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PLATO'S LAWCODE IN CONTEXT: RULE BY WRITTEN LAW IN ATHENS AND MAGNESIA

Perhaps more than any other dialogue, Plato's *Laws* demands a reading that is at once historical and philosophical.[1] This text's conception of the 'rule of law' is best understood in its contemporary socio-political context; its philosophical discussion of this topic, in fact, can be firmly located in the political ideologies and institutions of fourth-century Greece.[2] In this paper, I want to focus on the written lawcode created in the *Laws* in the context of the Athenian conception and practice of rule by written law. How are the Athenian laws authorized, disseminated, and implemented, and how does Plato's lawcode reflect and/or depart from this model? What is the status of the 'text' of each lawcode? How—and how well—do the citizens know the law? When and by whom can the lawcode be altered? Recent work on literacy and on rule by written law in fourth-century Athens invites a serious reconsideration of Plato's lawcode and the polity it is designed for. Certainly Plato's *Laws* is grounded in a serious meditation on Athenian legislative practices. But Plato adds a novel ingredient to his legislation—the 'Egyptian' practice of 'doing things by the book' exemplified by (among other things) the institution of laws which compel doctors to treat patients in strict accordance with venerable and, indeed, sacred medical texts. As I will argue, the 'Egyptian' medical and textual practices offer a model for the rule of law quite different from that found in Athens.

I

It is generally agreed that the constitution outlined in the *Laws* is characterized by a blend of Spartan and Athenian elements, with Athens making the largest contribution to the mixture. Certainly Plato's adoption of an extensive written lawcode (and a judicial system to go with it) signals a move towards Athens and away from Sparta, which preferred to bind its citizens to ancestral (and, primarily, unwritten)

[1] The following works are cited more than once in the text and will be referred to in abbreviated form: D. Cohen, *Law, Violence, and Community in Classical Athens* (Cambridge, 1995); M. Hansen, 'Athenian *Nomothesia* in the fourth century B.C. and Demosthenes' speech against Leptines', *C&M* 32 (1980), 87–104; *The Athenian Democracy in the Age of Demosthenes* (Oxford, 1991); W. V. Harris, *Ancient Literacy* (Cambridge, MA, 1989); D. M. MacDowell, 'Law-making at Athens in the fourth century B.C.', *JHS* 95 (1975), 62–74; G. Morrow, *Plato's Cretan City* (Princeton, 1960); A. Nightingale, 'Writing/reading a sacred text: a literary interpretation of Plato's *Laws*', *CPh* 88 (1993), 279–300; R. Thomas, *Oral Tradition and Written Record in Classical Athens* (Cambridge, 1989), 'Law and lawgiver in the Athenian democracy', in R. Osborne and S. Hornblower (edd.), *Ritual, Finance, Politics* (Oxford, 1994), pp. 119–134, and 'Written in stone? Liberty, equality, orality and the codification of law', in L. Foxhall and A. Lewis (edd.), *Greek Law in its Political Setting* (Oxford, 1996), pp. 9–31; S. Todd, *The Shape of Athenian Law* (Oxford, 1993), and 'Lysias against Nikomachos: the fate of the expert in Athenian law', in L. Foxhall and A. Lewis (edd.), *Greek Law in its Political Setting* (Oxford 1996), pp. 101–131.

[2] Historicizing readings of Plato's *Laws* are found in Morrow, *Plato's Cretan City* (n. 1); D. Cohen, *Law, Sexuality and Society: The Enforcement of Morals in Classical Athens* (Cambridge, 1991), ch. 9, and *Law, Violence and Community* (n. 1), ch. 3; and T. Saunders, *Plato's Penal Code* (Oxford, 1991). These scholars do not discuss the question of the nature and authority of the 'text' of the laws (Athenian or Platonic), nor do they consider the question of how citizens learned the laws and the level of expertise that they achieved.

laws by way of its elaborate educational system, its unique mode of military training, and other institutions (such as the 'common meals') designed to produce unity and discipline. Plato, of course, was powerfully attracted to the Spartan *politeia*; at the very opening of the *Laws*, in fact, he issues a ringing endorsement of Minos and Lycurgus, making no mention whatsoever of Solon and Athenian law.[3] Yet the fact remains that Plato opts in this dialogue to harness the power of written law for the project of social control.

