

17 Law in Plato's Late Politics

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Throughout his political works, Plato takes the aim of politics to be the virtue and happiness of citizens and the unity of the city. But whereas the *Republic* claims that this requires rule by philosophers (471c–473e), the *Laws* takes it to be achievable by the rule of law. It is commonly thought that Plato turns to law in the late dialogues due to his increased pessimism about the possibility of philosophical rule.¹ In fact, however, even Plato's earliest dialogues conceive of law as aimed at cultivating virtue, and of virtue as expressed in obedience to the law.

In the *Gorgias*, Socrates divides political expertise, which aims at the good of the soul and has an account of the means by which it produces this good, into two departments, legislation and justice (463e–465a), with legislation being the superior of the two (520b). Socrates' explicit parallel between these two expertises and the expertises that aim at the good of the body – gymnastics and medicine – indicates that the aim of legislation is to put and maintain the soul in a good condition, while the aim of justice is to correct souls that have gone wrong.

The *Apology* and *Crito* indicate that Plato sees a close connection between being a just person and obeying the law. In the *Apology*, Socrates presents himself as both an advocate of justice and as someone who opposes the unjust and illegal dealings of the city. He refuses, for example, to participate in the illegal (*paranomōs*, 32b4, *para tous nomous*, 32b6) mass trial of the generals of the battle of Arginousae,

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and he resists the illegitimate orders of the Thirty to arrest Leon of Salamis (32c–d).² In the *Crito*, Socrates argues that his commitment to justice requires that he abide by the city's laws, for he has made a just agreement to either follow the laws or persuade the city that its judgments are unjust (50c–53a).³

In light of Plato's longstanding interest in law and its relation to virtue, this chapter examines the roles played by law in the *Republic*, *Statesman*, and *Laws*, focusing on *how* law conduces to individual virtue and civic unity in each of these dialogues. Section I argues that in the *Republic*, laws regulate important institutions, such as education, property, and family, and thereby create a way of life that cultivates virtue and unity. Section II argues that in the *Statesman*, the political expert determines the mean between extremes and communicates it to citizens through laws that guide their judgment and conduct, so that they become virtuous themselves and the city is unified; this suggests how even non-expert legislation can contribute to virtue and unity. Section III argues that the *Laws* affirms and develops the idea that citizens should know and accept the laws to become virtuous themselves and to unify the city; this explains how the persuasive precludes and sanctions for violation attached to the laws contribute to citizen virtue and civic unity.

I LAW IN THE REPUBLIC: STRUCTURING VIRTUE-CONDUCTIVE INSTITUTIONS

The *Republic* is structured as a response to a challenge from three interlocutors: (1) Thrasymachus, who says that it is folly to be just or law-abiding, for the laws of each constitution aim at the advantage of its rulers (338e); (2) Glaucon, who claims that living a just and law-abiding life is a compromise between the goodness of outdoing others and the badness of being outdone by them (358e–359c); (3) Glaucon and Adeimantus, who argue that one would do better to appear just without being so in fact (362b–367e). In reply, Socrates presents an account of the just person that shows that it is rationally choiceworthy to be just. He develops his account by analogy with

justice in the city. In the city, justice is the condition in which each class does the work for which it is best suited (433a–434c), with the result that all of the citizens are happy. Most importantly, philosophers, who possess wisdom about what is best for the city as a whole, rule; and spirited “auxiliaries,” who have been educated to be courageous and moderate, help them to guard the city. By analogy, individual justice is the condition in which each part of the soul does the work for which it is best suited, with reason ruling on the basis of knowledge of what is good for each part and the whole, and spirit serving as its auxiliary in ruling over appetite (441d–442b). This condition is also the condition of psychological health, without which life is not worth living (445a–b); indeed, how happy or unhappy a person is depends on how just or unjust she is (580b–c).

Many readers come away from the *Republic*’s account of the just and happy city, which Socrates calls Kallipolis, with the impression that law plays little role in the virtue and happiness of the citizens, since it is philosophical rule that makes Kallipolis possible, and in Kallipolis citizens’ virtue, and therefore happiness, is produced by their education. Against this, Annas (2012, 2017) argues for the significance of law in the *Republic*, observing that it mentions terms for law and lawgiving over forty times (2012: 168)⁴ and that Socrates and his interlocutors characterize themselves as founders and legislators of Kallipolis (2017: 13–14, citing, e.g., *Republic* 380b–c, 403b, 458c–d, 497c–d). Similarly, Lane (2013) argues that the *Republic* “rehabilitates” law in the wake of Thrasymachus’, Glaucon’s, and Adeimantus’ challenge, and concludes that law is “the ally of everyone in the city” (citing 590e).

Building on these observations about the presence of law in the *Republic*, we argue below that law’s role in fostering virtue is *indirect*. Law regulates institutions (especially education, property, and family) that structure the citizens’ way of life, and it is the way of life,

in particular education, that directly conduces to virtue. To see this, consider three examples of Kallipolian legislation:

- 1) Laws and patterns (*nomōn te kai tupōn*, 380c8) regulate the stories about the gods told to the guardians during their musical education. Because the citizens admire the gods and so imitate their way of life (442a–b, 411e–412b), the content of stories about the gods requires regulation. But it is the stories, not the laws, that are in the citizens' consciousness, and so it is the stories rather than the laws that directly shape their values and conduct.
- 2) The founders lay down laws (*nomothetēsōmen*, 417b8) abolishing private property among the guardians, specifying that they are to live in communal housing, eat communal meals, and refrain from even touching gold and silver. This legislation blocks guardians from temptations to intemperance and competition with those they are supposed to guard (416a–417b). For this they *need not* be aware of the property laws; what is needed is that they not see wealth as something to strive for, so they are told they have no need of external gold or silver because they already have it “in their souls” (416e).
- 3) Legislation (*nomothetētai*, 459e5) regulating marriage and childrearing (459d–e, 460c–461b) ensures that the guardians do not know about any biological relations, but regard their contemporaries as siblings, their elders as parents, and those younger as children. Socrates claims that these laws are in tune with the laws forbidding private property. They prevent the citizens from having strong desires favoring their own households, which would threaten their concern for the good of the city as a whole and thus the unity of the city (464b–d). Here the guardians *should not* know the laws, for they are to believe that their marriages are determined by a lottery rather than the rulers' attempts to ensure that the best men and women marry each other (459c–460a).

Let us call this kind of indirect legislation “institutional legislation,” for in each case, the laws aim at the virtue of the citizens and the unity of the city by creating and maintaining institutions (an educational system, communal living, a non-biological family) which are themselves more directly virtue-conducive.

The concept of institutional legislation helps clarify a passage that some readers have, we think wrongly, taken to show the irrelevance of law to virtue in the *Republic*. After laying down the property laws for the guardians of Kallipolis, Socrates describes them as minor (*phaula*) so long as the guardians safeguard the one great (*hen mega*) or sufficient (*hikanon*) thing, their education (423e). He continues,

whenever children play in a good way right from the start and absorb lawfulness (*eunomia*) from musical training . . . lawfulness follows them in everything and fosters their growth, correcting anything in the city that may have been neglected before . . . And so such people rediscover the seemingly insignificant conventional views their predecessors had destroyed: . . . the silence appropriate for younger people in the presence of their elders; the giving up of seats for them and standing in their presence; the care of parents; hairstyles; clothing; shoes; the general appearance of the body; and everything else of that sort . . . To legislate about such things is naive, . . . since verbal or written decrees will never make them come about or last . . . [I]t looks as though the start of someone’s education determines what follows . . . And the final outcome of education . . . is a single, complete, and fresh product that is either good or the opposite . . . That is why I . . . would not try to legislate about such things . . . Then, by the gods, what about all that market business, the contracts people make with one another in the marketplace, for example, and contracts with handicraftsmen, and slanders, injuries, indictments, establishing juries, paying or collecting whatever dues are necessary in the marketplace and harbors, and,

in a word, the entire regulation of any marketplace, city, harbor, or what have you – should we venture to legislate about any of these?

