and Crete were settled under kindred laws (*adelphois nomois*): Pl. *Laws* III 682d–683b.

<sup>25</sup>Thus, for instance, the Athenian legislator echoes Clinias' formulation at Pl. *Laws* I 625d when he questions the Spartan, Megillus, at *Laws* I 633a: the Cretan and Spartan law-codes are alike ‘adapted for war’ or ‘directed to war’.

In Aristotle's critique of ‘the regimes of Sparta and Crete’ (*Polit.* II 1269a29), he cites Plato—*hoper kai Platôn en tois Nomois* ...—to precisely this effect: ‘The entire system of the [Dorian] laws (*pasa syntaxis tôn nomôn*) is directed towards one part of virtue only, military valour (*pros ... tén polemikên*), because this is useful for conquest’ (*Polit.* II 1271b1–4).

<sup>26</sup>The Athenian legislator reverses this bellicism at Pl. *Laws* VII 803d: ‘It is the life of peace that each should live as ... nobly as he can’; but he then seems to revert to it at *Laws* XI 942a–e.

<sup>27</sup>Pl. *Apol.* 28d–29a. The battle of Potidaea antedates, and contributes to the outbreak of, the Peloponnesian War: THUC. *Pelop.* I 56–65.

<sup>28</sup>Pl. *Apol.* 38e–39a. I return to this sentence in Sect. 3.3.

<sup>29</sup>For ‘free man’, Pl. *Apol.* 38e; and for ‘philosopher’, *Apol.* 28e. There is also an apposite definition of the ‘free man’ at Pl. *Rep.* III 387b, where ‘to be free’ is simply to ‘fear slavery more than death’.

<sup>30</sup>*Monos* here is from the phrase *monon skopein* (Pl. *Apol.* 28b), which I will now discuss. The mirror-effect with *nomos-monos* is my own.



issued, he is *accused*<sup>31</sup> of vile behaviour—‘corrupting the youth’ is perhaps the gravamen<sup>32</sup>—and faces a convict’s death. Socrates says this:

You do not speak well... if you think that a man worth anything at all should give thought to the risk of life or death, and not rather look to one thing (*monon skopein*) when he acts: whether what he does is just or unjust (*dikaia ê adika*).<sup>33</sup>

Justice, and not law (*nomos*), is Socrates’ ‘singular’ (*monos*).<sup>34</sup> And thus injustice, not illegality, is the sole condition of disgrace.<sup>35</sup>

This is the crux. It is this that constitutes Socrates—in his eyes—as a free man. It is this that increasingly renders Socrates—in the citizen-judges’ eyes—a menace to his city.<sup>36</sup> And it is this that signals—for us—the Socratic critique of law in the *Apology*. For observe: in Demaratus’ law,

whatever the despot-law commands they do, and his command is always the same – that they... stand firm where they are stationed;<sup>37</sup>

<sup>31</sup>According to one strain of Hellenistic tradition, Socrates’ accusers come to a bad end. Plutarch reports that Anytus and Meletus hanged themselves: PLUT. *Envy* 6 (537e–538a) (One thinks, here, of Judas Iscariot in Christian tradition. Cf. *Matthew* 27:5). Augustine believes that ‘the people’s indignation (*populi indignatione*) turned against Socrates’ two accusers to such a degree that one of them was set upon and killed by the violence of the multitude, while the other avoided a similar punishment only by going into ... permanent exile’: AUG. *Civ.* VIII 3.

<sup>32</sup>Note, in this regard, the prominence that Isocrates gives to the same charge in his fictive apology, *Antidosis*, which he composed in 354/53 BCE and patterned after Plato’s *Apology*: Usher (1999, 316–317). Cf. for instance, ISOC. *Antid.* 30: ‘Here in the indictment my accuser seeks to vilify me, charging that I corrupt the young men (*diaphtheirôi tous neôterous*) by teaching them to speak ... in the law-courts contrary to justice (*para to dikaion*).’ In a different context, however, it is the charge of impiety or ‘atheism’ that comes to the fore. Cf. PLUT. *Gen. Socr.* 9 (580b–c): ‘Has Meletus convinced you, too, that Socrates had no use for things divine (*ta theia*)? For that was the charge that Meletus brought against him before the Athenians (*touto gar autou kai pros Athênaious katêgorêsen*)’.

<sup>33</sup>PL. *Apol.* 28b.

<sup>34</sup>Echoing his opening words at PL. *Apol.* 17c—‘I believe what I say to be just’—and then his admonition to the citizen-judges at *Apol.* 18a: ‘Look strictly to this one thing, whether or not what I say is just; for that is the virtue (*aretê*) of a judge’. And cf. PL. *Crito* 54b, where the Athenian Laws adjure Socrates to care for nothing, not even his life, more than he cares for justice. These appeals take on a special gravity in Plato’s *Apology* and *Crito*, but they nevertheless undeniably belong—in generic terms—to the forensic rhetoric of the day. At LYS. *Comm.* 22, for instance, Lysias admonishes the law-court: ‘Put justice, therefore, above everything else’ (*peri pleistou oun poiêsamenoi to dikaion*).

<sup>35</sup>Ernst Heitsch comments that this section is devoted the question of ‘was *wirklich* schändlich (*αἰσχρόν*) ist’ (2004, 118 n. 212). And see Socrates’ return to the question of shame and disgrace at PL. *Apol.* 38d, where he effects a brilliant reversal: he has been condemned because he *lacks* ‘shamelessness’. See Chap. 4.2, below.

<sup>36</sup>Vlastos (1983, 496–497) quotes Xenophon in a similar regard: ‘But by Zeus, said his accuser, [Socrates] made his associates despise the established laws ...’ (XEN. *Mem.* I 2.9).

<sup>37</sup>HEROD. *Hist.* VII 104.

whereas in Socrates' truth,

wherever a man stations himself, holding that to be best (*beltiston einai*), or is stationed by his ruler, there he must... stand firm.<sup>38</sup>

The necessity of 'self-stationing' is Socrates' supplement to Demaratus' law. It is minimal, but it is terrible. For with this, Socrates asserts that no law-state, and no law-code, can free a man of his duty to decide his highest ideal.<sup>39</sup> Yet he at once insists that this decision cannot free him from his city's law-code. Socrates hereby 'stations himself' in immanent relation to his city's law-code, and to justice itself—his highest ideal.

It is this duplex—or better, duplicitous—relation to Athens and its laws that provides the impulse for the remainder of the *Apology*, since, in light of his truth, Socrates maintains:

- (i) that he is innocent of the charges that have been brought against him;
- (ii) that he has nevertheless, out of a fidelity to justice, acted 'illegally' in the past;
- (iii) that he will persist in 'illegal' behaviour if the law-court releases him *on condition* that he forsake philosophy; and
- (iv) that the Athenian law-court cannot shake or shame him – regardless of (ii) his past, or (iii) his future law-breaking – since he is not guilty of any injustice (*adikia*).

Our concern will be with the central points (ii) and (iii) in this list, since they lead into the formally linked yet crucially distinct concepts of what is 'unjust' (*para to dikaion*), and what is 'illegal' (*para tous nomous*). Before proceeding, a clarification of the term 'illegal' (*para tous nomous*) is in order here.

In his later dialogues, Plato vacillates as to whether bad laws should be termed 'laws'.<sup>40</sup> Notwithstanding this, I will use the term 'law'—and thus, 'law-breaking', 'illegality', and so on—in a basically functionalist sense.<sup>41</sup> For this we could appeal to Aristotle's formulation in the *Politics*: 'Order is law' (*taxis nomos*).<sup>42</sup>

Thus, in point (iii) of the above list, Socrates' contempt for a law-court's injunction is described as 'law-breaking'—regardless of that injunction's status as a 'law', and regardless of its 'justice'. To defy the Athenian law-court is, for our present purposes, to defy the Athenian laws. For, according to legal historian Mirko

<sup>38</sup>PL. *Apol.* 28d.

<sup>39</sup>Cf. PL. *Apol.* 36c.

<sup>40</sup>Morrow observes that Plato's 'use of the term ["law"]', now to denote the ideal, and at other times as a designation for positive prescriptions, shows that in Plato's text it is already infected with the ambiguity that has ever since clung to it' (1960, 563–564).

<sup>41</sup>That is, 'law' (*nomos*) will typically but not *invariably* refer to 'the enactment of statutes'; the term can also serve to denote a basic 'political condition' in which punishment is decided upon and meted out: Ostwald (1969, 70).

<sup>42</sup>ARIST. *Polit.* III 1287a20. Cf. PL. *Rep.* IV 424b, where the 'guardians' are to prevent any musical innovation that is 'contrary to the established order' (*para tèn taxin*), while *taxis* is then glossed at *Rep.* IV 424e with the terms 'laws and institutions' (*nomous kai politeias*).

Canevaro, it is only in the wake of the Thirty that provision is made for the supremacy of Athenian ‘laws’ (*nomoi*) over the city’s ‘decrees’ (*psephismata*).<sup>43</sup>

Similarly, to defy an Athenian oligarchy—such as the Thirty—can be construed as a form of ‘law-breaking’. The historical and institutional terrain is formidably complex, but in her superb treatment of ‘The Thirty and the Law’, Julia Shear finds that ‘the Thirty were serious about reforming the laws and producing a new *politeia* for the city’.<sup>44</sup> It is also suggestive that the forensic orator Lysias argues one of his cases from the fact that, during the regime of the Thirty, there was no ‘stronger authority (*archê ischyrotera*) in the city’.<sup>45</sup> That decrees of the Thirty interlock with the Athenian legal machinery is therefore a problematic, but still a reasonable conjecture to make.

This latitude with ‘law’ and ‘law-breaking’ is necessary to formalize the Socratic critique of law in the *Apology*, and thus to elucidate its most compelling aspects relative to our question.

### 3.1.2 A Socratic Axiom: ‘No Man Will Save His Life...’

With this said, the ‘truth’ of Socrates and the duplicity which it institutes as a free man’s relation to his city’s laws should perhaps be restated. Socrates himself restates it, before he moves into the terrain of points (ii) and (iii) in the above list.

In *Apology* 29, Socrates says that, while ‘no man knows death’,<sup>46</sup> yet ‘I *do* know that to be unjust and insubordinate to a superior, be he god or man, is shameful evil’.<sup>47</sup> Of the Socratic statements we have thus far reviewed—a citizen should only look to justice,<sup>48</sup> and a citizen should hold fast to his highest ideal<sup>49</sup>—this has the appearance of being the least critical. That it is not is signalled by Socrates’ formal designator, ‘a superior’. It is this designator that leads Socrates into his first real defiance of the Athenian law-court,<sup>50</sup> which I have anticipated in point (iii). I will return to this, Socrates’ threat of law-breaking.<sup>51</sup> But weightier than this threat is perhaps the past resistance to Athenian law—in its concrete operation—that

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<sup>43</sup>Canevaro (2016, 7).

<sup>44</sup>Shear (2011, 166–187, here 174).

<sup>45</sup>Lys. *Erat.* 29.

<sup>46</sup>Pl. *Apol.* 29a.

<sup>47</sup>Pl. *Apol.* 29b.

<sup>48</sup>Pl. *Apol.* 28b.

<sup>49</sup>Pl. *Apol.* 28d.

<sup>50</sup>Pl. *Apol.* 29b–30c.

<sup>51</sup>See Sect. 3.1.5, below.

Socrates' fidelity to justice has occasioned,<sup>52</sup> and with it, the divergence of law and justice that becomes visible in point (ii).

The Platonic conviction that law miscarries justice is successively muted and struck in the *Apology*.<sup>53</sup> It is somewhat muted at *Apology* 31, where Socrates simply parallels injustice and illegality, having first stated that he would have been put to death 'long before' his trial in 399 if he had intervened in Athens' affairs.<sup>54</sup> This is because:

No man will save his life who nobly contradicts you or any other multitude – a 'people'<sup>55</sup> – and prevents many unjust and unlawful (*adika kai paranoma*) things from occurring in his city.<sup>56</sup>

This is axiomatic in the Platonic corpus: a resolute insistence on justice and legality, in a democratic law-state, is *suicidal*.<sup>57</sup> Yet this Socratic axiom is still crude. At *Apology* 32, Socrates more sharply formulates the a priori injustice of the political:

He who means to actually *contend* for what is just, if he is to preserve his life for even a little while, must of necessity be a non-officeholder, not a politician (*idiôteuein alla mê dêmosieuein*).<sup>58</sup>

This, I suggest, is the melancholy axiom from which the Platonic reflection on law takes its departure: under any regime, a resolute insistence on justice is suicidal. The construction of 'necessity' (*anankaion*) here should be taken seriously: the dangers of such 'contention'<sup>59</sup> become thematic in Plato's *Gorgias* (Chap. 4), while Plato's *Laws* will *codify* this danger by rendering public criticism of his law-code a capital offence (Chap. 5).

Here in the *Apology*, however, this a priori rule concerning justice is demonstrated a posteriori, 'not by words but deeds'.<sup>60</sup> These deeds are Socrates', and at the same time as they shore up his dystopian axiom, they testify to his utopian mettle.

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<sup>52</sup>Cf. PL. *Apol.* 31c–33a.

<sup>53</sup>PL. *Apol.* 31d–32a.

<sup>54</sup>Cf. PL. *Apol.* 31d.

<sup>55</sup>Cf. PL. *Gorg.* 502d–e: 'the Athenian demos, or ... other assemblies of freemen in the various cities'.

<sup>56</sup>PL. *Apol.* 31e.

<sup>57</sup>Cf. the several, definite echoes at PL. *Rep.* VI 496c–e, VII 516e–517a. Slings (1994, 156) calls this 'a general principle'.

<sup>58</sup>PL. *Apol.* 32a. For the treacherous—and here, very free—term, 'politician', cf. Hansen 1983, 35–42: 'In fourth-century Athens the phrase ῥήτορες καὶ στρατηγοί is the nearest equivalent of what we with a much vaguer and less formal term call "politicians".'

<sup>59</sup>Cf. the phrase at PL. *Gorg.* 502e–503a: *diamachesthai legonta ta beltista*.

<sup>60</sup>Cf. PL. *Apol.* 32a, 32d.

### 3.1.3 *Socrates' Past: Law-Breaking in a Democratic City*

There is no romanticism of the 'sovereign *dêmos*' in Plato,<sup>61</sup> and both Socrates and the Socratic circle were charged with 'hatred of the masses' (*misodêmia*).<sup>62</sup> At *Apology* 32, Socrates refuses to flatter the democratic law-court of Athens. Rather, he reminds the bench of 500 or 501 citizen-judges<sup>63</sup> of a highly charged trial of eight Athenian commanders (*stratêgoi*) in the autumn of 406 BCE,<sup>64</sup> 'while the city was still under the democracy'.<sup>65</sup> Six of these commanders were put to death on the direct order of the court.<sup>66</sup> (One of those killed was Pericles, son of Pericles and Aspasia—who figures as a young man in Xenophon's *Memorabilia*.)<sup>67</sup> The other two were sentenced *in absentia* to death.<sup>68</sup>

By the time of Socrates' trial in 399, the citizen-judges' sentiments have shifted.<sup>69</sup> Socrates says that 'it later seemed to all of you' that the law-court's killing of six commanders had been 'illegal' (*paranomôs*). During the trial of 406, however, Socrates alone had denounced the court's order as unjust (*para to dikaion*) and unlawful (*para tous nomous*).<sup>70</sup> Therefore, he alone had contradicted the Athenian citizen-judges and opposed their resolution—which put him at risk of 'bonds or death'.<sup>71</sup>

Socrates states that he opposed this judicial mass-killing because it was unjust and illegal;<sup>72</sup> and in retrospect, Socrates' judges also regard it as 'illegal'.

<sup>61</sup>Scholtz 2004, 265. Paul Friedländer is less delicate: 'Athenian justice was held in great contempt by Plato' (1969, I:297).

<sup>62</sup>Montuori (1981, 186).

<sup>63</sup>MacDowell (1978, 202).

<sup>64</sup>Hansen (1975, 85) dates this trial to October or November 406.

<sup>65</sup>Pl. *Apol.* 32c. Cf. Burnet (1924, 210–213), and Socrates' mockery of Pericles' sons, Paralus and Xanthippus, at Pl. *Prot.* 315a, 319e–320a.

<sup>66</sup>Burnet (1924, 212).

<sup>67</sup>XEN. *Mem.* III 5.12–28.

<sup>68</sup>Hansen (1975, 84–86); Hamel (1998, 147).

<sup>69</sup>This seems to be confirmed by the tenor of one of Lysias' arguments: LYS. *Erat.* 36. The *terminus post quem* for this speech is 403 BCE (Usher 1999, 55 n. 6)—meaning that its date of composition is very close to Socrates' trial in 399. Several decades after Socrates' trial, when Isocrates remarks that 'in the past Athens has so deeply regretted the judgements which have been pronounced in passion ...', he appears to have in mind the trial of the *stratêgoi* in 406: ISOC. *Antid.* 19.

<sup>70</sup>Pl. *Apol.* 32a–b. Cf. Hansen (1975, 85): 'Only ὁ ἐπιστάτης τῶν πρυτάνεων, the chairman of this meeting of the Assembly Sokrates of Alopeke ... defies the people and is presumably replaced by another chairman'.

<sup>71</sup>Pl. *Apol.* 32c. Diogenes Laertius preserves the report of a nearly identical—and thus, presumably duplicate—stance taken by Plato in defence of a commander (*stratêgos*) who faced execution in Athens: 'Croblylus the informer met [Plato] and said, "What, have you come to speak for the defence? Don't you know that the hemlock of Socrates awaits you?"' (DIO. LAER. *Lives* III 23–24).

<sup>72</sup>Cf. the Athenian archons' oath at ARIST. *Ath.* 55.5: 'They swear they will rule justly (*dikaiôs*) and according to the laws (*kata tous nomous*)'. Socrates' oath figures prominently in Xenophon's recollections of this trial: XEN. *Mem.* I 1.18.

Nevertheless, he stresses that he faced court-ordered punishment—and apparently, death—during the trial of 406.

According to a light-hearted aside in Plato's *Gorgias*, the court erupted in laughter at Socrates' ignorance of procedural law at one stage of the trial.<sup>73</sup> But according to Xenophon's account of the trial, in *Hellenica* I, the court ultimately turned on him in anger. One sycophant—Lyciscus—proposed that Socrates should be handed over to the city's death-council, 'the Eleven', along with the commanders.<sup>74</sup> In a functional sense, then, Socrates is guilty of 'law-breaking' at the commanders' trial.<sup>75</sup> His highest ideal has set him against the supreme judges and enforcers of his city's law-code,<sup>76</sup> namely, the Athenian *ekklêsia*.<sup>77</sup>

Thus, his 'illegal' resistance to the Athenian law-court—as I put it in point (ii), above<sup>78</sup>—testifies, at once, to a democratic regime's injustice; to a divergence of law (the Athenian law-court's sentence) and justice (the eight commanders' innocence); to Socrates' fidelity to the ideal of justice; and finally, to the acute risks of such fidelity.

### 3.1.4 Socrates' Past: Law-Breaking in a Despotic City

Socrates' highest ideal, when stated negatively, is this: 'to do nothing unjust or unholy'.<sup>79</sup> When he defies the democratic law-court in 406 BCE because its decision is 'unjust', this cannot be reduced to his aristocratic sympathies. For in the year 404, as he then recounts,<sup>80</sup> Socrates also defies a brutal, short-lived oligarchy—the Thirty<sup>81</sup>—when it seeks to involve him in the extrajudicial killing of a certain Leon.<sup>82</sup>

<sup>73</sup>PL. *Gorg.* 473e–474a.

<sup>74</sup>XEN. *Hell.* I 7.8–15.

<sup>75</sup>PL. *Apol.* 32b.

<sup>76</sup>Cf. Hansen (1974, 19–21; 1975, 84–86; 1978a, 137–141).

<sup>77</sup>But Slings's remark on this passage is well founded: 'Athenian radical democracy, although constitutional in theory, was not so in practice, since the laws were not scrupulously observed, not even in matters of life and death for its citizens' (1994, 160).

<sup>78</sup>See Sect. 3.1.1, above.

<sup>79</sup>PL. *Apol.* 32d. Cf. PL. *Euth.* 14b, which contains an early formulation of 'the holy' as a force—and specifically, as an 'attendance on the gods' (*theôn therapeia* 13d)—which 'saves ... the communion of cities' (14b).

<sup>80</sup>PL. *Apol.* 32c–e.

<sup>81</sup>Krentz (1982, 64): 'The Thirty themselves were a body of the same size as the *gerousia* in Sparta. They wanted to keep their number at thirty ... [and] they intended to write their powerful position into law'.

<sup>82</sup>According to Xen. *Hell.* II 3.39, this is 'Leon of Salamis' (*Leontos tou Salaminou*). Cf. Krentz (1982): '[A] former general, Leon of Salamis, died in Athens'; and Slings (1994, 164): 'We have no certainty about the identity of Leon on Salamis' (my stresses).

The procedure, in this case, is of course different. Here, the oligarchs summon Socrates and several other Athenian citizens to their chambers in ‘the Rotunda’,<sup>83</sup> and direct them to seize this Leon, who is at Salamis. In the event, Leon is forcibly returned to Athens—and dispatched. But Socrates is not implicated in Leon’s death. For unlike the other citizens whom the Thirty commissioned with his capture, Socrates refuses to leave Athens.

