

# A COMPANION TO GREEK AND ROMAN POLITICAL THOUGHT

*Edited by*

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 **WILEY-BLACKWELL**

A John Wiley & Sons, Ltd., Publication

This edition first published 2009  
© 2009 Blackwell Publishing Ltd

Blackwell Publishing was acquired by John Wiley & Sons in February 2007. Blackwell's publishing program has been merged with Wiley's global Scientific, Technical, and Medical business to form Wiley-Blackwell.

*Registered Office*

John Wiley & Sons Ltd, The Atrium, Southern Gate, Chichester, West Sussex, PO19 8SQ,  
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*Library of Congress Cataloging-in-Publication Data*

A companion to Greek and Roman political thought / edited by Ryan K. Balot.  
p. cm. – (Blackwell companions to the ancient world. Literature and culture)  
Includes bibliographical references and index.  
ISBN 978-1-4051-5143-6 (hardcover : alk. paper) 1. Political science–Greece–History. 2. Political science–Rome–History. I. Balot, Ryan K. (Ryan Krieger), 1969–  
JC73.C67 2009  
320.0938–dc22

2008035574

A catalogue record for this book is available from the British Library.

Set in 10/12.5pt Galliard  
by SPi Publisher Services, Pondicherry, India  
Printed in Singapore by Fabulous Printers Pte Ltd

01 2009

## CHAPTER 24

# Plato on the Sovereignty of Law

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*Zena Hitz*

### The Rule of Law and Platonic Ideals

By far the most prominent political ideal expressed in the Platonic dialogues is the ultimate authority of political knowledge. From the *Charmides* and *Euthydemus* to the *Gorgias* and *Republic*, the dominant idea is that political power ought be exercised only by those who know the good. Just as doctors, navigators, and generals, in virtue of their expertise, are granted authority over certain practices aimed at certain goods, so, Socrates speculates again and again, there must be experts capable of attaining the political good who ought to hold political power.

The notion of political knowledge, while nearly ubiquitous in the dialogues, is persistently unclear. Its existence is a premise of the construction of the just city in Plato's central political work, the *Republic*, and lies at the root of his most famous political doctrine, the rule of philosopher-kings. All the same, the nature of this knowledge is never fully explained or fleshed out in any of the dialogues that appeal to it. Its appearance in the *Gorgias* and *Euthydemus* is only brief and suggestive. The knowledge of the good possessed by the philosopher-kings of the *Republic* is gestured at through metaphors and earmarked as something that needs further explanation (*Resp.* 506c–e). A similar architectonic political knowledge is the source of considerable paradox in the *Charmides*. (On the philosopher-king, see Saxonhouse, this volume, chapter 23; for Aristotle on political knowledge, see Depew, this volume, chapter 26).

While a full analysis of the ideal of knowledgeable rule is outside the scope of this chapter, a sketch of an explanation of the vagueness and paradox surrounding it seems warranted. One could doubt the sincerity of the endorsement of the rule of knowledge in the dialogues; or suspect that Plato himself believed political knowledge not to be attainable by human beings (see, for example, L. Strauss 1964). However, an alternative is available, namely that while the rule of knowledge is meant to be minimally attainable, its primary function as an ideal is not practical: it is not meant, at least not primarily, as a plan of political action. The lack of clarity and detail given to political

knowledge in the dialogues suggests rather that its philosophical use is hypothetical: it functions as a standard by which other constitutions or current conditions might be evaluated, rather than as a practical political program. So, for example, it serves as a hypothetical model to illustrate what is wrong with current conditions, as for example in the *Gorgias*, when the rule of knowledge is contrasted with the democratic use of political power for whatever the people happen to want (see Saxonhouse, chapter 23). Likewise, in the *Republic* it is held out as the only condition under which humans can live free from the evils of greed, injustice, and tyranny – but it is clear that neither Socrates nor his interlocutors think that such a condition is ever likely to hold (*Resp.* 544a; cf. 445c, 545a). What one actually knows when one has political knowledge, and how, practically speaking, it might help one rule, is never fully discussed; and given its hypothetical function in the relevant contexts, it does not need to be.

Versions of the ideal of the rule of knowledge also surface in Plato's last writings on politics, the *Statesman* and the *Laws*. The *Statesman* seeks to provide a formal definition of political knowledge (*politikē*) and to distinguish it clearly from its subsidiary rivals, the arts of rhetoric, judging, and generalship; and, more importantly, to distinguish the true statesman (*politikos*) from conventional politicians or “experts in conflict” (*stasiastikoi*). It does provide a richer picture of political knowledge than that seen elsewhere: the true statesman will know the right time to use the subsidiary forms of expertise, and will “weave” them together in his efforts to produce virtue in the city (Pl. *Plt.* 305e ff.).

Likewise, the *Laws* claims that under the best circumstances someone with knowledge would rule (*Leg.* 875d), and, while praising the rule of law, also finds a role for philosophic wisdom within its model regime in the form of the Nocturnal Council (951d–952d, 961a–968c). While the actual administrative role of the Council is somewhat unclear in the text, it is clear that its members have the general role of securing and “saving” the laws. Their knowledge is said to consist in knowledge of the way virtue is one thing while at the same time divided into its components, courage, moderation, justice, and wisdom (961d–965e). They are also said to know about the plurality and unity of the beautiful and the good (966a–c), as well as certain doctrines about god, the immortality of the soul, and related issues in mathematics and music (966e–968a).