What, then, is the conception of the lawcode explicated in the *Laws*? The dialogue as a whole provides both a code of actual laws and a discussion of the rationale behind each law or area of law. Because the articulation of the laws is interrupted by discussions and digressions, the reader is left to extract the text of the lawcode from the surrounding dialogue. The first thing one notices when performing this extraction is that the laws 'proper' turn out to form a small part of the written code, since a great deal of extra-legal material is also meant to be included in this written text. As the Athenian says at 823a: 'it is necessary for the lawgiver not only to write down the laws but, in addition to the laws, to write down all those things that he thinks are good and bad, mixing these together with the laws (*ὅσα καλὰ αὐτῷ δοκεῖ καὶ μὴ καλὰ εἶναι, νόμοις ἐμπεπλεγμένα γράφειν*)'. The good citizen, he adds, is the person 'who passes his life in perfect obedience to the written rules (*γράμμασιν*) of the legislator, as given in his legislation, in his praise, and in his censure' (822e–823a). Here, the praise and the censure of the lawgiver are, like the laws proper, 'written rules'. Note, too, that the 'preludes'—exhortations and explanations appended to each of the laws for the purpose of persuading the citizens to obey them in the right spirit—will also be written down.[4] As Clinias remarks about the prelude to the laws against impiety,

> this [prelude] gives the greatest support to intelligent legislation, since injunctions that pertain to the laws, when put into writing (*ἐν γράμμασι τεθέντα*), remain permanently on record so as to offer a proof for all time to come. As a result, one need not worry if these things are difficult on a first hearing, since it will be possible for even the slow learner, going back to them often, to study them . . . (890e–891a)

A wide range of what we think of as unwritten rules, then, will be incorporated into the written lawcode. This paradoxical idea is made explicit at 793a–d, where the Athenian indicates that 'unwritten laws' (*ἄγραφα νόμιμα*) are 'ancestral customs' that hold the lawcode together and form the very foundation for the constitution; though they will 'make the lawcode longer' (*μακροτέρους ποιῇ τοὺς νόμους*, 793d5), he adds, the unwritten laws must not be left out of the text of the lawcode.[5]

The inscription of the preludes and unwritten laws together with the laws proper, of course, marks a clear deviation from Athenian practice; as I will suggest, this is part of a programme designed to create a relation between the lawcode and the citizens which is quite different from that found in fourth-century Athens. Perhaps the most obvious point of discrepancy is the fact that the written text of Plato's lawcode is made to serve

[3] Note that Plato tends to conflate the Cretan constitution with that of the Spartans; he clearly possesses a much greater knowledge of Sparta than of Crete. For a discussion of Plato's familiarity with Cretan customs (as well as that of his contemporaries), see Morrow (n. 1), ch. 1.

[4] I will discuss the preludes in further detail below.

[5] See also 780a: 'Whoever proposes to publish laws for cities, regulating the conduct of citizens in state affairs and public matters, and thinks that there is no need to make laws for their private conduct, but that everyone should be allowed to spend his day just as he pleases, and believes, moreover, that it is not necessary that everything both in public and in private be done by a regular rule, and supposes that, if he leaves private conduct unregulated by law, the citizens will still consent to live according to the laws in public and civil life—this man is absolutely wrong.'

as a control for all other kinds of discourse in the city. As the Athenian indicates at 858e–859a:

> Is it more disgraceful for Homer and Tyrtaeus and the other poets to lay down bad rules about life and its pursuits in their writings, and less disgraceful for Lycurgus and Solon and all the men who have, as legislators, created written lawcodes? Or is it proper and necessary that, of all the writings circulating in cities, the text of the laws[6] should be seen, when unfolded, to be the finest and best by far, and that all other writings must either agree with them or, if they are dissonant, be treated as ridiculous?

Here, the lawcode is conceived as a distinct genre of writing which is not only elevated above all other modes of discourse but is accorded an almost scriptural status.[7]

The written lawcode, however, will achieve full authority only if the entire citizenry reads it and learns it thoroughly.[8] This will be achieved by a novel educational programme which makes literacy both compulsory and universal (at least for the freeborn citizens). As Harris reminds us, 'no classical city is in fact known to have required all free-born boys, let alone girls, to attend school or to learn to read or write; nor is any city of this era known to have subsidized elementary education in any way'.[9] There were, of course, schools throughout the Greek world in this period which offered instruction in reading and writing; but these were private enterprises serving those families who had the money and the inclination to send their children to school.[10] In Plato's Magnesia, by contrast, all freeborn children will be compelled to learn reading and writing for three years beginning at age ten; contrary to contemporary Athenian practice, 'neither the father nor the pupil may be allowed to make this period longer or shorter, whether the student likes or hates the study, in opposition to the law' (810a). The city, then, will prescribe and provide schooling, and it will also dictate the texts for the reading lessons. Not surprisingly, Plato suggests that the lawcode itself must form the foundation of this education, serving both as a basic reading text and as the testing-stone for the inclusion of other kinds of *logoi*. As the Athenian says at 811c–d:

> For in looking now at the *logoi* which we have been articulating from dawn until this present hour—not without the guidance of the gods—I see that they have been framed exactly like a poem. . . . And a feeling of great delight came upon me as I looked upon these *logoi* of ours marshalled all together. For of all the many discourses which I have learned or listened to, whether in poetry or prose, [our *logoi* concerning the laws] are clearly the most virtuous and the most suitable for the young to learn. I cannot find a better paradigm (παράδειγμα) than this for the law-warden and the educator, and the teachers must be made to teach the children this text and other discourses that resemble and agree with it.