That the procedure differs from the democratic trial in 406 to the oligarchs’ directive in 404, is immaterial. The principle is identical. In 406, a democratic law-court kills lightly a number of the city’s commanders; and in 404, a brutal clique kills lightly one of its disaffected citizens.<sup>84</sup> In 406, Socrates’ is the only negative vote in Athens’ council;<sup>85</sup> and in 404, he leaves the Rotunda with the others—but *he alone* does not leave Athens. Socrates refuses to cross the straits to apprehend Leon, and by his mere *remaining* at Athens, he spits in the regime’s face. He would likely have paid with his life for this defiance—on Plato’s telling, at least—‘if the oligarchy had not been overthrown shortly afterward’.<sup>86</sup>

Here again, Socrates is not ‘law-breaking’ *sensu stricto*. There is no reference to ‘law’ in these lines. Nevertheless, Socrates’ fidelity to justice over law is visible once the oligarchs’ directives are seen as ‘legalizing’ emergency orders.<sup>87</sup> (In *Memorabilia* I, for instance, Pericles states that ‘whatever a despot ... enacts is also known as a law’).<sup>88</sup> As with the democratic council in 406, when Socrates denounces a ‘legalizing’ court order out of fidelity to justice; so with the oligarchs in 404, when he refuses to enforce a ‘legalizing’ emergency order he regards as unjust—Socrates sets himself *athwart* the binding decisions of Athenian legal institutions.

Finally, a free man’s duplicitous relation to law in Plato’s *Apology* is rendered spectacularly clear by Socrates’ resistance to the Thirty. Socrates remains where he ‘stations himself’—namely, in Athens—*by refusing* to sail to Salamis, where he is ‘stationed by a ruler’.<sup>89</sup>

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<sup>83</sup>Riddell (1877, 85): ‘The building [in Athens] where the prytanes, and while they lasted the Thirty, daily banqueted and sacrificed’.

<sup>84</sup>I take ‘kills lightly’ here from Pl. *Apol.* 31a.

<sup>85</sup>Cf. XEN. *Hell.* I 7.15: ‘Then the [recusant] citizen-judges, struck with fear, agreed to put the question—all of them except Socrates, the son of Sophroniscus’.

<sup>86</sup>Pl. *Apol.* 32d. According to Krentz (1982, 152), the regime of the Thirty lasted from September 404 to October 403.

<sup>87</sup>Cf. Pl. *Rep.* I 338d–339a.

<sup>88</sup>XEN. *Mem.* I 2.43: *hosa tyrannos archôn, phanai, graphei, kai tauta nomos kaleitai*. That Alcibiades later compels Pericles to retract this statement is, for our purposes, immaterial.

<sup>89</sup>Pl. *Apol.* 28d.

### 3.1.5 *Socrates' Future: 'There Is no Man to Whom I Would Yield'*

As Socrates' past testifies, his highest ideal is not positive law. He is not a mere *subject* of the Athenian law-state in its concrete operation. The Athenian law-state is not Socrates' despot. Socrates says in his own *defence*, before the Athenian law-court, that the ideal of justice renders *inevitable* his insubordination to political officeholders—in a despotic, as in a democratic city. And it is also Socrates' highest ideal—to return to his threat of law-breaking, in point (ii)<sup>90</sup>—that constitutes the coded insubordination in his statement at *Apology* 29, where he declares that it is evil to be 'insubordinate to a superior'. For the identity of 'a superior', in Socrates' eyes, is not decided by law—but by justice.

A brutal oligarch is not Socrates' 'superior', and a venal citizen-judge is not his 'superior'. Indeed, as Socrates makes insultingly clear—the Athenian law-court *per se* is not his 'superior'. Plato prepares this insult in the *Apology's* prologue,<sup>91</sup> where Socrates asks the citizen-judges 'not to ... make a disturbance'<sup>92</sup> unless he speaks unjustly,<sup>93</sup> since this alone—justice, and injustice—should be their concern.<sup>94</sup> It is thus not accidental that a 'disturbance' occurs,<sup>95</sup> though it is not the first,<sup>96</sup> when Socrates defies the citizen-judges in the name of justice and 'the god', saying:

In these matters, men of Athens... dismiss me or do not. *There is no chance of my doing otherwise*, even if I am to die for it many times over. Please do not make a disturbance, men of Athens...<sup>97</sup>

That Socrates' defiance here—and with it, his closing defence—is alternately referred to the ideal of justice and an oracle of 'the god' is of no minor significance.<sup>98</sup> Still, this equivocation should not divert us. The *concrete* sense of

<sup>90</sup>See Sect. 3.1.1, above.

<sup>91</sup>Slings (1994, 180): 'The *Exordium* of the *Apology* is full of *topoi* which were commonly used in contemporary forensic oratory'.

<sup>92</sup>PL. *Apol.* 17d. And for 'disturbance' we could read: 'full-throated clamor' (Cairns 1942, 371).

<sup>93</sup>PL. *Apol.* 18a.

<sup>94</sup>Cf. LYS. *Alc. II* 8: 'You [citizen-judges] should reflect that you have sworn to decide according to justice (*ta dikaia gnōsesthai*)'.

<sup>95</sup>PL. *Apol.* 30c.

<sup>96</sup>Also at PL. *Apol.* 20e. Burnet comments: 'The dicasts would be amused [at 20e] by the heckling of Meletus, but to defy the Demos to do its worst [at 30c] was another thing' (1924, 205).

<sup>97</sup>PL. *Apol.* 30b–c.

<sup>98</sup>For Socrates' predecessors in this: Goldman (2009); and for his successors: Johnson (2009, 360 n. 47): '[The apostles] Peter and John, in fact, echo the words of Socrates when they declare before the Sanhedrin [= the supreme Judaic law-court of the first century CE]: "You judge whether it is righteous before God to obey you rather than to obey God" (Acts 4:19)'.



Socrates' saying, 'there is no chance of my doing otherwise',<sup>99</sup> is unaffected by his appeal to 'the god'.<sup>100</sup> The most rudimentary sense of Socrates' statement, which no appeal to 'love' or to 'the god' can expunge, is this: *regardless* of its legality, 'I shall never give up philosophy'.<sup>101</sup>

In saying this, Socrates threatens the law-court—the supreme council of the Athenian law-state—with *contempt*. And slightly later, he repeats this threat. 'Not only is there no man to whom I would yield... if that were unjust, but I would rather forfeit my life than yield'.<sup>102</sup> Socrates will not betray the *self*-resolved 'station' of philosophy, since *only an 'inferior'* could order him to betray it. 'I rouse you'—he says to the citizen-judges—'I persuade you, I upbraid you'.<sup>103</sup> All this is the effect of what Socrates calls his 'love of wisdom', or 'examining myself and others'.<sup>104</sup> And Socrates refuses to live in a law-state if he cannot subject its laws to this sort of actual—if para-political—critique.<sup>105</sup>

Thus, if the axiom that originally inspires the Platonic reflection on law is—as I suggest—that 'he who means to contend for justice, if he is to preserve his life for even a little while, must of necessity be a private citizen';<sup>106</sup> the resolution that accompanies the Platonic reflection on law is, from the outset: *regardless* of its legality, 'I shall never give up philosophy'.<sup>107</sup> Which is again to say this: Platonic philosophy takes its rise from, and survives within, the gravitation of a regime—that is, a law-state—that it regards as unjust.<sup>108</sup> As a consequence, the Platonic reflection on law takes its rise from a divergence of positive law and the ideal of justice.

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<sup>99</sup>Burnet (1924, 205).

<sup>100</sup>Cf. *Pl. Apol.* 37e; Opsomer (1998, 108): 'When [Socrates] says this, no one believes him: everyone thinks he is being 'ironical'. As irreverence towards the gods is ... one of the main charges on which he stands trial, the Athenians are not likely to believe him when he asserts that his conduct is the consequence of his obedience to God. The jurors will not accept this motivation. They will regard it as a mere pretext'.

<sup>101</sup>*Pl. Apol.* 29d. Slings (1994, 157) considers these 'defiant words ... to the jury' to be 'the most exalted moment of his defence'.

<sup>102</sup>*Pl. Apol.* 32a; English here *per* Burnet (1924, 210) (modified).

<sup>103</sup>*Pl. Apol.* 30e.

<sup>104</sup>*Pl. Apol.* 28e. Note the repeated phrasing at *Pl. Apol.* 38a.

<sup>105</sup>For 'para-political': *Pl. Apol.* 36b–c.

<sup>106</sup>*Pl. Apol.* 32a. This 'axiom' is heavily underscored at *Pl. Apol.* 32e, and again referred to at *Apol.* 36b–c.

<sup>107</sup>*Pl. Apol.* 29d.

<sup>108</sup>Cf. *Pl. Rep.* VI 494a, VI 497a–b: 'Not a single city as presently constituted (*tôn nun katastasin poleôs*) is worthy of a natural-born philosopher (*philosophou physeôs*)' (VI 497b).

### 3.2 *Apology* II: 'If You Had a Law ...'

As previously remarked,<sup>109</sup> Plato's *Apology* contains no explicit mention of Sparta's law-code. Nevertheless, during the counter-penalty phase of Socrates' trial—with which I opened the essay<sup>110</sup>—Socrates alludes to a non-Athenian law, saying:

Men of Athens ... we have conversed for so short a time. Now, I believe if you had a law (*ei ên hýmin nomos*), as other men do, that cases involving death should not be decided in a single day... you would be persuaded [of my innocence].<sup>111</sup>

This has every appearance of being an allusion to the legal customs of Sparta.<sup>112</sup> Given Socrates' reputation as an admirer of Sparta,<sup>113</sup> this provenance is hardly shocking.

What could give us pause, however, is this: Socrates suggests here that he stands condemned *as a result of* the citizen-judges' adherence to the Athenian laws—the duration of his trial is restricted to a single day—and yet, his appeal *is to a law*. Socrates' appeal is to a non-Athenian law, clearly; but this Spartan law is also introduced as a possible *future* law of Athens. That is to say, Socrates appeals to a *hypothetical* Athenian law, at the conclusion of his trial in an Athenian law-court. Despite the Platonic philosopher's critique of law, already in the *Apology*, a *critical revision* of Athens' law-code is already envisioned, and—in terms of Plato's corpus—instituted. Already in the *Apology*, that is to say, the Socratic critique of law is an *immanent* and *positive* critique.

The Socratic critique of law arises within the operative space of a democratic law-state, and anticipates a Platonic elaboration of hypothetical law-codes in his later dialogues (Chaps. 4 and 5). When Socrates says to his judges, '*If you had a law ...*', at the close of the *Apology*, he is very subtly introducing the work that Plato undertakes in his hypothetical legislations—the *Republic* and *Laws*.

### 3.3 *Crito*: A City Without Laws

Socrates' appeal to a Spartan law, in the *Apology*, seems to be flatly negated in Plato's *Crito*, when the Athenian Laws say to him:

<sup>109</sup>See Sect. 3.1.1, above.

<sup>110</sup>See Chap. 1.1.

<sup>111</sup>Pl. *Apol.* 37a–b.

<sup>112</sup>Riddell (1877, 96): 'The Lacedæmonians, for instance'; while Riddell (1877, 96) and Burnet (1924, 237) both reference the customary delay of Pausanias' prosecution and a procedural remark on trials at THUC. *Pelop.* I 132.5. Note, however, that while Plato uses the term 'law' (*nomos*) here, Thucydides does not.

<sup>113</sup>At Pl. *Prot.* 343a, Socrates describes Thales and Solon, *inter alia*, as 'lovers and disciples' (*kai erastai kai mathêtai*) of Spartan institutions.

You had *no desire* to acquire knowledge of other cities or other laws, but we [= the Athenian Laws] and this our city sufficed for you.<sup>114</sup>

Yet the Athenian Laws then negate this negation, saying:

You preferred [to live in] neither Sparta nor Crete, *which you often used to say were 'beautifully legislated'*,<sup>115</sup> nor any other cities, Greek or barbarian.<sup>116</sup> On the contrary, you left this city less often than the halt, the lame and the blind.<sup>117</sup>

This last observation—that Socrates was disinclined to leave his city—is less accidental than it appears. Indeed, it is integral to the *Crito*'s logic. For the Athenian Laws go on to say:

So the city pleased you to a degree surpassing all other Athenians – and thus, we also pleased you. For to whom would a city-state be pleasing without laws?<sup>118</sup>

We will return to this question. First, we must recall Demaratus' despot-law, whose 'command is always the same—the Spartans must never flee in battle... but must stand firm where they are stationed'.<sup>119</sup> In the *Crito*, some echo of this law still seems to be detectible—though it is here voiced by the Athenian Laws, who admonish Socrates:

And this is just: never to give way, never to desert, never to forsake your station, but in war and the law-courts and any other place to do what the city-state, your ancestral city, commands – that, *or persuade it* of what is intrinsically just. But it is unholy to use force ... against your ancestral city.<sup>120</sup>

Notice that Socrates' supplement to Demaratus' law has disappeared. In the *Crito*'s formulation, there is no principle of 'self-stationing'. Recall Socrates' wording in *Apology* 28d: 'Wherever a man *stations himself*, holding that to be best ... there he must, as it seems to me, stand firm and run the risks'.<sup>121</sup> Here, only Socrates' principle of legal ordering is stated: 'Wherever a man... *is stationed by his ruler*, there he must... stand firm'.<sup>122</sup>

<sup>114</sup>Pl. *Crito* 52b–c.

<sup>115</sup>And at Pl. *Rep.* VIII 544c, Socrates refers to the Cretan and Spartan polities 'which the masses praised'. Cf. Szegedy-Maszak (1978, 204): 'Among the Greek states, Sparta, Crete and Athens were particularly famed for their *eunomia*. Zaleucus, first to make a [Greek] written code [of laws], is said to have combined Cretan, Spartan and Areopagite usages. ... [The Spartan legislator] Lycurgus himself had travelled to Crete and is even alleged to have borrowed some laws from Thesean Athens'.

<sup>116</sup>For this sentence: Vlastos (1983, 499–500).

<sup>117</sup>Pl. *Crito* 52e–53a.

<sup>118</sup>Pl. *Crito* 53a.

<sup>119</sup>HEROD. *Hist.* VII 104.

<sup>120</sup>Pl. *Crito* 51b–c.

<sup>121</sup>Pl. *Apol.* 28d.

<sup>122</sup>Pl. *Apol.* 28d.

Is the *Crito*'s recollection of Demaratus' despot-law, then, a retraction of Socrates' truth?<sup>123</sup> That it is not is suggested, initially, by the fact that the phrasing of *Crito* 51 hews more closely to Socrates' restatement of his truth in *Apology* 38–39, than to its first articulation in *Apology* 28. Consider Plato's choice of words:

- (i) *Apol.* 38e–39a: 'neither in a law-court nor in war (*oute gar en dikêi out' en polemôi*) ought I or any man contrive to escape death by any means possible';
- (ii) *Crito* 51b–c: 'in war and in a law-court (*kai en polemôi kai en dikastêriôi*) and any other place [a citizen should] do what the city-state ... commands'.

Crucially, Socrates restates his truth in the *Apology* after he is sentenced, and precisely in defence of his defence. 'I would far rather die after such a defence', he says, 'than live with another one. For neither in a law-court nor in war ought I or any man contrive to escape death by any means possible'.<sup>124</sup>

Socrates no more retracts his defence in the *Crito* than he does in the *Apology*.<sup>125</sup> Still, in the *Apology*, where the self-stationing principle is stated, it refers decisively to his 'love of wisdom'. Regardless of its legality, Socrates says, 'I shall never give up philosophy'.<sup>126</sup> The self-stationing principle is no less evident in the *Crito*, but here it refers to Socrates' love of his city. Never one to 'visit the cities',<sup>127</sup> Socrates argues in the *Crito* that Athens is the city in which he has stationed himself.

The Platonic tradition in late antiquity did not lose sight of this decision. 'Unlike most philosophers', so Diogenes Laertius stresses, 'Socrates had no need to travel'. He preferred to 'stay at home and engage all the more contentiously (*philoneikoterōn*) in argument with anyone who would converse with him, his aim being ... to get at the truth (*to alêthes*)'.<sup>128</sup> Therefore, the *Crito* concludes with Socrates saying, in effect: regardless of the law-court's decision, 'I shall never betray this city'.<sup>129</sup>

Now, it is impossible here to retrace the arc of the *Crito*. But what is of prime importance for us in the Athenian Laws' prosopopoeia is this basic contention that Socrates has *stationed himself* in his city 'to a degree surpassing all other Athenians',<sup>130</sup> while his city has of course *judicially stationed* him in prison, to await execution.<sup>131</sup> For Socrates to flee prison, and his ancestral city, is thus for him to forsake his self-ordered and legal-ordered 'station'—and this, he will not do.

<sup>123</sup>Some of Holger Thesleff's comments on the *Crito*, a dialogue which he places 'at a considerable distance from the *Apology*', tend in this direction: Thesleff (1982, 208–209).

<sup>124</sup>Pl. *Apol.* 38e–39a.

<sup>125</sup>Cf. Montuori (1981, 239).

<sup>126</sup>Pl. *Apol.* 29d.

<sup>127</sup>Pl. *Soph.* 216c.

<sup>128</sup>DIO. LAER. *Lives* II 22. Cf. Vlastos (1983, 498): 'Like an infatuated lover, Socrates can hardly bring himself to part a single day from his beloved Athens'.

<sup>129</sup>Note the *caveat lector* here, 'in effect'. This is not a quotation, but a modulation of Socrates' statement at *Ap.* 29d: 'I shall never give up philosophy'. Cf. Pl. *Crito* 54b–e.

<sup>130</sup>Cf. Pl. *Crito* 52b, 53a.

<sup>131</sup>Once the ship has come from Delos: Pl. *Crito* 43c.

There is a further principle in the *Crito* of which we should note. I have remarked that Socrates' fidelity to justice 'stations him' relative to his highest ideal—namely, justice—and to a law-state's institutions. This constitutes Socrates' duplicitous—and in the event, fatal—relation to his ancestral city. In the *Crito*, as we have seen, Socrates says<sup>132</sup> that a citizen is 'to do what his ancestral city commands—that, *or persuade it* of what is intrinsically just. But it is unholy to use force ... against your ancestral city'.<sup>133</sup> In the *Apology*—in part, as he suggests, due to the brevity of his trial<sup>134</sup>—Socrates has failed to 'persuade' the Athenian law-court of his innocence.<sup>135</sup> Yet persuasion is clearly a mode of political critique that is countenanced—and indeed, insisted upon—by Plato's Socrates.

Similarly, *abstention* is a mode of contradiction that Socrates practiced under the democracy and the oligarchy. 'Force' or 'violence', to the contrary, is an 'unholy' mode of resistance—a *spurious* form of critique—within a citizen's ancestral city. Socrates' fidelity to justice precludes armed insurrection, or treason. In the *Crito*, the Athenian Laws portray Socrates' flight as treasonous—as a 'destruction' or 'corruption' of his ancestral city's law-code.<sup>136</sup> Since no city-state 'would be pleasing without laws'—so the Athenian Laws, here, imply<sup>137</sup>—Socrates' flight would itself corrode *the possibility of a city*.

This evocation of 'a city-state without laws' also suggests that at the source of all Platonic legislation is a memory and a fear of discordant, brutalizing force within a city—of factional rivalries, purges, and so on. In its disavowal of all violence against the 'ancestral city', the Socratic critique of law subjects itself to a law-state that it conspicuously and unrepentantly subjects to rational critique. The Platonic philosopher thereby risks—not the law-state, and not his highest fidelity—but his life.<sup>138</sup>

And this, finally, is the relevant set of contrasts. Having been driven into exile, Demaratus sought revenge against Sparta—his ancestral city—as Xerxes' strategist.<sup>139</sup> Alcibiades, living in forced exile, vaunted his 'city-love' (*philopolis*) to the Spartans—in order to advise them against his ancestral city.<sup>140</sup> Socrates awaited the ship from Delos, and then took the poisoned cup.

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<sup>132</sup>Or rather, Plato has Socrates *ventriloquize* this statement by the Athenian Laws.

<sup>133</sup>Pl. *Apol.* 51b–c.

<sup>134</sup>See Sect. 3.2, above.

<sup>135</sup>Cf. Pl. *Apol.* 37b.

<sup>136</sup>Cf. Pl. *Crito* 53b, 53c.

<sup>137</sup>Pl. *Crito* 53a, quoted above.

<sup>138</sup>Cf. Pl. *Crito* 49a–e, 54b–c; Pl. *Apol.* 41b.

<sup>139</sup>HEROD. *Hist.* VI 61–70.

<sup>140</sup>THUC. *Pelop.* VI 88–93. In the *Apology*, Socrates mocks Meletus' claim to 'love his city': Pl. *Apol.* 24b.

## Chapter 4

# A Critique of Law and the First Platonic Law-Code

**Abstract** In one of his middle-period dialogues, *Gorgias*, Socrates says this: ‘I, being but one man, *dissent*.’ The question of dissent is of fundamental importance to Plato’s legal theory. And this question likely receives its most rigorous treatment in the *Gorgias*, where the validity of the law-state is most fiercely contested. One of the dialogue’s speakers, Callicles, asserts that positive law is intrinsically decadent. Violence is the only instrument of real justice. The law-state’s suppression of violence is necessarily a perversion of justice. Socrates’ rebuttal of this thesis is exceedingly subtle—and has lost none of its trenchancy. In this chapter, I interpret Callicles’ attack on the law-state, and Socrates’ skilfull reply, as a sign that Plato is preparing to depict his ideal law-state in the *Republic*. In that middle-period dialogue, Plato conjures a city in which the operations of a law-state would finally coincide with the proportions of justice. But even *that* city’s law-code, he admits, would not be perfect.