While a detailed account of political knowledge across dialogues would require a great deal more discussion, it remains clear that the rule of political knowledge is consistently held out as ideal, and that this knowledge is said to rely crucially on knowledge of virtue or human excellence. Thus so far it may seem that these two dialogues, by a broad consensus thought to have been written late in Plato's life (see Cooper 1997a), present a political philosophy broadly consistent with that of the *Republic* and other non-late dialogues. However, the *Statesman* and the *Laws* also quite clearly undertake a different project than the earlier dialogues, namely, to give concrete and detailed advice about practical politics. This among other differences has led many scholars to believe that they represent a significant change in Plato's thinking about politics (Bobonich 2002; Klosko 1986). Alternatively, one could argue that the differences can be explained by the use of the political ideal of knowledge for distinct purposes across Plato's life (Kahn 1995); or that Plato does not have a political theory, as such, at all (Saxonhouse, chapter 23).

How is the focus of the *Laws* and *Statesman* more pragmatic? While both dialogues clearly endorse the ideal of the rule of knowledge, both suggest that this ideal is not attainable, or at any rate, not usually. Both dialogues describe a time in the mythic past, the age of Cronus, when gods governed humans, suggesting that political success is limited when mere human beings are in charge (*Leg.* 713e, *Plt.* 275c). What is most striking about these two dialogues in contrast with the rest is that they also outline a second-best alternative, a way that mortals can approximate the lost divine regime: the rule of law.

“The rule of law,” like “freedom” or “democracy,” functions as a slogan in our contemporary political life and in contemporary political theory, as it has in a variety of political cultures from ancient Athens to republican Rome and their many imitators. As is suggested in the account of rhetoric in the *Gorgias*, slogans do not get their power because of their clear and distinct denotation of real values, but because they satisfy some audience: they are used to gain a certain effect. We should expect, then, that the various rhetorical uses of “the rule of law” have rendered its meaning less than clear. This lack of clarity, in turn, makes it difficult to follow a philosophical or theoretical inquiry into the notion of the kind Plato pursues. For the purposes of this essay I assume that “the rule of law” describes a cluster of ideas surrounding the legal or constitutional restriction of political power to prevent its misuse. For example, a political community may achieve the rule of law by operating under fixed rules governing the appointment of officials and their duties, and by having legal remedies for the abuse of power. Sovereignty in such a community is treated as belonging to offices or to the laws themselves rather than to particular persons, and accordingly there are limits on the extent to which officials can exercise their private judgment. As a means to ensure the law is followed, the rule of law requires publicity: that the laws be clearly stated, easily available, and publicly known.

In the latter part of the *Statesman* (*Plt.* 297d–303d), regimes are praised as desirable (with qualifications) when the rulers – kings, oligarchs, or democratic assemblies – rule “according to the laws.” These regimes are contrasted with their degenerate counterparts, democracies, oligarchies, and monarchies, whose rulers act “contrary to law.” These phrases by themselves are highly ambiguous. (Because the Greek word for law, *nomos*, refers both to written positive law and the informal customs that govern and define a community, Greek discussions of law are often ambiguous.) However, it is clear in the *Statesman* that the lawful regimes are regimes in which written law holds ultimate authority. All types of regime – knowledgeable, lawful, and lawless – have laws. In the best regime ruled by knowledge, the laws are modified or suspended by the statesman-king when appropriate – the laws are subject to change in the light of the ruler’s knowledge (300c). The lawless regimes, on the other hand, are not those where law doesn’t exist, but where law is overrun by rulers seeking private profit or personal favors (300a). In lawful regimes, by contrast, strict obedience to the written laws and ancestral customs is enjoined (298d–e, 301a). In both lawless regimes and under the rule of knowledge it is the ruler that is sovereign – he changes or disobeys the laws, for good or ill (300d). In the lawful regimes, since the laws effectively restrict the actions of the rulers, it is clear that they, not the rulers, hold the ultimate authority.

The account of the rule of law in the *Statesman* does not, unfortunately, go much beyond this in describing how exactly the rulers will be restricted by law. Ultimately, then, the dialogue does not give a clear idea of what a law-governed regime would look like. By contrast the *Laws* begins from a discussion of the origin and nature of law, and its central project is the sketch of the laws for a new colony, Magnesia, to be founded on Crete. The laws of Magnesia as well as the role they play in its constitution are described exhaustively in the dialogue.

The construction of laws and a regime from scratch already distinguish the law-governed regime in the *Laws* from the parallel regime in the *Statesman*: in the latter, it is suggested, one makes a regime lawful simply by sticking to such laws as happen to be on the books.<sup>1</sup> All the same, there are significant parallels between the rule of law as we have sketched it in the *Statesman* and the rule of law in the *Laws*. As in the *Statesman*, the laws if not fixed are quite difficult to change (*Leg.* 772b–d, 957a–b; see Bobonich 2002: 395–408 for a different interpretation), and strict obedience to the laws is emphasized (as I discuss below, along with the idea of “slavery to the law”). While it is clear that all of the citizens of Magnesia are called to be “slaves to the law,” strict obedience is most emphatically enjoined for the magistrates or officers of the regime.