Only the text of the lawcode and discourses which harmonize with it will be used in the educational curriculum. Part of the job of the minister of education, in fact, is to find 'poems, or prose treatises, or verbal and unwritten discourses' that are 'akin' to the lawcode, and 'get them written down' (811e).

The citizens of Magnesia, then, will be compelled to really *learn* the law. This will involve reading and re-reading the actual text of the lawcode, as well as learning

[6] Or, more literally, 'the writings pertaining to laws': Plato means by this locution the laws proper plus the written text of the preludes and other 'unwritten laws'—the expanded lawcode which I have just described above.

[7] For a more detailed discussion of the lawcode as a sacred text, see Nightingale (n. 1).

[8] Note that, at 810b, the Athenian says that those children who are, by nature, slower learners will be required to learn how to read and write, but will not need to achieve great speed or beautiful handwriting. Since he goes on to say that the basic educational text will be the lawcode itself (811c–e), it is clear that this will be required reading even for the slower children.

[9] Harris (n. 1), p. 99. [10] Ibid., pp. 96–115.

poems and prose writings which contain exactly the same message as the laws. The citizens will thus become experts in the law, although this expertise is not that of a lawyer or of a lawgiver. For the citizens are not meant to learn the law in order to fight battles in the lawcourts—they are legal experts but not lawyers or legal professionals. In addition, they are not given the job of making laws, or the philosophic education which goes with it. For, in Plato's view, a true lawgiver must have the philosophic knowledge which will enable him to create a unified lawcode in accordance with the principles of reason. Rather, the citizens of Magnesia will be experts in the sense that they possess a thorough knowledge of the full text of the lawcode which will enable them to live lawfully and participate in all aspects of political life.

This conception of 'learning' the law is based on the mastery and memorization of a fixed text rather than on the acquisition of technical or argumentative skills. This is spelled out at 957c–d, where the Athenian describes the duties of judges:

> The man who is to be a fair and just judge must attend to all these things [i.e. rules for judges, courts, etc.] and he also must learn the written code of law which he possesses. For of all branches of learning, the study of the things written in the lawcode (if these are correctly set down) will be the most efficacious in making the learner a better man. . . . And, indeed, of all other modes of discourse (those of praise or censure in poems, or those in prose, whether they are in writing or uttered from day to day at all the other gatherings . . .)—of all these, the writings of the lawgiver will be a clear touchstone; and the good judge must regulate both himself and the city by possessing these writings within himself as an antidote against other kinds of discourse (*τούτων πάντων ἂν βάσανος εἴη σαφὴς τὰ τοῦ νομοθέτου γράμματα, ἃ δεῖ κεκτημένον ἐν αὑτῷ καθάπερ ἀλεξιφάρμακα τῶν ἄλλων λόγων, τὸν ἀγαθὸν δικαστὴν αὑτόν τε ὀρθοῦν καὶ τὴν πόλιν*).

Here, the Athenian not only endorses the study of law as a special branch of learning, but even explicates the precise goal of this activity: one 'studies' the law in order to become a better person and a better judge of other kinds of *logoi*. Note also that the good judge is meant to internalize—'possess within himself'—the text of the lawcode. Once this text has lodged itself within his soul, it can function as an *alexipharmakon* or 'antidote' against alien discourses. The notion of a written text operating as an *alexipharmakon* recalls the description of written texts as *pharmaka* in the *Phaedrus*. In that dialogue, of course, Socrates suggested that writing is a drug which blocks off the activity of enquiry and true memory: by relying on written texts, we let 'external marks' take the place of internal and autonomous thinking (275a–b). In the *Laws*, however, Plato chooses to harness the power of writing. He thus urges his citizens to memorize and internalize the written text of the lawcode so that it can serve as an ever-present standard for measuring all other modes of discourse and thought.[11] Although writing is still conceived as a kind of drug, Plato now chooses to emphasize its beneficent ability to provide an antidote against bad discourse rather than the damage it can do to independent thought and enquiry.