### 4.1 *Gorgias* I: Callicles and the Law of Violence

Xerxes’ reappearance at the close of Chap. 3 leads to our first question in the *Gorgias*: ‘By what sort of justice did Xerxes invade Greece?’<sup>1</sup> The question is put to Socrates by an Athenian aristocrat, Callicles of Acharnae, who perceives a high and archaic law in the *fact* of the tectonic masses—according to Lysias, a force of 500,000 men—that ‘the King of Asia’ could deploy in the Persian Wars.<sup>2</sup> This invasion itself demonstrates, for Callicles, a law—and a mode of justice—that I will call, simply, *the law of violence*.<sup>3</sup>

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<sup>1</sup>Pl. *Gorg.* 483d.

<sup>2</sup>Lys. *Epit.* 21: ‘For the King of Asia (*tês Asias basileus*), not content with the wealth that he possessed, but hoping to reduce Europe to slavery (*elpizôn kai tèn Eurôpên doulôsesthai*), mobilized an army of 500,000.’ Andrea Tschemplik drily observes: ‘That Callicles would appeal to Xerxes is strange indeed, given the outcome of the battles at Plataea and Salamis’ (2008, 82).

<sup>3</sup>Cf. AESCH. *Tim.* 5, for instance, on ‘those who attempt to destroy the constitution *by the law of violence* (*en cheirôn nomôi*)’.

Callicles cites Pindar to reinforce this law which, despite certain terminological innovations in the passage,<sup>4</sup> is postulated as the oldest law in effect.<sup>5</sup> Pindar sings:

Law, sovereign of all,  
of mortals and immortals ...  
Takes with supreme violence,  
with the high hand, rendering it just.<sup>6</sup>

We should first observe that ‘supreme violence’ is here the supreme law,<sup>7</sup> not of human nature uniquely,<sup>8</sup> but of archaic nature, elemental nature.<sup>9</sup> Pindar’s ‘supreme violence’ is sovereign-law of the material and bestial, of the human and divine. Its jurisdiction, its law-state, coincides with ‘the all’ (*to pan*).<sup>10</sup> A physical justice, says Callicles, is the fulgurous effect of this physical law.<sup>11</sup> And since this law is

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<sup>4</sup>Namely, with Callicles’ expression *nomon ton tês physeôs* (Pl. *Gorg.* 483e), which is typically rendered as ‘natural law’ or ‘the law of nature’. Dodds (1959, 268) calls this ‘a new and paradoxical phrase’, with ‘the nearest approach to it in earlier literature [occurring] at Thuc. 5. 105. 2’; and then specifies that the phrase ‘is not to be confused ... with “natural law” in the Stoic sense (the term seems to be first used in that way by Aristotle, *Rhet.* 1373<sup>b</sup>6)’.

<sup>5</sup>The Melian Dialogue (Thuc. *Pelop.* V 84–116) is frequently cited in this connexion (e.g. Mayhew 2011, 317 n. 19), and with reason: ‘We neither enacted this law (*oute thenes ton nomon*), nor were we the first to use it ... and we expect to leave it in existence for all time (*aiei*)’ (*Pelop.* V 105.2).

<sup>6</sup>Pl. *Gorg.* 484b = Pindar fr. 169a. For remarks on this Platonic quotation and an attempted reconstruction of Pindar’s poem: Ostwald (1965, 110–112, 122–123). Dodds translates: ‘Law, which is king of all, both mortal men and immortals, conducts the uttermost violence with the hand of power, making it just’ (1959, 270); Pearson: ‘Law, the king of all, of mortals and immortals alike, leads with sovereign hand the act of violence and makes it just’ (1962, 204); Ostwald: ‘Nomos, king of all, mortals and immortals, brings on with sovereign hand what is most violent and makes it just’ (1965, 117).

<sup>7</sup>Note that ‘violence’ (*bia*) tended to be defined in the Platonic milieu as ‘lawlessness’ (*anomia*)—as at, for instance, Xen. *Cyro.* I 3.17: ‘What is lawful (*nomimon*) is just (*dikaion*), and what is unlawful (*anomon*) is violent (*biaion*).’

<sup>8</sup>Cf. Pl. *Laws* IX 854a: *anthrôpinês physeôs*.

<sup>9</sup>The use of ‘nature’ (*physis*) here derives from Callicles, not Pindar. As Ostwald cautions: ‘The Plato-Callicles interpretation [of Pindar, fr. 169] bears the stamp of the νόμος-φύσις controversy, which did not flourish until several decades after Pindar’s death, and it is hazardous to retroject [φύσις] into Pindar’s poem’ (1965, 123).

<sup>10</sup>Cf. Ostwald (1965, 118): ‘Pindar begins with two assertions. In the first place, νόμος is king not only over men but even over the gods, and secondly, it is powerful enough to make just what is elsewhere in Greek thought regarded as the very opposite of justice, namely violence. ... We are not told, however, in what way νόμος makes this βιαιότατον just.’

<sup>11</sup>Cf. Pl. *Gorg.* 484b: *physeôs dikaion*; 483e: *nomon ... physeôs*. Callicles is rapidly forced to contradict his initial, corporeal interpretation of the law of violence (Pl. *Gorg.* 488b–490a), which is the interpretation that I develop here. In time, Callicles concedes to Socrates that ‘technique’ is a precondition of governance (*Gorg.* 500a). I have ‘physical justice’ and ‘physical law’ precisely because my exposition follows out this first, corporeal interpretation of Callicles’ *nomos basileus*, which is at variance with the connotations of later terms such as *lex naturalis*. To stress the genetic rudiments of ‘nature’ (*physis*), however, I will often render *kata physin* as ‘natural-born’, ‘connatural’, and ‘innate’. For a subtle analysis of the sense-complex, ‘physical

‘supremely potent’ or ‘violent’ (*biaiotaton*), its effect is a ‘natural-born’ or ‘intrinsic’ (*kata physin*) logic of domination and abjection.<sup>12</sup> That is to say: the corollary and mirror image of ‘supreme violence’ is absolute *subjection*.

This phenomenon of subjection at once discloses and *is* Callicles’ physical justice,<sup>13</sup> a unitary principle which necessarily effects this duplicity: a body that ‘takes with supreme violence’, and a body that is so taken. Callicles’ idea of justice reduces to a mute clash that is decided by brute force, and that therefore—he says—purely decides the ‘superior’ and ‘inferior’.<sup>14</sup> Supreme violence is Callicles’ highest ideal, and *vice versa*.<sup>15</sup> And for Callicles, as in Pindar’s fragment,<sup>16</sup> the sway of this law is pre-eminently revealed by the living—by humans and beasts, by the deathless gods.<sup>17</sup> It is not merely a law of corpuscular motion, but of life, glory and possession.<sup>18</sup> It flares out from ‘the centres of the city’.<sup>19</sup>

Yet Callicles’ law of violence, this ‘king of all things’ (*pantôn basileus*), can strangely be defied. The super-potent law of violence can be transgressed—though not by force, and not by weakness *per se*. It is innate (*kata physin*) and legitimate (*kata nomon*), for instance, for a war-captive to be violated, sold, or destroyed by a captor.<sup>20</sup> But in *the force of law*, and in philosophy, Callicles detects decadent (*para physin*) ‘forces’ which corrupt the pristine operation of the law of violence.

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(Footnote 11 continued)

justice’ (*physei dikaion*), in Callicles and his sophistic predecessors: Wolf (1952, II:76–139, esp. II:120–128).

<sup>12</sup>PL. *Gorg.* 483e.

<sup>13</sup>PL. *Gorg.* 484c; cf. PL. *Laws* IV 714c.

<sup>14</sup>PL. *Gorg.* 484c. And one can of course hear in this HERAC. *Fr.* 53 (Diels): ‘War is ... king of all (*pantôn de basileus*), and some ... he has made slaves, others free’, which is preserved in Hippolytus’ *Refutatio*; and HERAC. *Fr.* 80 (Diels): ‘One must realize that ... Conflict is Justice (*dikên erin*)’, from Origen’s *Contra Celsum*.

<sup>15</sup>Cf. the Athenian legislator’s allusion to Pindar in PL. *Laws* X: ‘poets ... assert that the summit of justice (*dikaioataton*) is to vanquish by force (*nika biazomenos*)’ (890a). But also note the legislative harmony of force and justice in Solon’s exultant stanza: ‘These deeds I made prevail/Conjoining force to justice (*biên te kai dikên synarmosas*) .../And ordinances alike for base and noble/Fitting straight justice unto each man’s case/I drafted’ (ARIST. *Ath.* 12.4).

<sup>16</sup>Socrates, however ironically, yields Pindar to Callicles at PL. *Gorg.* 488b: ‘Repeat to me what you and Pindar hold this physical justice to consist in: is it that the stronger should forcibly seize what the weaker possess, the superior rule the inferior?’

<sup>17</sup>Cf. the Athenian legislator’s gloss in PL. *Laws* III, where Pindar is ‘supremely wise’ (*sophôtate*) and the Pindaric sovereign-law is ‘ascendant among all *living things*’ (III 690b–c).

<sup>18</sup>Cf. PL. *Gorg.* 486d.

<sup>19</sup>Cf. PL. *Gorg.* 485d.

<sup>20</sup>Cf. PL. *Gorg.* 483a–b.



### 4.1.1 Law and the Forces of Decay

The force of law in a city-state, for Callicles, signals a base usurpation of force by the demos. Legislation is a decadent yet effective instrument devised by the masses to survive, unenslaved, in a city.<sup>21</sup> The force of law is thus, for Callicles, a *screened weakness*: the perverse and elaborate subjection of natural-born ‘captors’ to a multitude of natural-born ‘captives’. And importantly, this denaturing of the captors in a city—a condition of possibility of the force of democratic law—requires that the captors’ *memory* of the law of violence be repressed, if not effaced, by ‘writings and conjurings and charm-songs and laws, all of which are decadent’.<sup>22</sup> Callicles’ derisive linkage of ‘charm-songs and laws’ will—suggestively—become a positive motif in Plato’s *Laws*.<sup>23</sup>

But the philosopher, for Callicles, is a more decadent creature still than the democratic legislator, for his is not a species of the captive’s innate weakness; nor yet of the legislator’s calculating, screened weakness; but rather of a *cultivated, declared* weakness. The philosopher represents a willed,<sup>24</sup> persistent, and self-incurred defencelessness in the city. And whereas Callicles indicates that democratic legislators tend to be natural-born captives, he suggests that the philosopher may well be a natural-born captor,<sup>25</sup> who is corrupted *by* philosophy:

When I see an older man still involved in philosophy and not turning from it – that, Socrates, is the man I think should be flogged. For ... this man, even if he is superior by birth, is bound to become degenerate.<sup>26</sup>

Philosophy is thus, for Callicles, an injurious practice which reduces a natural-born ‘free man’ to impotence in the face of the ‘gravest threats’ to himself and his kin.<sup>27</sup> The philosopher marks the very limit of decadence since he, a natural-born captor, wilfully ‘lives on’ in his city-state without recourse to the law of violence *or* to the democratic law-courts,<sup>28</sup> which is to say, that the philosopher courts execution. This conclusion, which is explicitly and repeatedly linked to the *Apology*—and the whole of the *Gorgias* lies under the pall of Socrates’ death<sup>29</sup>—is

<sup>21</sup>Pl. *Gorg.* 483b: ‘Legislators are the weaker men’—but then, they are ‘numerous’.

<sup>22</sup>Pl. *Gorg.* 484a.

<sup>23</sup>Pl. *Laws* VII 812c: ‘charm-singing the souls of the young’; VIII 840b–c: ‘from infancy ... charming them ... with enchanting myths and speeches and songs’. And the Athenian legislator states specifically that such a ‘forgetting’ is one of a legislator’s *desiderata* (VII 798a–b). Morrow’s discussion of ‘chants’ and ‘enchantments’ is illuminating: Plato is ‘deliberately emphasizing a definite technique’ of persuasion (1960, 309–314).

<sup>24</sup>Pl. *Gorg.* 469a–c deftly undermines any ‘masochistic’ reading of Socrates’ defencelessness.

<sup>25</sup>Cf. Pl. *Gorg.* 485e–486a.

<sup>26</sup>Pl. *Gorg.* 485d.

<sup>27</sup>Pl. *Gorg.* 486b.

<sup>28</sup>Pl. *Gorg.* 486c.

<sup>29</sup>Cf. Pl. *Gorg.* 454a–b, 471e–472c, 473e–474b, 486a–c, 508a–e, 521b–522e.

not without interest. But our guiding question is the flux of law, so it should be asked: How are the *Gorgias*' depictions of law related to legal flux in the Platonic corpus?

### 4.1.2 *Flux and the Law of Violence*

In its pristine operation, Callicles' law of violence should result—in a *political* sense—in the purest lawlessness (*anomia*). Force, for Callicles, is the sole condition of superiority. Superior force can only be revealed, with any finality, in a clash of forces. Yet only a clash that ends in the annihilation of an inferior force can be final—and that, only as regards a corpse. In a city of the living, the unrestrained procession of Callicles' supreme law would effect, not a flux of law, but lawless flux. Such a city of the living, however, rapidly becomes a city of the dead. And in the *Laws*, Plato has not forgotten the possibility of such a *descensus*. Lawless flux constitutes, for him, an ineradicable threat within a city.

That it is ineradicable, Plato indicates in his turn, in *Laws* IX, to laws regarding the 'most impious' forms of slaughter,<sup>30</sup> for which 'it is a menacing and repugnant task to legislate, yet impossible not to legislate'.<sup>31</sup> This is because such outrages 'occur for the most part in misgoverned cities', but still 'occur at times in a territory where one would not expect them'.<sup>32</sup> Thus, in the next phase of his legislation, where Plato transitions from penalties for slaughter to penalties for the infliction of 'wounds and mutilations' in his prospective colony, Magnesia, his preliminary warning to the colonists opens in this way: 'It is necessary for humans to lay down laws for themselves and to live according to laws (*kata nomous*), or they in no way differ from the most savage beasts.'<sup>33</sup>

The Calliclean law of violence, we will recall, valorizes an archaic indistinction: the gods, humankind, and the 'most savage beasts' *alike* live in thrall to a logic of conflict and consequent subjection, in the flux of an undecieved and undecieving ascendancy of super-potent force. In *Laws* IX, the second Platonic law-code will constitute itself—and will appear to authorize legislation as such—as a defence against the spectre of this very indistinction.<sup>34</sup> Platonic law is set in force in order to

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<sup>30</sup>Pl. *Laws* IX 872d. Victoria Hunter examines Plato's 'enumeration of "the most serious" offences open to prosecution' in *Laws* IX relative to the 'core idea of criminal law ... embodied in Athenian legal thinking' (2009, 2–3).

<sup>31</sup>Pl. *Laws* IX 872c; cf. VII 788c: 'The result is an intense difficulty as to what to legislate concerning these things, yet it is impossible to remain silent'.

<sup>32</sup>Pl. *Laws* IX 872d.

<sup>33</sup>Pl. *Laws* IX 874e–875a. England clarifies: "It is a necessity for mankind to make themselves laws"—not "it is necessary to give men laws" (1921, II:428).

<sup>34</sup>Though Socrates will rehabilitate something of this 'indistinction' in the *Republic*, when he proposes to eradicate 'marriage' and 'filiation' in his city and to institute a sexual common-sphere (*koinônia*) 'among men, as among other living things'—and specifically, as in 'a pack of dogs'

separate a citizen from ‘the most savage beast’. The Calliclean law of violence is thus what forces the Platonic legislator’s hand.<sup>35</sup> The spectre of lawless flux is what validates any human—or at least, any Platonic—legislation. And Callicles would agree, at least, with this: the force of law is a *reactive* force.<sup>36</sup>

### 4.1.3 Flux and the Force of Law

In the *Gorgias* as in the *Laws*, Plato regards any appeal to the law of violence as repugnant and incoherent. The force of law is, for Plato, *per se* superior to the law of violence. Nevertheless, in the *Gorgias*, a Platonic critique of the force of law—or, better, of the *democratic* force of law—is discernible, and is essentially linked to its reactive character. Indeed, a Platonic critique of law is already in evidence in the *Crito*, where ‘the multitude’<sup>37</sup>—and Socrates includes its legislation here<sup>38</sup>—can only act and *enact* ‘by chance’, which is to say, reactively.<sup>39</sup> And while this critique still lacks in the *Gorgias* the formal articulation it attains in Plato’s *Politicus*, it is perhaps in the *Gorgias* and *Republic* that Plato is most sensitive to, and most concerned with, legal-juridical flux as an effect—a *negative* effect—of a democratic law-state’s volatility.

This hyphenated descriptor, ‘legal-juridical’, is a significant one in the *Gorgias*.<sup>40</sup> For, in his preliminary interrogations of a pair of sophists from the Greek colonies at Sicily—namely, Gorgias of Leontini and Polus of Acragas<sup>41</sup>—Socrates introduces the following division of a law-state. It is constituted by

- (i) legislation (*tên nomothetikên*); and by
- (ii) court-process or the satisfaction of justice (*tên dikaiosunên*).<sup>42</sup>

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(Footnote 34 continued)

(*hōsper kynas* Pl. *Rep.* V 466d). Nails (2012, 4, 4 n. 10) provides references on the *Republic*—or ‘proto-*Republic*’—in connexion to Aristophanes’ *Ecclesiazusae*.

<sup>35</sup>Cf. Pl. *Laws* IX 880d–e.

<sup>36</sup>Hölkeskamp (1992, 75): ‘The character of early [Greek] legislation as an instrument of acting, or rather reacting, directly to concrete necessity may explain the character and contents of the overwhelming majority of extant early laws.’ (My emphases.)

<sup>37</sup>Pl. *Crito* 48c.

<sup>38</sup>In both of the passages I cite here: Pl. *Crito* 44c–d, 48d.

<sup>39</sup>Pl. *Crito* 44d. I take up the role of chance in Platonic legislation in Sect. 5.2, below.

<sup>40</sup>Cf. Hansen (1981, 351–357).

<sup>41</sup>Cf. Pl. *Gorg.* 461b–481b.

<sup>42</sup>Pl. *Gorg.* 464b. Cf. Pl. *Apol.* 26a, where ‘it is not the law’ to prosecute involuntary errors in a law-court, ‘but rather to instruct and admonish’. ‘It is the law’ to prosecute ‘those in need of punishment, not instruction’.

But for a ‘court-process’ to result in a ‘satisfaction of justice’—and *dikaiosunē* carries both meanings,<sup>43</sup> a point of primary concern in the *Gorgias*, no less than the *Apology* and *Crito*<sup>44</sup>—this process must, if it observes the legal forms (*kata tous nomous*), be regulated by a *rational* law-code. Court-ordered injustice (*adikia*), that is to say, can result from a law-court’s adherence to a bad law-code, or from its breach or misapplication of a rational one.<sup>45</sup> Thus Socrates can attribute his conviction to Athens’ citizen-judges, and absolve the city’s law-code, in the *Crito*.<sup>46</sup> Judicial injustice can reflect an operative, and not a legislative failure.

But if Callicles regards the force of law as such—in its legislative *and* operative phases—as a decadent (*para physin*), screened weakness; the *Gorgias*’ Socrates sees in the demos’ susceptibility to illegal (*para nomon*), hedonistic ‘persuasion’, a danger that—to the contrary—the force of law can become a screen *for the law of violence*. For instance, and despite the fact that the sentence is Callicles’, an essentially criminal legislation will ensue—this is what Plato implies—if ‘a pack of low-lives’<sup>47</sup> were to convene and declare that their word is ‘a binding legal ordinance’.<sup>48</sup> Since the pristine law of violence ushers in a state of lawless flux, then a city in which the force of law serves as a ‘screen’—a procedural indirection of, and cynical technique for, the release and satisfaction of a *less* pristine law of violence—this city would be subjected to an essentially *reactive* flux of law. Law, in such a city, would shift to reflect the ceaseless swell of forces within it—and thus, at base, would never refer to the idea of justice. This could be called an *impure force of law*, and its ‘impurity’ will not go unnoticed in the *Gorgias*.

## 4.2 *Gorgias* II: Socrates and the Force of Contradiction

For Plato, the force of law can only transcend the law of violence insofar as a city’s legislators and citizen-judges have fortified a limit and a height that demarcates them *from within* from ‘the most-savage beasts’.<sup>49</sup> In the *Gorgias*, Socrates likens Athens’ democratic legislators and citizen-judges, not to such men, but to

<sup>43</sup>Cf. Stephanus (1954, III:1478), Liddell and Scott (1996, 429).

<sup>44</sup>Cf. ARIST. *Polit.* I 1253a38–40: ‘Justice is political; for court-process, which means the decision of what is just (*tou dikaiou krisis*), is the regulation (*taxis*) of the political common-sphere.’

<sup>45</sup>The latter point is stated with exemplary clarity at AESCH. *Tim.* 36.

<sup>46</sup>PL. *Crito* 54b–c.