Correspondingly we find two types of law or legal organization in the *Laws*: on the one hand, “constitutional” laws, setting up magistracies or offices, and giving rules on how they are to be filled; and on the other, the actual laws the magistrates are meant to enforce, which govern the behavior of citizens through their birth, education, pastimes, marriage, and death (Laks 2000: 263–7). It is the former sort of laws that the chief interlocutor, the Athenian, may have in mind when he proclaims that “where the law is master over the rulers, and the rulers slaves to the law, then the city will have security and all the good things that the gods give cities” (*Leg.* 715d3–6). Strict rules are set down in Magnesia as to how offices are to be filled. Among those rules is the scrutiny of magistrates before they take office, and audit afterward: every magistrate is subject to review both by other magistrates and by the citizens, creating a broad system of reciprocal audit. In this way, every magistrate or official exercises power under the constraint of law (Morrow 1960: esp. 215–28 and ch. 11). Because the laws are difficult to change, it is difficult for them to be manipulated in order to support some particular person’s hold on power. Lastly, the laws of the regime are publicly available and widely known; the *Laws* itself is required reading for all schoolchildren (*Leg.* 811c–812a).

The ideal of legal controls over magistrates to prevent the abuse of power had precedents in the constitutions of both ancient Athens and Sparta, both of which, along with Crete, serve as explicit models for the regime of the *Laws*. Sparta’s ephors audited its kings, and its divided or “mixed” regime is praised in the *Laws* (*Leg.* 691d–692a; Morrow 1960: 54–8 and ch. 10); the procedures in Athens for scrutiny and audit of magistrates, and its judiciary are models for the parallel systems in Magnesia (Morrow 1960: 544–61). Likewise, the publicity and clarity of the law was a significant goal of the Athenians in the wake of the oligarchic revolutions of 411 and 404 BC: legislative commissions with authority to collect and write down the laws were put under way, in order to prevent the manipulation and abuse of the law that took place under those brief regimes (Andoc. 1.81–9; Aeschin. 3.38; Dem. 20.91–4).

The use of law as a response to revolution and civic conflict or *stasis* is not only clear in Athenian practice in the late fifth and early fourth century, but it is also significant in nonphilosophical political writing in Athens prior to and contemporary with Plato. We find in this writing that the rule of law is contrasted both with the rule of force or violence – as in Xenophon’s fictional dialogue between Pericles and Alcibiades (Xen. *Mem.* 1.2.40–6) – and with the rule of men, their private interests and private judgment. For instance, in Theseus’ well-known speech in Euripides’ *Suppliants*, he contrasts a tyranny, where the law is the private possession of one man, to democratic Athens, where the law is “common” or “belongs to the community,” and claims that where the laws are written down, rich and poor alike have equal access to justice (Eur. *Supp.* 429–36; D. Allen 2000: 89–91). A natural empirical connection between the rule of private persons, the rule of those persons in their private interest, and civic conflict means that the rule of law is often ambiguous between what prevents force and violence and what prevents private rule. The sixth century Athenian lawgiver Solon writes of *eunomia* or lawfulness as what produces order and justice in cities, as what puts an end to both “crooked judgments” and civic conflict (Solon fr. 4, West). So also the fifth century sophist known as Anonymus Iamblichi writes of obedience to the law as contrasting with seeking one’s own advantage, and he likewise praises *eunomia* or lawfulness as key to the prevention of civic conflict (see bibliographic note). Set against these more mainstream views is the challenge of Thrasymachus in *Republic* I that law in fact serves as a mask for the ruler’s interest, and so promotes civic conflict rather than preventing it.

And so for the Athenians the rule of law seems to be appealed to in the service of distinct, if often overlapping goals: to protect the weak or the poor; to restrain oligarchic revolutionaries and tyrants; and to prevent self-seeking or overreaching behavior in officials. All of these goals fall under the general heading of the prevention of *stasis* or civic conflict, and to this extent, as I will discuss in more detail below, the law and the rule of law serve a similar function in Plato’s *Statesman* and *Laws*. The extent to which the Athenians meant to set up a regime of laws sovereign even over the people, as is key in Plato’s model regimes, or whether they meant simply to restrain the powers of oligarchs and possible revolutionaries and so to secure the power of the demos or the majority, is fiercely debated by scholars today (law is sovereign: Ostwald 1986: 497–524; skeptics: Ober 1989: 299–304; D. Allen 2000: ch. 8). By contrast, it is clear and explicit that Plato means to restrict the power of the majority as well as individuals, and so to aim at a good that is common to all regardless of class or faction.

## Liberalism, Perfectionism, and the Rule of Law

So Plato’s praise of law in the *Statesman* and the *Laws* resonates with our own notion of the rule of law in its emphasis on the ultimate authority of law, the importance of constraining official power, and on publicity and clarity. Nor would it have sounded strange at first hearing to an audience of ancient Athenians. But perhaps it ought to

have; and perhaps it ought to us. For one thing, the rule of law in both dialogues is said to be second best to the rule of political experts, and furthermore to “imitate” expert rule. One plausible way to understand this is to see the two forms of rule as aimed at the same goal, the production of human excellence (virtue) and human well-being (happiness). Plato, like Aristotle, is what we would call in the terms of contemporary political theory a *perfectionist*, one who believes that the central goal of government is to promote good characters and well-being among its citizens (see Depew, chapter 26). This explains his overriding concern with education and training from birth in the virtues of moderation, justice, wisdom, and courage, as seen in the *Republic*, *Statesman*, and *Laws* alike. The goal of human excellence is shared both by the knowledge-governed regimes described in the *Republic* and *Statesman*, and the law-governed regime of the *Laws*, and it is reasonable to think that this overarching end is at least one key way in which law-governed regimes imitate knowledgeable ones.