[Adeimantus:] No, it would not be appropriate to dictate to men who are fine and good. For they will easily find out for themselves whatever needs to be legislated about such things.

[Socrates:] Yes, provided that a god grants that the laws we have already described are preserved. (425a–e, tr. Reeve slightly modified)

Socrates here contrasts education, which his last remark emphasizes is governed by (institutional) legislation, with laws that directly command citizens to perform certain actions, and concludes that institutional legislation is more effective for producing virtuous conduct than direct legislation. He goes on to compare direct legislation to medical treatment which, when prescribed to intemperate people who refuse to change their way of life, “achieves nothing” (425e–426a). Indeed, while direct legislation aims to stop people from cheating and other wrongdoing, it is just “cutting off a Hydra’s head” (426e–427a), for if laws only prescribe or proscribe particular acts, vice will find an outlet. Thus it is better for laws to structure education so that citizens develop virtuous habits. In this way, citizens become lawful without having to think about the law as such. Of course, as Adeimantus says, the guardians will legislate where necessary, but the point of the passage is that the more consequential legislation is legislation regulating education.

It is striking, given all Socrates’ talk of law in the *Republic* – and given the seriousness of his attitude toward the laws in the *Apology* and *Crito* – that he does not discuss Kallipolis’ citizens’ attitude toward the laws. He does say that the citizens are aware of and endorse a central feature of the *constitution*: that philosophers rule and non-philosophers are ruled (431e–432a), and that they call each other by names reflecting their appreciation of each other’s contributions: “preserver,” “auxiliary,” “providers of upkeep,” “co-guardian” (463b). But these are not attitudes toward the laws *per se*.

Two passages might seem to suggest that the citizens are to know the law and that appreciating it is somehow related to their virtue. In the first, Socrates defines civic courage as the ability to preserve the “law-inculcated true belief about what is and is not to be feared” and distinguishes it from beliefs about the same matters found in slaves and animals (430b). One might suppose he means that while slaves and animals obey the law out of fear of punishment, citizens are law-abiding because they think “the law aims at my good,” or because they respect the law, and so accept its pronouncements about good and bad. But in this passage Socrates repeats *three times* that the laws inculcate the citizens’ beliefs through education (429c3, c6, 430a1). Thus the beliefs are “law-inculcated” only indirectly, in the sense that laws regulate the education that forms citizens’ beliefs.

In a second passage, Socrates says that it is better for everyone to be ruled by a divine and wise ruler, preferably one that is his own and within, but failing that, one imposed from the outside, so that all of the citizens can be as similar and friendly as possible; and he goes on to say that this is also the aim of the law, the ally of everyone in the city (590c–591a). Annas (2017: 16) reads this passage as evidence of citizens’ consciousness of and motivation by law, for “law presents reason to the citizens in a directive way.” But this passage compares the law’s aim to what parents intend in raising their children: “by fostering their best part with the similar part of our own, we establish it as guardian and ruler instead of us,” and “then we set them free” (590e2–591a3). Thus the law aims to nurture citizens’ own reason and (psychic) justice. But it is education by which reason comes to rule and a soul comes to be just (442a), so this passage too points to the laws as structuring citizens’ education.

Why does the *Republic* focus on institutional legislation to the neglect of citizens’ awareness of their laws, even though the challenge to the rational choiceworthiness of justice was also a challenge to lawfulness? We propose two complementary explanations. First, the abovementioned parallel between institutional legislation and

medical regimen (or gymnastics, in *Gorgias*) might suggest that institutional legislation can effect virtue without citizens' awareness of it. If what secures and maintains a patient's bodily health is his medical regimen (his diet, his exercises), then what secures and maintains a citizen's virtue would be the regimen of his actions and experiences. Neither the patient nor the citizen needs to know how his regimen effects bodily health or virtue for the regimen to do its work. As we will see in section III, the *Laws* revises this parallel.

Second, in the *Republic*, Thrasymachus and Glaucon challenge justice and law on the assumption that human nature is pleonectic, so that justice and law curb its pursuit of happiness. Socrates' account of the soul introduces a different picture of human nature, according to which pleonectic pursuits lead to psychic distress but rationally limited pursuits lead to harmony, so that law is not opposed to human nature but a means to its perfection. Given the fundamentality of Thrasymachus' and Glaucon's challenge, and of Socrates' defense, the question of Kallipolis' citizens' attitude toward law *per se* may be too fine-grained for the *Republic*. It is appropriate, then, that this question should be in the spotlight in Plato's more exclusively political works, the *Statesman* and *Laws*.

II LAW IN THE STATESMAN: WEAVING CITIZENS TOGETHER WITH THE BOND OF (TRUE) OPINION

The *Statesman* is structured as a dialectical exercise, led by an Eleatic Visitor, that aims to define political expertise or statesmanship.⁵ The Visitor says that statesmanship is an expertise that controls and cares for everything in the city, including the other expertises that care for citizens (e.g., generalship, judgeship, and rhetoric, as well as legislation), by weaving everything together in order to unify the city (305d–e). As we will see, “everything” includes citizens of different natural temperaments (308e–311c). The Visitor draws special attention to the difference between the human statesman's care for humans, on the one hand, and God's care for humans

or humans' care for other animals, on the other. Rather than caring for every aspect of his subjects' nurture by himself, the human statesman coordinates the many potentially subordinate and cooperative expertises concerned with the care of humans practiced by the subjects (274e–276d).

The *Statesman* advances a direct role for expertly formed laws in the inculcation of citizen virtue and civic unity: Citizens' awareness and acceptance of the law shape their beliefs about what is good, just, and fine. Understanding this role enables us to see, in the *Statesman*'s evaluation of non-ideal constitutions, how even non-expert laws contribute to the virtue of citizens and the unity of the city. Let us begin with the expertly formed laws.

To see how statesmanship uses law to cultivate virtue and unity, we need first to appreciate the challenges to virtue and unity faced by cities. According to the Visitor, civic conflict originates in the natural differences between two personality types: some people are quick, vigorous, sharp, and so by nature inclined to courage (call them “naturally courageous”), while others are gentle, slow, soft, and so by nature inclined to moderation (“naturally moderate”). These different inclinations, along with an affinity for what is similar to oneself and familiar, lead the two kinds to disagree in their praise and blame, and their disagreement leads them to feelings of enmity toward each other. A naturally courageous person, for example, might call swift and severe retaliation to a slight “courageous,” while a moderate type might call the very same action “manic.” Both, if unchecked in their natural tendencies, fall to extremes and ultimately destroy the city: naturally moderate people, wanting to live the quiet life and encouraging others to do the same, are eventually enslaved; and naturally courageous types are so interested in making war that they eventually destroy their land or are enslaved by their enemies (306e–308b). Thus, avoiding civil war and enslavement requires tempering and harmonizing citizens' natural tendencies.⁶

The statesman's laws resolve civic conflict in two ways. First, as in the *Republic*, laws govern citizens' birth and upbringing. The

statesman will not put a city together out of good and bad human beings, and the educators and tutors, *who function according to law* (*tois kata nomon paideutais kai tropheusin*, 308e5), shape the citizens so that they acquire a disposition suitable for the acquisition of virtue. However, education is *preparation* (*paraskeuazousin*, 308d7) for the statesman's intertwining activity, which suggests that even when all of the citizens have been educated to care for virtue, they can still disagree about what sorts of actions and policies are praiseworthy and blameworthy; consequently, statesmanship is still needed to weave citizens together.

