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Tripartition and the Causes of Criminal Behavior in *Laws* ix

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Commentators have been divided on the question whether, in Plato's late work the *Laws*, he continues to accept the tripartite theory of the soul that he first introduced in the *Republic*—the theory, that is, that the embodied human soul consists of three distinct parts (the reasoning, the appetitive, and the spirited). On the one hand, the *Laws* never explicitly endorses tripartition. The soul is said to contain a variety of states and impulses in the *Laws*, including both rational and non-rational ones, but there is no clear indication that there exist distinct *parts* of the soul that are the sources of those states and impulses. This omission is striking because on the surface, at least, the *Laws* has a project and focus not unlike that of the *Republic*: it records a conversation about proper political structure and rule, and it engages heavily with topics in moral psychology. Given the prominent role that tripartition played in the *Republic*, therefore, the fact that Plato chooses not to invoke that psychological theory explicitly in the *Laws* is significant. As a result, many commentators have concluded that Plato's views on moral psychology must have shifted by the time he wrote the *Laws*. Some have concluded that Plato shifted toward a simpler *bi*partite division of the soul into a rational part and a non-rational part, while others have argued that he abandoned the idea of a divided soul altogether.[1] According to these developmentalist lines of interpretation, Plato does not explicitly endorse tripartition in the *Laws* because he has come to *reject* it as an account of the soul.

On the other hand, in one crucial passage of the *Laws*, Plato provides what seems to be a tantalizing and approving reference to tripartite theory. In book 9, in order to prepare the way for his criminal penology, the Athenian Visitor identifies three psychological causes of wrongdoing: anger, pleasure, and ignorance (θυμός, ἡδονή, ἄγνοια; 863b3-c1). This threefold division bears striking resemblance to the tripartite psychology of the *Republic*. According to tripartite theory, anger is one of the most distinctive expressions of the spirited part of the soul, pleasure is the primary object of desire of the appetitive part, and ignorance represents a failure of the reasoning part. The desire for bodily pleasure and the

[1] Rees 1957, 115-117, Fortenbaugh 1975, 23-25, Laks 1990, 221, Robinson 1995, 145, and Sassi 2008 advocate various versions of the bipartite reading, while Bobonich 1994, 23-28 and 2002, 260-282 argues that Plato abandons the notion of a divided soul entirely in the *Laws* in favor of a unitary psychology. Frede 2010, 118 concurs with the developmentalists that the moral psychology of the *Laws* is not tripartite. Against these views, Kahn 2004, 361-362, Kamtekar 2010, 141-142, and Stalley 2003, 178 argue that tripartition is *compatible* with the moral psychology of the *Laws*, even if it is not explicitly advocated in the text.

angry desire for revenge are, in fact, precisely the motivations invoked in *Republic* iv to establish the distinctness of the appetitive and spirited parts of the soul (see *Rep.* 436a-441c). Many commentators have concluded, therefore, that the *Laws* ix division is all but explicitly advocating the *Republic*'s account of embodied psychology.[2] According to this line of interpretation, the threefold division of the causes of criminal behavior divides human motivations according to the three parts of the tripartite soul, and hence it should be understood as a tacit endorsement of tripartition.

In what follows I offer a new interpretation of the *Laws* ix passage. In doing so, I have two main goals. First, I argue that, despite initial appearances, the Athenian's threefold division is not intended to invoke three classes of motivation that correspond to the three parts of the tripartite soul. It is not, therefore, intended as an endorsement of tripartite psychology. Second, I argue that, although tripartition is not explicitly endorsed in book 9—or anywhere else in the *Laws*—we can explain that omission without positing developmentalism in Plato's moral psychology. My alternative explanation will rely on careful attention to the aims of Plato's criminal penology. I argue that, for the purposes of identifying and correcting the psychological causes of wrongdoing, invoking tripartite theory would not have been useful, and indeed would have complicated Plato's account in unnecessary ways. On the other hand, the psychological picture that the Athenian invokes in book 9 (on my reading of it) *does* provide a good basis for his penal code. Therefore, I will argue, Plato's failure to endorse tripartition in the *Laws* does not reflect—or at least cannot by itself be taken as evidence of—a change in his views on moral psychology. Rather, it reflects the context and aims peculiar to the dialogue.

I begin in section 1 by more closely examining the Athenian's division of the causes of wrongdoing, in order to determine which psychological distinctions are important to Plato in the passage. I argue that, contrary to what many commentators have assumed, the Athenian does not identify 'anger' and 'pleasure' as two of the causes of wrongdoing because he takes them to be exemplars of spirited and appetitive motivations. Rather, he identifies them because he takes them to be exemplars of two distinct psychological *methods* by which our non-rational impulses lead us to action: 'unreasoning force' in the case of anger and 'persuasion with forceful deception' in the case of pleasure. In section 2 I show how the Athenian makes use of this important distinction in the criminal penology that follows, and in section 3 I suggest that tripartite psychology would not have provided a comparably useful psychological basis for the Athenian's penal code. Finally, in section 4 I suggest that, despite the shift in focus, the moral psychology of book 9—and of the *Laws* more generally—is compatible with the theory of tripartition.

[2] See esp. Saunders 1962, Mackenzie 1981, 175, Grube 1980, 228, and Stalley 1983, 47.

1. The Psychic Causes of Criminal Behavior: *Laws* 863b1-864c2

The Athenian's discussion of the psychic causes of wrongdoing prefaces the criminal penology that he provides in books 9 and 10.[3] Punishment, the Athenian insists, should always aim at *curing* the wrongdoer of the psychic condition that made him act viciously.[4] The first step in drafting a criminal lawcode, therefore, is to determine what the underlying causes of wrongdoing are to begin with. As we have seen, the Athenian identifies three main types of causes. The crucial passage reads:[5]

> ***Passage A.*** Now it's clear that you say and hear from one another at least this much about the soul: that one thing in its nature, whether it's a passion or a part, is anger—a possession that is by nature quarrelsome and difficult to fight, overturning many things with unreasoning force (ὁ θυμός, δύσερι καὶ δύσμαχον κτῆμα ἐμπεφυκός, ἀλογίστῳ βίᾳ πολλὰ ἀνατρέπει)... And we don't call pleasure the same thing as anger, but from a strength opposite to that of anger pleasure holds absolute rule: through persuasion with forceful deception she does whatever she wishes (πειθοῖ μετὰ ἀπάτης βιαίου πράττειν πᾶν ὅτιπερ ἂν αὐτῆς ἡ βούλησις ἐθελήσῃ)... And someone wouldn't be speaking falsely if he said that ignorance is the third cause of faults... Now with regard to pleasure and anger, we almost all say that one of us is 'stronger' while another is 'weaker'; and this is the way it is... But with regard to ignorance, at least, we've never heard that one of us is 'stronger' while another is 'weaker'... But we assert that *all* these things often turn each man in directions opposite to that toward which his wish (*boulêsis*) at the same time pulls him (863b1-e3).

It would be a mistake to take this passage as an invocation of the *Republic*'s tripartite theory. The passage is intended to provide the moral psychological basis for the criminal penology that follows, and an examination of that criminal penology shows that tripartition cannot be the basis Plato had in mind. Instead, I suggest, the Athenian sets up his penological discussion by identifying the following three 'levels' of distinctions among our psychic states and impulses: first

[3] For discussion of the Athenian's threefold division and related controversies, see Saunders 1968, Mackenzie 1981, 245-249, Stalley 1983, 157-159, Görgemanns 1960, 136-161, Schöpsdau 1984, Roberts 1987, O'Brien 1957 and 1967, 190-194, Grote 1867, 395-399, England 1921, ii 400-403, and Adkins 1960, 304-311.

[4] That punishment aims at making the vicious individual *better* is stated at 731d, 854d, and 862c. The medical analogy is introduced into the text at 720a-e. See Mackenzie 1981, 195-206, Saunders 1991, 139-195, and Stalley 1983, 137-150 and 1995 for discussions of the medical analogy and the purpose of punishment in the *Laws*.

[5] Translations from the *Laws* are from Pangle 1980, with (often heavy) modifications. All other translations of Plato are from Cooper 1997.

(in order, not of exposition, but of increasing specificity), he distinguishes between (1) states and impulses that are in accordance with reasoning and law and (2) those that are in conflict with them. Second, among the states and impulses in conflict with reasoning and law (i.e., those that cause criminal behavior), he distinguishes between (2.a) rational states—namely, states of ignorance—and (2.b) non-rational ones.[6] And finally, among the *non-rational* impulses that are in conflict with reasoning and law, he distinguishes between (2.b.i) those that motivate through unreasoning force and (2.b.ii) those that motivate through deceptive persuasion. It is in this final distinction that Plato departs from tripartite psychology: as we will see, the distinction does not map neatly onto the distinction between the appetitive and spirited parts of the soul.