<sup>47</sup>PL. *Gorg.* 489c. Dodds comments on *syrphetos*: ‘lit. offscourings, scum of the earth, is an index of [Callicles’] acute class-consciousness’ (1959, 287).

<sup>48</sup>PL. *Gorg.* 489c. Dodds translates: ‘and if these persons express some opinion, that is law’ (1959, 287). There is no anticipation, here, of the later Roman commonplace—which has a special salience in the later writings of Augustine of Hippo—that ‘even criminal gangs have a code of laws to observe and obey’: CIC. *Offic.* II 11.40.

<sup>49</sup>PL. *Laws* IX 874e–875a.

increasingly wild beasts.<sup>50</sup> To halt this process of bestialization, Socrates seeks to identify the condition for and source of a *pure force of law* in his ancestral city, and—in the absence of such a force of law—of a pure force of *contradiction*.

And we are not yet clear of the Spartan exile in Xerxes' retinue, Demaratus. For we may recall from Chap. 3 his question to 'the great King',<sup>51</sup> after the vast Persian legions have made the crossing into Europe, 'under the lash'.<sup>52</sup> Demaratus' question is this: Is Xerxes seeking pleasure, or the truth?<sup>53</sup> This is a Socratic question that increasingly comes to the fore in the *Gorgias*: Will Callicles seek his pleasure—or truth? Will he serve a tyrant's or the demos' pleasure—or truth? That is to say, what will Callicles *circulate* in his ancestral city and its law-courts—truth, or flattery (*kolakeia*)?<sup>54</sup> Demaratus' politic, yet basically servile question to Xerxes,<sup>55</sup> is also *precisely* the question that Socrates refuses to put to his city's demos—and, at his trial, to Athens' citizen-judges. Thus, in the *Apology*, Socrates swears that the law-court will hear 'the whole truth' (*pasan tēn alētheian*) from him,<sup>56</sup> and then says after his sentencing:

I have been convicted for a lack – not a lack of words,<sup>57</sup> but a lack of brazen shamelessness, a refusal to say the things you would find it *pleasurable to hear*.<sup>58</sup>

And in the *Gorgias*, Socrates' reformulates the pleasure/truth opposition in this way:

For my part I say that it is flattery whenever a man – regarding body, soul or anything else – attends to pleasure without reflecting on what surpasses pleasure.<sup>59</sup>

Flattery is an 'attendance upon' (*therapeia*) pleasure to the neglect of pleasure's 'superior' (*ameinon*). And flattery is the basic mode of speech that is cultivated—as Demaratus' question, for us, and the Greek sophists' behaviour, for Socrates,<sup>60</sup> alike indicate—wherever what we may call the *impure law of violence* (a despot), or the *impure force of law* (a demos), are in the ascendancy. In the *Gorgias* and the *Apology*, Socrates represents a perilously *impolitic* mode of speech—namely,

<sup>50</sup>PL. *Gorg.* 516c: *agriôterous*.

<sup>51</sup>Cf. PL. *Gorg.* 470e: *ton megan basilea*.

<sup>52</sup>HEROD. *Hist.* VII 56. And for 'the lash' as a politicized motif in this section of the *Histories*: Forsdyke (2001, 347–354).

<sup>53</sup>HEROD. *Hist.* VII 101.

<sup>54</sup>Dodds (1959, 225): 'κόλακείαν is conventionally translated "flattery", but the Greek term applies to a wider range of actions and also carries a more emphatic implication of moral baseness (cf. [PL. *Gorg.*] 521 b 1–2).'

<sup>55</sup>Cf. PL. *Gorg.* 518a: 'slavish and menial and unfree'.

<sup>56</sup>PL. *Apol.* 17b.

<sup>57</sup>As Callicles 'predicts' at PL. *Gorg.* 486b.

<sup>58</sup>PL. *Apol.* 38d. Cf. PL. *Gorg.* 522d: 'If I came to my end through a lack of flattering rhetoric (*kolakikēs rhētorikēs*) ...'.

<sup>59</sup>PL. *Gorg.* 501c.

<sup>60</sup>PL. *Gorg.* 502d–503e.

contradiction. Yet his contradiction is not essentially ‘political’. Its basic concern is not despot, demos or city. Rather, it is the possibility of *truth*—and with it, the idea of justice: Socrates’ highest ideal.

Already in his discussion of flattery with Gorgias of Leontini, towards the beginning of the dialogue bearing that sophist’s name, Socrates condemns as flattery (*kolakeia*) any rhetoric that is finally directed, not at ‘what is excellent’, but at ‘what is pleasurable’.<sup>61</sup> In the later, Calliclean sections of the *Gorgias*, Socrates opposes a rhetoric which is not ‘directed at the highest ideal’, but at a lower sort of ‘indulgence’, to a rhetoric that ‘strives and contends to say what is most excellent, regardless of whether it is pleasurable ... to hear’.<sup>62</sup> This rhetorical division apropos of pleasure—a rhetoric of contention versus a rhetoric of indulgence—precisely mirrors a division that should obtain *within* Platonic rhetors, as *within* Platonic legislators and citizen-judges.

A ‘self-superior’ citizen attends to present pleasures in light of future time and a high ideal; a ‘self-inferior’ citizen<sup>63</sup> indulges present pleasure *as* present pleasure.<sup>64</sup> Such indulgence subjects the hedonistic rhetor or legislator, citizen-judge or autocrat, to a bestial foreshortening of temporal horizons, and a brutal effacement of legislative horizons.

### 4.2.1 *Self-resistance and Self-superiority*

And we are still not clear of Demaratus. For Socrates here characterizes his ‘self-superior man’ as one who will not ‘improperly pursue or flee ... things or people, pleasures or pains’, but will ‘stand firm and persevere wherever he must’.<sup>65</sup> The shape this formulation takes should by now require no comment.<sup>66</sup> But the insertion here of ‘pleasures and pains’ (*hêdonas kai lupas*) is consequential, and not only because these terms recur in a parallel formulation in *Republic* IV.<sup>67</sup> Nor because, as the Athenian legislator says in *Laws* I, any reflection on law is at root a reflection on ‘pleasures and pains’ (*hêdonas kai lupas*).<sup>68</sup>

Our interest, here, is also with how this phrase deepens and renders explicit what is contained in the *Gorgias*’ ‘stand firm’—as in the ‘stand firm’ of Demaratus’ law in the *Histories*, and of Socrates’ truth in the *Apology*.<sup>69</sup> Namely, that self-resistance

<sup>61</sup>PL. *Gorg.* 464e–465a.

<sup>62</sup>PL. *Gorg.* 502e–503a.

<sup>63</sup>PL. *Gorg.* 507c.

<sup>64</sup>Cf. PL. *Gorg.* 501a–c.

<sup>65</sup>PL. *Gorg.* 507b.

<sup>66</sup>See Chap. 3, and Supplement 1b, at the back of the volume.

<sup>67</sup>PL. *Rep.* IV 429c–d.

<sup>68</sup>PL. *Laws* I 636d. Cf. *Laws* I 633c–634a.

<sup>69</sup>Cf. HEROD. *Hist.* VII 104; PL. *Apol.* 28d; PL. *Gorg.* 507b. But see the mystagogic sense of ‘remaining’ at PL. *Crat.* 403c: ‘Which is the stronger bond upon any living being to keep it in any

is never a pure force, or a positive force. Rather, self-resistance is a *counter*-force in which what is resisted—pleasure and pain—has a certain temporal, if not ontological, primacy.<sup>70</sup>

Yet such *self*-resistance, in Plato's *Gorgias*, is the *conditio sine qua non* of a pure force of law. This becomes clear at the point of the dialogue at which Socrates manoeuvres Callicles out of the grandiose terrain of 'supreme violence' and into the more intimate terrain of 'pleasure'—as at a similar point of transition from city-state (*polis*) to soul (*psychê*) in *Republic* IV.<sup>71</sup> The *Gorgias* passage is this:

SOC. Each is his own ruler. Or is there no need to rule oneself, but only others?

CALL. What do you mean by ruling oneself?

SOC. Nothing arcane. Just what the masses mean. One who is self-possessed and self-mastered, a ruler of the pleasures and desires that are in oneself.<sup>72</sup>

In this terse exchange, we glimpse the *Gorgias*' basic critique of Callicles' law of violence. While this critique may not wholly deliver us from the spectre of 'supreme violence',<sup>73</sup> it counters Callicles' interpretation of archaic law by *self*-instituting a form of law.<sup>74</sup> This is a Platonic law that operates and holds sway within the singularity of a 'self' (*autos*),<sup>75</sup> or within—as the *Republic* later puts it—the very innate or connatural force by which we live.<sup>76</sup>

In the *Republic*, Socrates' expression in this *Gorgias* passage—namely, 'self-mastered'—is, with a slight inflection to 'self-superior',<sup>77</sup> initially dismissed as 'absurd' (*geloion*).<sup>78</sup> How could the soul be superior to *itself*? Socrates then proceeds to articulate, in defence of this expression, the *Republic*'s 'partition' of the

(Footnote 69 continued)

one place, necessity or desire?' For the *Cratylus*' Socrates, it is 'desire'—which could be used to insert 'self-resistance', here, into the sphere of eros.

<sup>70</sup>Cf. PL. *Laws* II 653a: 'the first sensations (*prôtên aisthêsin*) are pleasure and pain'; *Laws* VI 782e on infantile *epithymia* and *erôs*; *Laws* VII 791e–792a on the behaviour and nurture of infants.

<sup>71</sup>PL. *Rep.* IV 430e–431d.

<sup>72</sup>PL. *Gorg.* 491d–e.

<sup>73</sup>It is, of course, droll—but more than a drollery—when Callicles accuses Socrates of 'violence' at PL. *Gorg.* 505d. Socrates is forceful, and, as he suggests here, 'contentious' (*philonikôs Gorg.* 505e). It is in this sense of rational 'contention' that the Athenian legislator valorizes Pindar's 'sovereign-law' in *Laws* III—and in Pindar's name—as a 'natural force of law, without violence, over those who accept it' (PL. *Laws* III 690b–c).

<sup>74</sup>Cf. the 'disgrace', in PL. *Rep.* III, of having recourse to law-courts and judges—i.e. to a justice which is 'brought in from others', due to a man's inner 'lack' of justice, and with the result that citizen-judges become his 'despot' (*despotôn Rep.* III 405a–c). And thus, the first Platonic city's 'youths' will take care 'not to need a law-court' (*Rep.* III 410a).

<sup>75</sup>PL. *Gorg.* 491d–e.

<sup>76</sup>PL. *Rep.* IV 445a.

<sup>77</sup>PL. *Gorg.* 491d; *Rep.* IV 430e: *kreittô hautou ... heautou kreittôn*.

<sup>78</sup>PL. *Rep.* IV 430e.

human soul (*psychê*).<sup>79</sup> Now, in the *Republic*, the Platonic soul is tripartite;<sup>80</sup> but there is no tripartition of souls in the *Gorgias* and *Laws*.<sup>81</sup> In the latter dialogues, the human soul is bipartite. And neither here nor hereafter will the *Republic*'s psycho-political tripartition be significant for us ('psycho-political' because cities in the *Republic*, like human souls, are tripartite).<sup>82</sup> In the *Gorgias*—unlike in the *Republic*—the 'absurd' phenomenon of human self-superiority is *intentionally* left unclarified. ('Nothing arcane. Just what the masses mean.')<sup>83</sup> And moreover, in the passage under consideration, the ontological provenance of pleasure—unlike, for instance, the *Republic*'s 'pleasures associated with the body'<sup>84</sup>—is similarly unspecified. Here a citizen's 'pleasures and desires' are simply located 'in oneself'.

In the remainder of this section, then, the salient phenomenon is *this* duplicity: a *pure force of law*, according to Plato, must be instituted by a legislator who is *self-superior*.

### 4.2.2 *Subjection, Imitation, Self-contradiction*

We will recall the duplicity that results from and illuminates the unitary logic of Callicles' law of violence. It is a duplex relation of *bodies*: a captor, a captive. This brutal duplicity constitutes Callicles' original and ideal political phenomenon: what I have called 'subjection'. And the phenomenon of *pure* Calliclean subjection can only be observed—and with it, his physical justice—as the incorrupt effect of a mute, corporeal clash. *Iustitia* is revealed *per pugnam*, for Callicles—and only *per pugnam*.<sup>85</sup>

There is no mode of speech which is proper to the pristine operation of Callicles' law of violence.<sup>86</sup> As a mediation, a mode of indirection, language *as such* is

<sup>79</sup>Pl. *Rep.* IV 436b.

<sup>80</sup>Pl. *Rep.* IV 441a. Cf. *Rep.* IV 440e–441c.

<sup>81</sup>Cf. Pl. *Laws* V 726; Robinson (1970, 125), Laks (1990, 221).

<sup>82</sup>Cf. Robinson (1970, 119–122).

<sup>83</sup>And this recurs in the *Laws*: 'Let our tyrant be young', the Athenian legislates, provisionally, in *Laws* IV, while this tyrant's soul must exhibit *sôphrosynê* 'in the demotic sense of it, not the sort one speaks of in a high style ... but rather the sort that blooms innately (*symphyton*), from the beginning, in children and beasts (*paisin kai thêriois*), and by which some are self-inferior (*akratôs*) with regard to pleasures while others are self-superior (*enkratôs*)' (Pl. *Laws* IV 709e–710a, cf. IX 863d).

<sup>84</sup>Pl. *Rep.* IV 442a: *peri to sôma ... hêdonôn*.

<sup>85</sup>To press an early mediaeval formula into service. Or we could alternatively, again, call up HERAC. *Fr.* 80 (Diels): 'One must realize that ... Conflict is Justice (*dikên erin*) and that all things come to pass in accordance with conflict (*kat' erin*).'

<sup>86</sup>Cf. Pl. *Rep.* III 411a–412b, where this is evident. A real 'discourse-hater' (*misologos*) is the citizen who 'no longer makes use of persuasion through speech (*dia logôn*), but achieves all his ends by force and savagery like a wild beast' (*Rep.* III 411d–e).



decadent. Yet, as stated above, there is a mode of speech in the *Gorgias* which is proper, at once, to the impure law of violence (in despotic regimes) *and* to the impure force of law (in democratic regimes)—namely, flattery. Flattery derives from a slavish adaptation, at once, to the underlying circulation of ‘supreme violence’ within a bad regime *and* to the directives of hedonic calculation within a person who speaks—for instance, a Persian satrap or a Greek rhetor. The *Gorgias*’ Socrates contends that such rhetorical adaptation—a policy of ‘imitation’ (*mimêsis*)—is an oblique mode of physical surrender to ‘supreme violence’, an obeisance to physical justice: a *screened subjection*.

This phenomenon of screened subjection comes to clarity in the later phases of the Calliclean interrogation,<sup>87</sup> and is strictly elaborated by Socrates as a reflection of ‘supreme violence’ that derives—symmetrically—from a hedonistic speaker’s calculation of pleasure, and from a hedonistic speaker’s fear. That there can be an erotic aspect of ‘imitation’ (*mimêsis*) is granted at the beginning of the Calliclean sections of the dialogue, where Socrates suggests that Callicles’ powerlessness to contradict his city’s demos is a result, in part, of his ‘love’ for that demos.<sup>88</sup> This aspect of imitation is never totally eliminated in the *Gorgias*, yet in the dialogue’s later sections, the picture is darker.

On a hedonistic register—that is to say, if ‘fleeing pain and pursuing pleasure’<sup>89</sup> is a person’s highest ideal and controlling desire—there is this duplex possibility for the ‘self’ (*autos*) in a city: ‘He needs to *himself* rule in—or himself tyrannize—his city, or he needs to be a partisan of the existing regime’.<sup>90</sup> Note the reversal from the Socratic imperative, ‘each his own ruler’ (*auton heautou archonta*), to this Calliclean directive, ‘he needs to himself rule (*auton archein*)’. In the Socratic mode, a legislator or a citizen-judge ‘must rule *himself*’; in the Calliclean mode, a hedonistic politician ‘must *himself* rule the city-state’.<sup>91</sup> The hedonistic directive and the Calliclean directive coincide in this reversal. According to Socrates’ reflexive duplicity, the necessity of ‘rule’ gives rise to a ‘self’ which is *at once* ruler and ruled (*auton heautou archonta*). But according to Callicles’ oppressive duplicity, the ‘self’ is *simply* a ruler, while all others are *simply* ruled (*allôn archein*).

It is not this despotic possibility—the possibility of tyrannizing in a city-state—that Socrates traces up here, however. Rather, he pursues the latter possibility, that of the ‘self’ (*autos*) living as a ‘partisan’ (*hetairois*) of his city’s existing regime. And if pure or utmost subjection—the relation of a captor and to his captive—is the duplicity that results from a *pure* logic of Calliclean violence; then the screened

<sup>87</sup>Pl. *Gorg.* 509c–511c.

<sup>88</sup>Pl. *Gorg.* 481d. Cf. Dodds (1959, 261–262).

<sup>89</sup>Cf. Pl. *Laws* IX 875b.

<sup>90</sup>Pl. *Gorg.* 510a.

<sup>91</sup>Pl. *Gorg.* 491d, 510a.

subjection of flattery—i.e. ‘duplicity’ in its most banal sense<sup>92</sup>—is what attends the logic of an impure (despotic) law of violence, or an impure (democratic) force of law, in a city-state.

In a despotic or a democratic regime, a hedonist must ‘accustom himself’ to be ‘as indistinguishable as possible from *that person*’,<sup>93</sup> i.e. from the despot or the demos. This mimetic ‘self’ (*autos*)—‘the imitator’ (*ho mimoumenos*) whose duplicity consists neither in self-possession,<sup>94</sup> nor in a sovereign possession of his city-state,<sup>95</sup> but in slavishly ‘reproducing an image of his lord’ (*tên mimêsin tou despotou*)—can indeed hope for a certain ‘power’ in his city-state.<sup>96</sup> In a democratic regime, for instance, precisely this type of imitation gives the rhetor his power—a power ‘which preserves us in the law-courts’.<sup>97</sup> (It is Socrates’ death, of course, which clangs in this last phrase.) What this mimetic ‘self’ (*autos*) cannot hope to preserve, however—and Socrates’ insinuation has teeth—is his ‘nature’ (*physis*), since this self’s hedonistic duplicity will result, not in his feigning, but in his *becoming* a reproduction of the regnant ‘Other’ (*ekeinos*), of ‘*that person*’.<sup>98</sup> This ‘hyper-resemblance’<sup>99</sup> will in time infect the partisan’s core, inborn nature (*autophuês*),<sup>100</sup> and will inevitably result in—*decadence*.

Callicles’ imitation of ‘supreme violence’, Socrates argues, will inevitably terminate in—*abjection*.<sup>101</sup> The ‘partisan’ of a city-state’s regime will necessarily be reduced, *within* himself, to a dim and impotent simulacrum of that regime. Callicles’ rhetorical mimeticism and theoretical brutalism alike derive from—and therefore, romanticize—not the highest, most extimate types of sovereignty and law, but the lowest, most intimate kinds of servility and lawlessness: the self’s powerlessness to resist the flux of pleasures and pains *from within*. This is the ‘defencelessness’ that results in Callicles’ banal incapacity to contradict *his city-state*, and more specifically, its current regime. And the final result of this, in Plato’s *Gorgias*, is that Callicles—since the democratic force of law is endlessly shifting to reflect the demos’ flux of pleasures and pains—is endlessly contradicting *himself*.<sup>102</sup>

<sup>92</sup>Or I could say, ‘Euripidean sense’. Cf. EUR. *Hipp.* 612: ‘It was my tongue that swore it, not my heart (*phrên*)’; which is alluded to at PL. *Theaet.* 154d: ‘If you answer “yes” it will be in the Euripidean spirit’. For the sense, significance, and transmission of this line: Avery (1968).

<sup>93</sup>PL. *Gorg.* 510d.

<sup>94</sup>Cf. the Eleatic Stranger’s description of democratic politicians as ‘the greatest of imitators’ (*megistous de ontas mimêtas*): PL. *Pol.* 303b–c.

<sup>95</sup>Cf. Thrasymachus’ praise of those who suborn ‘cities and whole human tribes’: PL. *Rep.* I 348d.

<sup>96</sup>PL. *Gorg.* 511a.

<sup>97</sup>PL. *Gorg.* 511b–c.

<sup>98</sup>Which has parallels in the *Republic*, see esp. PL. *Rep.* III 394e–396a.

<sup>99</sup>PL. *Gorg.* 513a: *homoiotaton*.

<sup>100</sup>PL. *Gorg.* 513b.

<sup>101</sup>Cf. PL. *Rep.* VIII 564a.

<sup>102</sup>PL. *Gorg.* 481d–482c.