How, exactly, does the rule of law promote virtue? One puzzle here is what role the sovereignty of law over magistrates plays in instilling virtue or preventing vice. But it is even reasonable to ask how the laws governing the lives of citizens promote virtue. This question may seem trivial: after all, the laws for citizens prescribe certain beneficial or virtuous behaviors, like marriage or honorable ways of hunting, and forbid the various forms of vice and injustice such as theft, assault, and murder. As Aristotle points out, even ordinary criminal laws aim at virtue (*Arist. Eth. Nic.* 5.1). The difficulty that arises is that real virtue requires choosing the right things for the right reasons, choosing the good because it is recognized and desired as good – while a law, for Plato as for us, is *coercive*: it threatens punishment against those who transgress it. What role can coercive law play, then, in the promotion or inculcation of virtue?

This question, it should be recognized, is broad, deep, and universal. Today’s right-wing perfectionist does not want laws governing sexual morality or euthanasia to be obeyed merely out of fear of punishment or force of habit. Rather, he or she wants citizens to grasp the relevant value – the sanctity of life or the primary value of the family. Likewise it is hard to see how a left-wing perfectionist can attain a more compassionate or socially just society only by coercing the rich to contribute to the support of the poor. Beyond any partisan perfectionism, I do not think that any of us want to live in a community where the injunctions of the criminal code, laws against rape, murder, or theft, are obeyed merely out of fear of punishment or force of habit. We want rather that our neighbors not want to do these things, and that they not want to do so for the right reasons.

Laws governing educational systems, as we find in *Republic* 2–3 and *Laws* 7, are a straightforward application of perfectionist ideals. Likewise, it is not as puzzling or surprising that restrictive criminal codes might play some role in a perfectionist scheme, as a last resort, for instance, or a concession to the intractably vicious. And so Socrates concedes a role for coercive law even within the highly optimistic and ambitious just state of the *Republic*, when he argues that the manual worker, if he cannot be ruled by his own reason, ought to be ruled by reason from the outside via law (*Resp.* 590d). Here the coercion of the law is seen as a last resort, so that those who are not ruled by their own reason may still benefit from its guidance. (If one takes into account the laws restricting the Guardians, for instance the ban on private



property, the question about coercion and virtue arises in the *Republic* as well.) There is the further mysterious claim, repeated throughout the dialogues, that punishment itself is curative and in some way improves the moral condition of the lawbreaker (Stalley 2007: 74–5 has a summary with references; see also Stalley 1995a).

But in the perfectionist law-state described in the *Laws*, the laws are central, not peripheral, to the ordering of the state, and the promotion of virtue is the explicit overarching end of the laws and of obedience to them. The interlocutors of the *Laws* seem to recognize the dangers of coerced obedience, and accordingly they suggest that explanatory “preludes” be attached to the laws, so that the laws seek persuasion in the first order, and threaten punishment only as a last resort. We will look at whether and how the preludes dispel worries about the relation between law-enforced virtue and real virtue in the next section. The difficulty will be even more pressing for the *Statesman*, as it advocates not the making of new virtue-promoting laws but simply strict obedience to whatever laws happen to be in place. Assuming that the innovations of the *Laws* have a chance to solve the difficulty, how will following ordinary laws, of the kind found in regimes claimed to be degenerate or vicious, be of any use in the improvement of the characters of the citizens? And if they are not useful for promoting virtue, in what sense does Plato think they have any value at all?

In what follows I will look first at how laws instill virtue under more ideal circumstances in the *Laws*. Then I will turn to the ordinary laws endorsed in the *Statesman*, and speculate about what use obedience is meant to be in that context. I will conclude with some general remarks about law and virtue for Plato.

## The Rule of Law and the Rule of Reason

As in the *Statesman*, the *Laws* describes a mythical lost era – “the time of Cronus” – when superior beings (*daimōnes*) ruled men as shepherds rule sheep. Since weak and fallible mortals were not in charge, the city achieved “peace, modesty, good laws, justice in full measure, and so made the tribes of men free from *stasis* or civic conflict and happy.” The rule of mortals, unfortunately, can never fully achieve the ends of political community. The only hope, says the Athenian, is that

We ought by every means to imitate the life in the age of Cronus, as tradition paints it, and order both our homes and our cities in obedience to the immortal element within us, giving to reason’s ordering the name of “law.” But if an individual man or an oligarchy or a democracy, possessed of a soul that strives after pleasures and appetites and seeks to fill itself with these things . . . if such a one shall rule over a city or an individual by trampling on the laws, then there is, as I said just now, no means of salvation. (*Leg.* 713e)<sup>2</sup>

The passage encapsulates the main principles of political theory in the *Laws*. A good political community is one with determinate goals, virtue, and happiness; and the chief means to those goals (given current less-than-ideal conditions) is the law or laws. The rule of law is said to be akin to the rule of reason, “the immortal element within us.”

The passage also makes clear what political problem the law is meant to solve – *stasis* or civic conflict – and explains that such problems result from the rule of men rather than laws, and the rule of appetite and pleasure rather than reason.