The distinction between impulses in accordance with reasoning and law and impulses contrary to reasoning and law is one that the Athenian introduces early in the *Laws*, in the guiding psychological metaphor that he offers in the dialogue. At 644d7-645b1 the Athenian offers the image of the 'divine puppet' as a way of illuminating the puzzling notion of being 'stronger' or 'weaker' than oneself, a notion that the Athenian and his interlocutors discuss at length in book 1.[7] We are all like divine puppets, he says, pulled in opposite directions (σπῶσίν τε ἡμᾶς καὶ ἀλλήλαις ἀνθέλκουσιν ἐναντίαι) by the affections or 'cords' within us: we are pulled toward virtue by the 'golden cord' associated with correct reasoning and law, and we are pulled toward vice by our 'iron cords', which represent non-rational impulses associated with pleasure and pain (644d7-645b1). As the Athenian's surrounding remarks make clear, those impulses are meant to include, in addition to feelings of bodily pleasure and pain themselves, a broad range of non-rational states such as boldness, fear, anger, and sexual desire (see 644c-d, 645d, and 649d-e). Whereas the iron cords are 'hard' and can move us to action on their own, the Athenian tells us that the golden cord is 'gentle' and requires assistance. Therefore, we must 'pull along' with it. When we do pull along and the golden cord is victorious, then we are 'stronger' than ourselves; when the iron cords prevail, then we are 'weaker' than ourselves.

Passage A is clearly meant to recall the earlier image of the puppet. First, it invokes the puppet passage's language of being 'pulled' in two opposite directions: pleasure, anger, and ignorance, the Athenian says, all draw us in directions contrary to that toward which our *boulêsis*, or wish, at the same time pulls (ἐπισπώμενον, 863e3) us. Moreover, the book 9 passage appeals to the notion of

[6] The Athenian twice subdivides ignorance: it can be either 'simple', of which we are told only that it is the cause of 'light' (κοῦφα) faults, or it can be 'double', which is possessed by the individual who 'partakes not only of ignorance but also of the opinion that he is wise, and believes he knows completely things about which he knows nothing' (863c1-d4). The double kind is then divided into that which is accompanied by strength, which causes the greatest faults, and that which is accompanied by weakness, which causes faults such as those of children and the elderly.

[7] For commentary on the much-discussed puppet passage, see Bobonich 1994, 17-23 and 2002, 260-282, Crombie 1962, 276, Frede 2010, 116-121, Gerson 2003, 150, Kamtekar 2010, 130, 141-142, Laks 2000, 273, Sassi 2008, 130-137, Sharples 1983, 4, Stalley 1983, 61 and 2003, 178-181, Tarrant 2004, 157, and Wilburn 2012.

being 'weaker than oneself' that was illuminated by the puppet metaphor: the Athenian explains that we are weaker than ourselves when we act against our *boulêsis* on account of vicious non-rational impulses, just as in the puppet passage we were weaker than ourselves when we acted against the golden cord on account of non-rational impulses.[8] The parallel indicates that the golden cord in the earlier passage corresponds to *boulêsis* in the later. And in the puppet passage, the golden cord represented 'the noble pull' of correct reasoning and law.[9] Thus Passage A distinguishes between our *boulêsis* pulling in the direction of correct reasoning and law, and our non-rational impulses and states of ignorance pulling *against* correct reasoning and law (which is why they are causes of *unlawful* behavior).

It will be important in what follows to distinguish two ways in which our *boulêsis* might pull in the direction of correct reasoning. Let us note, to begin with, that throughout the *Laws boulêsis* is implicitly identified (or at least strongly associated) with rational desire and judgment.[10] There are two ways, then, in which our rational desires and judgments might pull in the direction of correct reasoning, contrary to our impulses to act criminally. The first is that we might correctly judge that we should not commit the *particular crime* in question and hence rationally desire not to commit it. Although a rational desire of this sort would certainly count as an impulse in accordance with correct reasoning, this *cannot* be the sort of *boulêsis* the Athenian has in mind when he indicates that, whenever people act criminally due to ignorance or non-rational impulse, they are being pulled to do so against their *boulêsis*. The reason is that although all criminals evidently act contrary to their wish, it is *not* the case that all criminals judge that they should refrain from committing their crimes. On the contrary, the Athenian makes it clear that most criminals judge that they *should*

[8] In the book 9 passage, the Athenian speaks not of being stronger or weaker than oneself, but rather of being stronger or weaker than *pleasure or anger*. However, throughout the book 1 discussion, the Athenian and his interlocutors alternate indiscriminately between talk of being 'weaker' than oneself and being 'weaker' than some non-rational impulse such as pleasure or pain. (See, e.g., the comment at 633e: λέγομεν τὸν ὑπὸ τῶν ἡδονῶν κρατούμενον τοῦτον τὸν ἐπονειδίστως ἥττονα ἑαυτοῦ.) And indeed, as the puppet passage illustrates, being weaker than oneself just means failing to overcome one's non-rational impulses.

[9] The fact that the golden cord, and the *boulêsis* pulling against our criminal impulses in book 9, are to be associated with *correct* reasoning is supported by the following. First, in the puppet passage, the Athenian emphasizes that the golden cord is 'sacred' and that we should *always* follow it. Surely that would be a strange recommendation if he meant only that we should follow our reasoning, whether it is mistaken or not. Second, two passages that allude to the puppet passage emphasize the correctness of reasoning: 659d1-2 and 689a7-9 (and cf. 689b2-3). And finally, the golden cord represents the pull of reasoning *and law*, and law, in the text, is intended to embody correct reasoning about how to act (see 645b3).

[10] *Boulêsis* is often associated with rational processes such as βούλευσις (872a1), ἐπιβούλευσις (872a2), διάνοια (876e6), and διάκρισις (742d1). Moreover, an individual's *boulêsis* is evaluated based on how well it conforms to correct reasoning (e.g., at 687e5-9). Cf. also 733d and 742d-e. (For Platonist support from outside the *Laws*, consider the definition of *boulêsis* that is offered in the *Definitions*: 'will, wanting, based on correct reason; reasonable desire; natural desire, based on reason' [413c]. And cf. Aristotle, *DA* 432b5 and 433a23-25.)

commit their crimes and hence wish to commit them.[11] This raises a puzzle: although most criminals actually wish to commit their crimes, *all* criminals nonetheless count as acting *against* their own wishes.

This puzzle can be resolved by considering its connection to the related issue of the involuntariness of injustice, which the Athenian addresses immediately prior to introducing the three causes of wrongdoing.[12] The issues are related because, throughout the *Laws*, acting voluntarily tends to be equated with acting in accordance with one's *boulêsis*, and acting involuntarily with acting *contrary* to one's *boulêsis*.[13] The issue of voluntariness arises when the Athenian declares his commitment to the maxim that no one voluntarily does injustice (860d; cf. 731c). The problem with this view is that it apparently conflicts with the task of the legislator, which seems to require distinguishing between injustices that are committed voluntarily and those that are committed involuntarily. The Athenian's solution is to draw a distinction between injustices (ἀδικήματα) and mere harms (βλάβαι). Although some *harms* are committed voluntarily (and others involuntarily), the Athenian insists that no *injustices* are ever committed voluntarily. No one wants what is *bad* for him, he claims, and injustice is bad for the individual who commits it or possesses it. No one, therefore, *voluntarily* commits injustice, because doing so involves having and acquiring something that he does not want—badness. Criminals often voluntarily commit their crimes—that is, voluntarily cause harm—but in doing so they are *involuntarily* doing something unjust and bad for themselves.[14]

[11] Indeed, the Athenian's discussion strongly suggests that *no* criminals judge that they should *not* commit their particular crimes. Consider first crimes committed out of ignorance. If we act *because* of ignorance, then that must mean that we are acting in a way that we (mistakenly) judge it is best and most desirable to act. Therefore, it is a condition of acting on ignorance that we *not* make the correct rational judgment that we should refrain from the criminal action, and hence we cannot be acting against that correct judgment when we act. Moreover, Plato goes out of his way to make it clear that those who act criminally due to non-rational impulse do *not* do so akratically. That is, if acting akratically means that one performs some action X while rationally believing, and despite rationally believing, that one should not perform X, then *none* of the criminals that Plato discusses in his penology counts as acting akratically. I discuss this latter point at length in Wilburn 2012.