The Visitor describes statesmanship as binding the naturally courageous and naturally moderate "by fitting together that part of their soul that is eternal with a divine bond, in accordance with its kinship with the divine, and after the divine, in turn fitting together their mortal aspect with human bonds" (309c, tr. Rowe). To fit the citizens together with a divine bond, it ensures that all of the citizens have the same true opinion about what is fine or shameful, just or unjust, and good or bad; and to fit the citizens together with a human bond, it arranges that the naturally courageous and moderate types intermarry, instead of allowing each type to go with their natural feelings and marry those like them (309c–310e).

We suggest that the divine bond – the citizens' shared true opinion about what is good, just, and fine – is due, at least in part, to their awareness and acceptance of the law. This second way of resolving civic conflict by law is indicated not only by the Visitor's description of education as preparation for binding, but also by his claim that the citizens' true opinion "only takes root, through laws (*dia nomōn*), in those dispositions that were both born noble in the first place and have been nurtured in accordance with their nature" (310a, cf. 309d). So, while the *Republic* emphasizes that the citizens' true opinions about the just, fine, and good are formed by their education and way of life, the *Statesman* adds that the statesman's laws express the correct norms regarding what is just, good, and fine and the citizens' grasp of the laws informs their true opinions.

The Visitor claims that a naturally courageous soul that acquires true beliefs becomes tame and willing to share in what is just, and a moderate type becomes genuinely moderate and wise (309e). Considering how the Visitor's general claims about expertise apply to the expertise of the statesman-legislator (so-called at 294a, 305b) clarifies how this works. For every expertise there is a normative art of measurement that determines when things are excessive, deficient, or appropriate relative to a standard (*metron*) (284a–b). Since statesmanship uses legislation, the statesman's laws must express his determination of what is appropriate, given the end of the good of the city, which would be a mean between the extremes to which the naturally courageous and temperate tend. When naturally courageous and temperate people accept the statesman's determinations as just, good, and fine, so as to judge and act in accordance with them, their excesses are tempered, bringing them in line with genuine virtue; and their disagreements are reduced, unifying the city. For example, the statesman might lay down a law governing military deliberations: "if the city is attacked, the generals should deliberate for two days before deciding on a response." Such a law would temper both the naturally courageous inclination to retaliate immediately, and the naturally moderate reluctance to counter-attack. The deliberators' acceptance of this law would also give both a reason to praise the outcome of deliberation as just, good, and fine, thereby harmonizing them with each other and unifying the city.

Why does the *Statesman* advance this new role for law in inculcating virtue and unity? One reason may be the abovementioned account of statesmanship as directing and coordinating subordinate expertises. While the *Republic* lumps together the expertises of general, judge, and educator under "ruling" or "guarding," the *Statesman* distinguishes these expertises both from each other and from statesmanship, so that in the city they would be practiced by distinct office-holders.⁷ If these office-holders have different natural tendencies, the laws regulating their offices would need to guide them toward the mean. Moreover, since these offices may be entrusted to a group of

citizens including both naturally courageous and moderate types (310e–311b), the different types need to be able to deliberate productively and achieve consensus (rather than remain polarized), which requires them to have some shared standards of what is good, just, and fine for the city as a whole. The laws can provide these standards. Although the *Statesman* does not tell us how or why citizens come to accept the expert's laws, we will see this question addressed in the *Laws*.

The Contribution of Non-expert Legislation to Citizen Virtue and Civic Unity

So far, we have discussed how expertly formed law secures citizen virtue and civic unity. The Visitor also gives a ranking of constitutions that reveals his attitude toward inexpertly as well as expertly formed laws. The best constitution is the one in which the statesman rules, since he has the expertise required to secure the good of the citizens and the unity of the city (296e), using laws since he cannot be everywhere at once (295a–b). Since law is too general and inflexible, and human affairs are too dissimilar and variable, for law to prescribe what is best for every situation (294b–c), the statesman has the authority to change or disregard the laws he has instituted if he determines they do not prescribe the optimal action for a certain situation (295b–297b). The Visitor goes on to claim, however, that in the absence of the expert ruler, a constitution where laws have the highest authority imitates the statesman's constitution better than any other and is a second-best.

This claim is striking, because it allows that laws not formulated by experts can have ultimate authority. This is evident from the Visitor's description of the origins of the law-abiding constitution. He describes how, when people think their rulers have been abusing them, and so do not trust that they possess wisdom or act in the interests of the citizens (298a–b; 301c–d), they decide that all citizens, experts and non-experts alike, may give their opinions on civic matters, and they establish as written law and unwritten ancestral custom whatever the majority decides is best. The citizens accord these

laws the greatest authority, appointing officers in the city to ensure that everything is done in accordance with the laws, and legislating severe punishment for anyone who inquires into the laws and recommends anything other than what the law prescribes – “for there must be nothing wiser than the laws” (299c). According to the Visitor, although this way of proceeding destroys expertise, it is nonetheless better than a situation in which officers who are tasked with overseeing the law ignore or change it in ignorance and for the sake of personal profit (298a–300b).

How is the law-abiding constitution so described an *imitation* of the ideal and a second-best? The Visitor indicates that the laws of the second-best constitution imitate the statesman’s laws (300c, 301e), and are good laws (302e).⁸ The challenge is to explain why, given his critical account of the origins of the law-abiding constitution, he should think this.⁹ We suggest that the answer lies in the legislative process of collective deliberation aimed at generating shared standards that allow the citizens to live well together. While the Visitor is initially dismissive of the legislative process, he ultimately explains why the law should have the highest authority by appeal to features of this process:

for if, I imagine, contrary to laws that have been established on the basis of *much experiment* (*ek peiras pollēs*) with some *advisers or other having given advice on each subject in an attractive way* (*sumboulōn hekasta charientōs sumbouleusantōn*), and *having persuaded the majority* (*peisantōn . . . to plēthos*) to pass them – if someone were brazen enough to act contrary to these, he would be committing a mistake many times greater than the other [rigidly adhering to ordinary laws] and would overturn all expert activity (*pasan . . . praxin*) to a still greater degree than the written rules. (300b, our emphasis)

Consensus achieved out of experience, consultation, and persuasion across differences, we suggest, is the collective’s counterpart to expert knowledge about what is best for the whole.

Laws III gives a similar account of the process of legislation. The Athenian claims that legislation begins when several household dynasties, previously isolated from one another, come together. These households have different customs, originating in the temperamental differences in natural courage and moderation between their progenitors and educators. Within each household the authority of the eldest is unquestioned, and so the customs approved by the authority are also accepted without question. We may surmise that this unquestioning acceptance is due to the natural affection between the head of the household and his dependents, a natural affection which assures the dependents that the customs are not contrary to their interests. But when these households combine, they have to select which of their different customs they should all together live by (681b–d). The name “legislation” (*nomothesia*) refers to the intentional selection process by which such a diverse community determines its laws. In this process legislators are elected to examine and choose among the existing customs; they present their selection to the uncontested kings over each of the dynasties; when the kings ratify the selected customs, they become law. Because the legislators select laws acceptable to all from among a pool of customs aiming at the good of the whole, we have reason to expect that these laws reflect a concern for the common good, and because the legislators include customs from both the naturally courageous and moderate, that these laws express a mean between extremes.