How, then, do laws prevent *stasis*? They do so on several levels. Specific laws, for instance the laws on the distribution of property, will be designed to eliminate causes for conflict, such as extreme wealth or poverty (*Leg.* 744d, cf. 729a1 and 757a). More generally, the sovereignty of law itself over any ruler, group, or faction means that the laws can benefit the whole city. When law is not sovereign, the Athenian argues, but rather the ruler or rulers are, those rulers will seek their own benefit at the expense of others. Such states, named as oligarchies, democracies, and tyrannies, are not true constitutions (*politeiai*) but are rather “conflict-tutions” (*stasiōteiai*) (715b–d). Further, because the laws of Magnesia do not aim at the good of a particular faction, but rather at the whole city or citizenry, they are not threatened by the development of virtue throughout the whole political community. The city aimed at the common good, virtue and happiness, is also said to be “free”; it consists of “voluntary rule over willing subjects,” as opposed to the rule of a faction, which is said to be “voluntary rule over unwilling subjects accompanied by force of a sort” (832c).

A “conflict-tution” may have criteria for holding office, such as wealth (as in oligarchies), or “strength, size, or birth”; by contrast, Magnesia’s criterion for office is obedience to the law: with the most obedient citizen qualifying for the highest magistracies, and so on proportionately down the hierarchy (715b). Magistrates ought to recognize the law as “master” – they ought, indeed, in the Athenian’s peculiar phrase, to be “slaves to the laws” (715b–d). Nor is this true only of magistrates: “every man” ought to serve the laws first, since one cannot be a good master without being a good servant (762e).

While the phrase “slaves to the laws” might suggest forceful rule or at the least robotic citizens carrying out orders in blind obedience, a closer look indicates otherwise. The language of slavery here is meant to explain the relationship between reason as embodied in the laws and one’s appetites and desires; the human excellence sought by the laws is constituted by the authority of reason in the soul. At the beginning of the general prelude to the laws in book 5, the Athenian describes the relationship between the soul and the body as a master and a slave:

Of all a man’s own belongings, the most divine is his soul, since it is most his own [*oikeiotaton*]. A man’s own belongings are invariably twofold: the stronger and better are master [*despozonta*], the weaker and worse are slavish [*doula*]; wherefore of one’s own belongings one must honor those that are master above those that are slaves [*douluōn-tōn*]. (*Leg.* 726e1–6)

One ought to be a slave to the laws as one is a slave to reason – which is to say that reason ought to rule over one’s appetites and desires as a natural superior over a natural inferior, as a shepherd over his sheep. The appetites have nothing to offer as a standard for the guidance of one’s life, although properly directed they can of course drive one to live the life reason demands. The exclusion of the appetites as such as standards for how we ought to act is suggested in the definition of injustice as the

domination or tyranny of the soul by anger, fear, pleasure, pain, envy, and desire (*Leg.* 864a), as well as in the age of Cronus passage quoted above. (For Aristotle on the rule of reason, see Depew, chapter 26).

The citizens are thus “slaves” to the laws in that they treat them, as expressions of divine reason, as having absolute authority over appetites, desires, and emotions. Reason’s authority is necessary for one to attain one’s good and to achieve human excellence or virtue. Furthermore, since in the passage above about the slavery of the body to the soul, the soul is said to be “most one’s own,” and since at least in some sense no one does wrong or is vicious willingly (*Leg.* 860de, 861d), there is a way in which following reason involves doing what we really want.

The promotion of virtue and the prevention of *stasis* or civic conflict so turn out to involve the same central condition: the rule of reason in the souls of magistrates and citizens. Just as the law must be sovereign over the will of any individual magistrate or potential ruler, preventing self-serving or faction-serving behavior, so must it be sovereign over the impulses, appetites, and desires of the individual citizen. In other words, *stasis* is a manifestation of vice; it results from self-seeking or greedy behavior in magistrates or citizens. It is prevented by the promotion of virtue – the rule of reason – which in Magnesia is attained chiefly by obedience to the law. And obedience to the law is meant, in the end, to promote virtue and the rule of reason not just by coercion, but by the education required by laws as well as the persuasive prefaces attached to them.

However, the identification of law as an expression of reason deepens the question that I raised earlier. If law is reason, and as such is truly “one’s own” and commands one’s true good, what one in fact really wants, to what extent are laws simply correct moral rules that allow for the self-fulfillment and well-being of a rational creature, and to what extent are they coercive injunctions? What accounts for maintaining the coercive function of law, if law is so truly in accord with one’s nature and if it correctly produces one’s good?

The answer must be that the effectiveness of laws as reason must depend on the rational capacities of the citizens. If then, the laws fail to be utterly persuasive on their own terms, it must be, in the view of Plato in the *Laws*, because of a failure in rationality in the person persuaded. And this in turn would seem to indicate a failure to achieve the central goal of the laws, virtue. To explore this question in detail, and to see clearly whether and how it is problematic for Plato, we will have to look at Plato’s chief innovation in lawmaking: the preludes.

## The Preludes

So far in my discussion of the *Laws* I have left the means by which the laws promote virtue vague and unspecified, apart from suggesting that “slavery to reason” and the subjugation of the appetites are somehow involved. And this has left the most pressing question open: what kind of obedience to the law is attained in Magnesia, and how does that obedience relate to being virtuous?

One way of sharpening the question is to look at what sort of obedience might *not* be virtuous. Here is the kind of obedience that I originally questioned in this respect: that the citizens obey the laws without really wanting to. In other words:

- (i) The citizens follow the rules out of coercion, rather than desiring what the law demands as something good.

The identification of law with reason, however, and the emphasis throughout the *Laws* on the effects of education and law on the desires and emotions suggest that a distinct kind of worrisome obedience may be in play, that the citizens may obey the law without understanding it. In other words:

- (ii) The citizens are habituated by the shaping of their desires and pleasures to obey the law, rather than understanding why what the law commands is good.