[12] For discussion of the passage on the involuntariness of injustice, see esp. Görgemanns 1960, 161-166; Mackenzie 1981, 200-204; O'Brien 1957 and 1967, 190-193; Roberts 1987; Saunders 1968, 1970, 367-369, and 1973; Schöpsdau 1984; and Stalley 1983, 152-157.

[13] For example, the distinguishing feature of involuntary harms at 862a3 is that the agent does not 'wish' to cause the harm (μὴ βουλόμενος), and the distinguishing feature of the 'voluntary' crimes discussed at 869e ff. is that the agent *does* wish to cause them. We can see this identification as well at 733d7-e1, where the Athenian undertakes to distinguish the ways of life that are 'wished-for and voluntary' (τὸ βούλητόν τε καὶ ἑκούσιον) from the 'unwished-for and involuntary' (ἀβούλητόν τε καὶ ἀκούσιον). Burnet 1907, 149, and England 1921, i 494 following him, bracket ἑκούσιον ἀβούλητόν τε καί from this passage, which would have the Athenian saying that he wants to distinguish the ways of life that are βούλητον from those that are ἀκούσιον. If correct, this emendation would strengthen my point, because it would mean that Plato felt comfortable treating βούλητον as the opposite of ἀκούσιον. As England puts it, 'It looks exactly as if some presumptuous scribe had doubted the possibility of using ἀκούσιον as the opposite of βούλητον.'

[14] This interpretation of the Athenian's discussion of voluntary and involuntary actions is

The important point to draw from this discussion is that, on the Athenian's view, all human beings fundamentally desire what is truly good for them (and desire to avoid what is bad for them).[15] This is a desire that people have despite the fact that they do not always make the correct judgments about which particular actions are good for them. Therefore, the sense in which criminals always act contrary to their *boulêsis* when they act criminally is that they are always acting contrary to their rational wish for their own good, *even if* they are simultaneously acting *in accordance with* their wish to commit the criminal act in question. The *boulêsis* that always pulls us toward correct reasoning contrary to our criminal impulses, therefore, is not a desire to refrain from committing the particular crime in question, but rather a fundamental rational desire that pulls toward what is *actually* good for us, and hence toward correct reasoning and law.[16]

The first distinction in Passage A, then, is between (1) motivations that are in accordance with correct reasoning and law—at least one of which, the desire for our own good, is possessed by all of us[17]—and (2) states that are opposed to correct reasoning and law. Among the latter, the Athenian draws a further distinction between (2.a) strict ignorance as a cause of wrongdoing and (2.b) non-rational causes of wrongdoing—such as, anger and pleasure. Strict ignorance, as the Athenian understands it, is a failure of one's rational capacities that does not result from the influence of one's lower impulses.[18] The crucial differ-

roughly in line with interpretations that have been offered by O'Brien 1967, 195n17, Roberts 1987, and Saunders 1973. Stalley 1983, 156, however, resists the idea that, according to the Athenian's proposal, criminal agents do *injustice* involuntarily: 'Common sense', he writes, 'suggests that many unjust men realize that they are behaving unjustly. Plato, would not, I think, deny this. What he would say is that these people do not realize that their unjust behavior is bad for them.' For the purposes of my interpretation, it does not matter whether criminal acts are involuntary under the description 'doing injustice'; it matters only that criminal acts are always in *some* sense involuntary. However, it is difficult to reconcile Stalley's interpretation with the Athenian's repeated and insistent endorsement of the claim that all acts of injustice are involuntary. At 860d5-e4 he first asserts, and then reasserts, the position, and at 861c7-d4, Kleinias gives the Athenian a choice: either refrain from saying that all unjust acts (ἀδικήματα) are involuntary, or explain why this is the right thing to say. The Athenian responds, 'Of these two alternatives one is totally unacceptable to me—refraining from saying it, when I believe it to be the truth.'

[15] For the Athenian's view that everyone desires what is good for them and desires to avoid what is bad for them, see also 733d4, where the Athenian states that whenever we live unvirtuous lives, we do so contrary to what we 'wish by nature', namely, our own *actual* good. Cf. *Tim*. 86b-87b, *Meno* 77c-78b, *Gorg*. 467d-468c, and *Rep*. 505d-e.

[16] That the *boulêsis* that pulls against our criminal impulses should be understood as a rational desire for our own good is recognized by Mackenzie 1981, 247, Schöpsdau 1984, 118, Stalley 1968, 427n3, and Strauss 1975, 132. England 1921, ii 402 concurs that the *boulêsis* pulls in the direction 'in which we really wish to go'.

[17] Presumably, most individuals will have other rational judgments and wishes in accordance with correct reasoning and law as well, e.g., the desire to be courageous or the desire to be an admirable citizen.

[18] Hackforth 1946, 118 notes that ignorance as a distinct cause of wrongdoing is a 'failure of moral insight' by itself that does not spring from domination by the irrational elements in the soul. The Athenian treats ignorance as a distinct cause of wrongdoing in book 10 in his discussion of atheism and impiety. He treats it as a surprising revelation, moreover, that ignorance should be a cause of

ence between ignorance and the non-rational causes of wrongdoing, he explains, is that whereas we can be either 'stronger' or 'weaker' than pleasure or anger, we are neither 'stronger' nor 'weaker' than ignorance.[19] The idea is evidently that whereas pleasure and anger are psychic states whose force we can (try to) resist, we cannot resist ignorance, because one of the conditions of our being ignorant is precisely that we are unaware of the *need* to resist.[20]

It is important to note that although the Athenian initially mentions only anger and pleasure as non-rational causes of crime, the discussion that follows makes it clear that (just as the earlier puppet passage indicated) we can be 'weaker' than a variety of different psychic states, not just pleasure or anger.[21] Immediately following Passage A, the Athenian calls injustice the 'tyranny in the soul' not just of pleasure or anger, but of pleasure, anger, fear, pain, envy, and appetite, and later in book 9, the Athenian discusses murders 'that spring from weakness in the face of pleasures, appetites, and feelings of envy' (863e6-9, 869e5-8). The Athenian's intention in Passage A, therefore, is to establish that whenever we act criminally because of one of our non-rational impulses (whether it is pleasure, anger, or something else), we are 'weaker' than that impulse and hence 'weaker than ourselves'. This shows that Plato is not concerned with the relatively narrow task of identifying just two specific non-rational causes of wrongdoing, pleasure and anger. Rather, he wants to identify a *broad* range of non-rational impulses that can lead to criminal behavior. And indeed, in his criminal penology, the Athenian addresses a broad range of psychic causes of crime, not merely pleasure and anger.

This brings us to the third and final distinction that emerges from Passage A: the distinction between two different kinds of vicious non-rational impulses. As the preceding remarks should suggest, the Athenian is not concerned with drawing a narrow distinction simply between feelings of pleasure and the emotion of anger, or even, more generally, between *appetitive* impulses on the one hand and *spirited* ones on the other. Rather, as we will see in the next section, the non-rational distinction that proves to be important in his criminal penology is a distinction based on the two different psychological *methods* by which pleasure and

wickedness all by itself (886a8-b2). Later in book 10, he describes a 'just' atheist, who has a naturally just disposition and hates injustice the way he should, but nonetheless comes to hold mistaken, impious beliefs about the gods (908b-909a). My focus being on the *non-rational* causes of wrongdoing discussed in book 9, I largely leave aside the discussion of ignorance as a distinct cause of wrongdoing.

[19] Note that the distinction between rational and non-rational causes of wrongdoing represents a refinement of the moral psychology introduced by the earlier image of the puppet. In the earlier passage, the Athenian wanted to illuminate the notion of ruling oneself. Hence he was concerned only with states that we can be 'weaker' than and accordingly identified only non-rational impulses of pleasure and pain as states opposed to reasoning and law.

[20] In other words, rationally to recognize a need to resist is no longer to be ignorant, and hence to have nothing left to fight. Cf. the views adopted by Saunders 1968, 427n1, Jowett 2006, 203, and England 1921, ii 401. For a dissenting interpretation, see Mackenzie 1981, 247.