Even if Plato thinks that a consensus-seeking and experience-based deliberative process generates decent laws, the *Statesman's* insistence that the second-best constitution is one in which the citizens never change the laws raises serious questions. Couldn't non-expert legislation result in some laws that are bad for the citizens and the city? If so, shouldn't a constitution that aims at the good of the whole allow some changes to the law in order to better secure its aim? Plato might acknowledge this consideration but still think the costs of changing the law are too high.¹⁰ Laws can provide shared standards of what is good, fine, and just, so that even inexpertly formed laws

generate civic unity and stability. But for the laws to play this role, citizens must see them as authoritative. Perhaps Plato thinks allowing that a law is bad threatens the authority not only of that law, but of the laws in general, opening the door to further changes to the law, which gives citizens opportunities to favor themselves and their friends by new legislation. Citizens might then come to doubt that their laws are a result of a legitimate process aimed at arriving at standards that are good for all and instead suspect that they serve special interests, which would lead to further conflict and instability. Finally, if law-abidingness is itself a virtue, then changing the laws and thereby undermining their authority also detracts from the citizens' virtue. These costs do not apply to the statesman's suspension, change, or disregard of laws if he finds they do not prescribe what is best on a certain occasion, because his laws are accompanied by the proviso: Unless I determine otherwise, these will have to do as best for the most part.¹¹

III LAW IN THE LAWS: CULTIVATING VIRTUE THROUGH PERSUASION AND COMPULSION

In the *Laws*, Plato's last dialogue, an unnamed Athenian discusses legislation with the Cretan Cleinias and the Spartan Megillus. While the first four books address theoretical questions about law, including the proper aim, origins, and form of law, as well as the question of what should have authority in a well-governed city, the remaining eight books have a more practical focus, and describe in detail the law-code for Magnesia, a new colony which Cleinias has been tasked with founding (702b–c).¹² Accordingly, as Annas (2017: 23–31) has argued, the *Laws* shows a greater concern with implementation than the *Republic*.

This concern with implementation explains two striking features of the *Laws*' treatment of law. First, on the grounds that unaccountable power is corrupting to any merely mortal nature (691c–d, 715d, 875a–d), the Athenian claims that in Magnesia's constitution, it is the laws (and not philosophers, as in the *Republic*, or

the expert, as in the *Statesman*) that should have supreme authority. Second, in place of Kallipolis' political division of labor (philosophers ruling and others being ruled), Magnesians membership in the assembly and eligibility for office are co-extensive with citizenship. Since officials must rule in accordance with laws regulating their office (715d), they are first raised to be law-abiding and then tested for their law-abidingness before their election (751c–d). Thus, civic virtue requires that the citizens know and be committed to the laws.¹³

In the opening theoretical discussion, the Athenian claims that legislation aims at the good of the whole city (rather than, as cynics claim, serving the interests of the stronger, 714b–715b). This aim is achieved distributively, by making individual citizens as virtuous, and thereby as happy, as possible; and collectively, by making the city as a whole as unified and friendly as possible. The law should aim at not just one part of individual citizens' virtue (as do Sparta's and Crete's laws, which, because of their focus on victory in war, cultivate only courage), but complete virtue, including wisdom, moderation, and justice, for it is complete virtue that both makes the citizens happy and ensures that they are friends to one another (*Laws* I–II, especially 688a, 631b–32d).

Magnesian law cultivates virtue and unity both indirectly, by regulating institutions that are themselves virtue-conducive as in the *Republic*, and directly, insofar as the citizens' awareness of law forms their true beliefs about what is best, as in the *Statesman*. The Athenian defines complete (individual) virtue as wisdom or true judgment along with non-rational feelings (e.g., pleasures and desires, pains and aversion) in agreement with this (653a–c, 864a) and says that education channels non-rational feelings so that they are in accord with the true judgment (653a–c). Accordingly, he lays down laws for the institutions that structure the citizens' birth and upbringing – the latter in the broadest sense, including not only their schooling but their whole environment: the stories they hear and the music they listen to, the bodily movements they engage in, and family life. Since the *Laws*, in

contrast with the *Republic*, allows for so-called private property and households, laws also manage wealth inequality (737b–747e) and prescribe communal meals (780e–781d) in order to foster friendship and a concern for the common good.

That law also plays a direct role in cultivating virtue is suggested by the Athenian’s (1) claim that the name “law” is given to reasoning that has become the common opinion (*koinon dogma*) of the city (645a), (2) prescription that each citizen study the text of the *Laws* during their education (811c–e) – rather than being in the dark about the regulations that shape their lives, as they are about the selection of sexual partners in the *Republic* (459d–460c) – and (3) description of the good and virtuous person as a servant of the law, one who lives his life following the legislation, praise, and blame in the lawgiver’s writings (822e).¹⁴

The *Laws* discusses issues concerning the direct role of law not addressed in the *Statesman*. First, how should the laws address the citizens so that their acceptance of the law conduces to virtue and unity? Second, what role does the citizens’ awareness of the punishments associated with law play in cultivating virtue and unity? Below, we take up these questions by discussing, first, the preambles to the laws, and second, the normative underpinnings of the provisions for punishing wrongdoers.

Preambles

The *Laws*’ signature innovation in legislation is to preface persuasive preambles (*prooimia*) to the law-code as a whole and the particular laws within it. At the start of his discussion of the preambles the Athenian states their goal: that citizens should be as obedient (or persuaded, *eupeithestatous*) as possible in relation to virtue (718c). For this reason, the legislator should not just state each law and the penalty for disobedience without offering any “word at all of encouragement or persuasion (*paramuthias de kai peithous*)” (720a), but should instead practice a “dual method” of lawgiving, combining

persuasion and force (722b–c, 722e–723a). To explain, the Athenian compares legislation with the prescriptive practices of two kinds of doctor:

You realize, don't you, that the people who fall sick in our cities may be slaves or free-born? And that it is the slave-doctors who for the most part treat the slaves? . . . [N]one of these doctors gives any explanation of the particular disease of any particular slave – or listens to one; all they do is prescribe the treatment they see fit, on the basis of trial and error – but with all the arrogance of a tyrant, as if they had exact knowledge. Then they're up and off again, to the next suffering slave . . . [By contrast] the free-born doctor spends most of his time treating and keeping an eye on the diseases of the free-born. He investigates the origin of the disease, in the light of his study of the natural order, taking the patient himself and his friends into partnership. This allows him both to learn from those who are sick, and at the same time to teach the invalid himself, to the best of his ability; and he prescribes no treatment without first getting the patient's consent. Only then, and all the time using his powers of persuasion to keep the patient cooperative, does he attempt to complete the task of bringing him back to health. (720b–e, tr. Griffith)

The free doctor, the model for the legislator, prescribes based on the study of nature; pays attention to the causes of the particular patient's disease; and persuades the patient to follow his regimen – indeed, teaches him, to the best of his ability (cf. 857d–e). The analogy between free doctor and legislator marks a new direction in the medical regimen–legislation parallel we have encountered in earlier dialogues. In the *Laws*, the free are to be made healthy or virtuous by a health- or virtue-conducive regimen *of which they approve*.¹⁵

While the Athenian is clear that the aim of the preludes is to persuade the citizens to accept the law willingly (723a), scholars disagree about whether the persuasion involved is rational or emotional. Some maintain that the preludes appeal to the citizens' reason

by giving them good reasons to follow the law.¹⁶ As evidence, they note that the analogy between the doctor and the legislator suggests that the legislator teaches and the citizens learn (cf. 857c–858a). In addition, they highlight the preludes that persuade through argument. The general prelude to the law-code, for example, argues that virtue, as a good of the soul, is the highest good and the aim of all the laws (726a–734e), and the preamble to the impiety law consists of philosophically sophisticated arguments that the gods exist, care for us, and cannot be bribed (890b–907c). Other scholars claim that despite the Athenian’s programmatic remarks, most preludes engage in rhetorical persuasion, exhorting the citizens to follow the law by praising the actions they recommend and expressing disapproval of those they prohibit, thereby appealing to the citizens’ sense of honor and shame.¹⁷ The preamble to the hunting law, for example, simply praises certain forms of hunting as courageous and disparages others as lazy (823d–824b); and the preamble to the law prohibiting temple defilement does not argue that temple robbing is bad, but characterizes the desire to rob temples as evil and alien and follows up with instructions on how to manage the desire should it arise (854b–c).