This notion of internalizing the lawcode also emerges in the parable of the puppet set forth in Book 1 (644c–645a). The souls of human beings, relates the Athenian, are like puppets manipulated by strings that pull them in different directions. The hard

[11] Cohen, *Law, Sexuality and Society* (n. 2), p. 235 argues that, in the *Laws*, 'the internal aspect of normative order is dominant'; as he puts it in *Law, Violence and Community* (n. 1), p. 44, 'Plato's reliance on the subjective dimension of legal order distinguishes his conception of the rule of law from modern notions which typically emphasize the external aspect of compliance, regarding the law as a system of commands backed by threats.' While Cohen is right to emphasize the 'internal' and 'subjective' dimension of the rule of law in Magnesia, he does not address the ways in which the written lawcode controls the process and the product of this internalization.

and ironlike strings are pleasure, pain, fear, and confidence, and the soft and golden string is 'calculation' (*logismos*, d2), whose job is to decide which of the states represented by the other strings is better or worse in a given situation (d1–2). A parallel is now drawn between soul and city: the law fulfils the role in the city that calculation plays in the soul (d2–3).[12] But this soul–city analogy is immediately blurred. For in the very next passage, the Athenian indicates that the laws should provide the rational deliberation and judgement for both city and soul:

> Our argument says that a man must always yield to one of these pulls without resistance, but pull against all the other strings—must yield, that is, to the golden and sacred drawing of calculation (*τὴν τοῦ λογισμοῦ ἀγωγήν*), which summons as an ally the common law of the city.[13] The other [strings] are hard and ironlike, resembling manifold substances, whereas it is soft, as befits gold. So a man must always co-operate with the noble drawing of law (*τῇ καλλίστῃ ἀγωγῇ τῇ τοῦ νόμου*), for calculation, though noble, is also gentle and free from violence, and its drawing needs supporters if the gold within us is to prevail over the other strings. (644e4–645a8)

Whereas the man is first enjoined to yield to his own calculation, by the end of this passage he is told to co-operate with the 'drawing' of law—as though law were one of the strings inside the soul! Since the pull that calculation exerts on the soul is 'gentle' and cannot overpower the other forces unaided, it needs 'supporters' in the form of laws that provide a pull of their own. The rational part of the average soul, it would appear, is characterized by a calculating faculty which needs to be supplemented—one might almost say supplanted—by the lawcode. Indeed, the very comparison of the human soul to a puppet suggests a lack of complete autonomy. The law must therefore stand in as the true authority for the soul as well as for the city.[14] As the Athenian puts it at 955d1–2, 'seeing the truth and, once having seen it, to persevere in it, is not easy; it is safest to listen to the pronouncements of the law and be persuaded'.

One should note, finally, that the text of the law is to be disseminated orally as well as through the medium of writing. As Detienne has suggested, Plato's lawgiver

> devises the astonishing project of domineering over rumor, of organizing its orientation, and making it circulate via a thousand channels. He will leave no stone unturned so that the community may express constantly and in the most useful way 'one and the same voice thoughout its existence, by means of its chants (*ôidai*), its tales (*muthoi*) and its discourse (*logoi*)'

[12] As Kathryn Morgan has suggested to me, the assimilation of *logismos* to *nomos* is problematic, since the former is an intellectual activity, whereas the latter is a fixed entity; the lawcode cannot really be said to do the thinking for the city.

[13] I differ from England and other scholars who translate *τὴν τοῦ λογισμοῦ ἀγωγὴν χρυσῆν καὶ ἱεράν, τῆς πόλεως κοινὸν νόμον ἐπικαλουμένην* as 'the golden and sacred drawing of calculation, which gets the name, when it affects (not a man but) the state, of a generally binding law' (*The Laws of Plato*, vol. 1 [London, 1921], p. 256 ad loc.). In general, the verb *ἐπικαλεῖν* means 'take as a surname or nickname' when it is used in the passive; in the middle it means 'call in as a helper or ally'.

[14] Note that the members of the Nocturnal Council will receive a philosophic education and thus achieve a knowledge which is self-ruling (961a–968b, and esp. 968d–e). At 966c–d, for example, the Athenian says that the only men qualified to join the Nocturnal Council are those who have 'toiled over and mastered every proof (*pasan pistin*)' concerning the gods and the cosmos, whereas the average citizen need only 'follow the language of the law' (*τῇ φήμῃ μόνον τῶν νόμων συνακολουθοῦσιν*). This does not mean that the Nocturnal Council is above the laws of the city; on the contrary, as Morrow shows (n. 1, ch. 9, esp. pp. 511–14), all citizens in Magnesia are subject to the written laws. The point is that the members of the Nocturnal Council will follow the laws because they understand the truth that underlies them; unlike the other citizens, they do not need written rules to guide them in right action.