[21] Bobonich 2002, 263 notes this point.

anger lead individuals to act: (2.b.i) 'unreasoning force' in the case of anger, and (2.b.ii) 'persuasion through forceful deception' in the case of pleasure.[22]

2. Criminal Penology in *Laws* ix

In the penology of book 9, where the Athenian focuses on crimes committed as a result of non-rational impulses, he organizes his discussion in accordance with the distinction between (2.b.i) and (2.b.ii) above. That distinction turns out to be useful because it provides a framework for measuring the extent to which criminal actions are *voluntary*—that is, in accordance with the agent's *boulêseis*.[23] In what follows I examine that discussion more closely, focusing primarily on the Athenian's treatment of murder, because it is what he discusses first and in the greatest depth, and because his treatment of it provides the model for his subsequent discussion of wounds and assault.

After opening with a discussion of murders and deaths that are accompanied by various kinds of mitigating or exculpating conditions—insanity, senility, extreme youth, or simply by accident or external compulsion—the Athenian turns to murders committed out of anger.[24] He distinguishes two version of angry killings. The first version is committed by those 'who act on a sudden impulse (ὁρμή), who all at once (παραχρῆμα) and without wishing (ἀπροβουλεύτως) to kill beforehand destroy someone with blows or some such thing, and feel regret immediately after the deed is done' (866d7-e3).

This represents the Athenian's paradigmatic case of a non-rational impulse that motivates through 'unreasoning force'. It is the 'unreasoning' part of this description that primarily distinguishes anger from impulses such as pleasure and appetite. The latter work by 'persuading' the individual to act in a certain way. As Saunders 1968, 426 puts it, they 'put on a show of reasoning'. The impetuous killer, however, does not become *persuaded* through deceptive reasoning that it is best for him to commit murder. Rather, his anger works by overcoming him so suddenly and powerfully that he never *has time* to make a reasoned judgment at all about whether he should kill. The fact that he does not plan his crime in advance and feels regret immediately after committing it indicates that if he *had* had time to deliberate about the crime, he would not have rationally approved of it. The impetuous killer's anger, therefore, does not 'convince' him to act, but

[22] Here we can see one reason why Plato would have been motivated to state the threefold division of causes of wrongdoing in the way that he did initially: pleasure and anger are the paradigmatic examples of impulses that operate by means of these two methods. Pleasure is often associated with trickery and sophistic persuasion in Plato (see, e.g., the rhetorical prowess of the bad horse at *Phdr.* 254a-e and 255e-256a), and anger is the standard example of an impulse that operates through violence and compulsion.

[23] We should not, of course, lose sight of the fact that criminal acts are never *completely* in accordance with the agent's *boulêseis*, inasmuch as they are always opposed to the criminals' wish for his or her own good.

[24] For discussion of Plato's treatment of angry killings in *Laws* ix, see Woozley 1972 and Saunders 1973.

rather 'forces' him to act without thinking.[25]

If impetuous anger does not 'persuade' the killer to act, however, then how exactly does its motivational force operate? Here it will be instructive to consider anger's connection to pain. In a passage from book 1 that anticipates the division between 'unreasoning' impulses and 'persuasive' ones, the Athenian distinguishes between the 'right side' of our impulses, which includes appetites and desires, and the 'left side', which includes pain and fear (633c-634a). The virtue of courage, he argues, requires that we be able to prevail over *both* sides. He says this in response to Megillus, who has just offered a patriotic description of the Spartan methods of promoting courage by subjecting young men to painful exercises. The kind of pain Megillus has in mind is primarily *physical* pain, that is, feelings of pain that are caused by external forces acting on the body. The training he describes includes threats of imminent beatings, subjection to extreme heat and cold, and physical fighting. The purpose of the exercises, he says, is to give the young men training in *endurance* (πρὸς τὰς καρτερήσεις, 633c5). Indeed, physical pain is a paradigmatic example of something that is *endured* or *resisted*. (Hence in English we have expressions such as 'fighting the pain'.) It can, therefore, 'force' someone to act in a certain way in virtue of its insufferability.

The Athenian does not explicitly identify anger as a type of pain in book 1. However, when he is recapitulating the three causes of wrongdoing at 864b3-4 he refers to the first 'form'—which he had initially identified simply as 'anger'—as 'pain, which we call 'anger' and 'fear'.[26] Anger, of course, is not a physical pain (in the sense specified above). However, as the Athenian understands it, it is a type of *psychic* or *emotional* pain, and as such it is analogous to physical pain. The distress of offended pride is a pain inside the individual that demands the release of revenge, and, because of its suddenness and intensity, it is an especially forceful kind of pain.[27] Here we might compare remarks in the *Republic*. There Socrates calls spirited anger 'irresistible' (ἄμαχον), 'unbeatable' (ἀνίκητον), and 'indomitable' (ἀήττητον, 375b1-2), and he asks, 'What happens when a man thinks he is being done injustice? Doesn't his *thumos* in this

[25] A similar analysis of the impetuous killer is offered by Bobonich 2002, 268-269.

[26] Ritter 1897, 283 argues that Plato could not have written λύπης at 864b3, on the grounds that pain is a distinctively appetitive concern and that Plato would not, therefore, have included anger, a distinctively *spirited* emotion, under that heading. This objection, however, ignores the fact that anger was included among the iron cords of pleasure and pain, and that it has already been identified throughout the text as one of many non-rational states of pleasure and pain. The inclusion of it under 'pain' at 864b, therefore, is nothing surprising. The point at 864b is not that anger is an emotion that is essentially tied to the experience of bodily pain; rather, anger is an emotion that is essentially psychically *painful*. England 1921, ii 402 notes this point: 'Are we to presume to condemn Plato for discerning an element of *pain* in [fear and anger], and calling them therefore an εἶδος λύπης? They are not *pure pain*, but they are nevertheless *painful*.' Indeed, it is precisely the painfulness of anger that makes it such a compelling source of motivation.

[27] For anger as a mental pain, cf. Aristotle *MM* 1202b26-27: 'For incontinence due to anger is a pain, since no one feels anger without being pained.' Also, Plutarch, *De Coh. Ira* 457b-c: 'So it is from mental pain and suffering that anger arises, thanks above all to weakness.'

case boil and become harsh...and even if it suffers in hunger, cold, and everything of the sort, doesn't it stand firm and conquer and not give up its noble efforts until it has either succeeded, or death intervenes, or before it becomes gentle?' (440c7-d3). Just as an angry individual does not get his way with external enemies by *coaxing* them, but rather through brute violence and destruction, so also anger gets its way *within* the individual not by changing the individual's mind about what he ought to do, but by brutely 'forcing' him to do it through its intolerability. Hence the Athenian calls it 'difficult to fight' (δύσμαχον, 863b3).[28]

This analysis explains why the Athenian says that crimes committed in anger are 'between the voluntary and the involuntary' (867a1).[29] Impetuous murders, he says, are 'like' the involuntary, but not *entirely* involuntary. As noted earlier, 'voluntary' in the *Laws* tends to be identified with 'in accordance with one's wish' and 'involuntary' with 'contrary to one's wish'. The impetuous killer has a unique status in this regard: he makes no rational judgment at all about whether he ought to commit *this* crime and hence neither wishes to commit it nor wishes to refrain from committing it. Hence he acts neither in accordance with, nor contrary to, any wish at all concerning his particular crime.[30]

The second version of angry killing is somewhat different. It is committed by those 'who have been insulted by words or dishonorable deeds, who seek retribution, and who later kill someone, wishing (βουληθέντες) to kill and feeling no regret once the deed is done' (866e3-6). The patient killer is distinguished from the impetuous killer by the fact that he *does* plan his crime (it is performed μετὰ ἐπιβουλῆς, we are twice told: 867a4, b4), he *wishes* to commit it, and he does *not* regret it afterward. Such murders are still between the voluntary and the involuntary, but they are 'like' the voluntary.

Patient angry killers thus have an intermediate status between impetuous killers and the fully voluntary killers. On the one hand, unlike impetuous killers, but *like* fully voluntary ones, patient killers judge that they *should* commit murder (and indeed, deliberate about how to do it), and hence they are acting in accordance with (one of) their wishes when they act. In other words, patient killers have their reasoning about what they ought to do corrupted, rather than merely bypassed or preempted (as in the case of impetuous killers). Because they wish to commit their crimes, their actions are considered 'like' the voluntary. On the other hand, their actions are not fully voluntary, and Plato clearly classifies patient killers among those who kill because of the 'unreasoning force' of their impulses. Consequently, the punishment they receive is similar to that of impetu-

[28] As Adam 1902, 106 suggests, Plato's characterization of anger may echo Heraclitus: θυμῶι μάχεσθαι χαλεπόν· ὅτι γὰρ ἂν θέληι, ψυχῆς ὠνεῖται (*Fr.* 85 Graham 2010 i).