Virtue, for Plato, as is clear from the passages I have already cited, involves life under the authority of reason. This seems fine for those with sufficient rational capacity to understand exactly why they live as they do. But will the citizens of Magnesia have this capacity? This question turns out to be crucial for the overall success of the regime of the *Laws* on its own terms. How exactly will the citizens avoid nonvirtuous obedience?

The interlocutors of the *Laws* address this question through Plato's major innovation in legal theory. The laws will have attached to them "preludes" or prefaces that explain the reasoning behind the law (718b–724b). If the prelude is successful, the coercive part of the law, the part threatening punishment, will be unnecessary. It seems to be assumed, however, that the coercive part must always remain in place regardless. For example, the interlocutors set a law for Magnesia that one must marry before age 35, on penalty of yearly fines. This prescription, threatening punishment if not followed, is prefaced by an explanation of the role that marriage plays in the best life – namely, by securing immortality through procreation (721b–e).

The analogy that the Athenian uses to explain the preludes is a comparison between "slave doctors" and "free doctors." Slave doctors are slaves and have slaves for patients. A slave doctor gives no account of their patient's condition or their treatment, but "like a tyrant" prescribes what he judges best and rushes off without further explanation. The free doctor, a free man who treats free men, investigates the condition of his patient, and tries so far as is possible to give explanations and "to teach [*didaskei*]" the patient, so that he does not begin treatment until he has persuaded the patient and obtained his consent (720b8–e2). In a later passage referring back to this one, the Athenian describes the free doctor as "nearly philosophizing" when he talks with his patient, as "practically educating" him as if he were being trained to become a doctor (857c2–e5).

The doctor analogy strongly suggests that the preludes to the laws are to persuade the citizens by appeal to their reason, so that their own reason is brought into accord with the reason embodied in the law. To some extent, the preludes we find in the *Laws* bear out this goal. The prelude to the laws against impiety in *Laws* 10, for example, is a series of fairly sophisticated theological arguments apparently designed

to convince the citizens that the theological theses ordained by the state (that gods exist, are good and cannot be bought off) are actually correct (888a–907c). Likewise, we find philosophical discussions – meant for the citizens to understand – of the distinction between voluntary and involuntary, as well as the nature of justice and injustice (861d–864c). It is also clear enough, given the nature of virtue and the goal of the law to promote it, that rational understanding ought to be sought where possible.

It is less clear, however, how much rational persuasion is actually sought and achieved by the preludes we find in the *Laws*. Our first sign that something is amiss is that the chief interlocutors, Cleinias and Megillus, get lost in the midst of the sophisticated theological arguments of book 10 (892 dff.). If the interlocutors cannot follow the argument and so be rationally persuaded, why should we think that many or most of the citizens will? There is furthermore an often noticed gap between the preludes as described in the doctor passages and the actual preludes the interlocutors attach to the laws. In addition to (a) the philosophical preludes I have mentioned, we also find (b) sermon-like exhortations, explaining the role of obedience to the law in the good life. The prelude to the law that one must marry before age 35 is an instance of this; it gives a hortatory description of the role procreation has in a good life, and explains that it achieves a certain kind of immortality (721b–e). The “general prelude” to the whole law code, found in book 5, is an even better example: here we find the passages cited above about the relation between the law and reason and the importance of reason and obedience to it in the best life. And further, there are preludes consisting of (c) simple rhetorical flourishes, praising or condemning the behavior in question, as for instance the prelude to the law restricting hunting exclusively to hunting quadrupeds (823e–824b), as well as the preludes to the laws about temple-robbing (854b–c), beatings (879c–880a), and fraud (916d–917b). Lastly, we find (d) preludes threatening punishment after death, as in the laws against injustice (870e, 872e). (The laws themselves threaten bodily punishment, exile, or fines.)

How should we understand the gap between the preludes as they are described in the doctor analogy and the preludes that the interlocutors actually attach to the laws? One possibility is that the doctor analogy describes a certain ideal of the role of law in producing virtue, an ideal that often must be compromised in light of the actual rational capacities citizens have (Laks 2000). Another possibility is to argue that virtue in the *Laws* has a lower bar than we find in other dialogues, and consists of a fairly low-level rational grasp of good (Bobonich 2002). This fits well with much of the language in the *Laws* that suggests that virtue can be attained with a true belief about what is good (and a sincere desire for it), as opposed to full-fledged knowledge or understanding (*Leg.* 653b–c, 654b–d, 659d–e). A citizen persuaded by the prelude to the law concerning marriage, for example, would have a correct belief that he ought to get married, along with some understanding of why he ought to do it: because procreation helps him attain immortality. The prelude thus may not require excellence in reasoning to the highest degree, but it will involve some low-level rational grasp of the relevant good.