### 4.2.3 *Envoi: For a Pure Force of Law*

Against a reactive, hedonistic flux of law in Athens *and* mimetic self-contradiction in its citizens, the *Gorgias*' Socrates—who is not a 'partisan' of his city's regime—represents a destabilizing force in Athens. This is despite the fact that he is endlessly saying 'the same things ... about the same things',<sup>103</sup> and despite the fact that he is politically defenceless—and undeceived of this fact.<sup>104</sup>

It is Socrates' reflexive, *counter*-hedonistic duplicity—'each his own ruler'—that conditions his *counter*-sophistic stance. Socrates is the only force of contradiction in Athens, and he delivers a sharp rebuke to the habits of sophists and sycophants (in the modern sense of that term).<sup>105</sup> Thus, Socrates can say to the sophist Polus—and at the same time, to his city-state's regime: in the *Gorgias*, as in the *Apology*—'I, being but one man, *dissent*'.<sup>106</sup> And it is this *formally* counter-despotic and counter-mimetic duplicity—'each his own ruler'—that introduces, according to Plato, not only philosophic 'contention' in a city-state, but, with it, the logic and possibility of a *pure force of law*. That is to say, the possibility of a law-code and a regime which originate—

- (i) not out of the pristine operation of what Callicles calls 'physical justice' = pure law of violence; and
- (ii) not out of the brutal indulgence of a clique's or a tyrant's pleasure = impure law of violence;<sup>107</sup> and
- (iii) not out of the sycophantic indulgence of the masses' pleasure in a 'law-state' = impure force of law, but
- (iv) out of 'the *true* political technique (*politikê technê*)',<sup>108</sup> which could alone institute a *pure force of law*.

In the *Republic*, Plato traces out the possibility of such a pure force of law, and with it the possibility—in contradistinction to all the Greek 'cities'—of 'a city'.

<sup>103</sup>Pl. *Gorg.* 490e. This is a later Socrates' form of *mimêsis*: Pl. *Rep.* VI 500c.

<sup>104</sup>Pl. *Gorg.* 521c–d.

<sup>105</sup>Pl. *Gorg.* 502d–e.

<sup>106</sup>Pl. *Gorg.* 472b: *egô soi heis ôn ouk homologô*.

<sup>107</sup>Cf. Pl. *Ep.* VII 351a, where the tyrant 'is not his own ruler, but the craven subordinate of his pleasures'.

<sup>108</sup>Pl. *Gorg.* 521d. Cf. the appearance of 'political technique' at Pl. *Laws* I 650b, noting that Cicero seems to translate the term as *scientia civilis* at, for instance, Cic. *Inv.* I 5.6.

### 4.3 *Republic*: Law and the Possibility of a City

The pure force of law is a condition of possibility of ‘a city’ in Plato’s *Republic*. The Platonic legislator’s formal object is to ‘render the city one’ (*poiêi mian*).<sup>109</sup>

Plato is depressed by what he observes in the Greek city-states. ‘None of these other cities is in fact a city,’ his Socrates says, ‘but a *multitude* of cities (*poleis ... ou polis*)’.<sup>110</sup> He means by this that each Greek city-state contains ‘a city of the rich and a city of the poor—and they are at war with each other (*polemia allêlais*)’.<sup>111</sup> Plato’s concern with the possibility of ‘a city’ in the *Republic* will become, in the *Laws*, his formal horizon for binding legislation. ‘We deny that laws are valid (*orthous nomous*)’, his Athenian legislator specifies, ‘unless they are instituted for the sake of what is common to the whole city (*tês poleôs heneka tou koinou*)’.<sup>112</sup> Unlike any codification of legal-judicial force which is calculated to indulge a class, faction or clique within a law-state<sup>113</sup>—and thus, finally, to satisfy the logic of Calliclean force (*kratos*)—Platonic legislation is, *per definitionem*, enacted for ‘the city’ as a potential unity, *by* being directed at the ideal form of this city—which is to say, at ‘the idea of justice’.<sup>114</sup>

When we read in the *Republic* that ‘it is not a concern of law (*nomôi*) that some one clan or clique within the city (*genos en polei*) should prosper’, this is not an incidental or an empirical, but a *definitional* statement. For Plato, law’s concern with elevating ‘the city as a *totality*’ is constitutive.<sup>115</sup> The concern with rational unity is, for Plato, what constitutes and validates a law as a *law* (*nomos*). It is because of this that a philosopher acts as the Platonic legislator in the *Republic*.<sup>116</sup> In this middle-period dialogue, Socrates is the Platonic philosopher—and thus, the Platonic legislator. (In Plato’s late-period *Laws*, by way of contrast, the Platonic

<sup>109</sup>Pl. *Rep.* V 462a–b.

<sup>110</sup>Cf. Pl. *Laws* VIII 832b–d on ‘the non-constitutions (*ou politeias*) that I have often mentioned ... democracy, oligarchy and tyranny. None of these is a genuine constitution (*politeia*), but all would most correctly be termed “disunions” (*stasiôteiai*). For none of them constitutes a *voluntary rule of the voluntarily ruled*, but a voluntary rule—always with some violence—over the involuntarily ruled.’

<sup>111</sup>Pl. *Rep.* IV 422e–423a; cf. *Laws* III 679b–c, V 744d.

<sup>112</sup>*Laws* IV 715b.

<sup>113</sup>Cf. Pl. *Rep.* I 338e–339a: ‘A democracy institutes (*tithetai*) democratic laws, a tyranny tyrannical laws, and so on. By instituting laws, regimes declare ... what is to their advantage, and they punish whoever oversteps their law as a “lawbreaker and malefactor” (*paranomounta ... kai adikounta*). So ... in every law-state [we see] the same thing ... the advantage of the existing ruling-class (*kathestêkuias archês sympheron*).’ This depiction is not Socrates’ but Thrasymachus’. What Socrates proceeds to criticize, however, is not Thrasymachus’ certainty that cliques within a law-state typically enact self-indulgent laws, but rather that such self-indulgence is truly to the ‘advantage of the existing ruling-class’, and that corrupt laws introduce justice.

<sup>114</sup>Pl. *Rep.* IV 435b: *tês dikaiosunês eidos*. And cf. Pl. *Laws* IV 705e–706a.

<sup>115</sup>Pl. *Rep.* VII 519e–520a.

<sup>116</sup>Pl. *Rep.* III 417b, IV 425d, V 456b–c.

legislator is a nameless ‘Athenian’.) It is Socrates’ concern with unity is what sets him off as a ‘true legislator’,<sup>117</sup> in the *Republic*, and it is in this rôle that he hypothetically institutes a sort of phratry of philosophers who will govern the first Platonic law-state. ‘Law produces such men in a city’, Socrates reasons, ‘in order that it may use them to bind the city together (*syndesmon tês poleôs*).’<sup>118</sup>

Despite the celebrated mystagogy of Plato’s Cave, and so on, there is thus a perfectly immanent logic behind Plato’s linkage of philosophy and legislation—namely, the logic of ‘political technique’ (*politikê technê*) or ‘knowledge’ (*epistêmê*). For all ‘knowledge’, as we read in *Republic* IV, is necessarily ‘knowledge of some type of thing’.<sup>119</sup> And the law-state or *polis*—which is to say, the political ‘type of thing’—outlasts generations of legislators, judges and other office-holders.<sup>120</sup> Therefore, the law-state is an entity that calls for a certain measure of *speculative* clarification. There is no *politikê technê*—no possibility of *rational* legislation—without a philosophy of history. A Platonic legislator, therefore, has to track the rise and eclipse of legal regimes like a ‘star-gazer’ reducing celestial phenomena to cycles.<sup>121</sup> Witness, for this, Plato’s world historical excursions in *Republic* VIII and *Laws* III. Platonic legislation incorporates the philosophical ideal of *formalizing* the subtle, epochal tendencies and oscillations that presage a legal regime’s demise. According to Plato, there can be no rational legislation without a corresponding theory of institutional *collapse*. ‘It is no mark of insight for us to see the causes of decline *now*’, as the Athenian legislator says in *Laws* III, ‘but if a legislator had foreseen these things *then* ... he could have saved all the beautiful designs (*noêthenta ... kala*) of that time’.<sup>122</sup>

For Plato, a true legislator is a saviour of beautiful designs. And what ‘beauty’ means, in terms of legislation, is sharply defined in *Republic* IX. ‘Beautiful and shameful laws arise through this: beautiful ones subordinate the bestial elements of our nature to the human (*tôi anthrôpôi*) ... and shameful ones enslave (*douloumena*) what is civilized and subject it to the beast.’<sup>123</sup> To legislate Platonically is thus to legislate without regard for an *existing* law-state’s pleasure *as* present pleasure. This disregard merely reproduces, at the level of a possible ‘city’, the legislator’s superiority to a flux of present, corporeal ‘pleasures and pains’.

<sup>117</sup>Pl. *Rep.* IV 427a.

<sup>118</sup>Cf. Pl. *Rep.* VII 519e–521b.

<sup>119</sup>Pl. *Rep.* IV 438c.

<sup>120</sup>Plato later comments that the city is a ‘marvellously’ (*thaumasteos*) longevous type of thing: Pl. *Pol.* 302a. Cf. XEN. *Ways* 3.10: ‘The city-state ... is to all appearances the safest and most durable (*polychroniôtaton*) human institution’; ARIST. *Mund.* 5 (396a33 *et pass.*): ‘[Some] have wondered ... how a city survives, composed as it is of the most opposite classes (*tôn enantiôtatôn ethnôn*)’.

<sup>121</sup>Pl. *Rep.* VI 488d–e, 489c, and cf. the abuse of astronomy at *Rep.* VII 528e–530c.

<sup>122</sup>Pl. *Laws* III 691b, 692c.

<sup>123</sup>Pl. *Rep.* IX 589c–d.

A self-superior law-state is the ‘beautiful design’ of self-superior legislators. ‘If any city must be called “superior” to its pleasures and drives, and “self-superior”, Socrates assures his interlocutors, ‘it is *this* city’.<sup>124</sup> Nevertheless, the historical possibility of *this* city—the first Platonic city—remains undecided in the *Republic*.<sup>125</sup> Platonic legislation is, in *generic* terms, a type of ‘hypothetical legislation’. It is promulgated in the conditional mood. But Plato sees clearly that the hypothetical character of his law-codes is not a merely literary device. What I have called a ‘pure force of law’ is for him a theoretical—but not a *political*—ideal.

In *Republic* VI, for instance, Socrates stipulates that a philosopher ‘would refuse to touch a city-state or a private citizen, or to draft laws (*graphein nomous*), until he received a *tabula rasa* or cleared it himself’.<sup>126</sup> Political history contains no blank tablets, however. Platonic legislation is itself, demonstrably and concretely—in a number of senses—a palimpsest. Thus, if the possibility of a Platonic city is its absolute *novelty*, then this city—which is to say, the law-state instituted by Plato’s first law-code—must be regarded as an *impossible* city. In *Republic* IX, Socrates insists that this city’s possibility ‘makes no difference’ to him. The philosophical legislator will ‘colonize himself’ (*heauton katoikizein*) in the light of his ideal polity. ‘He acts for this city alone (*tautês monês*)’, says Socrates, ‘and for no other’.<sup>127</sup> It is in light of Plato’s impossible city—which is to say, in light of ‘the idea of justice’<sup>128</sup>—that his first law-code is inscribed.

Plato’s derogation of all the law-codes in his milieu is not to be confused with his disavowal of the eminently Hellenic ideal of a law-state. Plato’s *Republic*, like his *Laws*, is a work of legislation.<sup>129</sup> In the years between the *Gorgias*’ critique of the *force* of law,<sup>130</sup> and the *Politicus*’ critique of the *form* of law,<sup>131</sup> Plato himself drafts a law-code: the *Republic*. But as his draft of a *rational* law-code, it is not shocking that the first Platonic legislation—which takes its rise from a Socratic style of ‘contradiction’—includes a programmatic mockery of the flux of law in democratic law-states.

Socrates derides the democratic legislators that ‘pass their lives ceaselessly instituting and revising (*tithemenoi aei kai epanorthoumenoi*) a host of ... sta-

<sup>124</sup>Pl. *Rep.* IV 431d.

<sup>125</sup>Laks (1990, 213–217), addresses ‘the question of possibility ... in the *Politeia*’.

<sup>126</sup>Pl. *Rep.* VI 501a.

<sup>127</sup>Pl. *Rep.* IX 592b, cf. VI 502c.

<sup>128</sup>Pl. *Rep.* IV 435b: *tês dikaiosunês eidos*. And cf. Pl. *Laws* IV 705e–706a.

<sup>129</sup>Pace what Morrow could still call ‘the orthodox view’ in 1960, and which he effectively breaks with, asking: ‘Is law really absent from the *Republic*, as this interpretation asserts? Whoever reads the *Republic* with this question in mind will be struck by the frequent references to laws (*vômoi*) and legislation (*νομοθεσία*)’ (1960, 578–579).

<sup>130</sup>See Sects. 4.1–4.2, above.

<sup>131</sup>See Sect. 5.3, below.

tutes'.<sup>132</sup> And a moment later, he resumes: 'They ceaselessly enact laws ... and revise them (*kai epanorthountes*), always hoping to secure an end to all the fraudulent transactions [in the law-state].' This type of legislation, he says, is hopelessly ineffective—'like cutting off the Hydra's heads'.<sup>133</sup> But it is not merely ineffective; it is destructive. The fluidity of a democratic law-code erodes the substructure of a democratic law-state. The paradoxical effect of excessive legislation—of rapid, *ad hoc* re-codification—is that democratic citizens finally 'do not even give thought to the laws, written or unwritten.'<sup>134</sup>

It will become clear in Chap. 5 that legal 'flux' is not the sole or the deepest Platonic objection to the political instrument of law. Law is nevertheless an instrument that Plato never renounces,<sup>135</sup> and cannot renounce. And indeed—as will be demonstrated in Chap. 5—'the flux of law' is itself a corollary of rational legislation that Plato authorizes and codifies in the *Republic*,<sup>136</sup> and more elaborately, in the *Laws*.

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<sup>132</sup>Pl. *Rep.* IV 425e.

<sup>133</sup>Pl. *Rep.* IV 426e.

<sup>134</sup>Pl. *Rep.* VIII 563d–e. One could perhaps hear a fore-echo in this last passage, Pl. *Rep.* VIII 563d–e (*nomôn ... despotês*), of the Athenian's *nomos despotês* at Pl. *Laws* IV 715d.

<sup>135</sup>Hall (1956, 184): 'Plato had not rebelled against the rule of law in the *Republic*, and certainly did not reject it.'

<sup>136</sup>See Sect. 5.4, below.

## Chapter 5

# The Flux of Law and the Second Platonic Law-Code

**Abstract** In one of his late dialogues, *Politicus*, Plato articulates a formal critique of law. No law-code, human or divine, can comprehend ‘the fact that none of the human things is ever at rest’. The flux of things necessitates a flux of law. Nevertheless, Plato believes that a law-code’s volatility is both a sign and cause of a law-state’s instability. In *Republic IV*, for instance, he mocks democratic law-states for ‘ceaselessly instituting and revising a host of statutes’. The question of legal revision becomes salient in Plato’s late dialogues—and most visibly in his last dialogue, the *Laws*—precisely because it is a rational *necessity* which is a sign and a cause of structural *instability*. ‘No legal regime can remain perfect’, he insists in *Laws XII*, unless it is authorized ‘to revise any laws that are deficient’. Yet there can of course be no legal revision in the absence of legal critique. Thus, on my interpretation, Plato returns to the question of Socratic dissent in the last pages he ever penned—with vicious consequences.

### 5.1 Towards Plato’s *Politicus* and *Laws*

In Plato’s middle-period dialogues, a certain aversion to law is visible. This aversion takes its rise, in part, from a flux of law that Plato perceives—and derides—in democratic law-states. The democratic type of legal flux derives from a hedonistic susceptibility of the *demos*,<sup>1</sup> and from the half-observed and half-obstructed circulation of ‘supreme violence’ in such regimes. What I have called the ‘impure

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<sup>1</sup>Cf. *Pl. Laws III* 689a–b: ‘What it is of the soul that is pained and pleased’—namely, ‘the largest part of the soul’—‘is like the *demos*’. This at once harks back to and revises *Pl. Rep. IV*, in which ‘that which strives and desires ... is the largest part of the soul’ (*IV* 442a). In *Laws III*, this ‘largest part of the soul’ is the sensitive (*aisthêtikon*), whereas in *Rep. IV*, Plato *dis-identifies* the spirited (*epithymêtikon*) and sensitive (*aisthêtikon*) parts of the soul.



force of law’, which the *Gorgias* criticizes and the *Republic* seeks to purify, is a product of class-factionalism, and produces a class-indulgent flux of law. Since such law is not ‘in league with all who are in the city’,<sup>2</sup> this ‘city’ is at once menaced by its law-code—and a menace to it.

In the *Apology*, Socrates’ critique of such law, and its flux, is para-political. He subtracts himself from ‘the city’s affairs’, and professes to have ‘no hand’ in them.<sup>3</sup> Yet because of his persistence in critique, Socrates is regarded as a law-breaker—a corrupter of Athens’ legal culture. At the close of the *Gorgias*, however, Socrates’ critique of democratic law, and its flux, is hyper-political. He is recast here, by Plato—in *precisely* inverted terms—as ‘the only man ... who has taken the city-state’s affairs in hand’.<sup>4</sup> And, as such—because he is still not ‘a partisan of the existing regime’<sup>5</sup>—Socrates is still perceived as a law-breaker. In the *Republic*, Socrates is at once para-political *and* hyper-political, since he acts as a legislator—an exemplar of ‘political technique’ (*politikê technê*)—but as a strictly *hypothetical* legislator. In Plato’s *Republic*, the critic of every existing law-code—Socrates’ shade—delinates a *possible* regime and an *ideal* law-code.

When the force of law reflects a highly principled and ascetic ‘technique’ (*technê*), then a *certain* perdurance of law—a mechanicity and inflexibility—is idealized by Plato. ‘Saving the laws’ (*sôtêrian tôn nomôn*),<sup>6</sup> in the *Republic*, is sharply contrasted with the democratic practice of ‘instituting and revising a host of ... statutes’.<sup>7</sup> Thus, the first Platonic city has its ‘guardians of the laws’, much as the second Platonic city—the *Laws*’ hypothetical colony, Magnesia—will have ‘guardians of the laws’.<sup>8</sup> The *Republic*’s Socrates of course senses the threat that this ‘guardian’ class—his city-state’s ‘security apparatus’<sup>9</sup>—could come to live in

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<sup>2</sup>Pl. *Rep.* IX 590e.

<sup>3</sup>Pl. *Apol.* 31d.

<sup>4</sup>Pl. *Gorg.* 521d.

<sup>5</sup>Pl. *Gorg.* 510a.

<sup>6</sup>Cf. Pl. *Rep.* IV 429c. And HERAC. *Fr.* 44 (Diels) is also illuminating here: ‘The people must fight for the law as for their city wall’.

<sup>7</sup>Pl. *Rep.* IV 425e.

<sup>8</sup>Pl. *Rep.* IV 421a: *phylakes de nomôn*; *Laws* VI 754d: *phylakes ... tôn nomôn*. In the *Laws*, Plato prefers the portmanteau term, ‘law-guardian’ (*nomophylax*), as at *Laws* VI 752e. Friedländer says that ‘we cannot fail ... to see that the [*Laws*] name “custodians of the law” (νομοφύλακες) only slightly varies the name of the “guardians” (φύλακες) in the *Republic*, who are also charged primarily with “guarding the laws” (φυλάξει νόμους, *Republic* 484b)’ (1969, III:441).

From several remarks in Aristotle, it seems to me that Plato’s usages may derive from old Athenian legal terminology: ‘The Council of Areopagus was guardian of the laws (*phylax ... tôn nomôn*), and kept watch over the archons to make them govern in accordance with the laws (*kata tous nomous*)’ (ARIST. *Ath.* 4.4); ‘And he [Solon] ... appointed the Council of the Areopagus to the duty of guarding the laws (*nomophylakein*), just as it had existed even before as overseer of the constitution (*episkopos ... tês politeias*)’ (ARIST. *Ath.* 8.4).

<sup>9</sup>Fronterotta (2010, 127).

the city like 'wolves' and 'wild despots'.<sup>10</sup> It is precisely when a law-code is 'in league with *all* who are in the city' that such 'guardians' can represent, at once and indistinctly, 'guardians of the laws *and* of the city'.<sup>11</sup>

But in the present world-age, in 'the present world-system',<sup>12</sup> this—the first Platonic city—may be regarded as an impossible city. Its impossibility is determined by the purity of its idea of justice. For, in the *Republic* as in the *Laws*, Plato invokes—as Socrates, and then as the Athenian legislator—this unattributed saying: 'Friends truly hold all things in common'.<sup>13</sup> It is this pure law of friendship (*philia*) which constitutes, in both Platonic legislations, the terminus and sign of the *purest* force of law.<sup>14</sup> Plato's ideal of justice is, at its summits, communistic.<sup>15</sup>

It is conceivable, so Plato suggests in the *Politicus*, that this condition of pure friendship obtained in some mythic prehistory.<sup>16</sup> But a negation of communism *as* the condition for 'a city', in the *Politicus*' prehistory, subtly attests to its impossibility in 'the present revolution' of the world-sphere<sup>17</sup>—which is to say, in 'this present life'.<sup>18</sup> For *when* that condition obtained, Plato says here, 'there were no cities'.<sup>19</sup>

This glance at the communistic ideal of justice introduces us to Plato's late dialogue, *Politicus*—and with it, to the most concentrated late-Platonic reflection on law,<sup>20</sup> on the divergence of justice and law, and on a flux which circumvents the formality and mechanicity of law.

<sup>10</sup>PL. *Rep.* III 416a–b. And cf. *Lys. Erat.* 94, where Lysias recalls how the regime of the Thirty installed 700 Spartan mercenaries in the Acropolis to act as 'guardians (*phylakas*) of their dominion and of your slavery (*douleias*)'.