[29] The Athenian restates this view, with an analogy, at 878b4-8. For an analysis of the sense in which crimes committed out of anger are in the 'middle', see Woozley 1972, 315-317, Saunders 1973, 354-356, and Stalley 1983, 161-164.

[30] He does, of course, act against his wish for his own good, but that is not a wish about *this particular crime*.

ous killers, and is significantly *less* than that of fully voluntary killers: impetuous murderers and patient murderers receive two and three years of exile, respectively, while voluntary murderers are sentenced to death (867c8-d3). The question is, if patient killers make corrupt rational judgments about what they ought do and *wish* to commit their crimes, then why are they not classified with those who kill because of the 'deceptive persuasion' of their impulses? Why, moreover, if their crimes are premeditated, is their punishment mitigated as it is for impetuous killers?

The reason the patient angry killer is classified with impetuous killers is that, although his anger corrupts his reasoning and makes him *wish* to commit his crime, it does *not*, crucially, do so by 'persuading' him that he ought to commit it. That is, the patient angry killer does not wish to commit murder because he has come to accept specious arguments that have as their practical conclusion that murder (or the vengeance at which it aims) is *good* for him. Rather, he wishes to commit murder because he cannot endure the anger and distress he feels at having suffered an unavenged injustice. In other words, he judges that he should commit murder because the alternative—continuing to suffer his unattenuated rage by letting the offense go unpunished—is unbearable. Thus his anger 'forces' him, not simply to commit murder, but to *wish* to. Because the patient killer rationally desires to commit murder, he is closer to the voluntary than the impetuous killer and hence *worse*. But because his rational desire is the result of anger's unbearableness—and not the result of his having become 'persuaded'—the patient killer's crime is not fully voluntary, and it still counts as a crime committed because of the 'unreasoning force' of his impulses.[31]

There are two further features of the patient angry killer's crime that help to explain the mitigated punishment he receives. First, although the patient killer's reasoning is corrupted, it is a temporary and isolated corruption. That is, the corruption does not affect what he wishes for and rationally desires *in general*, but simply what he wishes for in this special set of circumstances. The patient killer evidently did not wish to kill *prior* to being dishonored, and Plato clearly seems open to the possibility that the individual will never want to kill again, for he is allowed back in the city following his exile. If the criminal does kill again after returning, then he is exiled again, this time forever (868a). But the fact that he is given a second chance indicates that Plato is optimistic that his crime does not reflect complete or permanent corruption of his practical reasoning, but rather a one-off case of bad judgment under the influence of anger. Second, it is clearly important to Plato that the crime is committed in response to insults and dishonorable deeds. Hence the killer's aim—to exact revenge on those who have acted

[31] Another way of conceiving the difference between the 'compulsive' judgment of the patient angry killer and the 'voluntary' judgment of killers 'persuaded' by pleasure is this: whereas pleasure entices someone toward the good (and in doing so 'convinces' the person that something is good), a painful experience such as anger simply 'forces' someone to choose something that the person judges to be necessary, i.e., *less bad*. Hence even the anger of the patient killer does not 'deceive' him into thinking that murder is good; he simply judges (falsely) that *he has no other choice*.

unjustly against him—is not *entirely* corrupt. It is misguided, but it is at least directed at promoting perceived justice, rather than, say, at wealth or pleasure.

After treating murders committed out of anger, the Athenian discusses murders 'that are voluntary, totally unjust, and involve plotting—those which spring from weakness in the face of pleasures, desires, and envies' (869e5-8). He discusses three impulses under this heading that he considers especially threatening and prevalent. The first and greatest cause of voluntary murders, he says, is appetite, 'which dominates a soul driven wild by longings. This occurs especially where there is the yearning that is most frequent and strongest among the many: because of the wickedness due to nature and lack of education, money has the power to give rise to tens of thousands of erotic desires for its insatiable and limitless acquisition' (870a1-6). The second cause is 'the habit of the honor-loving soul', which breeds feelings of envy (870c5-6). And finally, he discusses the 'cowardly and unjust fears' that lead those who have already done something wrong to murder others who might inform on them (870c8-d4).[32] Voluntary murders of these sorts may be carried out by the agent's own hand or by arranging to have the victim killed, but their distinguishing feature in all cases is that they are carried out with forethought (ἐκ προνοίας, 871a2) and involve planning (ἐπιβουλή, 869e7). In the case of arranged killings, Plato is especially emphatic on this point: the killer brings about the murder 'through his *boulêsis* and plotting (ἐπιβούλευσις)' (872a2).

The distinguishing feature of voluntary murders is that they are performed in accordance with the individual's rational judgment and wish. However, unlike the case of the patient angry killer, voluntary murderers do not have their reason-

[32] Fear represents a strange case in the text. On the one hand, it is classified with pain at 633c9-d1 and 644c10-d1 (where it is called the 'expectation of pain'), and at 864b3, it is included in the first form of wrongdoing—'pain, which we call "anger" and fear'. We might expect, therefore, that murders committed out of fear will be treated like murders committed out of anger. Instead, the Athenian discusses them alongside voluntary murders. A reason may be that the fear discussed at 870d is a specific type: the fear of someone who already committed a crime and fears being found out. This differs from the fear in 633c9, which is fear of imminent physical pain in fighting and warfare. The guilty fear presupposes that the person is already thoroughly corrupt, since he has already committed a crime (possibly also murder), and presumably did so out of appetite, greed, or envy. But Plato's treatment of fear shows that the distinction that is most important to him is not a distinction simply between painful impulses and pleasurable ones, but rather the distinction that I have identified between impulses that motivate through brute, unreasoning force, and those that motivate by 'putting on a show of reason'. Plato evidently thinks that fear—or at least, guilty fear—is an impulse of the latter sort. *Rep.* 413c (discussed in section 4) seems to confirm this reading. The question, then, is, why does Plato list fear in the category of pain, and alongside anger? Two things can be said here. First, fear is, in fact, an unpleasant emotion, and one that involves the anticipation of pain. Second, pain and fear are commonly recognized (by, e.g., Spartans like Megillus) as related psychic states that the virtue of courage is supposed to combat. Therefore, except in the context of criminal penology, the Athenian has two very good reasons for grouping them together. It is significant, though, that at 874e5-7, after having given different treatments to anger and fear, Plato seems to want to put more distance between them. He writes: 'Now wounds should be distinguished just as murders were distinguished, into those that are voluntary, those that occur because of anger, those that occur because of fear, and those that occur voluntarily out of forethought.'

ing merely locally or temporarily compromised; rather, their corruption is global and permanent. That is why they are described as 'totally unjust' (869e6). The greedy killer does not simply have a one-off desire to kill for money. He kills because his soul is dominated by appetites and desires for wealth, and as a result his reasoning is irrevocably compromised. Hence he receives the death penalty, a punishment reserved by the Athenian only for those considered 'incurable' (see 862e-863a and 957e-958a).

Here we can see why Plato takes voluntary crimes to be caused by non-rational impulses through 'persuasion with forceful trickery': such impulses work by not by forcing the individual to act without making a judgment or by forcing him to make a misguided judgment under pressure, but rather by systematically corrupting his reasoning about what is valuable. Such criminals have come to believe that they should live their lives exclusively in pursuit of, for example, pleasure or wealth, and they judge that they should commit murder when doing so results in a suitably significant increase in their pleasure or wealth. Hence the greedy killer not only approves of his crime, but approves of it *because* he has come to think that money is 'first among the goods' and thus a priority over justice and lawfulness (870a8-b1).

If pleasure works through deceptive persuasion, however, then why is it called 'forceful'? In order to answer that question, we should begin by noting a parallel between the Athenian's characterization of persuasion and that offered by the historical Gorgias in his *Encomium of Helen*. There Gorgias claims that persuasion impresses the soul 'however it wishes' (ὅπως ἐβούλετο), and he asks, 'What reason prevents us from thinking that Helen came led by the power of speech as involuntarily as if she was ravished by force (ὁμοίως ἂν οὐκ ἑκοῦσαν ὥσπερ εἰ βίαι)?... For speech, which persuades the soul that it persuades, compels (ἠνάγκασε) it both to accept its message and to agree to its deeds.'[33] Plato takes on this conception of persuasion in his own *Gorgias*, where the dialogue's namesake argues that, through persuasion, an orator could get his way against anyone, 'if he so wished' (εἰ βούλοιτο, 456c2). Likewise Polus, continuing this argument in the dialogue, maintains that orators, like tyrants, can do whatever they wish in a city (466b11-c2). The idea here is that, through persuasion, one is able to change the behavior of another according to one's own will, and even in ways that are *contrary* to the other person's will. Helen may, under the bewitching power of persuasion, have *wanted* to sail to Troy, but it is not what she *really* wanted, or would have wanted if she had had all the facts, and hence there is a sense, on Gorgias' view, in which she was *forced* to go 'unwillingly'.[34] Therefore, while persuasion may differ from brute physical violence in its method, that methodological difference does not amount to a difference in *forcefulness*. Persuasion, as the historical Gorgias puts it, 'does not indeed have the form of compulsion (ἀνάγκη), but does have its power' (*Encomium* 12).