[664a]. To this end, the nomothetic old men, in their wisdom, set up three choruses to direct their incantations to the souls of citizens. . . . One and the same voice [is heard in] three choruses in unison corresponding to the three ages of man so that the best hearsay may deluge all members of the body social.[15]

I do not wish to downplay the importance of oral enunciations of the text of the laws and of related discourses that are sanctioned by the law. Clearly, Plato does not believe that the mere act of reading and mastering the text of the law will give it a permanent residence in the human soul. This text must be bolstered by a thousand same-sounding voices if the code is to work its magic on the souls of the citizens. But it is, finally, the written laws which determine the legitimacy of all spoken discourse; as Megillus says at 838c–d, 'rumour (*phêmê*) has an amazing power, when nobody ever attempts to breathe a word contrary to the lawcode.' The spoken voice of 'rumour' is tethered to—and sanctioned by—the written 'voice' of the lawcode.[16]

II

To what extent, then, is Plato's lawcode informed by the theory and praxis of rule by written law in fourth-century Athens? Recall that in the last decade of the fifth century, the Athenians attempted to codify all their laws, which seems to have involved revising the laws to eliminate inconsistencies, collecting them together, and inscribing them on the Stoa Basileios.[17] In addition, they introduced an important change into the legal system by distinguishing *nomoi* from *psêphismata*, and giving precedence to the former: *nomoi* were now 'laws' of a general nature with permanent standing, whereas *psêphismata* were mere 'decrees' which dealt with immediate and individual issues and did not establish legal precedent (note also that the adoption and revision of the *nomoi* were entrusted to a newly appointed committee of *nomothetai* rather than to the assembly as a whole).[18] Finally, Athens appears to have established its first city archive in this period—the Metroön—which contained the official documents of the boule and assembly.[19] These late fifth-century revisions and enactments have generated a great deal of scholarly controversy, especially concern-

[15] M. Detienne, *The Creation of Mythology*, trans. M. Cook (Chicago, 1986), p. 100.

[16] Detienne (ibid., ch. 5), in his investigation of the commandeering of 'mythology' in Magnesia, overlooks the role played by the written text of the laws; he therefore concludes (wrongly, in my view) that Plato *rejects* 'the Egyptian paradigm that assigns to written work the prerogative of producing an authentic mythology' (p. 290). Cf. M. Vegetti, 'Dans l'ombre de Thoth. Dynamiques de l'écriture chez Platon', in M. Detienne (ed.), *Les Savoirs de Écriture en Grèce Ancienne* (Lille, 1988), pp. 387–419.

[17] It is difficult to assess the success or impact of this effort, since most of the evidence rests on the less-than-satisfactory account offered by Andocides (1.81–89). For a debate about the nature of the revision, see N. Robertson, 'The laws of Athens, 410–399 B.C.: the evidence for review and publication', *JHS* 110 (1990), 43–75; and P. Rhodes, 'The Athenian code of laws, 410–399 B.C.', *JHS* 111 (1991), 87–100. See also Hansen, *Athenian Democracy* (n. 1), pp. 162–4; Todd, *Athenian Law* (n. 1), pp. 56–8, and 'Lysias against Nikomachos' (n. 1). I favour the view set forth by Rhodes.

[18] Hansen, *Athenian Democracy* (n. 1). ch. 7 offers a detailed discussion of the precise nature of *nomoi* and *psêphismata*.

[19] Thomas, *Oral Tradition* (n. 1), p. 38, n.72 claims that the main contents of the Metroön in this period were the decrees; by the late fourth century, however, it also contained the laws. Thomas also discusses the ways in which the documents were collected and stored within the Metroön; she argues that the archive did not have the systematic organization and the easy accessibility that characterizes modern archives, and that the average Athenian did not make much use of the facility (pp. 68–83).

ing the changes in the power of the assembly,[20] and the (alleged) shift 'from popular soveriegnty to the sovereignty of law'.[21] The focus of my enquiry, however, will be the operation of written law rather than the nature of the democracy as a whole.

When the democracy was restored in Athens in 403 B.C.E., the city enacted a new law which made it illegal to introduce or enforce a law which had not been inscribed (Andocides 1.85–7); written law thus assumed an even greater status than it had in the early democracy.[22] In a recent article on the codification and inscription of law in classical Greece, Thomas has argued that an ideology began to develop in late fifth-century Athens which associated the rule by written law with democracy, and government by unwritten law with oligarchy.[23] This ideology is readily apparent in fourth-century texts; to cite one typical example, Aeschines claims that 'autocracies and oligarchies are administered according to the whims of their leaders, but democracies according to the established laws' (1.5; see also Demosthenes 24.75–6). One should recall that Sparta is said to have rejected the use of written laws, preferring to regulate its citizens by intensive education.[24] Although the 'Great Rhetra' which served as the foundation for Spartan law was clearly a written text, this appears to have been one of the exceptions that proved the rule.[25] Certainly the level of literacy in classical Sparta was relatively low in this period. Athenians, in fact, went so far as to depict the Spartans as illiterate (see e.g. *Dissoi Logoi* 2.10, Isocrates, *Panathenaicus* 209; cf. 250–1).[26] The Athenians' championing of the rule by written law, we may conclude, had both practical and ideological implications.