<sup>11</sup>PL. *Rep.* IV 421a: *phylakes de nomôn te kai poleôs*.

<sup>12</sup>PL. *Pol.* 269a: *to nun schêma*.

<sup>13</sup>PL. *Laws* V 739c: *ontôs esti koina ta philôn*; cf. PL. *Rep.* IV 424a, V 449c. According to DIO. LAER. *Lives* VIII 10: 'Pythagoras was the first to say "Friends hold all things in common" (*koina ta philôn einai*) and "Friendship is equality" (*philian isotêta*)'.

<sup>14</sup>But even in the *Republic*, the extent of this law is limited: 'Communistic institutions in the *Republic* are notoriously restricted to a fraction of the city, that of the guardians' (Laks 2001, 109).

<sup>15</sup>For a very early intimation of this: PL. *Lys.* 207c.

<sup>16</sup>Plato's reference, here, to his highest 'dictum' in the *Republic* and *Laws* is inexplicit, but unmistakable: 'There were no possessions of women and children' (PL. *Pol.* 271e–272a).

<sup>17</sup>PL. *Pol.* 274e: *tês nun periphoras*.

<sup>18</sup>PL. *Pol.* 272b: *bion ... ton nuni*.

<sup>19</sup>PL. *Pol.* 271e. Or, more precisely, 'no polities' (*politeiai*). But a polity of course serves to organize, precisely, a city-state (*polis*). Rowe (1995, 69) has 'no political constitutions'.

<sup>20</sup>Cf. Piérart (1973, 122).

## 5.2 The God Cronos, the Flux of Things, and the Sway of Chance

The ‘prehistory’ I have referred to is Platonic, but it is not articulated by Plato’s Socrates. This mythic prehistory is rather given by the *Politicus*’ Eleatic Stranger persona, who prepares his interlocutor—a sort of Socrates ‘the youngest’<sup>21</sup>—for an ‘impressive myth’ that he proceeds to relate: a myth of Cronos.<sup>22</sup>

There are censorious references to Hesiod’s Cronos myth in Plato’s *Euthyphro*<sup>23</sup> and *Republic*,<sup>24</sup> and there is a rakish allusion to Cronos in the (arguably, pseudo-Platonic) *Hipparchus*<sup>25</sup>; while the *Gorgias* concludes with Plato’s first Cronos myth,<sup>26</sup> a ‘beautiful speech’<sup>27</sup> in which—under the auspices of Homer<sup>28</sup>—Cronos’ juridico-political significance for Plato is first suggested.<sup>29</sup> This significance is re-announced, and the myths re-configured, in Plato’s *Politicus*,<sup>30</sup> and lastly, in his *Laws*.<sup>31</sup>

But the operative element for us in the *Politicus*’ Cronos myth—namely, flux—is anticipated in the middle-period dialogue, *Cratylus*.

### 5.2.1 Cratylus: The Reign of Cronos

The *Cratylus* is Plato’s speculative—or perhaps, ‘outrageous and ridiculous’<sup>32</sup>—reconstruction of the ‘most-ancient names’ of things<sup>33</sup> as they were instituted by an

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<sup>21</sup>To take liberties with the *Politicus*’ Younger Socrates persona, in light of this essay’s Argument (0.1). While the *Parmenides*’ Socrates is ‘very young’ (*sphodra neon* Pl. *Parm.* 127c), there is no indication of Younger Socrates’ age in the *Politicus*. For the *Politicus*’ personae: Ricken (2008, 81–90).

<sup>22</sup>Pl. *Pol.* 268d.

<sup>23</sup>Pl. *Euth.* 5e–6a.

<sup>24</sup>Pl. *Rep.* II 377e–378a.

<sup>25</sup>Pl. *Hipp.* 229b–c. The name ‘Cronos’ is frequently put to use as an insult in Aristophanic comedy: ARISTOPH. *Clouds* 398, 929, 1070; *Wasps* 1480.

<sup>26</sup>Pl. *Gorg.* 523a–527e.

<sup>27</sup>Pl. *Gorg.* 523a.

<sup>28</sup>Cf. HOM. *Il.* XV 184–199.

<sup>29</sup>Plato returns to the judgement-of-Rhadamanthus motif, which appears in his *Gorgias* myth: Pl. *Gorg.* 523e–524a, 524d–525a.

<sup>30</sup>Pl. *Pol.* 268e–274e.

<sup>31</sup>Pl. *Laws* IV 713a–714b. Mayhew (2011, 315–317) foregrounds this Cronos myth.

<sup>32</sup>Pl. *Crat.* 426b: *hybristikia ... kai geloia*.

<sup>33</sup>Pl. *Crat.* 426b: *tôn prôtôn onomatôn*.

archaic, poetic ‘legislator’ (*nomothetês*).<sup>34</sup> It will suffice to observe here that this legislator’s *first* lexeme, *per* the logic of Socrates’ reconstruction in the *Cratylus*, expresses ‘movement’ (*kinêsis*).<sup>35</sup>

Later in the dialogue, the semiotic—and therewith, the legislative—depth of flux is restated. ‘Names ... indicate essences to us’, Socrates stipulates, ‘on the assumption that all things (*tou pantos*) are swept on and in flux (*rheontos*)’.<sup>36</sup> And where it is first introduced in the *Cratylus*, this flux-motif is explicitly Heraclitean.<sup>37</sup> This is Socrates, in a mock-mantic tone:

I seem to have a vision of Heraclitus uttering some archaic wisdom, primitive as the reign of Cronos and Rhea ... Heraclitus says, you know, that all things rush on and nothing remains, and he likens all things to the flux of a river.<sup>38</sup>

The philosopher Heraclitus and the god Cronos. This is not, for Plato, a senseless conjunction.<sup>39</sup> And Socrates’ archaeology of divine names in this section of the *Cratylus* will deepen it.<sup>40</sup> This conjunction is also linked, in the *Cratylus*, to a Homeric line<sup>41</sup> that later appears in Plato’s *Theaetetus*,<sup>42</sup> where Heraclitus is similarly invoked, and where ‘it is out of moving and compounding (*kinêseôs kai kraseôs*) ... that all those things become which we wrongly say “are” (*einai*)’.<sup>43</sup>

This dense constellation of references to a primitive—and therewith, to a *legislative*—primacy of flux in Plato’s corpus helps to prepare us for the *Politicus*’ Cronos myth, since it is a cataclysmically *kinetic* political myth which ushers in ‘the present epoch’, and which prepares the Eleatic Stranger’s critique of law in the *Politicus*.

<sup>34</sup>PL. *Crat.* 427c. Ademollo (2011, 122) tabulates the textual evidence from the *Cratylus* and concludes: ‘It does not matter to [Socrates] whether there was one such individual or more; the lawgiver is, so to speak, a species rather than an individual’. Cf. Sedley (2003, 66–74); Thomas (2008, 344 n. 10); Ademollo (2011, 117–125).

<sup>35</sup>PL. *Crat.* 426c–d.

<sup>36</sup>PL. *Crat.* 436e. The Heraclitean motif culminates, and is subjected to an unfinished critique, at the close of the dialogue: *Crat.* 439c–440e.

<sup>37</sup>Cf. ARIST. *Met.* I 6.2 (987a32–987b1): ‘In his youth Plato first became acquainted with Cratylus and the Heraclitean doctrines (*tais Hêracliteiois doxais*)—that the whole sensible world is in a state of perpetual flux, and that there is no real knowledge (*epistêmês*) of it—and in later years he still held these doctrines’.

<sup>38</sup>PL. *Crat.* 402a.

<sup>39</sup>Cf. PL. *Crat.* 402b: *apo tou automatou*.

<sup>40</sup>PL. *Crat.* 401b–402d. For ‘archaeology of divine names’: *Crat.* 401a, 425c.

<sup>41</sup>HOM. *Il.* XIV 201. And although these lines are not cited at PL. *Crat.* 402b or *Theaet.* 152e, cf. also HOM. *Il.* XIV 203–204.

<sup>42</sup>The *Theaetetus* and *Politicus* are dramatically linked by the *Sophist*: PL. *Theaet.* 210d; *Soph.* 216a; *Pol.* 257a.

<sup>43</sup>PL. *Theaet.* 152d–e.

### 5.2.2 *The Platonic City-State: ‘Sovereign Over Its Own Procession’*

‘Listen closely to my myth (*tôi mythôi*)’, the Eleatic Stranger says to a Younger Socrates, ‘as if you were a child’.<sup>44</sup> He then narrates a bizarre origin myth, in which the birth of the city-state—and with it, of the political—is caused by a change in heavenly motion.

In an immemorial age that the Eleatic calls—impishly, if not impiously—‘the reign of Cronos’,<sup>45</sup> the highest God set the celestial sphere in motion and controlled its revolutions. *In illo tempore* there were no wars and ‘no law-states (*politeiai*)—nor did men possess wives or children’.<sup>46</sup> But then, the highest God withdrew. The celestial sphere then suffered a ‘reversal of its motion’.<sup>47</sup> When the highest God withdrew, and when the motion of the celestial sphere halted and reversed, life on the terrestrial sphere—which is to say, here on earth—reversed with it.

With orderly motion reversed, disorderly motion commences. With divine governance withdrawn, human governance emerges. Plato’s communist idyll vanishes with the old humanity of the preceding world-cycle. We are the new humanity. And for us, the reign of Cronos—which is to say, a Platonic paradise without kinship systems, law-codes, and wars—is fated to remain a myth. For us, the gods must be worshipped—but have withdrawn. The essence of the political, in the *Politicus*’ myth, is the anti-mythical idea that the city is ‘deprived of the care of the deity (*daimonos*)’.<sup>48</sup>

While the phantasmagoria of the *Politicus*’ myth cannot be gone into, its operative element for us is flux. This element of the myth can be isolated out with some specificity and integrity.

- (i) The celestial sphere—and with it, ‘the all’ (*pantos*)<sup>49</sup>—revolves, but is fated to periodically halt and reverse<sup>50</sup> its quasi-divine circuit.<sup>51</sup>
- (ii) Whatever dwells within (*entos*) the celestial sphere, in any epoch, suffers the most intense alterations (*megistas ... metabolas*), and when its circuit is reversed, most living things are destroyed.<sup>52</sup>

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<sup>44</sup>Pl. *Pol.* 268e.

<sup>45</sup>Pl. *Pol.* 270b.

<sup>46</sup>Pl. *Pol.* 271e–272b.

<sup>47</sup>Pl. *Pol.* 269d.

<sup>48</sup>Pl. *Pol.* 274b.

<sup>49</sup>Pl. *Pol.* 270b.

<sup>50</sup>Cf. Pl. *Pol.* 272e.

<sup>51</sup>Pl. *Pol.* 269d–270a.

<sup>52</sup>Pl. *Pol.* 270c–d.

- (iii) The god Cronos presided over the epoch of the prior celestial revolution,<sup>53</sup> when gods still ruled (*theôn archontôn*) on earth, tending to all living things.<sup>54</sup> ('God himself was their shepherd', says the Eleatic.<sup>55</sup> This is a political image which harks back to Homer,<sup>56</sup> and further back, to the city-states of ancient Sumeria.<sup>57</sup>)
- (iv) Nevertheless, during Cronos' reign—as previously remarked—there were no cities or law-states (*politeiai*).<sup>58</sup> The archaic, theocratic order is not a properly *political* order.
- (v) The *present* celestial revolution was preceded by a swell of 'archaic discord'<sup>59</sup>; it was inaugurated by the torsion, concussion, and contra-pulsion of the heavens; and with it, 'all other things changed', resulting in 'the present mode of coming-to-be' here below.<sup>60</sup>
- (vi) The present mode of coming-to-be is called Zeus' reign,<sup>61</sup> and in it—which is to say, in 'human life' (*anthrôpinon bion*)—humankind is not ruled by terrestrial gods or revealed laws. To the contrary: the city-state is now 'self-led' (*heautôn ... tèn te diagôgên*).<sup>62</sup>

As Antonio Capizzi summarizes this myth's denouement: 'The world is left to its own devices by the god'.<sup>63</sup>

Notice this, which is not without a certain echo of the *Gorgias*' Callicles, albeit to essentially different ends: it is movement as such that institutes 'the political' in

<sup>53</sup>PL. *Pol.* 271b.

<sup>54</sup>PL. *Pol.* 271c–272a. Evanthia Speliotis (2011, 297–301) seeks to puncture the 'initial impression' that this age of Cronos is 'idyllic'.

<sup>55</sup>PL. *Pol.* 271e.

<sup>56</sup>A Homeric king is a 'shepherd of the people' (*poimena laôn*): HOM. *Il.* I 263, II 254, IV 296, V 144, etc. Aristotle points to this connection in ARIST. *Nic. Eth.* VIII 11.1 (1161a13–16).

<sup>57</sup>Dvornik (1966, I:24): 'It should be stressed that from the Sumerian period onward the title of shepherd was regarded as having an important kingly significance'. Note also that the Sumerians' supreme god, Anu, bore the title of 'shepherd'.

<sup>58</sup>PL. *Pol.* 271e–272a. And see Sect. 5.1, above.

<sup>59</sup>PL. *Pol.* 273c. Rowe (1995, 73) has 'original disharmony'.

<sup>60</sup>PL. *Pol.* 273e.

<sup>61</sup>PL. *Pol.* 272b.

<sup>62</sup>PL. *Pol.* 274b–e. Cf. PL. *Laws* IX 853c: 'We are humans and legislating now for the seed of humans' (*anthrôpoi te kai anthrôpôn spermasi nomothetoumen ta nun*).

In her unconvincing reconstruction of the *Politicus* myth, Gabriela Carone stresses that the city's liberation from the governance of daemons—or what I prefer to call 'terrestrial gods'—is not to be taken as a crass Platonic atheism (Carone 2004, 102). This is of course correct. But what is essential is this: during the reign of 'Zeus', the present world-age, no god or daemon *legislates* for the city.

As to the significance of this name 'Zeus' in the *Politicus* myth, Bernadete—unlike Carone—is negative-theological. He writes: 'The Stranger[s] ... myth denies that Zeus and the Olympian gods are anything more than names for the absence of the gods. "Zeus" is a concealed negative; it means "not god"' (1992, 39). Likewise Speliotis: 'In this age, there is no god ruling' (2011, 299).

<sup>63</sup>Capizzi (1990, 35).

this Platonic origin myth. It is ‘the impetus or pulsion of the all’<sup>64</sup> that shapes the pulsion of the Platonic city-state, which is fated ‘to follow-close upon the mutations of the all’,<sup>65</sup> and which is forced—like ‘the all’, during the reign of Zeus—‘to be sovereign over its own mode of procession’.<sup>66</sup>

This precedence of movement and its conditioning of the political resurface in the Eleatic Stranger’s critique of law in the *Politicus*, and reintroduce us—if indirectly—to the Heraclitean link that we observed in the *Cratylus*’ myth of an archaic legislator. This is the Eleatic Stranger’s basic objection to law, in Plato’s *Politicus*:

The dissimilarities (*anomoiotêtes*) of human persons and their actions, and the fact that *none of the human things is ever at rest*, will never permit any technique (*technên*) to produce a unitary rule concerning all human things and covering all time (*panta ton chronon*) ...<sup>67</sup>

This unconditional denial of political authority’s most architectonic pretension—this a priori critique of any conceivable law-code or law-state, in light of a Heraclitean efflux of things<sup>68</sup>—clearly includes all political doctrine and every conceivable legal institution, for:

We see that law is basically directed at and strives for *this very thing*, like an incorrigible and uncouth man (*anthrôpon authadê kai amathê*) who permits no one whatever to counteract his own ordering of things or even to pose a question, not even if it occurs that some new thing is superior (*beltion*), though contrary to the rule (*para ton logon*) which he himself laid down.<sup>69</sup>

In the *Politicus*, as this indicates, we witness something like a Platonic volte-face. In his figure of the Eleatic Stranger, Plato exposes and derides, not the chaotic re-codification of democratic laws—as in the *Republic*—but the torpidity and mechanistic iterability of law *as such*.<sup>70</sup> Here in Plato’s *Politicus*, it is not the demotic flux but the constitutive *inflexibility* of law that vulgarizes law as a political instrument. Here, Plato says, any legal ontology is *eo ipso* a spurious ontology.<sup>71</sup>

<sup>64</sup>Pl. *Pol.* 270b.

<sup>65</sup>Pl. *Pol.* 274a.

<sup>66</sup>Pl. *Pol.* 274a: *autokratora einai tês hautou poreias*. Brisson (2000a, 204) has ‘le maître de sa proper marche’.

<sup>67</sup>Pl. *Pol.* 294b.

<sup>68</sup>There is a similar passage in Isocrates’ *Antidosis*, though it is only glancingly connected to legislation—whereas Plato’s argument in the *Politicus* is strictly concerned with the possibility of rational legislation. Cf. Isoc. *Antid.* 184: ‘... no system of knowledge can possibly cover all these occasions, since they will inevitably elude our knowledge (*epi gar hapantôn tôn pragmatôn diapheugousi tas epistêmas*). Yet those who turn their minds to such occasions and are able to discern the consequences which *for the most part* (*to polu*) result from them, will most often meet them in the right way’.

<sup>69</sup>Pl. *Pol.* 294b–c.

<sup>70</sup>Morrow similarly interprets the *Politicus*’ critique of the ‘generality of any law’, and rehearses—much as I do here—the ‘defects [which] are inherent in the nature of law’ (1960, 584).

<sup>71</sup>Cairns (1942, 365): ‘Human life is not simple, but the law, which is persistently simple, aims, nevertheless, to control that which is never simple’.

The ‘very thing’ that a law-code seeks to realize, the ‘order’ (*taxis*) it seeks to impose, and the legislative impulse as such, are all—when set in a certain light—cretinous and uncouth (*amathês*). Law’s constitutive insensitivity to ‘the new’ (*neon*) commits it to a mechanistic persecution of ‘the superior’ (*beltion*). (There is doubtless, in this, a conscious resonance with the *Apology*.)<sup>72</sup> According to the *Politicus*, legislation formally—and thus, necessarily—penalizes the *singular*.<sup>73</sup>

Whereas the *Gorgias* and *Republic* initiate a Platonic critique of law’s factionalism, its betrayal of the city-state as a possible ‘totality’ (Chap. 4), the *Politicus* revives and radicalizes the Socratic critique of the earliest Platonic dialogues (Chap. 3). Here, positive law again exhibits its divergence from justice—law’s highest ideal. But beyond this, positive law—in its imperfect generality and generalized imposition—is charged with an a priori betrayal of the citizen in his ‘singularity’ or ‘dissimilarity’ (*anomoiotês*).

This contrast can be rendered extremely precise. In *Republic* IX, the objective of law qua law, is to conjoin ‘all who are in the city’ (*pasi tois en tê polei*).<sup>74</sup> And in the *Politicus*, the objective of law qua law is to ‘enjoin’, within the city, ‘all at once’ (*pasin hama*).<sup>75</sup> In Plato’s *Republic*, this represents a legislative ideal. But in his *Politicus*, it signals a legislative betrayal.

And it is this motif of human ‘dissimilarity’ in the *Politicus*—and with it, this inevitability of legislative betrayal—that Plato will reflect when he writes in *Laws* IX, in the course of penalizing several varieties of murder,<sup>76</sup>

This is difficult to legislate with precision. For there would be times when the man law classifies as the more ‘savage’ killer is rather the more civilized, and when the ‘civilized’ offender is actually more savage ... but for the most part (*to polu*) things will occur in the way specified here.<sup>77</sup>

This banal caveat, ‘for the most part’ (*to polu*), serves to signal that Platonic legislation is not handed down by a prophet or a god,<sup>78</sup> and that no law-code can comprehend—as a law-code—‘the fact that none of the human things is ever

<sup>72</sup>PL. *Pol.* 299b–c. See Sect. 5.5, and supplement 3b.

<sup>73</sup>The Eleatic Stranger repeats this criticism at PL. *Pol.* 295a.

<sup>74</sup>PL. *Rep.* IX 590e.

<sup>75</sup>PL. *Pol.* 294b.

<sup>76</sup>With regard to ‘murder charges’, writes Saunders, ‘on the whole Plato follows Attic law’ (1963, 197).

<sup>77</sup>PL. *Laws* IX 867d. Pangle ends this aside, rather, with: ‘the procedure will for the most part follow what is now being said’ (1980, 262).

<sup>78</sup>Note the contrast at PL. *Laws* III 691d, where ‘perceiving the due measure’ is ‘the sign of great legislators’, while ‘foreseeing the future’ is the sign of ‘a god’ (*theos ... ta mellonta proorôn*). Cf. XEN. *Cyro.* III 2.15: ‘How little of the future we humans can foresee, O Cyrus, and yet how much we try to accomplish!’, Isoc. *Soph.* 2: ‘I think it is evident to all that foreknowledge of future events (*ta mellonta progignôskein*) is not given to our human nature, but that we are so far removed from this prescience that Homer—who has been conceded the highest reputation for wisdom (*sophia*)—has pictured even the gods as at times debating among themselves about the future’.



at rest'.<sup>79</sup> This is why Plato's second legislation—the *Laws*—is preceded by the Eleatic Stranger's assertion in the *Politicus*, that even rational legislation reflects a *formal* divergence of law from justice.