[33] *Encomium* 12-13. Translations of Gorgias are based on Graham 2010.

[34] Cf. *Laws* 663b4-6: 'No one would voluntarily be willing to be persuaded (οὐδεὶς γὰρ ἂν ἑκὼν ἐθέλοι πείθεσθαι) to do that which does not bring him more joy than pain.'

Significantly, Plato's presentation of pleasure and persuasion in the *Laws* seems to include deliberate allusions to the *Gorgias*. In the *Gorgias*, Socrates argues that the 'forcefulness' of persuasion lies in its connection to pleasure. In his response to Gorgias and Polus, he acknowledges that oratory is powerful,[35] but he insists that it is a kind of flattery (κολακεία), 'which takes no thought at all of whatever is best, but with the lure of what's most pleasant at the moment and with deception (ἐχαπάτῃ)...it gives the impression of being most deserving' (464d1-2). In the *Laws*, the Athenian says that pleasure works through 'deception' (ἀπάτῃ, 863b8), and he calls the 'left side' of our impulses—the one associated with pleasure—'the side of cunning and blandishment', which operates through 'terrible, coaxing flatteries' (δεινὰς θωπείας κολακικάς, 633d2). Moreover, in an apparent Platonic wink to the reader of the *Gorgias*, the Athenian says that through persuasion, pleasure is able to accomplish 'whatever *she* wishes' (ὅτιπερ ἂν αὐτῆς ἡ βούλησις ἐθελήσῃ, 863b8-9).[36]

In the *Gorgias*, of course, the type of persuasion under discussion was persuasion of one agent by another. In the *Laws*, however, Plato applies that understanding of persuasion to *internal cases* involving pleasure and related impulses. Of course, this need not mean that we should conceive of our desires as literally 'talking' to the reasoning self within us.[37] However, the idea motivating Plato's presentation is evidently that, just as orators persuade others by appealing to what is pleasurable, so also our feelings of pleasure themselves (and related impulses) have a way of *changing our minds*, and so have an effect like that of persuasion. Just as in the external case, moreover, these impulses are compelling and hard to

[35] However, he insists on a distinction between what people wish for (βούλονται) and what they merely think is best (αὐτοῖς δόξῃ βέλτιστον εἶναι, 466e). While Socrates concedes that tyrants and orators certainly do whatever they think best, they do not, he claims, thereby do what they wish. Everyone always acts for the sake of what is good, Socrates claims, and therefore, what they wish for when they act is not the action itself, but rather the goodness they expect to get from it. Since tyrants and orators wish for their good, but in doing what they think is best act in ways that are in fact bad for them, they do not, it turns out, do what they wish. In the *Laws*, we have seen, Plato similarly insists that those who act criminally thereby act against their wish for their own (actual) good; what he does not insist on, as he did in the *Gorgias*, is that wishes aim *only* at one's own (actual) good. Hence killers can 'wish' to commit their crimes in the *Laws*, whereas in the *Gorgias* they can only 'think it best' to commit them.

[36] The *Laws* picks up this theme from the *Gorgias* elsewhere as well. At 907c, the Athenian says that his spirited arguments against the impious are motivated by 'a concern lest the bad should believe that if they ever were stronger in arguments, they could act in whatever ways they wish (βούλονται)'. Similarly, he says of tyrants that they can do 'whatever they desire (ὅτι ἂν ἐπιθυμῇ)' (661b). The *Laws* has something else in common with the *Gorgias* as well: both dialogues address the apparent tension between just punishment's seeming admirable (since what is done justly is admirable) and its seeming shameful (since being punished is shameful). Notably, in the *Laws*, this problem is taken up at 859c-860b (cf. *Gorgias* 476b-480d), just before the discussion of the causes of criminal behavior.

[37] My account need not decide whether (a) the imposter reasoning is supplied by the impulses themselves, or (b) the imposter reasoning is supplied by the rational element in the soul itself, under the influence of the impulses (although I do think option [b] is preferable).

resist.[38] Note that in the image of the puppet, pleasure was included among the 'hard' iron cords that were distinguished from the 'gentle' cord of reasoning. Although pleasures, appetites, and feelings of envy might operate through deceptive persuasion, they are nonetheless quite powerful impulses that can make an individual act contrary to the golden cord, or to the individual's wish for his own good—and hence, in that sense, *involuntarily*. Through persuasion, our impulses can make us act in whatever ways 'they' wish, and though we may, under their influence, come to share those wishes—we may, that is, wish to commit our crimes—in another important sense, Plato thinks, we are also being forced to act contrary to our 'true' wish.

3. Why Not Tripartition?

The criminal penology of book 9, then, is organized in accordance with the distinction between 'unreasoning' non-rational impulses and 'deceptively persuasive' ones. The reason this distinction provides an effective basis for Plato's penology is that it offers a useful framework for evaluating the extent to which criminals act voluntarily or involuntarily—and hence for evaluating the severity of the criminals' viciousness. The extent to which a criminal act is voluntary, we have seen, depends on the extent to which it is in accordance with the rational desires and wishes of the agent. What the lawgiver must do, therefore, is determine the degree to which the criminal agent's reasoning has been corrupted, and the distinction the Athenian draws provides a kind of sliding scale for doing just that. At one extreme are the fully voluntary murderers: not only do they wish to commit their crimes, but their wish to commit them also reflects a deeply ingrained, incurable pattern of vicious wishes and desires. Their 'persuasive' impulses have deceived them into having the wrong views about what is valuable in life, and as a result their crime is in accordance not just with their immediate wish to commit the crime, but with their rational wishes, desires, and goals *in general*. Those who kill because of the 'unreasoning force' of their impulses, on the other hand, reflect a significantly lower degree of corruption. Their crimes are not fully voluntary because their impulses force them to act or to wish in ways that are contrary to what their rational wishes are or tend to be in other circumstances. In general, they wish for the right things (they are not necessarily mistaken about what is good or valuable in life), but because of the violent unbearableness of their impulses, they act or judge wrongly in a given instance.

[38] England 1921, ii 400 finds it implausible that Plato would have described deception as 'forceful' at 863b8, as the Burnet text would have it. He proposes the emendation of οὐ βίᾳ for the βιαίου, suggesting that the οὐ was accidentally omitted, reinserted over the line, and then erroneously tacked on to the end of βίᾳ. Taylor 1960, 252n1 concurs with England's assessment of the implausibility of βιαίου. In response, and in line with my view, Saunders 1968, 425-426 says: 'The contrast Plato wishes to make is not between something violent (θυμός) and something not violent (ἡδονή), but between an unreasoning (ἀλογίστῳ b4) force and one which puts on a show of reasoning (πειθοῖ b8) that is really deceit (ἀπάτης).' He adds 1972, 355: 'The violence of anger...gives it no special status, because the allurements of pleasure are just as strong, if not stronger: at 863b anger overturns merely "many things," pleasure achieves "whatever she wants."'

Under pressure from their impulses, their reasoning is temporarily bypassed, preempted, or perverted in a localized way, but it is not *entirely* corrupt.