[20] This debate has been fuelled in large part by Mogens Hansen's contention that, after 403/2, the lawcourts gained ascendancy over the assembly in Athens (and therefore over the *demos* proper, which he identifies with the assembly and not the courts); Hansen provides a useful overview of this ongoing scholarly debate in *The Athenian Assembly in the Age of Demosthenes* (Oxford, 1987), pp. 94–107.

[21] See e.g. M. Ostwald, *From Popular Sovereignty to the Sovereignty of Law* (Berkeley, 1986) and R. Sealey, *The Athenian Republic: Democracy or the Rule of Law?* (Philadelphia, 1987) for arguments in favour of this shift; J. Ober, *Mass and Elite in Democratic Athens* (Princeton, 1989) and Todd, *Athenian Law* (n. 1) offer powerful arguments against this thesis.

[22] This piece of legislation may have been designed in response to the unscrupulous use of unwritten laws by the oligarchs during their takeovers in 411 and 404 (see esp. Thomas, 'Written in Stone?' [n. 1], pp. 17–19; Todd, 'Lysias against Nichomachos' [n. 1], pp. 107, 125–6; cf. S. C. Humphreys, 'The discourse of law in Archaic and Classical Greece', *Law and History Review* 6 [1988], 476).

[23] Thomas, 'Written in Stone?' [n. 1], pp. 16–19 (see also Thomas, *Oral Tradition* [n. 1], pp. 30–2; Cohen, *Law, Violence and Community* [n. 1], pp. 52–7; and C. Hedrick, 'Writing, reading, democracy', in R. Osborne and S. Hornblower (edd.), *Ritual, Finance, Politics* [Oxford, 1996]). This does not mean, of course, that Athenians did not acknowledge and revere some unwritten laws; the point is that they did not consider these appropriate for use in judicial or political proceedings.

[24] See esp. Plutarch, *Life of Lycurgus*: 'none of the laws were put into writing by Lycurgus, indeed one of the so-called *rhêtrai* forbids it' (13.1). In place of written laws, Lycurgus introduced a *paideia* or system of education which fostered goodwill and good behaviour; no constraints of written law were necessary, for the educational system obviated the need for such constraints (13.1–2). In this education, 'the Spartans learned only enough of reading and writing to serve their turn' (16.6). See E. N. Tigerstedt, *The Legend of Sparta in Classical Antiquity*, vol. 1 (Stockholm, 1965), pp. 70–8 and *passim* for a discussion of the legends surrounding Lycurgus.

[25] As D. M. MacDowell, *Spartan Law* (Edinburgh, 1986), p. 5 observes, although some written laws did exist in in Sparta, '. . . no stone inscriptions of laws of the classical period have been found at Sparta, and we hear nothing of any attempt to make a comprehensive written code. . . . It is likely that many of the 'laws of Lykourgos' remained unwritten.' See also P. Cartledge, 'Literacy in the Spartan oligarchy', *JHS* 98 (1978), 35–7.

[26] As Cartledge shows (ibid.), these claims were self-serving and exaggerated; see also Thomas, *Oral Tradition* (n. 1), pp. 30–1.

It is in the context of these political and ideological movements in Athens that we must consider Plato's evolving conception of the rule by law. In the *Statesman*, of course, Plato argues that rule by an expert statesman is far better than rule by written law.[27] Given his endorsement of the philosopher-kings in the *Republic* and his criticism of writing in the *Phaedrus*, this comes as no surprise. In the *Laws*, however, Plato champions government by written law, and even undertakes to compose a detailed text of the best kind of written code.[28] Does Plato's turn toward written law signal a rapprochement with democratic ideology? To what extent is the conception of written law in the *Laws* modelled on the Athenian use of written law?

Morrow has suggested that the operation of the written rule of law in Magnesia resembles that of Athens in fundamental ways. But how—and how well—did the Athenians learn their laws? According to Morrow,

> Attic law was much simpler than modern law and more accessible; inscribed on pillars and wooden tablets in the Agora, it could easily be consulted and could hardly fail to be noticed by the citizen as he went about his daily business. The other institutions of Athenian life provided him abundant opportunity and incentive for making his knowledge of the law more precise and thorough. Every citizen was a member of the assembly from about the age of twenty. The assembly often had to deal with legal as well as executive matters, and its many meetings during the year, attended usually by some thousands of citizens, could hardly fail to give the average Athenian a technical familiarity with his laws that the citizen in a modern state inevitably lacks. Service on the dicasteries . . . would be simply a continuation of this education.[29]

If this account is accurate, then the adult Athenian citizen in this period can be seen to know his written laws just as well as Plato's Magnesians, even though the latter learn them in school at an early age. But this account should not be adopted uncritically. In particular, we need to address the following questions: To what extent did the Athenians actually read the inscriptions of the laws? How exactly did the Athenians learn their laws? Did the average Athenian know—or need to know—the written lawcode in its entirety, as the Magnesians will in Plato's city?