One might worry that if many of the preludes engage in rhetorical persuasion, then their primary aim is simply to encourage the citizens to obey the law, without instilling any real understanding of the value of doing so. But this worry is misplaced. First, even if a rhetorical or emotional appeal only produces behavioral conformity with the law, behavioral conformity in turn offers agents opportunities to appreciate their own actions, and hence, eventually, to appreciate the law requiring these actions. Second, rhetorical persuasion *can* enable the citizens to grasp the reasons behind the law.¹⁸ Annas argues that the preludes are diverse – engaging in rational argument, emotional appeal, and discussion – because they must respond to varied motivations and address citizens of varied intellectual abilities and educational achievements.¹⁹ This diversity notwithstanding, she argues that all of the preludes present, in a range of ways, “the ethical

ideals implicit in the way of life structured by the various laws" (2017: 93–8).

We agree that most preludes present the virtues and values achieved by following the laws as fine and praiseworthy. The general prelude to the law-code makes clear that the laws aim at the divine good of virtue; and many preludes to particular laws show that the law in question aims at a specific virtue, often a concern for the common good.²⁰ Thus, the preludes simultaneously give the citizens good, if not fully philosophically grounded, reasons to accept and abide by the laws, and engage their emotions by presenting the aim of the laws as worthy of aspiration. In this way, the preludes directly contribute to both the intellectual and emotional components of the citizens' virtue. Since the citizens' early education aims to foster a love of virtue, we can see the preludes and education as working together to bring out the connection between what the citizens have been trained to value in their education and the specific laws.

We propose that the preludes also contribute to citizens' virtue in the following way: Understanding the aims of the laws enables the citizens to act virtuously in situations where the law is silent. For while a legal command can only state which actions are obligatory and forbidden, the virtuous agent must choose which among the permissible actions is best. Because the preludes convey the aim of the specific laws, and so the virtues and values that citizens should aspire to in the relevant domains, they can guide citizens to go above and beyond the letter of the law, since they have internalized its spirit.²¹ We see this when we consider two features of the law-code together. First, the Athenian argues against sanction-backed legislation regulating every detail of citizens' private lives on the grounds that since citizens can easily ignore such legislation and yet go undetected, it undermines law-abidingness and the stability of the written law-code (788b–c, 793a–d, 823b). Second, many of the Athenian's preludes recommend conduct that is more demanding

than is contained in the legal command. Let's consider some examples.

- 1) The hunting law forbids night hunting and some forms of catching birds and fish. But while this permits hunting of all land animals, the prelude indicates that hunting can be done in more and less courageous ways, and describes particularly courageous forms of hunting, i.e., hunting four-footed land animals on foot using horses, dogs, and the citizens' own bodily effort (823b–824c).
- 2) The marriage laws require men to marry by the age of 35. But the precludes explain that the aim of marriage is having children and that one should choose a partner not with a view to what is best for oneself but rather what is best for the city. One prelude recommends, specifically, that rather than choosing mates who are like themselves, the more wealthy should marry the less wealthy, the more powerful the less powerful, and the naturally courageous the naturally moderate, in order to avoid polarization between these classes of people (772d–774c, 721b–d).
- 3) The agricultural laws specify that if someone encroaches on another's land, he must pay the injured party twice the damages. By explaining that the aim of these laws is to avoid bitterness and resentment between neighbors and instead promote friendly feeling, the lawgiver's writings encourage citizens to go further than correcting their own wrongs, by helping to rebuild what has been damaged (843b–d).

In all these and other cases, while the law states what is obligatory and impermissible, the precludes indicate what virtue calls for, by making clear the virtues and values expressed in actions, and by signaling the lawgiver's praise and blame.

It is for this reason that the Athenian says:

Once our laws, and the social and political system as a whole, have been written down in the way we are suggesting, our approval of the citizen who is outstanding in terms of human excellence will not

confine itself to saying that whoever is the best servant of the laws, and the most obedient to them – that this is the one who is good. A fuller description would be: “whoever passes his whole life, consistently, in obedience to the writings of the lawgiver – both his laws and his (positive or negative) recommendations (*epainontous kai psegontos*).” This is the most accurate form of words when it comes to praising a citizen, and it puts a corresponding onus on the lawgiver to do more than merely write the laws; in addition to the laws he has to write down his views – say what he thinks is good, and what not good (*kala kai mē kala*) – blended in with the laws. The perfect citizen should treat these as immovable, no less than the ones which have the backing of the law and its penalties. (822e–823a)

If this is right, then in addition to giving citizens reasons to obey the law, the preambles enable citizens to behave virtuously in situations not explicitly addressed in the existing law. The familiar worry in Plato, and in virtue ethics, about the limitations of law for action-guidance, is in the *Laws* addressed by the persuasive preambles.

The action-guidance provided by understanding the law's aim extends to citizens' performance of their offices. This has the interesting consequence that the Guardians of the Law and other relevant office-holders and experts who are to supplement the existing law-code are enabled to do so by the preambles to the existing laws.²² The Athenian compares citizen-legislators to painters. Just as a painter who wants his painting to remain beautiful forever must leave behind a successor who is able to repair damage and improve the painting over time, so a legislator must also leave behind successors to supplement the law-code (769b–770b). He imagines saying to these citizen-legislators:

Friends, protectors of laws, our position is this: in any particular branch of our legislation there are all kinds of things we shall be leaving out. That's unavoidable. Not that we won't do our best to include the important points and the general idea in a kind of

outline sketch. Your job will be to fill in the outline. What your aim should be as you carry out a task of this nature, we are now going to tell you . . . We want you to be in sympathy with us, to be our students, having those aims in view which we agree with one another should be the aims both of the guardian of the law and of the lawgiver. (770b–c)

Since virtue is the highest good, virtue is the aim they should keep in view as they amend the laws (770d–771e). Citizens will need to supplement the law-code with new legislation and regulations regarding, for example, songs and dances (772a), competitions at festivals (835a–b), judicial procedure (846b, 855d, 957a–b), and marketplace regulations (917e, 920b).²³ To do this well, it is not enough for the citizens to know the existing laws, for they are not deciding whether a certain action falls under the existing law. Rather, they are, as citizen-legislators, determining whether a proposed law promotes the relevant aims, for which they need to understand the aims of the law in general, and of the laws in a certain domain. Since this determination is always made by relevant office-holders and experts deliberating together, the citizen-legislators must give reasons for and against a proposed law with reference to the aims of the law-code. So, while the *Statesman* stresses that law provides shared standards and thereby facilitates successful deliberation and agreement, the *Laws* adds that citizens' knowing and agreeing about the aims of the laws is required for successful deliberation *about legislation*. Inculcating a grasp of and commitment to these aims is the job of the prelates.