The theory of tripartition would not have added anything to this picture and would not have provided a suitable alternative to it; it would, indeed, have complicated the picture in unnecessary ways. The main problem with tripartite theory in this context is that the distinction between appetitive impulses and spirited ones does not provide a good framework for evaluating the voluntariness of crime: the extent to which a criminal's reasoning has been corrupted, and the extent to which his crime is thus in accordance with his wishes, cannot be determined by identifying in which part of the soul his corrupting impulse originated. We can see this by examining the second cause of voluntary murder discussed above: feelings of envy. If Plato *were* to invoke the tripartite soul in this discussion, it is clear to which soul-part he would attribute feelings of envy. The Athenian says that they come from 'the habit of the honor-loving soul', indicating that they would be attributed to the honor-loving *part* of the soul, namely, the spirited part (see *Rep*. 548c, 549a, 550b, and 581b). However, Plato classifies those who kill out of envy not with angry killers, but rather with those who kill out of an insatiable appetite for wealth, despite the fact that anger is a characteristically *spirited* motivation and the appetite for wealth a characteristically *appetitive* one. And this classification makes good sense. Those who kill out of envy, as the Athenian characterizes them, are those who kill their superiors in the city because they love and seek honor above all else. Just like the greedy killer who has come to believe that wealth is the greatest good, so also the envious killer has come to believe that *honor* is the greatest good.[39] His rational judgment about what is worthy of pursuit, in other words, has been systematically corrupted in the same way that the greedy killer's rational judgment has been corrupted. The envious killer commits his crime because he has become *persuaded*, under the influence of his lust for honor, about the rightness of murder in the pursuit of perceived honor. This makes him *like* the greedy killer but *unlike* the impetuous killer, who kills because rage forces him to act without thinking. A simple division into impulses that originate in the spirited part of the soul and those that originate in the appetitive part, therefore, would not have provided the kind of distinction Plato needed for the purposes of drafting a criminal law code.[40]

A further complication for tripartition in this context is that, on Plato's account, it is not clear that all non-rational impulses can be straightforwardly attributed exclusively to one soul-part or the other. Take, for example, the emo-

[39] Thus the greedy killer and the envious killer are, in a sense, the criminal counterparts of the timocratic and oligarchic individuals of *Rep*. viii 549c-550b and 553a-d who are distinguished by their love of wealth and their love of honor, respectively.

[40] Another example is the second version of angry killings—patient killings. As discussed above, the patient killer has an intermediate status between those who kill nearly involuntarily out of impetuous anger and those who kill fully voluntarily out of greed, envy, or fear. The theory of tripartition, in contrast, could not easily accommodate the intermediate status of patient, angry killing. Such killers do not act partly out of a spirited desire and partly out of an appetitive desire; they act just as purely on a spirited desire, anger, as do their impetuous counterparts.

tion of fear. Given that fear involves the expectation of pain, and that the appetitive part of the soul is the part concerned primarily with the pursuit of bodily pleasure and the avoidance of bodily pain, fear would seem to be a distinctively appetitive emotion. And indeed, in his accounts of tripartition, Plato identifies fear as one of the main tools for keeping appetites in check and often seems to attribute that emotion to the appetitive part of the soul itself (*Rep*. 554d3, *Tim*. 71b5, *Phdr*. 254e8). However, fear is also directly related to cowardice, which is primarily a condition of the *spirited* part of the soul. The *Timaeus* is illuminating on this point. There, in Timaeus' physiological account of the soul, we are told that the lungs are placed near the heart—the bodily location of the spirited part of the soul—in order to provide cooling breath during 'the leaping of the heart in expectation of fearful things (ἐν τῇ τῶν δεινῶν)' (70c1-2). This strongly suggests that the spirited part of the soul is involved in the emotion of fear. This view is echoed in the *Laws*: fear involves the 'expectation (προσδοκία) of evils' (646e7-8), it causes 'the harsh leaping of the heart' (791a4-5), and it leads to cowardice (791b). Presumably, the idea is that the appetitive part of the soul is the part that is especially averse to bodily pain, but the psychological effects of its aversion can be minimized or amplified depending on the toughness of spirit: if the spirited part of the soul is strong, the person will be fearless and brave in the face of pain; if it is weak, the person will experience fear and act cowardly. In other words, appetite's aversion to a given pain does not *by itself* constitute fear; fear also involves a certain kind of response by the spirited part of the soul. The theory of tripartition, then, would not provide a good basis for classifying crimes, because it not possible to attribute 'mixed' emotional impulses exclusively to one soul-part or another.[41]

Aside from the fact that tripartition would not have been helpful in the context of criminal penology, we can point to another good reason why Plato did not explicitly advocate it in the *Laws*: it would have invoked controversial commitments that were neither philosophically nor dialectically necessary. (Compare the *Republic*, where tripartition was useful, or even *required*, for achieving the dialogue's philosophical and argumentative objectives.) The primary aim of the *Laws* is, from the beginning, the practical one of identifying which educational programs, laws, and political institutions will most effectively promote the virtue and happiness of the city's citizens, and Plato gives numerous indications in the text that, to that end, he wishes to set aside many contentious issues. One example is from Passage A itself, where the Athenian says that 'one thing in its nature, whether it is a passion (πάθος) or a part (μέρος), is anger' (863b2-3).[42] While some have read this as evidence one way or the other on the question whether there is tripartition in the *Laws*, the most reasonable interpretation is simply to take it as an indication that Plato does not wish to address issues about the nature

[41] Another example may be grief. In the *Republic*, it seems to be the appetitive part of the soul that 'hungers for tears' in times of personal sorrow at 606a. Yet grief is also associated with excessive love of one's own, which would seem to make it a characteristically *spirited* emotion (see n53).

[42] See also 627d and 655b for the Athenian's evasion of unnecessary technicalities and theory.

of the embodied human soul—and in particular, the issue of whether there is a distinct, spirited part of the soul.[43] In other words, the remark reveals nothing about the question of tripartition, because it sets the question aside. Similarly, it is significant (but has not received due attention) that when the Athenian provides his great image of the soul, the puppet, nowhere in the remarks introducing the passage, nor in the description of the puppet itself, does he ever actually use the word for 'soul', *psuchê*. It is, of course, clear that he is discussing psychological phenomena, but the fact that he does so without talking directly about *psuchê* is significant. If Plato had wanted to engage with abstract issues about the embodied soul, and *a fortiori* if he had wanted to indicate a shift in his philosophical views about the soul, then surely he would have marked the discussion as a discussion *of the soul*.[44]

It is clear, then, that Plato wants to avoid invoking controversial and unnecessary philosophical commitments in the text.[45] Given that fact, and given that tripartition would not have added anything to the already useful moral psychology in place in the *Laws*, Plato's omission of it from the dialogue was both understandable and prudent.

4. The Earlier Dialogues

So far I have argued that the *Laws* ix threefold division should *not* be read as a tacit invocation of the tripartite division of the soul. What I now want to argue is that, although the *Laws* does not explicitly endorse tripartition—or make it the primary basis for its criminal penology—we should not conclude on that basis

[43] Stalley 1983, 47, 157 claims that 863b is 'an obvious reference to the doctrine that the human soul has distinct reasoning, spirited, and appetitive parts', though 'the Athenian is unsure whether we should speak of "parts" or "states" of the soul' (cf. Saunders 1962, 39). Bobonich 1994, 26 and 2002, 540n78 claims that although 863b does not attempt to settle the question whether *thumos* is a passion or a part, the inclusion of anger as one of the puppet's πάθη at 645d7 *does* settle the question and indicates that *thumos* is *not* a part of the soul. Bobonich evidently reads 863b as claiming: '*thumos* is *either* a πάθος of the soul *or* a μέρος of the soul, but not both'. However, that reading is by no means demanded by the text, nor is it even the most natural one. The comment clearly could mean: 'it doesn't matter for our present purposes whether we call *thumos* a πάθος or a μέρος'. As the Athenian has stated repeatedly, theirs is not the business of investigating 'the seemliness or unseemliness of words' (627d). It is worth noting, moreover, that in the works featuring tripartition, Plato very rarely uses the term *thumos* to refer to the spirited *part* of the soul, preferring instead either τὸ θυμοειδές or periphrastic expressions such as 'the part of the soul that shares in courage and anger' (*Tim.* 70a2-3). *Thumos* typically refers rather to the emotion of anger itself (cf. Hobbs 2000, 6-7). Therefore, even if the *Laws* did rule that *thumos* is a πάθος and *not* a μέρος, that would not settle whether there is a also spirited part of the soul. Sassi 2008, 136-137 rightly observes that the purpose of 863b is to avoid stating a position on the question of partitioning.

[44] As he does, for example, at *Phdr.* 245c1-3 (cf. 246a2-3) and *Rep.* 435c4-6.

[45] The one place in the dialogue where the conversation *does* turn toward an especially sophisticated discussion, it should be noted, is book 10, in the Athenian's arguments for the existence of gods and for their benevolent and conscientious supervision of the world. However, in this case Plato *does* consider such philosophically complex arguments to be crucial to his aim in the *Laws*. Because atheism and impiety are, as Plato understands them, distinctively *rational, intellectual* failures, they require a rational, intellectual remedy, namely, philosophical argument.

that Plato has *abandoned* tripartition. There is, however, an objection that might be raised to this claim: *if* (as I have claimed) tripartition is not useful for the purposes of drafting a criminal penology, then does that not represent a shortcoming of tripartition? And if so, then why should we not take Plato's different psychological focus in book 9 as evidence of a shift away from tripartite theory? There are three points to make in response to this worry. First, the fact that Plato does not find tripartition useful in this context does not mean that he thinks it *fails* to do the things for which it was originally designed, namely (at least), identifying the composition and structure of the embodied soul and providing a psychological account of the virtues. If a doctor took the part of the body that a given disease afflicted to be irrelevant to the question of the disease's severity, that would not impugn anatomy. Likewise, the fact that the severity of a criminal's viciousness is not determined by the part of the soul in which that viciousness originates does not impugn tripartition.