### 5.2.3 *Legislation and Collusion with Chance*

In Plato's *Laws*, unlike in the *Politicus*, it is the periodicity of a quasi-divine 'chance' (*tychê*), rather than the incessant dissimilarity of flux, that is invoked as an inextinguishable limit to legislative foresight. 'For no legislator has jurisdiction over chance',<sup>80</sup> nor indeed over the merely 'unfortunate' citizen (*ton dystychê*), whom it is senseless—and heartless—to punish.<sup>81</sup> The rhetor Lysias offers a clear reason for this principle: 'No one wills misfortune (*dystychêma*) upon themselves'.<sup>82</sup>

In *Laws* IV, the Athenian legislator inflates the role of chance, much as the Eleatic Stranger magnifies the shapelessness of flux in the *Politicus*. And what Platonic 'chance' effects, here, is precisely a *flux of law*:

ATH. It is likely that almost all human things are in a similar condition.

CLIN. To what are you referring?

ATH. I was on the verge of saying that no human whatever *legislates* (*oudeis ouden nomothetei*), but that chance—and all manner of contingent events, occurring in every possible way—legislates all things for us (*nomothetousi ta panta hymin*). For either it is a war that violently overturns regimes, and changes the laws (*metebale nomous*), or the stress of harsh poverty does it ...<sup>83</sup>

Of course, this momentarily absolute figure of chance in *Laws* IV, like flux in the *Politicus*, is then relativized.<sup>84</sup> Yet the role of chance in Platonic legislation is never eliminated or denied. The Athenian legislator concludes in the *Laws* that 'all the human things' are 'steered', 'at once', by 'god, chance, and occasion'. And as a result, all human 'technique' (*technê*)—and with it, the legislation derived from

<sup>79</sup>Pl. *Pol.* 294b.

<sup>80</sup>Pl. *Laws* IX 879b. Cf. Pl. *Laws* V 741a: 'Not even a god can use force ... against necessity'; and VII 818b: 'Not even god will ever be seen contending with necessity', which the Athenian legislator clarifies, here, as being some kind of 'divine' necessity (*theiai ... anankôn*). At Pl. *Prot.* 345d, Simonides is identified as the source of the dictum: 'Not even the gods contend with necessity' (*anankê d' oude theoi machontai*).

<sup>81</sup>Pl. *Laws* XII 944d.

<sup>82</sup>Lys. *Phil.* 10.

<sup>83</sup>Pl. *Laws* IV 708e–709b.

<sup>84</sup>The Athenian legislator introduces and then denounces a non-divine 'chance' (*tychê*) at Pl. *Laws* X 888e–890a, and then declines, at X 901a–902b, to reintroduce the quasi-divine 'chance' (*tychê*) of *Laws* IV. Nevertheless, aspects of the Magnesians legal regime are left to 'divine chance' (*theia tychê*, *Laws* VI 759c).

‘political technique’ (*politike technê*)—has the task of *colluding* with ‘chance’ (*tychê*),<sup>85</sup> and with the gods.<sup>86</sup>

For a legislator to collude with chance, like a steersman with the sea,<sup>87</sup> it is necessary for a legislator to be *receptive*. Yet a legislator’s instrument—namely, law—is formally, and *per definitionem*, unreceptive. And this returns us once again to the late-Platonic critique of law in the *Politicus*.

### 5.3 The Mechanicity of Law and the Subtilization of Plato’s Laws

We may recall the *Gorgias*’ division of ‘the political’ into legislation and the court-process,<sup>88</sup> and Plato variously articulates a certain ‘mechanicity’ of the court-process.

In the *Apology*, citizen-judges are not seated in court to ‘show favour’, but to ‘render judgement according to the laws (*kata tous nomous*)’.<sup>89</sup> In the *Gorgias*, Socrates declares legislation to be ‘more beautiful than court-process’,<sup>90</sup> since a legislator’s attention to justice is more acute than a judge’s. A court-process is not concentrated upon the idea of justice, but upon a juridical object—the accused—whose person is to be treated as the law dictates.

In the *Politicus*, judicial power is purely instrumental. The sole, ‘special nobility’ (*idian aretên*) of the judge is an *insensitivity* to bribes, threats, pity, friendship, and so on. The ‘work of [a judge’s] power’ (*dynamêôs ergon*) is univocal: to impose ‘all the laws that have been instituted’. This is why a Platonic judge, in the *Politicus*, can be called—note the phrase<sup>91</sup>—a ‘guardian of laws’ (*nomôn phylaka*).<sup>92</sup>

Yet in the *Politicus*, it is foremost the mechanicity of law that is at stake. And law’s levelled iterability is a sign, for Plato, that it is ‘artless’ (*atechnôs*),<sup>93</sup> a *dis*-technique. Where ‘knowledge’ (*epistêmê*)—like a demonic double who could shadow and counsel a citizen ‘all his life’ (*dia biou aei*)—registers differences and

<sup>85</sup>PL. *Laws* IV 709b–c.

<sup>86</sup>Aspects of the Magnesian polity in the *Laws* will still be decided ‘*per delphica oracula*’, in Marsilio Ficino’s rendering of a phrase at PL. *Laws* VIII 828a (England 1921, II:325–326). Cf. Malkin (1989).

<sup>87</sup>The ‘ship of state’ is a commonplace. Cf. ARISTOPH. *Wasps* 28–29: ‘Oh, it’s momentous—it’s about the whole ship of state (*poleôs ... tou skaphous holou!*)’

<sup>88</sup>See Sect. 4.1.3, above; PL. *Gorg.* 464b. This is restated in *Laws* V, where the two constitutive ‘aspects’ of any law-state (*duo politeias eidê*) are the institution of laws and the appointment of officers: PL. *Laws* V 735a.

<sup>89</sup>PL. *Apol.* 35c.

<sup>90</sup>PL. *Gorg.* 520b.

<sup>91</sup>Rowe’s commentary, at least, does not: Rowe (1995, 238).

<sup>92</sup>PL. *Pol.* 305a–c. Cf. *Laws* VI 767a–b; Maffi (2004, 306–309).

<sup>93</sup>PL. *Pol.* 294c.

makes distinctions, the instrument of law necessarily posits and enforces spurious indistinctions.<sup>94</sup>

The Platonic legislator is thus, in the *Politicus*, a priori culpable of injustice. To legislate for the beauty of ‘the city’ (*polis*) is, necessarily, to legislate for the benefit of the ‘the mass’ (*polus*). Yet this is, inevitably, to legislate the harm—however limited, however periodic—of ‘the one’ (*hen*).<sup>95</sup> And suggestively, the legislative caveat that we observed in *Laws IX*—Plato’s ‘for the most part’ (*to polu*)<sup>96</sup>—serves to codify this formal critique of law in the *Politicus*, where a legislator drafts his laws ‘for the most part’ (*to polu*), and ‘for the masses’ (*tois pollois*), and ‘only crassly, unevenly for the individual (*hekastois*)’.<sup>97</sup>

Since this legislative guilt is incurred due to the ‘*form of law*’ as such,<sup>98</sup> towards the end of the *Laws*, Plato delivers what is perhaps his most arresting legal prologue.<sup>99</sup> As the Athenian legislates at an intersection of Magnesia’s inheritance and marriage laws,<sup>100</sup> in *Laws XI*, he suggests that ‘a kind of general legislative prelude (*koinon prooimion*) be issued’, in which the legislator should request a *reciprocal* form of ‘pardon’ or ‘forgiveness’ in the new Platonic colony:

[That] those who are enjoined by this order forgive the legislator<sup>101</sup> since it is impossible for him, in his oversight of the common things (*tôn koinôn*), to provide at the same time for the private calamities of each citizen (*tas idias hekastôi*); and similarly [that] those enjoined by the law [be forgiven], since it is likely that they will, at times, be unable to carry out ordinances the legislator laid down in ignorance.<sup>102</sup>

Here again, a certain incommensurability which is criticized in Plato’s *Politicus* is codified in his *Laws*. In being issued for the masses, so as to institute a common-sphere, a law-code *as such* wrongs the ‘one’ (*hen*) and ‘each’ (*hekaston*)—which is to say, the ‘uncommon’ in a city-state.

This reciprocal ‘forgiveness’ in the *Laws*, however, is occasioned, not only by the spurious generality of law and the mechanicity of its imposition, but by a duplicity which informs the Platonic court-process no less than the elaboration of Platonic laws:

<sup>94</sup>PL. *Pol.* 295a–b.

<sup>95</sup>PL. *Pol.* 294e–295a.

<sup>96</sup>PL. *Laws IX* 867d.

<sup>97</sup>PL. *Pol.* 295a.

<sup>98</sup>Cf. *schêmati nomou* at PL. *Laws IV* 718b–c.

<sup>99</sup>Waugh (2001, 29): ‘*Prooimia* are needed [in the *Laws*] because ... for mortals the force of the laws appears not as rational *ananke*, but as brute *bia*’. It is curious that Waugh, in this article on ‘the dialogic character of the *Laws*’, neither cites nor discusses this singularly ‘reciprocal’ prologue at PL. *Laws XI* 925e–926a. Laks’s discussion (2001, 111–114), in the same volume, of the *Laws*’ use of a ‘legislative prelude’ is suggestive.

<sup>100</sup>PL. *Laws XI* 925a–926a.

<sup>101</sup>Pangle (1980, 327) has ‘forgive the lawgiver’.

<sup>102</sup>PL. *Laws XI* 925e–926a.

In all the cities, by all the legislators who have ever arisen, [there] have been held to be two forms (*eidê*) of injustices – voluntary (*hekousia*) and involuntary (*akousia*)—and [offences] have been so legislated.<sup>103</sup>

This duplicity, the ‘voluntary’-‘involuntary’ (*hekousia-akousia*) distinction in *Laws IX*, is the most fundamental subtilization of Platonic law—and perhaps, of the very concept of human law.<sup>104</sup> Our prologue’s dual ‘pardon’ or ‘forgiveness’ in *Laws XI*, recall, is rooted in the ‘involuntary’ character of the legislator’s and the citizens’ offences. Yet with this duplicity in place, an indefinite ramification of the Platonic law-code commences.<sup>105</sup>

Needless to say, this subtilization of the Platonic law-code signals and presages a mode of *positive* legislative flux—a corollary of rational legislation as such—that Plato must address.

## 5.4 Plato's Mechanization of Legal Revision

The positive flux of a Platonic law-code is not a novelty in the *Laws*. In the *Republic*, Socrates remarks that a ‘true legislator’ (*alêthinon nomothêtên*) will disregard whole branches of law (*toiouton eidos nomôn*) which require no real ‘technique’ to draft and which will arise ‘mechanically’ or ‘spontaneously’ (*automata epeisin*) from the operation, over time, of his legal regime.<sup>106</sup>

Similarly, in the *Laws*, Plato foresees a process of his law-code’s expansion. And here again, this process which renders the mechanism of law more precise—and thus, more responsive to temporal flux, chance, and ‘dissimilarities’ in the Platonic city—is itself, in some sense, mechanistic. That is to say, where the torpidity and mechanicity of law is criticized in the *Politicus*, a mechanistic and strictly incremental subtilization of Platonic law—and seemingly, its final stabilization—is suggested in the *Laws*. Consider this passage, for instance:

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<sup>103</sup>Pl. *Laws IX* 861b. Cf. for instance, *Lys. Phil.* 11: ‘It is a custom (*ethos*) accepted as just among all mankind (*pasin anthrôpôis*) that in the face of the same crimes we should be most incensed (*malista orgizesthai*) with those who are most able to avoid criminal action (*adikein*), but should be indulgent to the poor or disabled because we regard their offenses as involuntary’.

<sup>104</sup>For difficulties with the sense of this distinction in Plato’s *Laws*: Saunders (1968, 1973). Plato not only codifies, but reconceives what ‘all the legislators who have ever arisen’ have written into their codes. A fascinating study of ‘the discovery of the mind’ in Greek criminal law—which is to say, the formulation of the mental element of crime (*mens rea*)—is Carawan (1998).

<sup>105</sup>Plato’s consideration of the ‘voluntary’-‘involuntary’ distinction in his legislation of theft, in the *Laws*, marks a refinement of the Athenian laws on theft: Saunders (1990, 80–81).

<sup>106</sup>Pl. *Rep.* IV 427a. There are parallel remarks at Pl. *Rep.* IV 425a–b, 425d–e. Note a pertinent methodological comment at *Arist. Nic. Eth.* I 7.17: ‘The proper procedure is to begin with a rough sketch (*hypotyposai*), and later to elaborate it further (*hysteron anagrapnai*). If a work has been commenced well in outline (*perigraphêi*), then anyone can carry it on and complete it in detail. Time itself seems to be a skilled inventor and a collaborator in this process (*ho chronos tôn toioutôn heuretês ê synergos agathos einai*)’.

There are countless of these minor legal usages that have to be ... produced. ... They cannot be left unlegislated, but at the same time they are beneath the consideration of an old legislator. So the young legislators (*hoi neoi*) should make additions to these aspects of the law-code, imitating what their predecessors have laid down and modelling minor laws on the graver ones ... until it is decided that all the lesser usages have been adequately established. And then, *having permanently fixed them (akinêta poiêsamenoi)*, they shall live according to the legal usages that have attained the due measure.<sup>107</sup>

Plato's laws concerning the 'formation' or 'discipline' (*paideia*) of the young in *Laws VII* appear to comprise such an 'adequately established' set of laws, with the Athenian saying at the end of the book: 'Only now ... should we say that all the laws pertaining to formation appear to be perfected (*telos echein*)'.<sup>108</sup> What is of interest for us is the fact that this set of laws pertains to the formation, *inter alia*, of Magnesia's 'young legislators'. And the Athenian is very consciously invested in this fact.

In *Laws VI*, for instance, the Athenian glosses 'amendment of the laws' by young legislators as a 'preservation (*phylattein*) of the laws',<sup>109</sup> and likens this process—legal preservation *by* legal amendment—to a self-effacingly derivative work, by successive generations of painters, on a vast fresco.<sup>110</sup> The 'fresco' here is, of course, Plato's final law-code: the *Laws*. The beauty of his legislative outline can only be realized by legislators who are unborn when its first lines are set down. To adapt a line from the Latinized corpus of one of Plato's contemporaries, Hippocrates: *Lex longa, vita brevis*.

And here again, Plato states—or, less dogmatically, his Athenian legislator states<sup>111</sup>—that a law-code is 'necessarily' imperfect (*anankê gar*).<sup>112</sup> This is so salient a fact that, later in *Laws VI*, Plato forges a new Greek term for what it is that his second law-code will require:

The law-guardians (*nomophylakes*) should take cognizance of all these matters and supplement the laws or add new laws (*epinomothetountôn*)<sup>113</sup> as needs arise – and the same holds for all other matters the law-code (*ho nomos*) might, in its uncertainty (*aporian*), omit.<sup>114</sup>

<sup>107</sup>Pl. *Laws VIII* 846b–c.

<sup>108</sup>Pl. *Laws VII* 824a.

<sup>109</sup>Pl. *Laws VI* 769e.

<sup>110</sup>Eva Keuls (1978, 115–117) very perceptively contrasts this analogy in *Laws VI* with a superficially similar analogy in Pl. *Rep. VI* (500d–501c). 'In the *Republic* passage', writes Keuls, 'the principal point of comparison is the notion of the clean surface: the innovative lawgiver must, like the painter, start with a clean slate. In the *Laws* the basis of the equation is, curiously, the almost opposite notion that no initial product of human endeavour is perfect, but that it requires preserving, emending and improving in later generations'.

<sup>111</sup>Cf. Saunders (1990, 63): 'Plato himself, in thin disguise as an "Athenian Stranger" ...'.

<sup>112</sup>Pl. *Laws VI* 770b.

<sup>113</sup>I take the second rendering here—'add new laws'—from Montanari (2015, 780), s.v. ἐπινομοθετέω.

<sup>114</sup>Pl. *Laws VI* 779c–d.

While the surviving text titled *Epinomis* ('supplement to the law') is likely a pseudo-Platonic production,<sup>115</sup> the term itself, *epinomothetêô* ('to supplement the laws'), is—from what I can determine—a *uniquely* Platonic one.<sup>116</sup> And as this term indicates, Plato's *Laws* is not a sealed book. It anticipates a legislative supplement.<sup>117</sup>

Nevertheless, the Athenian legislator's iconographic analogy for the process of law-supplementation is, as he admits, by no means ideal. Less volatile than any paideutic or artistic transmission of the law-code, he says, would be 'some device' or 'machine' (*tina mêchanên*) that could flawlessly transmit the code and its logic to the colony's new crop of legislators.<sup>118</sup> It is this curious expression that leads us to a conclusion.

## 5.5 The 'Nocturnal Council' and the Second Death of Socrates

The word *philosophia* does not appear in the *Laws*, and its cognates only rarely.

—G.R. Morrow, *Plato's Cretan City*<sup>119</sup>

There is, of course, no actual 'machine' in the *Laws* which could regulate the supplementation of Plato's final law-code. Plato devises no mystical or structural algorithm, by means of which younger and future legislators could refine the laws of his hypothetical colony, Magnesia.

This desire for a legislative 'machine' in *Laws* VI nevertheless casts an interesting light over the Magnesian youths' hybrid regimen of 'Egyptian' charm-songs

<sup>115</sup>Since antiquity, the *Epinomis* has been attributed to one of Plato's disciples, Philip of Opus: DIO. LAER. *Lives* III 37.

<sup>116</sup>Cf. Astius (1835, I:787), s.v. ἐπινομοθετῶ; Stephanus (1954, IV:1716), s.v. ἐπινομοθετέω; Liddell and Scott (1996, 649), s.v. ἐπινομοθετέω; Brandwood (1976, 379), s.v. ἐπινομοθετούντων; Montanari (2015, 780), s.v. ἐπινομοθετέω. Gaisford (1848, 362) has no entry; Ritter (1896, 177–178) gives no gloss; England (1921, I:626) limits his comment to syntax. Sophocles (1983, 506, s.v. ἐπινομίς) cites several Philonic passages for the Hellenistic sense of *epinomis* as 'supplement to a law', but mentions no other authors.

<sup>117</sup>Some accept the *Epinomis*: Ledger (1989, 148–151). I do not myself—as of this writing—accept it as Platonic, but its authenticity would obviously serve my purposes here.

<sup>118</sup>Pl. *Laws* VI 769e–770b; Pangle (1980, 157) has 'some device'. England (1921, I: 600) clarifies punctuation but not the expression. The sentence receives no comment from Ritter (1896, 169) or Schöpsdau (2003, 444).

<sup>119</sup>Morrow (1960, 573). (I have transcribed φιλοσοφία in Morrow's text.) The paucity of 'philosophy' in this dialogue is also registered at Laks (2005, 260). With Mayhew (2007) and against Bobonich (1991), I regard the *Laws* as imposing a regime of 'persuasion' that is essentially indistinct from 'compulsion'. Plato dictates the *self-exile* of philosophy from his hypothetical colony, Magnesia.

and dances,<sup>120</sup> Spartan mess halls and staged combats,<sup>121</sup> and the colony's *sui generis* cycle of 365 feast days. (Note in passing that 'in this reckoning of the length of the solar year Plato is ahead of his time'.)<sup>122</sup>

The Platonic desire for a legislative 'machine' could also be recalled in *Laws* VIII, when the Athenian legislator introduces this cycle of 365 feast days and then—despite its calendrical perfection—lays out a protocol for identifying lacunae in Magnesia's cultic laws:

The exegetes, priests and priestesses, and diviners should convene with the appointed law-guardians (*nomophylakôn*)<sup>123</sup> to arrange whatever the legislator is forced to leave unsaid in regard to these matters. These same persons are the ones who must determine *what he has left unsaid*.<sup>124</sup>

This last stipulation has consequences in the paragraphs that follow it, with the Athenian legislating that the law-guardians are to appoint poets who may be no younger than 'fifty years of age',<sup>125</sup> and who alone will have 'freedom of speech in song' (*parrhêsian en mousais*).<sup>126</sup> This restriction must be enforced—he warns—even if 'unauthorized songs' are composed which are 'sweeter than the hymns of Orpheus'.<sup>127</sup>

While this close conjunction of legislative supplementation and a restriction of free speech (*parrhêsia*) points directly to the Nocturnal Council of Rulers in *Laws* XII,<sup>128</sup> we should first relate this ban on 'unauthorized songs' back to the *Politicus*, where the Eleatic Stranger expresses concern over the mechanistic of law, which

permits no one whatever to counteract its own ordering of things (*para tèn ... taxin*) or even to pose a question, *not even if it occurs that some new thing is superior*, though contrary to the rule (*para ton logon*).<sup>129</sup>

<sup>120</sup>Cf. PL. *Laws* II 656d–657a, VII 795d–804c; Brisson (2000b, 164–166). Citing HEROD. *Hist.* II 80, II 166–167, VI 60, and PL. *Tim.* 24, Szegedy-Maszak (1978, 204 n. 25) recalls that 'there is ... a strong tradition comparing Spartan and Egyptian customs'. Plato's 'Egyptian' dances (etc.) in the *Laws* are doubtless meant to suggest a 'Spartan' style of culture in the Platonic colony.

<sup>121</sup>For the 'syssition' or 'common mess': Piérart (1973, 77–80), David (1978).

<sup>122</sup>England (1921, II: 326).

<sup>123</sup>Regarding Magnesia's exegetes, priestesses, diviners, and so forth: Brisson and Pradeau (2006, I: 439–456) survey the Platonic colony's intricate political machinery.