One might worry that the conception of virtue that the preludes help achieve on this latter view, consisting as it does of a fairly unsophisticated grasp of the good, is a weak or limpid conception of virtue. After all, virtue involves the rule of reason, and

reason seems to involve real understanding and not simply the unreflective behavior one might expect from someone with a correct belief about how to live and a sincere desire to live that way, even if in some cases they have a crude justification for that belief. Crude and roughly correct justifications are awfully easy to find: for instance, a person who gets married because he has an idea this would make him happy may well have a low-level grasp of the good of marriage; similarly, a soldier who fights because he judges his native political order to be a good thing. But such a grasp of the good seems not to demonstrate much in the way of human excellence, much less excellence in reasoning. So while the view does successfully provide an account of how a citizen of Magnesia may have *some* grasp of the good, and so is not simply an obedient robot, the virtue indicated looks substandard or at least very ordinary. The inadequacy of this type of virtue to grasp and secure the overall aim of the city is made explicit late in the *Laws*, when the Nocturnal Council is said to provide the expert knowledge and surpassing virtue needed (962b; 964b; cf. 632c). Those with merely common virtue (*dēmosia aretē*) are thus not capable of ruling the entire city (968a). Virtue thus seems to have two levels in the *Laws*, the ordinary subexpert level, and the level attained by members of the Nocturnal Council.

There is a further difficulty, however, for those who think that the preludes in principle give the rational understanding needed for authentic virtue, and that is that there is a certain lack of connection between the general exhortations of the preludes to the good life and the enormous detail and specificity demanded by the laws themselves. The *Laws* as a whole contains far more in the way of regulative detail than it contains explanation or justification of those regulations. This means that the citizens may obey the laws willingly, understanding the importance of law and of reason generally, but they will not understand the specific rules they are commanded to follow. The prelude about marriage (that reproduction provides a share in immortality and so a key human good) may well convince the citizens that they ought marry. But how will it convince them that they ought to marry before age 35? And likewise with many of the detailed laws about inheritance, buying and selling, hunting and fishing, and so on found in the dialogue. The “general prelude” to the law code found in book 5 is particularly worrisome on this point. It may convince the citizens that they ought to honor the soul and follow reason in the form of laws, but how does it explain to them that reason demands the particular laws that follow? These features of the preludes raise the disturbing specter that the preludes encourage citizens to obedience generally, without giving much of an explanation of why they ought to obey in these particular and very specific ways.

That the preludes simply soften up citizens into an obedient frame of mind is supported both by the fact that the preludes are meant as preparations for the law itself, and by the dual function of law as both persuasive and compulsive. The preludes are not sufficient on their own, or self-standing without their coercive counterparts, on this view, because they are not capable of justifying the specific types of obedience that the laws command, but only obedience generally. Hence the worry: that the persuasion provided by the preludes is a persuasion to obey whatever the laws the lawgivers hand down, and not persuasion that these laws in particular provide the goods promised.

Both worries about the preludes can be generalized in the following way. If the preludes do not produce rational understanding, or if they do so only at a crude level, to obey laws for the sake of the ideal of a certain kind of rational life may yet mean to obey laws that one does not oneself understand. Life under the authority of reason, then, might mean life in obedience to someone else's reason, as is suggested in the final parts of the *Republic* (590a–e). Indeed, even the seemingly optimistic analogy of the lawgiver to a doctor that we saw in the discussion of the preludes could suggest that the citizens of Magnesia are not themselves the source of the rational understanding that guides their lives, any more than the free patient could heal himself on his own.

If it is correct that the grasp of the good sought for the citizens of the *Laws* is very general, so that obedience is judged to be good even without detailed understanding of what sort of obedience is best, this might help to explain why, in the *Statesman*, obedience to ordinary laws is also praised. The *Statesman's* praise of obedience to the law even in cities with ordinary laws has puzzled commentators (see C. Rowe 1995, 2000a). After all, given the suspect sources of these laws, in ordinary common sense and the commonplace wisdom of the village elder (*Plt.* 300b1–5) why should these regimes be praised? What good – from the perspective of Platonic perfectionism – could obedience to ordinary laws obtain?

There are clear parallels between the *Statesman's* praise of obedience to laws as such and the inculcation of general obedience, as sought by the general prelude of *Laws* 5, in Magnesia. In both cases, one constrains one's appetites in accordance with public, general rules that aim at least roughly at some good. (A key difference will be that in the *Statesman*, this good is factional – hence the leaders even of lawful regimes are called “experts in faction [*stasiastikoi*]” – whereas in the *Laws*, a common good is sought.) This opens the possibility that obedience is praised in the two dialogues for similar reasons: that deliberate orderliness, even if partly coerced or encouraged by coercion – even in the absence of the sophisticated grasp of the good that the *Republic's* philosopher-kings and the *Statesman's* expert ruler have – constitutes a desirable, if second-rate, form of human excellence for Plato.

## Law and Order

Law, for Plato, is an expression of reason. Reason is the “immortal element” within us and has its ultimate source in divine reason, *nous* or understanding, which orders everything into its best condition (*Leg.* 713e; 903a–905b). Law is associated with order and harmony throughout the dialogues (e.g. *Grg.* 503e–504d; *Phlb.* 26b), but in the *Laws* the connections between divine reason and the forms of human order are perhaps clearest (Morrow 1960: 560–1; Bobonich 2002: 93–7; Laks 2000: 260–1, 275–8).

There is no question that, in Plato's *Laws* and related dialogues, reason is the source of real order, and accordingly, beings capable of reason (human souls, divine intellects) are higher and more authoritative than the passive recipients of order (bodies and materials) (Bobonich 2002: 97). The difficulty that becomes clear from

our discussion so far is that there is some evidence that certain forms of order can be achieved by passive obedience rather than active understanding; and while a passive, orderly soul is not the ideal result of the rule of knowledge, it may well be all that the regime outlined in the *Laws* can obtain for a great many of its citizens.