Second, although tripartition does not provide the basic framework for the Athenian's criminal penology, it does inform it in many subtle ways. It is telling, for instance, that although both greedy killers and envious killers are incurable, greedy killers are nonetheless considered *worse* than envious killers. This evidently reflects the fact that of the two lower parts of the tripartite soul, the spirited part is considered superior (e.g., at *Tim.* 69e5). Similarly, at 938b-c, those who commit perjury out of 'love of money' are punished more harshly than those who do so out of 'love of victory' (the former are exiled or killed, the latter simply banned from participation in the law courts). The point, however, is that tripartition can inform the penal code in these relatively minor ways without the need to invoke tripartite psychology as a philosophical commitment about the structure of the soul.

Finally, there are indications in earlier texts, particularly *Timaeus* and *Republic*, that the moral psychological picture of *Laws* ix is not a novelty in Plato. Rather, he employs parts of that picture in earlier dialogues as well, often comfortably alongside the theory of tripartition. To begin with, we have seen that in the *Laws* Plato emphasizes the distinction between impulses in accordance with reasoning and law and impulses in conflict with reasoning and law, without distinguishing, among the latter, between appetitive and spirited impulses. We find a similar focus in *Republic* x, where Plato makes it clear that he is comfortable dropping the talk of tripartition that had been prevalent in books 4, 8, and 9. Instead, he focuses simply on a distinction between what is 'foolish' (τὸ ἀνόητον, 605b8) in the soul and taken in by the illusory effects of poetry, on the one hand, and what follows reasoning and law in the soul and can resist the effects of poetry, on the other (see discussion at *Rep.* 602c-606d). Plato clearly intends to include both the appetitive and the spirited parts of the soul as components of the 'foolish' element in the soul, because he attributes both appetitive and spirited impulses to it. The non-rational psychic states stimulated by poetry, he writes, include 'sexual desires, anger, appetites, pains, and pleasures' (606d1-2). Because the appetitive and spirited parts of the soul are both equally taken in

by poetry in a way that conflicts with reasoning and law, Plato need not distinguish between them for his purposes, and hence he need not explicitly assign the various 'foolish' impulses to one part of the soul or the other.

In the *Timaeus,* similarly, the psychological distinction that is relevant for much of the text is simply between the immortal part of the soul, which is responsible for reasoning, and the mortal part. When Timaeus introduces the latter at 69c-d (and cf. 41d-42b), he says only that the mortal soul contains within it a variety of 'dreadful but necessary affections: pleasure, first of all, evil's most powerful lure; then pains, that make us run away from what is good; besides these, boldness also and fear, foolish counselors both; then also the spirit of anger hard to assuage, and expectation easily led astray' (69d1-4). He does not mention soul-parts here, nor does he draw any distinctions among these various vicious impulses, which all have in common (just like the 'iron cords' of the *Laws*) their potential to interfere with the proper functioning of reason. It is only when Timaeus needs to discuss the physiology underlying the nature of the embodied soul that he finally distinguishes between the two parts of the mortal soul (69e ff.).

Moreover, there is also an important parallel in the *Republic* to the Athenian's division of non-rational impulses according to the methods by which they motivate vicious behavior. At 413a, during Socrates' discussion of how to make sure that the city's guardians hold fast to the opinions that are inculcated in them through early education, he tells Glaucon that everyone who is deprived of true opinions is deprived of them *involuntarily*. He then explains that there are three ways for this to happen: through robbery, force, or bewitching. Those who lose true opinions through robbery are those who either forget their opinions or are persuaded to change their minds by third parties. 'By "the *forced*",' he says, 'I mean those whom some grief or suffering causes to change their opinions... And the "victims of bewitching", I think you'd agree, are those who change their opinions because they are charmed by some pleasure or terrified by some fear' (413b9-c3).

The parallel to *Laws* ix is clear: in the *Laws* the Athenian identifies three causes of wrongdoing, which amount to three ways in which individuals fail to have (and act in accordance with) correct rational judgment or wish about what to do in a given situation; in the *Republic*, Socrates identifies three ways in which correct judgments are *lost*. In both texts, moreover, the three ways are roughly equivalent. Ignorance in the Athenian's division is a distinctly intellectual failure, one not due to the influence of vicious impulses,[46] just as, in Socrates' division, forgetfulness or gullibility represent defects of the individual's rational capacities, rather than defects of his character. In both accounts, moreover, states associated with pain that operate through brute force are a distinct cause of false

[46] As we have seen, ignorance accompanies almost all criminal behavior in the form of corrupt practical judgments. However, the Athenian's discussion suggests that he reserves citing ignorance as the cause of wrongdoing for those cases in which the ignorance results, not from the influence of non-rational impulses, but from a failure of reason itself (see n18).

judgment.[47] And finally, the bewitching that Socrates identifies as the third way of losing correct judgment corresponds to the persuasive deception identified by the Athenian: both processes involve a change or loss of opinion resulting not from brute psychic 'compulsion', but rather from a deceptive form of intra-psychic 'persuasion' caused by states such as pleasure and fear.[48]

We have, then, two excellent reasons for rejecting the developmentalist argument that the shift in Plato's moral psychological focus from *Republic* to *Laws* reflects a shift in his underlying views about the embodied soul. The first is that, as we have just shown, the shift is not as much of a shift as it at first appears. The psychological distinctions that are central in the *Laws* are present in earlier dialogues that feature tripartition. Therefore, they are neither innovations in Plato's moral psychology nor features of it that Plato took to be incompatible with the tripartite theory of the soul. Rather, they are ways of discussing psychology that do not require the tripartite distinction, but that prove useful for addressing certain topics and questions.

The second reason for rejecting the developmentalist argument is that the context and aims of the *Republic* are quite different from those of the *Laws*, and we can point to good reasons why Plato would have avoided talk of tripartition in the latter, given those differences.[49] In the *Republic* Plato was concerned primarily with providing an account of justice and the rest of the virtues and with defending their value in human life, and the soul-parts were a crucial component of that account.[50] But in the *Laws* Plato was concerned with identifying which laws and practices would best prevent and correct bad character and behavior, and, as we have seen, tripartition would have complicated that project. This argument does not, of course, entail Plato's *acceptance* of the tripartite theory at the time that he wrote the *Laws*. It does, however, show that we cannot appeal to the omission of tripartition from the *Laws* as evidence of Plato's *rejection* of that theory. Indeed, its omission cannot be assumed to reflect anything more or less than Plato's sin-

[47] In the *Republic* Socrates does not explicitly mention anger as a type of painful state, but he does mention grief, and it is not difficult to see the connection between the two, especially given that, at this point in the conversation, Socrates has just discussed the extreme, vengeful behavior of Achilles following the death of his beloved friend Patroclus (388a).

[48] Hence Glaucon responds to Socrates' description of bewitching affections: 'Yes, that's because everything that deceives (ὅσα ἀπατᾷ) seems to bewitch' (413c4). Note the characterization of persuasion as 'bewitching' in Gorgias' *Encomium*.

[49] Grube 1980, 145 suggests a different motivation for Plato's omission of tripartition from the *Laws*. As Grube points out, the Athenian combats the views of the impious in book 10 by arguing for the existence of the immortal soul, and the explicit introduction of the 'mortal' parts of the soul, therefore, would have complicated those arguments. I am sympathetic to this suggestion, which I take to be compatible with my interpretation.

[50] It is worth noting that Plato does *not* offer a philosophical account of the virtues in the *Laws*. Indeed, one of the Athenian's concluding recommendations of the dialogue is that the Dawn Council should determine how 'the four forms of virtue' are each distinct, since there are four of them, as well as how each of them is one, since they are all in a sense one thing, namely, virtue. The fact that Plato does not go on to answer the question himself in the *Laws* suggests that he was still satisfied with the answer he had already given.

gle-minded pursuit of the ultimate goal that motivates the *Laws* as a whole, and the criminal penology of book 9 in particular: *making people better*.[51]

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