Finally, insofar as the prelates secure this commitment to the spirit of the law, they enable the political participation of the citizens, and so contribute in a distinctive way to the friendship and unity of the city. The Athenian claims that the correct constitution must blend monarchical or authoritarian and democratic elements, which secures the freedom, friendship, and wisdom of the city (693d, 701d–e). He illustrates with the examples of Persia and Attica. Although Persia

under Cyrus was a monarchy, the citizens enjoyed a share of freedom, including freedom of speech, and were on an equal footing, which encouraged friendship between the rulers and the ruled (694a–b). When Cyrus' successors took away the freedom of the common people, they destroyed the principle of friendship and cooperation in the state, and the rulers' policies no longer aimed at the common good (697c–d). Although Attica during the time of the Persian wars was a democracy, the citizens' participation was guided by their respect for the norms and laws of their society, which, along with their fear of the Persians, increased the friendship and solidarity between citizens. But when the Athenians started to question the authority of social norms, which ultimately led them to question the authority of the laws proper, the city degenerated into chaos (698a–701c).²⁴

So, while the *Republic* claimed that philosopher-rulers and producers can be friends, despite the producers' lack of political participation and indeed despite the producer's being referred to as a slave (*doulos*) to the philosopher-rulers in this respect (590c–d), the *Laws* stresses that some degree of political equality and freedom is required for civic friendship, for “slaves and masters can never be friends” but “equality creates friendship” (757a). Granting some degree of political equality and freedom promotes friendship and trust between the rulers and the ruled, both by acknowledging the potential of citizens of different walks to contribute to the affairs of the city (cf. their competing claims to authority, 690a–c), and by ensuring that the policies of the city aim at the common good. At the same time, the citizens' participation must be constrained by an authoritarian element that ensures that it is guided by wisdom aimed at the common good.

Magnesia achieves the balance between the authoritarian and democratic elements as follows: The laws have the ultimate authority in the constitution and indeed office-holders must think of themselves as slaves to the law (715b–d), but all citizens are eligible to participate in the political life of the city in accordance with the wisdom expressed in the laws. More specifically, all citizens are members of the assembly;

all citizens are eligible to fill most political offices; all citizens select, by vote, the majority of office-holders; and all participate in the system of the courts. The precludes, by securing the citizens' appreciation of and commitment to the ideals of law, equip them to participate in the affairs of the city, thereby promoting the citizens' political freedom and the friendship between them.

Punishment

Magnesia's laws will be not only prefaced by the preambles we have been discussing, but also accompanied by specifications of the various penalties for violating the law. The Athenian explains that they must specify these penalties because they are legislating for humans, not gods or heroes, and some humans will fail to be "softened" by the laws; citizens that continue to have motivations contrary to the law will need the threat of punishment to deter them (853b–d). The most common penalties for citizens are fines and dishonors, and in the extreme, death and exile; penalties for slaves and foreigners add branding and whipping to this list. The schedule of penalties restricts judicial discretion considerably more than in contemporary Athens. For example, a man who remains unmarried after the age of 35 must pay an annual fine, the amount of which is determined by his property class (774a–b); the law concerning water use assigns a penalty of double the damage done to the party harmed by wrongful use of water resources (844d–e); the law concerning stealing requires the convicted thief to repay twice the value of the stolen article (857a).

How do such penalties fit with the law's overall aim of citizens' virtue and civic unity? Below, we argue that in the *Laws*, punishment is forward-looking, with compensation of the injured and reform ("cure") of wrongdoers and onlookers as *proximate* aims, which in turn serve the law's *ultimate* aims of individual virtue and civic unity.²⁵ After laying out the Athenian's vision of punishment, we address apparent tensions between these aims and the bases on which penalties are assessed.

In the course of laying out the penalties for such serious crimes as temple defilement and homicide, the Athenian identifies the aims of penalties by distinguishing between two aspects of an act, injury – whether someone was harmed – and injustice – whether the harm was a manifestation of psychic injustice, i.e., the tyranny of one's conception of the good by anger, appetite, and pleasure, or ignorance, in the soul (863e–864a).

So there are in fact two things he [the lawgiver] has to look out for – injustice and harm – and any harm done he must use the laws, as best he can, to render harmless, restoring what has been lost, raising up again what has been cast down, making remedy for what has been killed or injured, and when he has achieved atonement, by means of compensation, in regard to those who did a particular injury and those who had it done to them, he should always then try to use the laws to bring friendship in place of disagreement. (*Laws* 862b–c, cf. 933e–934b)

The Athenian's distinction between harm and injustice (an injustice [*adikēma*] being an intentional violation of the law) allows him to distinguish between two functions a penalty may serve: compensating a victim and punishing a wrongdoer. Even if an injury is unintentional and not the expression of an unjust character, the victim needs to be compensated.²⁶ But, according to the Athenian, compensation's ultimate aim is not simply to make good the victim's material loss; it is to restore friendship in place of discord. The Athenian might think that if an injured citizen believes that the law of her city does not protect her and compensate her for the injuries she suffers in the course of her civic associations, then the law does not include her in the collective at whose good it aims, and at which she too is expected to aim. Losing self-interested reasons to obey the law is likely to erode her disposition to obey it and to promote the good of the city. If this is right, then compensating the injured party is necessary for civic unity,

and, if obedience to the law conduces to individual virtue, it also preserves the injured party's and the injurer's individual virtue.

For cases in which an act of injustice has been committed, the Athenian adds:

When we come to unjust injuries and benefits (if one person treats another unjustly, yet causes him some benefit), he is to treat these as diseases of the soul, curing them when they are curable . . . if someone commits an act of injustice, great or small, the law will [A] instruct him and categorically compel him either never to have the effrontery to do such a thing again, if he can help it, or certainly to do it far less – not to mention the payment of damages. That's the aim; whether by means of actions or words, or with pleasures or pains, privileges or loss of them, financial penalties or even rewards – in fact any way at all you can make someone hate injustice and embrace (or not hate) the nature of true justice – that, and only that, is the function of the finest laws. [B] But those who, in the lawgiver's perception, are incurable in this respect – what sentence, and what law, will he put in place for them? He will be aware, I take it, that for anyone of this character, two considerations apply: for them, it is no longer better to remain alive; and for everyone else, there will be a double benefit if they take their leave of life – they will serve as an example to others not to act unjustly, and they will empty the city of evil men. (862c–863a)

Likening the condition of the wrongdoer to disease, in [A] the Athenian makes clear that the (proximate) aim of punishing the intentional wrongdoer, whose unjust act is evidence of an unjust character, is to disincentivize committing such acts again and to make him love, or at least not hate, justice.²⁷ But how does this work? After all, merely refraining from unjust actions does not make for a virtuous citizen. As Glaucon remarks in the *Republic*, even slaves and animals obey the law out of fear of punishment (430b).²⁸ Granted that neither punishment nor its prospect can make anyone virtuous, still, refraining from intentional violation of

the law is a step a vicious person can take in the direction of virtue. The experience of inhibiting an action one is inclined to do teaches that it is not so difficult to restrain an impulse. Acting lawfully on one occasion makes doing it again easier, and eventually, easy enough to do even when the threat of punishment is absent, so that instead of calling to mind the nonmoral goods to be enjoyed by breaking the law, the agent eventually just does the lawful thing. The citizen is now in a position at least to see the value in acting according to the law – the sort of value that Magnesia's education inculcates and that the preludes point to – which is a step in the direction of coming to love justice. On this picture, the incentives provided by penalties promote virtue not directly, but by enabling the beginning of a process of habituation through action.

In [B], the Athenian adds that even when the wrongdoer cannot be cured or reformed by punishment, he may still be punished, by death, because (1) his life is no good (but presumably bad) for him, (2a) his example will disincentivize others from wrongdoing, and (2b) the city will be freed of a bad person. But even in these cases, the Athenian has virtue and unity in view. The point of seeing another person punished (2a) is to disincentivize wrongdoing, and the point of refraining from wrongdoing is to create the conditions for progress toward virtue.²⁹ Finally, the point of freeing the city of bad people (2b) is to reduce the injuries that hinder civic unity and, as a result, other citizens' virtue.