It thus seems plausible that even an externally enforced order, or an order attained without full or proper grasp of its goodness, is a weak form of human excellence for Plato. This would explain why the preludes aim at the rule of reason in citizens even while providing not much more than a very general and low-level grasp of the good. The scale of human excellence, on this view, would then correspond to a scale of orderliness: from the least orderly, whose behavior is coerced; to the “common” virtue of the average citizen of Magnesia, consisting of sincere desires and correct, loosely justified, beliefs; to the most orderly and most virtuous person, whose own reason fully grasps the good in his life and who actively shapes the world accordingly. Unity and order within the soul are still the highest human achievement – and each citizen does live in accordance with reason to the best of his ability – but conformity with an external unity or an external order may yet provide a similar, if weaker, form of human good.

We began by noticing close connections between the rule of law as an ideal of contemporary liberalism, as a way of restraining the use and abuse of political power, and the rule of law as described in both the *Statesman* and the *Laws*. These connections are undeniable, as is the influence of the legal structures of the *Laws* on liberal political ideals, via Aristotle and Roman writers. What I have suggested is that a closer look at the rule of law in Plato indicates deep and unbridgeable differences: the law for Plato remains an explicit second-best alternative to political expertise; the rule of law, like the rule of political expertise, is ultimately and irreducibly perfectionist in its aims; and, to the extent that the rule of law does indeed consist of an externally imposed order, it is baldly inconsistent with contemporary liberal ideals of autonomy and the rights of the individual.

### FURTHER READING

Laks 2000 gives an excellent and relatively brief general overview of the philosophical issues in the *Laws*, and C. Rowe 2000a does likewise for the *Statesman* in the same volume. For more in-depth general reading on the *Laws*, Morrow 1960 gives the seminal account of the Magnesian regime’s constitutional and legal structures and their historical parallels, while Bobonich 2002 provides an invaluable survey of the major philosophical issues, along with many provocative arguments. For a valuable recent discussion of the role of knowledge in Plato’s political philosophy, see Schofield 2006: ch. 4. There is strong historical evidence that the *Laws* was unfinished at Plato’s death, and so was written last, and strong linguistic and stylistic reasons to think that the *Statesman* (along with the *Sophist*, *Philebus*, *Timaeus*, *Critias*) was written at around the same time. For a judicious and sensible discussion of the chronology of the dialogues, see Cooper 1997a. For developmental accounts of Plato’s political thought, see Bobonich 2002 and Klosko 1986; for an alternative, see Kahn 1995. On the rule of law and its many contemporary interpretations, see Shklar 1987 and Raz 1977. For a very interesting



account of the relation between the rule of law for the Athenians on the one hand and for Plato and Aristotle on the other, see Cohen 1995. On the rule of law in ancient Athens, see Ober 1989: 299–304 and D. Allen 2000: ch. 8 for arguments that the Athenians did not distinguish between the sovereignty of the democratic Assembly and the sovereignty of law; for counterarguments, see Ostwald 1986: 497–524 and M. Hansen 1987. For discussion of the Athenian movement to codify and clarify the laws in the late fifth and early fourth century, see M. Hansen 1999: 162–79 and Ostwald 1986: 405–11, 414–20, and 511–23. On the importance of *stasis* or civic conflict to Greek political thought, especially Plato, see Balot 2001a. For an extensive and powerful argument that the prelates seek rational persuasion and that the citizens of Magnesia are capable of rationally grasping the laws, see Bobonich 2002, esp. 93–119. For an argument that the prelates in fact chiefly involve nonrational forms of persuasion, see Stalley 1994. For the view that they seek rational persuasion as a utopian ideal, but end up seeking nonrational persuasion as a concession to real conditions, see Laks 2000, 1991. Plato's account of the function of punishment is surveyed in Mackenzie 1981 and an account of the view in the *Laws* in particular is found in Stalley 1995a and Saunders 1991. I believe that the goal of the lawful regimes of the *Statesman* like that of the *Laws* is virtue, but this point is disputed by Christopher Rowe, who argues that these regimes aim only at minimal stability and order (C. Rowe 1995: 14–18; 2000a: 244–51). For strong disagreement with the point of view of the essay's conclusion, see Bobonich 2002 and D. Cohen 1993, both of whom argue that the political philosophy of the *Laws* is broadly compatible with contemporary liberalism.

## NOTES

I am very grateful to Julia Annas, whose manuscript "Virtue and Law in Plato" first got me thinking about these questions, and from which I have learned a great deal. Thanks also to the audience at the 2006 Princeton Classical Philosophy Colloquium, where I presented comments on Annas's paper, and to Ryan Balot, who commented on an earlier draft of this essay.

- 1 So it seems from the fact that the lawful regimes come in different kinds, monarchies, oligarchies, and democracies; and from the Eleatic Visitor's description of the laws having their origins in experience and the agreement of some wise advisors with the people (*Plt.* 300b). However, the Visitor also describes lawful regimes as using the written documents belonging to the knowledgeable regime (297d), and calls the laws of the lawful regimes "imitations" of the truth handed down as far as possible from those "who know" (300c). It is not clear from the text whether the Visitor means (a) that the lawful regimes will literally use the statesman's laws; (b) that the village elders who suggest the laws approved by the majority have statesman-like knowledge; or (c) that in some way, ordinary laws aim imperfectly at correct ones, because in a mysterious way traces of truth are available to nonexperts.
- 2 All translations in this essay are based on Bury 1967–8 with modifications.