Recent work on literacy in classical Athens has shown that the mere presence of written inscriptions in the the city does not, by itself, indicate that the majority of the population was literate, let alone that it was relying on these inscriptions for information and evidence.[30] Thomas, for example, reminds us that 'written documents, even when they do begin to be used, are often still duplicated by oral communication. . . . Thus we should expect that Athenians only gradually become prepared to use written documents extensively rather than oral communication, and indeed to

[27] I refer here only to the argument elevating the rule by an expert statesman over the rule by written laws; I take this argument at face value, though it is of course a small part of a much more complicated dialogue about political governance. The precise political 'message' of the dialogue—which is a matter of great controversy—is beyond the scope of this essay. For a discussion of some differing views about Plato's political position in the *Statesman* (and its relation to the doctrines of the *Republic* and the *Laws*), see C. J. Rowe, *Plato. Statesman* (Warminster, 1995), Introduction.

[28] Much ink has been spilled on the question of whether Plato changed his political and/or metaphysical views towards the end of his life: is the *Laws* a departure from the *Republic* and the *Statesman*, or is Plato simply replaying the same ideas in a different key? In this essay, I will not discuss the relation of the *Laws* to Plato's middle/late dialogues. Instead, I want to investigate the written code in the *Laws* against the backdrop of the Athenian rule of law, thus focussing on the socio-political rather than the philosophic context of the dialogue.

[29] Morrow, *Plato's Cretan City* (n. 1), p. 252.

[30] Harris, *Ancient Literacy* (n. 1), ch. 4; Thomas, *Oral Tradition* (n. 1).

trust written documents at all.'[31] The key issue, then, is not simply the question of the precise level of literacy in the city as a whole (though this is certainly important) but also the function and status of written texts in the culture. The stelai upon which the laws were incribed, for example, may have functioned more as monuments and memorials than as documents conveying information.[32] And since these stelai were scattered throughout the city in no special order or arrangement, the average Athenian would have had a difficult time mastering the full text of the law by consulting the inscriptions. With the creation of the Metroön at the end of the fifth century, of course, the laws were finally housed under a single roof. Yet it is not until the middle of the fourth century (in the speeches of Aeschines) that one finds explicit evidence that the documents in the archive were being cited as sources in the courtroom.[33] According to Thomas, it is only in the mid-fourth century that we discern the beginnings of a truly 'document-minded' culture in Athens; before this, the Athenians did not treat written texts as documents offering, by themselves, evidence that was trustworthy, irrefutable, and superior to that provided by oral discourse.[34]

Athenian inscriptions, of course, often included the statement that they were erected 'so that all who wish to may know' (ἵνα πάντες [οἱ βουλόμενοι] εἰδῶσιν) or so that 'anyone who wishes may see' (σκοπεῖν τῷ βουλομένῳ). But how many Athenians did in fact 'wish' to read and 'know' the inscriptions? As Hansen reminds us,

> What the Athenians expected of the ordinary citizen was [passive participation], which demanded enough common sense to choose wisely between the proposals on offer, whereas active participation was left to those who might feel called to it—'he who wishes', *ho boulomenos*, in fact. Democracy consisted in every citizen having *isêgoria*, the genuine possibility to stand up and state his proposal or his objection, but it did not require everyone to do so—indeed, if every citizen had insisted on making use of his *isêgoria*, assembly democracy would have broken down there and then.[35]

The ordinary Athenian citizen, then, was neither compelled nor expected to read the

[31] Thomas, *Oral Tradition* (n. 1), p. 36.

[32] Ibid., pp. 64–5 and *passim*.

[33] Ibid., pp. 69–72 (note especially her discussion of [Dem.] 25.99, which is sometimes taken to indicate that ordinary citizens made a practice of looking things up on the Metroön). See also Todd, *Athenian Law* (n. 1), p. 58n., who observes that 'Hansen [*C&M* 41 (1990), 71] seems to regard the Metroön as the primary source of law and the inscribed texts as secondary (at least after the failure of the code on the wall of the *stoa basileios*). The usage of the orators does not reflect this: of the passages that [Hansen] mentions, Dem. 19.25 refers to a non-legislative document; and neither Dem. 25.98–9 . . . nor Lyk. 1.67 cites a law from the Metroön, although both refer to it as a (or the) place where laws are kept.'

[34] Thomas, *Oral Tradition* (n. 1), ch. 1.