We have argued that the Athenian emphasizes that the penalties are forward-looking, intended to compensate the injured for the sake of civic unity, and to cure wrongdoers. Indeed, the thought that penalties must serve some good end is so central to the Athenian's outlook that he refuses the name "penalty" (*dikē*) to the worst consequence of vicious actions, namely that their agent acquires a vicious character, on the grounds that this is simply a bad outcome, but a penalty must be something fine (728b–c). Still, it has seemed to many readers (e.g., Mackenzie 1981, Adams 2019) that in practice his system of penalties must serve additional aims, including

deterrence and perhaps even retribution, because (1) the penalties he outlines are assigned not on the basis of character but action; (2) the penalties are fixed in proportion to the wrong done; and sometimes (3) penalties are determined by the discretion of the victim. Let's address these in turn.

One reason for (1), punishing on the basis of actions rather than character even though the same act might issue from two different states of character, is epistemic. The legislator and the judge cannot peer into the souls of citizens, and so must rely on actions to indicate character. Similar considerations account for (2), proportionality. The Athenian says that larger violations are indicators of greater corruption of the soul (presumably it takes more *chutzpah* to steal something larger, given that it is likely better protected, and its loss likely to harm its owner more):

Any theft of public property, be it substantial or indeed trivial, calls for the same penalty, because the person who steals something small has the same desire to steal – merely less power; and the one who makes off with something larger, not having deposited it there in the first place, is a wrongdoer through and through. Therefore, if the law decides on a lesser punishment for either of them, it is not on account of the scale of the theft, but rather because one offender might perhaps be curable, whereas another is incurable. (941c–942a)

The same reasoning can explain why an injury committed by violent means receives a bigger penalty than the same injury committed without violence, and one done in secret receives a bigger penalty than the same one done openly (864c, 908d–e); why a crime committed impulsively receives a smaller penalty than one committed with premeditation (866d–67c); and why a repeat offense is punished more heavily than a first-time one (868a). In each of these scenarios, the aggravating condition indicates that the overruling of the agent's conception of the good by some passion or appetite or ignorance is

relatively hardened, so that disincentivizing wrongdoing requires a greater penalty.

A second reason to punish for actions rather than on the basis of character evaluation (1), even when the goal is reform, is that such penalties teach the wrongdoer that she should not do the type of action she has done or is contemplating doing. What would a wrongdoer learn from being penalized for her character? That she was bad, to be sure, but then what should she do to improve? After all, it is actions that shape our characters.

A further explanation for (2), proportionality, is that law is by nature fixed. When laws, rather than magistrates, rule and guide behavior, not only the prescriptions and proscriptions of the laws, but also the penalties must be fixed. But this does not detract from the penalty's aiming at reforming the wrongdoer.

Finally, the Athenian gives the victim or his family discretion in determining the punishment for homicide or wounding when the wrongdoer is a slave and the victim free, suggesting that victims are allowed to indulge in retributive feelings (868b–c; cf. 731d, which restricts such feelings to the punishment of incurables). But rather than indicate that the penal code has retribution as an aim this may be evidence of its concern with civic unity. Perhaps when no suitable compensation is available for those who have been harmed, the law must make a concession to their feelings and allow them some satisfaction – even if the legislator does not condone the feelings – on pain of risking their behaving unjustly as a response to harm. This would also explain why agents of unintentional homicides are exiled for a year, even though by definition their act is not an act of injustice or evidence of an unjust character.

One might worry, however, that purely forward-looking punishment (whether aiming at compensation, reform, or deterrence) licenses Magnesians legislators and judges to over-punish, e.g., to slap very costly penalties on minor wrongs or scapegoat an innocent for the example his punishment sets for others.

It is striking that the Athenian never makes or argues for such trade-offs. (He does privilege the good of the whole city or family over the good of any particular individual [923b], but this is not the same as choosing what is bad for an individual because the whole benefits.) Instead, he likens the role of legislator to that of a judge considering a family of good and bad sons, and asks which of three judges would be better:

the judge who destroyed those of them who were bad, and told the better ones to be their own rulers, or the one who told the good ones to be rulers, but allowed the worse to live, having made them willing to be ruled? And presumably, with our eye on excellence, there is a third judge we should mention – supposing there could be such a judge – the one who would be able to take this single family which is at odds with itself and not destroy any of them, but reconcile them for the future, and give them laws to keep them on good terms with one another. (627d–628a)

Although the Athenian does not say why the third judge is the best, we suggest that it is because by reforming the bad brothers and achieving reconciliation, *all* of the brothers are benefited. The best judge aims to reform the bad brothers, for their status as family members entails that one try as hard as possible to reform them. But in addition, once reformed, the family can reconcile and each brother can contribute something to the family, making the whole family better off. Similarly, the Athenian emphasizes reforming the wrongdoer because as a citizen, his good is part of the overall good at which the city aims, and the city may not forsake this unless he is actually incurable. But in addition, as a good citizen he will be able to make a civic contribution that benefits the whole city. Even in his discussion of punishment, then, Plato holds the twin aims of the law – the virtue of the citizens and the unity of city – clearly in view.

NOTES

- 1 See, e.g., Klosko 2006.
- 2 The case of Leon of Salamis raises the issue of the legal status of decrees given by rulers established by coup – are they “laws,” and if not, why not?
- 3 The classic account of the logic of the laws’ speech is Kraut 1984.
- 4 In the *Republic* “law” can designate (1) specific pieces of legislation (e.g., the law requiring that women and men receive the same education [456c, 457b–c], and the law prohibiting the guardians from ravaging the country or burning the houses of Greeks in war [471c]), or (2) *whatever* civic institutions the interlocutors introduce as conducive to the happiness of the city. For example, when he replies to Adeimantus’ criticism that depriving the guardians of private property makes them less happy than they might otherwise be, Socrates says, “in establishing our city, *we* aren’t aiming to make any one group outstandingly happy but to make the whole city so, as far as possible” (420b); when he replies to Glaucon’s complaint that requiring the philosophers to rule is making them live a worse life, he says, “You are forgetting again that it isn’t the *law’s* concern to make any one class in the city outstandingly happy but to contrive to spread happiness throughout the city” (519e). “The law” has replaced “we [sc. the legislators].” Again, after having described the character of the philosopher, Socrates calls rule by philosophers, first, “just those [sc. arrangements] that seem best to us” (*haper hēmin dokei*) and a couple of lines later, “this legislation” (*nomothesia*) (502c).
- 5 Lane (1998) and El Murr (2014) discuss the dialogue as a whole with special attention to how it “weaves together” the two themes of dialectic and politics. For detailed discussions of the parts of the *Statesman* see also Dimas, Lane and Meyer 2021.
- 6 This account of the obstacle to virtue and unity contrasts with the *Republic’s*, where civic conflict arises from pleonectic and privatizing desires (358e–369c, 462a–c).
- 7 Cooper (1997b) argues that the *Statesman*, in contrast with the *Republic*, allows for independent experts who are not rulers to contribute to the moral development of the other citizens.
- 8 Against this, Rowe (1995: 15–18 and 2000: 244–51), Lane (1998: 158–9), and Klosko (2006) deny that ordinary laws bear any resemblance to the statesman’s laws. They argue that the law-abiding constitution imitates the best in a formal or structural way only. In the best constitution, after