<sup>124</sup>PL. *Laws* VIII 828b.

<sup>125</sup>PL. *Laws* VIII 829c.

<sup>126</sup>PL. *Laws* VIII 829d.

<sup>127</sup>PL. *Laws* VIII 829d–e.

<sup>128</sup>PL. *Laws* XII 968a: *archontôn nykterinon syllogon*. Recall here that at PL. *Rep.* V 463a, Glaucon observes that the term 'rulers' (*archontas*) is preferred by the ancient Greek democracies.

<sup>129</sup>PL. *Pol.* 294b–c.

The *Laws*’ express prohibition on songs ‘even ... sweeter than the hymns of Orpheus’ seems to reproduce and institute precisely the sort of gross and coarsening mechanicity that is criticized in Plato’s *Politicus*.<sup>130</sup>

And the parallels deepen, since Plato echoes the above sentences at *Politicus* 294 when he evokes the death of Socrates at *Politicus* 299, in which Socrates is characterized as speaking ‘against the laws’ (*para tous nomous*):

There will have to be a law (*thesthai nomon*)<sup>131</sup> that if anyone is found to be investigating [legislative matters] ... contrary to the written code (*para ta grammata*), or to be indulging in any speculation whatever on such matters... anyone who is qualified may bring an accusation against him and take him to the law-court for corrupting the youth (*diaphtheiron ta allous neoterous*) and persuading them... in opposition to the laws (*me kata nomous*) ... And if he is found to be persuading either young or old contrary to the laws (*para tous nomous*) ... he shall suffer the most extreme penalties (*kolazein tois eschatois*).<sup>132</sup>

In the *Politicus*, Plato has Socrates ‘the youngest’<sup>133</sup> recoil from this legal rule and ordeal—which, of course, summon up the philosopher Socrates’ trial and death in 399.<sup>134</sup> The Younger Socrates persona objects that a ban on free investigation would devastate the city’s arts and render life ‘intolerable’ (*abiotos*).<sup>135</sup>

In *Laws* XII, however, Plato codifies a lightly emended version of this ban, and—while the logic for this cannot be gone into—condemns the philosopher Socrates *ex post facto*.<sup>136</sup> This occurs in the very last sections of Plato’s last dialogue, *Laws*—sections which institute the office of envoy (*theoros*) in Magnesia,<sup>137</sup> and with it, the Nocturnal Council that is to regulate the flux—which is to say, the subtilization and emendation—of Plato’s hypothetical law-code.<sup>138</sup>

<sup>130</sup>That being said, it is natural—and necessary—to compare this late-Platonic interdict with a passage in Aesch. *Tim.* 19–20: “‘If any Athenian”, [so stipulates one article of the fourth-century Athenian law-code], “shall have prostituted his person he shall not be permitted to ... act as an advocate for the state (*syndikêsatôi*) ... nor ever to address the Council or the Assembly”, *not even* [adds Aeschines] *if he is Athens’ finest (deinotatos) orator*’.

<sup>131</sup>Cf. Pl. *Pol.* 297d–e, 300b–c.

<sup>132</sup>Pl. *Pol.* 299b–c.

<sup>133</sup>To again take the *Politicus*’ Younger Socrates persona in light of my opening remarks on ‘the youngest’ Plato; while noting—again—that I see no reason to accept Speliotis’s claim that this Younger Socrates has ‘no relation to Plato’s philosopher’ (2011, 295).

<sup>134</sup>It is not controversial to see a ‘reminiscence of Socrates’ here: Rowe (1995, 230), Ricken (2008, 198).

<sup>135</sup>Pl. *Pol.* 299e.

<sup>136</sup>See Sect. 2.3.

<sup>137</sup>Piérart (1973, 213): ‘L’institution des théores est une des plus curieuses des *Lois*’.

<sup>138</sup>Pl. *Laws* XII 950d–952d.



Like the poets of *Laws VIII*, the envoys of *Laws XII* must be no younger than fifty.<sup>139</sup> Their function will be:

- (i) To survey ‘the legal institutions of other peoples’.<sup>140</sup>
- (ii) To consider which of Magnesia’s laws are ‘nobly enacted’ (*kalôs ... keitai*), and how to ‘amend’ or ‘revise’ (*epanorthoumenon*) the colony’s law-code wherever it is found to be ‘deficient’.<sup>141</sup>
- (iii) To report to Magnesia’s youth (*tous neous*), in a thoroughly partisan fashion, that ‘other regimes (*politeias*) are inferior to their own’.<sup>142</sup>
- (iv) To deliver findings and to propose legal revisions to Magnesia’s nocturnal council, since ‘without such survey and investigation (*theôrias kai zêtêseôs*), no legal regime can remain perfect (*teleôs polis*)’.<sup>143</sup>

In contrast to the partisan behaviour of ‘incorruptible’ (*adiaphthartos*) envoys,<sup>144</sup> the Athenian legislator then evokes and traduces—on my reading—the figure of Socrates.<sup>145</sup> This last Platonic ‘Socrates’ is not condemned in Athens’ law-courts for ‘corrupting (*diaphtheirei*) the youth’<sup>146</sup>; but is rather to be condemned in Magnesia’s law-courts as an envoy who is *himself* ‘corrupted (*diephtharmenos*) on his return’ to the Platonic colony.<sup>147</sup> Against such a ‘corrupted’ envoy,<sup>148</sup> the Athenian legislates:

... in spite of his pretensions to be wise (*sophos*), he is not to associate with any young or older man.<sup>149</sup> And if he should obey the rulers (*peithêtai tois archousin*), then he may live

<sup>139</sup>Pl. *Laws XII* 951c.

<sup>140</sup>Pl. *Laws XII* 952b.

<sup>141</sup>Pl. *Laws XII* 951c.

<sup>142</sup>Pl. *Laws XII* 951a.

<sup>143</sup>Pl. *Laws XII* 951c.

<sup>144</sup>Pl. *Laws XII* 951b–c.

<sup>145</sup>Though Socrates was never one to ‘visit the cities’: Pl. *Soph.* 216c. Socrates is quoting Homer here.

<sup>146</sup>Pl. *Apol.* 23d: *diaphtheirei tous neous*. Cf. *Apol.* 24b: *tous te neous diaphtheironta*; *Apol.* 24c: *tous neous adikein me diaphtheironta*; *Apol.* 25b: *peri tous neous ei eis men monos autous diaphtheirei*.

<sup>147</sup>Pl. *Laws XII* 952c: *ean de diephtharmenos aphikesthai doxê*.

<sup>148</sup>By insisting on a schewed Socratic resemblance, here, I do not mean to deny that Plato may also have intended to legislate against other types of ‘corrupted envoy’—most notably, perhaps, the Spartan commander Pausanias: THUC. *Pelop.* I 95.

<sup>149</sup>Cf. Pl. *Apol.* 30a: *tauta kai neôterôi kai presbyterôi, hotôi an entynchanô, poiêsô, kai xenôi kai astôi*.

as a non-officeholder (*idiôtês zêtô*).<sup>150</sup> But if not, he is to be put to death<sup>151</sup>—if, that is, he should be convicted in a law-court of interfering in the formation of the young, and in the laws.<sup>152</sup>

There is in this coda to the Platonic *Laws*—and thus, to the Platonic corpus—a vicious circularity which can only be observed.<sup>153</sup> It is the eldest Plato, here, who installs himself as Socrates’ judge in *Laws* XII. How would Socrates reply to him? This is an impossible question, but it is necessary to recall that Socrates—in words that come to us from the youngest Plato—testified to the Athenian law-court:

- (i) with Plato’s *Laws*: ‘He who means to actually contend for what is just, if he is to preserve his life for even a little while, must of necessity (*anankaion esti*) be a non-officeholder (*idiôteuein*)’<sup>154</sup>; and then,
- (ii) against Plato’s *Laws*: ‘I shall never give up philosophy’.<sup>155</sup>

The philosopher who says (ii) could not survive in the Platonic colony of Magnesia.<sup>156</sup> For while law is not Socrates’ despot, Plato—perhaps echoing the Spartan defector in Herodotus’ *Histories*, Demaratus<sup>157</sup>—intends for his law-code to be despot in Magnesia, and for his colony’s officeholders to act as its slaves (*douloi tou nomou*).<sup>158</sup>

To the precise extent that the last pages of Plato’s *Laws* remind us of a divergence of positive law from justice (Chap. 3), they serve to remind us that the force

<sup>150</sup>This is, of course, precisely the legal-judicial ‘condition’ that Socrates rejects, in no uncertain terms, at Pl. *Apol.* 29b–30c. See Sect. 3.1.5, above.

<sup>151</sup>Saunders (1963, 194): ‘The death penalty in the *Laws* is reserved for the incorrigible’.

<sup>152</sup>Pl. *Laws* XII 952c.

<sup>153</sup>See Sect. 2.3 and supplements 3a–b.

<sup>154</sup>Pl. *Apol.* 32a; Sect. 3.1.5, above.

<sup>155</sup>Pl. *Apol.* 29d; Sect. 3.1.5, above.

<sup>156</sup>Cf. Grote (1888, IV:429).

<sup>157</sup>The link is not only suggested by Plato’s use of Demaratus’ phrase *despotês nomos* at Pl. *Laws* IV 715d, but by a passage at *Laws* III 698a–c, which follows the Athenian legislator’s survey of the Persian monarchs from Cyrus to Xerxes at *Laws* III 694a–696a. See supplement 2a, at the back of the volume.

But regardless of Demaratus, there can be no question that the *Laws*’ restrictions on envoys’ free speech (*parrhêsia*)—and thus, what I call ‘the second death of Socrates’—is Dorian in inspiration. At Pl. *Laws* I 634d, the Athenian defers to ‘the Laconian and the Cretan regimes’, whose ‘laws are drawn up in a circumspect way’, and then specifies, at *Laws* I 634d–e:

One of your finest laws is the one that forbids any of the young to inquire which laws are virtuous and which vicious (*mê zêtein tôn neôn mêdena ean poia kalôs autôn ê mê kalôs echei*), but commands them all to say in unison, with one voice from one mouth, that all the laws are nobly laid down by gods (*panta kalôs keitai thetôn theôn*). If someone says otherwise, there is to be no heed paid to him at all. And yet if some old man has a stricture to pass on something in your laws, he is to make his argument before an archon and a man his own age, with none of the youths present.

<sup>158</sup>Pl. *Laws* IV 715d.

of principled and reasoned *contradiction* in a city (Chap. 4)—and in its wake, a *positive* flux of law: the amendment and emendation of inherited law-codes (Chap. 5)—is sanctioned by the trial and death of Socrates.

The second death of Socrates is adumbrated in the *Laws*. It should nevertheless be stressed that, as Plato's *second* attempt at hypothetical legislation, the *Laws* codify a formal imperfection of law that Plato articulates in the *Politicus*. Neither the heinousness of Socrates' second death, nor the formal innovativeness of the *Laws* as a second Platonic legislation, is adequately observed in the literature on Plato.

Platonic legislation reflects the *constitutive* imperfection of every law-code—qua code, and qua law. This is not to say that Plato rejects the ideals of rational legislation, the law-state, or the modification of existing legal regimes. To the contrary: Plato legislates. Our conclusion, rather, is that Platonic legislation—like philosophy—is endless.<sup>159</sup>

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<sup>159</sup>Pl. *Laws* IX 859c: 'We are in the process of becoming legislators, and may perhaps become so, but we are not yet legislators'.

# Epilogue

The world-cause is like the flux of a river. All things rush on. ... Put no hope in Platonic legislations!

—MARCUS AURELIUS, *Meditations*<sup>1</sup>

From 161 to 180 CE the Roman emperor was a philosopher, Marcus Aurelius Antoninus.<sup>2</sup> According to a late-antique poet, it was Marcus who ‘introduced the ordinances of Plato (*scita Platonis*) to Roman power’.<sup>3</sup>

There is no denying that Plato was a decisive influence on Marcus’ legal philosophy.<sup>4</sup> According to Marcus himself, however—writing in Greek in his untitled notebooks—the rescripts and decrees that he issued were not inspired by Plato.<sup>5</sup> On the contrary, the emperor urged himself to ‘put no hope in Platonic legislations’ (*mê tèn Platônos politeian elpize*).<sup>6</sup> He believed that it would be idiotic, and not philosophic, to impose a hypothetical fourth-century BCE law code on a real second-century CE law state. Because the life of human cities shifts and alters ‘like the flux of a river’, he held that the flux of law is a rational necessity.

According to the argument of this essay, it was Marcus’ resistance to the *letter* of Platonic legislation—his reckoning with time and flux in light of a high, and, yes, a Platonic idea of justice—that made him a Platonic legislator.<sup>7</sup>

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<sup>1</sup>MARC. AUR. *Med.* IX 29.

<sup>2</sup>The same could be said of the brief reign of Julianus Augustus (‘the Apostate’) from 361 to 363 CE.

<sup>3</sup>AUSONIUS, *Carmina in Caesares Romanos* 17 (Cit. Novotný 1977, 89).

<sup>4</sup>Hadot (1998, 296–302). For Cicero’s hand in grafting ‘platonisme politique’ onto the Roman stock of Stoic thought: Neschke-Hentschke (1995, I:183–202).

<sup>5</sup>Meric Casaubon is the first to title Marcus’ notebooks *Meditations*, or more precisely, *Meditations concerning himself* (London, 1634). Casaubon’s Greek edition (with a facing Latin translation) is titled more conventionally, *De seipso et ad seipsum* (London, 1643): Hadot (1998, 23–34), here 24.

<sup>6</sup>MARC. AUR. *Med.* IX 29. Needless to say, this has been freely rendered to reflect the essay’s title. For a reading of this passage in its Roman context: Hadot (1998, 303–306).

<sup>7</sup>‘The letter of Platonic legislation’ is to be taken in a strict sense; it refers to the fact that Plato’s laws are *written*. Camassa (2012, 29) is right to stress that ‘il problema del mutamento delle leggi nasce soltanto in presenza della scrittura’, and to link the question of legal critique to Plato’s critique of writing. This connection is treated with singular breadth and rigour in Camassa (1977, 1988, 1994, 2011, 2012).

# Supplements

## Supplement 1a. Demaratus and Socrates

(α) Demaratus to XERXES, HEROD. *Hist.* VII 104.<sup>8</sup>

They must never flee in battle, whatever their enemies' numbers, but must **stand firm** (*menontas*) where they are **stationed** (*taxi*), and there, either conquer or **die** (*apollusthai*).

(β) Socrates to the Athenian lawcourt, PL. *Apol.* 28d.

Wherever a man **stations** (*taxêi*) himself, holding that to be the best, or is **stationed** (*tachthêi*) by his commander, there he must, as it seems to me, **stand firm** (*menonta*) and run the risks, giving thought to neither **death** (*thanaton*) nor any other thing except disgrace.

## Supplement 1b. Demaratus and Socrates

(α) Demaratus to XERXES, HEROD. *Hist.* VII 104.

They must never **flee** (*pheugein*) in battle, whatever their **enemies'** (*anthrôpôn*) numbers, but must **stand firm** (*menontas*) **where they are stationed** (*en tê taxi*), and there, either conquer or die.

(β) Socrates to Callicles, PL. *Gorg.* 507b.

It is surely not the part of a self-possessed man to improperly pursue or **flee** (*pheugein*); rather, it is his part to pursue and **flee** (*pheugein*) what he ought, whether things or **people** (*anthrôpous*), pleasures or pains, and to **stand firm** (*hypomenonta*) and persevere **wherever he must** (*hopou dei*).

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<sup>8</sup>This text from Herodotus' *Histories* is, to my mind, the most striking *comparandum*, but other texts could of course be cited. Cf. for instance, Lys. *Epit.* 31: 'The Spartans, showing no failure of spirit, but deceived as to the numbers ... of those with whom they had to contend, were destroyed (*diephtharêsan*), not having been worsted by their adversaries, but slain where they had been stationed for battle (*all' apothanontes houper etachthêsan machesthai*).'

## Supplement 2a. Demaratus and Plato's Athenian Legislator

(α) Demaratus to XERXES, HEROD. *Hist.* VII 104.

They are free, but not **absolutely free** (*panta eleutheroi*): **law is their despot** (*despotês nomos*), whom they fear much more than your men fear you.

(β) The Athenian legislator to a Cretan and a Spartan, PL. *Laws* III 698a–c.

We ought to examine next, in like manner, the Attic polity, and show how **absolute freedom** (*pantelês ... eleutheria*), unfettered by any authority, is vastly inferior to a moderate form of government under elected magistrates. At the time when the Persians made their onslaught upon the Greeks – and indeed one could say on nearly all the nations of Europe – we Athenians had an ancient constitution, and archonships based on a fourfold grading; and we had reverence (*aidôs*), which acted as **a queen**, causing us to live as the willing slaves of the existing **laws** (*despotis ... nomois*).

## Supplement 2b. Demaratus and Plato's Athenian Legislator

(α) Demaratus to XERXES, HEROD. *Hist.* VII 104.<sup>9</sup>

They are free, but not absolutely free: **law is their despot** (*despotês nomos*), whom they fear much more than your men fear you.

(β) The Athenian legislator to a Cretan and a Spartan, PL. *Laws* IV 715d.

Wherever **law** (*nomos*) is servile and impotent, there I see ruin impending; but wherever it is **despot** (*despotês*) of the rulers, and the rulers are slaves to the laws, there I foresee salvation and all the blessings which the gods bestow on cities.

## Supplement 3a. Magnesia's Socrates

(α) The Athenian legislator to a Cretan and a Spartan, PL. *Laws* XII 952c–d.

But if ... such an envoy appear to be **corrupted** (*diephtharmenos*) on his return [to Magnesia], in spite of his pretensions to be **wise** (*sophos*), he shall be forbidden to associate with anyone, **young or old** (*mête neôi mête presbyterôi*), and if he obeys the commanders he shall live as a private citizen, but if not, **he shall be put to death** (*tethnatô*) – if, that is to say, he is convicted in a **lawcourt** (*en dikastêriôi*) of interfering in the formation of the young and **in the laws** (*tous nomous*).

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<sup>9</sup>Again, other texts could be cited. Cf. for instance, Lys. *Epit.* 19: '... they deemed that it was the way of wild beasts to be held subject to one another by violence (*bia*), but the duty of humans ... **to submit to the sovereignty of law** (*hypo nomou men basileuomenous*) and the instruction of reason.'

(β) The Eleatic Stranger to Young Socrates, PL. *Pol.* 299b–c.

There will have to be a law that if anyone is found to be investigating [legislative matters] ... contrary to the written rules, or to be indulging in any speculation whatever on such matters, he shall in the first place ... be called a ... a star-gazer, a kind of loquacious **sophist** (*sophistên*), and secondly anyone who is properly qualified may bring an accusation against him and take him to the **lawcourt** (*dikastêrion*) for **corrupting** (*diaphtheironta*) the young and persuading them ... in opposition to **the laws** (*tous nomous*) ... And if he is found to be persuading **either young or old** (*eite neous eite presbytas*) contrary to the laws ... **he shall suffer the most extreme penalties** (*kolazein tois eschatois*). No one ought to be **wiser** (*sophôteron*) than the laws.

## Supplement 3b. Magnesia's Socrates

(α) The Athenian legislator to a Cretan and a Spartan, PL. *Laws* XII 952c–d.

But if ... such an envoy appear to be **corrupted** (*diephtharmenos*) on his return [to Magnesia], in spite of his pretensions to be **wise** (*sophos*), he shall be forbidden to associate with anyone, **young or old** (*mête neôi mête presbyterôi*), and if he obeys the commanders he shall live as a **non-officeholder** (*idiôtês zêtô*), but if not, **he shall be put to death** (*tethnatô*) – if, that is to say, he is convicted in a lawcourt of interfering in the formation of the young and in the laws.

(β) Socrates to the Athenian lawcourt, PL. *Apol.* 29b–d.

Perhaps, gentlemen, in this matter also I differ from other men in this way, and if I were to say that I am **wiser** (*sophôteros*) in anything, it would be in this, that not knowing very much about the other world, I do not think I know. ... And therefore, even if you acquit me now and are not convinced by Anytus, who said that either I ought not to have been brought to trial at all, or since was brought to trial, I must certainly be put to death, adding that if I were acquitted your sons would all be **utterly corrupted** (*diaphtharêsontai*) by practicing what I teach – if you should say to me in reply to this: ‘Socrates, this time we will not do as Anytus says, but we will let you go, on this condition, however, that you no longer spend your time in this investigation or in philosophy, and if you are caught doing so again **you shall die** (*apothanei*)’; if you should let me go on this condition which I have mentioned, I should say to you, ‘Men of Athens, I respect and love you, but I shall obey the god rather than you, and while I live and am able to continue, I shall never give up philosophy or stop exhorting you and pointing out the truth to any one of you whom I may meet, saying in my accustomed way ...’

(γ) Socrates to the Athenian lawcourt, PL. *Apol.* 30a.

This I shall do to whomever I meet, **young and old** (*kai neôterôi kai presbyterôi*), foreigner and citizen ... for I go about doing nothing else than urging you, **young and old** (*kai neôterous kai presbyterous*) ...

(δ) Socrates to the Athenian lawcourt, PL. *Apol.* 32a.

He who means to actually contend for what is just, if he is to preserve his life for even a little while, must of necessity be a **non-officeholder** (*idiôteuein*), not a politician.

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