- the statesman legislates, the citizens do not change the laws; similarly, in the law-abiding constitution, after the citizens legislate, they do not change the laws. Lane argues that the second-best constitution's citizens do not change the law because they are aware of their lack of expertise.
- 9 Sorensen (2016: 91), citing 297d, 300c, argues that the expert uses ancestral law (i.e., the ordinary laws described here) as material when framing his own laws (94–5). According to Sorensen, the sense in which the law-abiding constitutions imitate the best is in *pretending* to rule by expertise (67–70), because subjects, having the wrong expectation of political expertise, overthrow expert rulers and institute democratic deliberation instead.
 - 10 Plato's *Crito* offers an alternative in the speech of the laws of Athens, which allow the citizen who does not wish to obey the city's law to persuade the city that it (or its application) is unjust. Citizens of such a city might uphold their laws in part because they know that which laws remain in effect is revisable by them, if they have good arguments for revision. Here in the *Statesman* the Visitor brushes aside Young Socrates' alternative, that one who wishes to change the law might persuade the city that other laws are better (296a).
 - 11 It is useful to compare the status of laws in the statesman-ruled vs. second-best good constitutions with rules under act- vs. rule-utilitarianism. Act utilitarianism can use rules of thumb when directly calculating the right (utility-maximizing) act is impossible or too costly. The rule is clearly a second-best, and direct calculation is more authoritative. This is the situation in the constitution ruled by expertise. In rule utilitarianism, however, even though rules are chosen because they maximize utility, they are authoritative even when an act contrary to the rule would, in that instance, secure greater utility. This is the situation in the second-best, law-abiding, constitution. Whereas utilitarians are concerned with the costs of rule violation or suspension to the stability of rules, Plato is also concerned about the bad effects on character.
 - 12 For a fuller account of the structure of the *Laws*, see Laks (forthcoming), ch. 1.
 - 13 The concern with implementation might also explain why the Athenian distinguishes between the two parts of a constitution: the arrangement of offices, or of who is going to rule over what, and laws or rules

governing the various offices (735a), which allows him to assess not only the aims of a given constitution but also the fit between constitutional aims and laws, a twofold assessment also used by Aristotle in *Politics* II.

- 14 For the historical significance of Plato's emphasis on written law, see Nightingale 1999.
- 15 Some commentators see a disanalogy between being persuaded to follow one's medical regimen and one's legal regimen in that the former is a precursor to, rather than part of, the production and maintenance of bodily health, whereas the latter does away with the need for law (see, e.g., Stalley 1983 and Laks 1990). Laks argues that the preambles are Plato's attempt to "reduce" law, i.e., to minimize its compulsive form of command and threat of sanction for disobedience. Schofield (2006) argues that the doctor analogy is not a model for the actual precludes to the laws, which are one-way instruments of social control to bring about compliance, with punishment as a back-up in case they fail. Instead, the doctor analogy models a hypothetical discussion between a legislator and his citizen critic, "encapsulating the voluntary outcomes that *would* be achieved by innumerable exercises in Socratic dialogue" (85). But justification via hypothetical consent is a device in liberal political philosophy where the standard for political legitimacy is acceptance by parties characterized as free, equal, and rational, because of rock-bottom disagreement over substantive conceptions of the good, whereas in Plato the standard for political legitimacy is a substantive conception of the good, viz., the virtue and happiness of the citizens and the unity of the city. These ends require citizens to be *actually* persuaded.
- 16 Bobonich (1991; 2002: 97–119) argues that the precludes engage in rational persuasion and discusses the implications of this for Plato's politics. See also Irwin 2010: 98–9.
- 17 Hitz 2009: 375–9; Morrow 1954 and 1960: 552–60; Stalley 1983: 42–4, and 1994; and Wilburn 2013: 88–97.
- 18 Note that the *Statesman* includes rhetoric as one of the subordinate expertises in the best constitution, which suggests a role for rhetoric in the citizens' acceptance of the law and so of their true and shared beliefs about what is good, fine, and just (304c–d).
- 19 Buccioni (2007), Fossheim (2013), and Baima (2016) also argue that the precludes are diverse, reflecting the Athenian's awareness of the intellectual and motivational diversity of the citizen body. See also

- Meyer 2006: 385–97. Samaras (2002: 305–25) argues that the psychology of the *Laws* shows that there is no inconsistency in the preludes’ using both rational and non-rational persuasion, and spells out the implications of this for Plato’s attitudes to authority and democracy.
- 20 There are exceptions. The preludes to the murder laws, for example, claim that murderers will be subject to supernatural revenge (865d–e; 870d–e, 872a–873a). Perhaps the Athenian thinks that preambles addressing citizens with strong murderous desires must elicit strong contrary motives (i.e., fear) in order to encourage them to follow the law (Annas 2017: 95–6).
- 21 Silverthorne (1975) argues that the preambles overcome the two deficiencies in law mentioned in the *Statesman*, that (1) it is overly general, insofar as a law, which states what one ought to do in all circumstances, couldn’t possibly state what is correct for every situation; and (2) it is inflexible, and “resembles a stubborn individual.” He thinks this provides jurors with guidance on how to apply the law during trials. But in fact, Plato overcomes (1) by making the laws as specific as possible, thereby lessening the problems with (2).
- 22 There is some debate over the extent to which the guardians of the law can change (as opposed to supplement) the original laws. See Reid 2021 for a survey of the debate and an argument in favor of the view that changes to the law-code are minimal.
- 23 See Bobonich (2002: 573, n. 67) for a complete list of passages assigning the guardians of the law the task of completing the laws.
- 24 The Athenian’s description of the excessive freedom which developed in Attica recalls Socrates’ description of democracy in *Republic VIII*.
- 25 Mackenzie (1981: 195–204) argues that by contrast with the *Gorgias*, which considers punishment only from the perspective of the individual wrongdoer and hence focuses on punishment’s reformatory function, the *Laws* takes up a political perspective and considers the effects of wrongdoing and punishment not only on wrongdoers, but also on victims and observers, as a result adding prevention, deterrence, and restitution to the aims of punishment. We dispute these other aims below.
- 26 Must compensation always come from the injuring party, even when the injury is unintentional and involves no fault on the part of the injurer, or may it in that case come from the city’s funds? In cases where the injury is

due to malice or negligence, as in the case of water-damage (844d–e), there remains some ambiguity about how much of what is paid to the injured party is compensation – for example is he compensated more than his material loss because of loss of use of his materials? – and how much penalty.

- 27 Stalley (1983: 143–50) raises difficulties for punishment's ability to effect this result and argues that in practice the penalties aim not only at cure but also deterrence.
- 28 Saunders (1991: 172–8) proposes that the pain of punishment can disrupt habitual psychic motions, preparing a wrongdoer for an opportunity to develop a new behavioral regimen. Note that citizens are typically punished by fines and dishonors rather than by painful corporal punishments (exceptions include beating for young people caught stealing fruit [845c], for officers who have left the barracks where they are supposed to remain [762c], and for citizens who assault their parents [881d]; and whipping for younger citizens who neglect their parents [932b–c]). The fact that it is typically slaves and foreigners who are given corporal punishment (e.g., slaves and foreigners are branded and whipped for temple robbery but citizens, who have been educated according to and by the law, are put to death [854d–e]; cf. the differential punishment for theft of public property [941d]) suggests that the Athenian takes psychic pain to be more curative and conducive to virtue than is bodily pain.
- 29 Adams (2019) argues that the penal code has two equally important aims: reforming the criminal *and* deterring others from committing a crime. This is supposed to explain why the Athenian's punishments are (allegedly) all painful even though in [A] the Athenian allows that pleasures too might reform a wrongdoer. A pleasant reformatory treatment would not deter others, but a painful punishment both reforms and deters. But the Athenian's claim in [A] that even pleasures and rewards may be used to reform the wrongdoer emphasizes that the penalties are merely instrumental to the aim of reform and are justified to the extent that they promote reform. This does not imply that as a matter of psychological fact, some wrongdoers will be reformed by being rewarded. Adams adds that if the most effective means of reforming the criminal differs from the most effective means of deterring others, then the Athenian would favor deterrence, since this benefits the whole. But if reform and deterrence are really twin aims on a par, why restrict the exemplary use of the death

penalty to incurables? Couldn't administering the death penalty to some curables turn out to be a more effective deterrent overall? And surely there are punishments worse than death, such as torture or solitary confinement (e.g., being sent to the countryside prison "named after retribution" [908a], to which the unjust and dissembling among the impious are sent), that would deter even more than the death penalty.