[35] Hansen, *Athenian Democracy* (n. 1), pp. 306–7. See also R. K. Sinclair, *Democracy and Participation in Athens* (Cambridge, 1988), ch. 5 and *passim* for a more detailed investigation of the extent to which ordinary Athenians participated in the legislative and political machinery of the Athenian democracy. Sinclair argues that, in the fourth century, there is evidence of an ongoing problem in securing attendance at the Assembly (pp. 114–19); in some periods, the attendance for ordinary meetings was below 6,000 'either commonly or not infrequently' (p. 118). He also suggests that the taxpayers (i.e. wealthier citizens) made up a significant part of the audience at the Assembly, since (among other things) it was their money and special interests that were on the line (pp. 123–4). The lawcourts, by contrast, tended to be populated by poorer citizens (pp. 127–33); but Sinclair adds that 'perhaps even more than in the assembly, where there was at least the regular invitation for anyone to address the meeting, the citizen in the lawcourts could play a passive role and not expose his inexperience or lack of detailed knowledge and understanding' (pp. 132–33). Finally, he argues that the attendance at the Boule was spotty and that there was manifest 'apathy and passivity' on the part of ordinary citizens who served as Council members (p. 215; see also pp. 106–14).

public inscriptions or to master the text of the laws. To be sure, the citizens would have learned a good deal through oral channels, especially from the proceedings in the assembly and courts. But in these arenas, the citizens in attendance would be presented with a given law or set of laws for the purpose of an immediate judgment or vote; there was no need for people to prepare for these meetings by studying the laws or to memorize for future reference the expositions of law presented in these venues. Some laws, no doubt, would have become well known by virtue of their regular use in the courts. But, by the same token, laws dealing with crimes committed only rarely would be far less familiar to the average Athenian juror.

It is possible that a comprehensive oral presentation of the laws was offered to Athenian citizens at the first Assembly meeting of each year, when the citizens voted to reaffirm or to reject the existing laws. Unfortunately, our source for this practice of 'reviewing' the law (Demosthenes' *Against Timocrates* 20–3) does not tell us whether every single law was read out individually; all it says is that the laws were divided into four sections, each of which was voted on separately.[36] MacDowell suggests that 'to vote on each law individually every year would take up too much of the ekklesia's time; to vote simply on the one question "Are the laws satisfactory?" would be too sweeping; taking them in four gulps is a compromise'.[37] But even if a great number of laws were read out on this occasion, one should remember that the text of the laws would differ at least in small ways from one year to the next, since laws were both added and removed in the course of each year. Indeed, the very reason for instituting this annual 'review' of the laws was to keep an eye on the changes made in the laws each year; this is very different from the rehearsal of a fixed text. In addition, the citizens who were participating in the political process in the 'passive' sense set forth by Hansen and Sinclair are likely to have responded to this 'review' of the laws perfunctorily; there was no special reason for the average citizen to get deeply involved in this process unless, of course, he had recently faced a legal battle involving a specific law or laws.

I would argue, then, that the average Athenian did not learn or master the texts of the lawcode as a whole by reading them on the stelai or in the Metroön or even by hearing them in the Assembly or the lawcourts.[38] Let me bolster this claim with some evidence from classical writers. Take, first of all, Andocides 1.115–16, where we learn that a man named Callias 'expounded' an 'ancestral law' (*nomos patrios*) which indicated that the penalty for Andocides' alleged crime was instant death; Cephalus comes to Andocides' aid by pointing out that the true penalty for this deed—a fine of a thousand drachmae—is inscribed on 'the stele at your feet'.[39] This passage indicates that the law inscribed on the stele was not well known, and that the ancestral law may have won the day if Cephalus had not called attention to the inscription. Consider also

[36] For discussions of this 'Review Law', see MacDowell, 'Law-making at Athens' (n. 1), pp. 66–9 and Hansen, *Athenian Democracy* (n. 1), p. 166. MacDowell ('Law-making at Athens' [n. 1]), Hansen ('Athenian *Nomothesia*' [n. 1]), and P. J. Rhodes ('*Nomothesia* in fourth-century Athens', *CQ* 35 [1985], 55–60) offer useful (albeit different) assessments of *nomothesia* in Athens, and of the modifications of this institution in the fourth century.

[37] MacDowell, 'Law-making at Athens' (n. 1), p. 66.

[38] As Thomas observes ('Written in Stone?' [n. 1], pp. 14–15), many Greek cities made a practice of singing laws at various kinds of gatherings; but the only evidence of Athenians following this practice indicates that they sang the laws of Charondas, an early lawgiver from Italy, at their drinking parties (Athenaeus, *Deipnosophistai* 619b = Hermippus fr. 88 Wehrli).

[39] See M. Ostwald, *From Popular Sovereignty to the Sovereignty of Law* (Berkeley, 1986), pp. 164–7 for a discussion of this passage.

pseudo-Demosthenes 47.68–71, in which the plaintiff claims that he visited 'the sacred expounders' (*hoi exêgêtai*) in order to learn how he should proceed with regard to a fatal assault on his nurse. The interpreters ask him whether he wants them merely to 'expound the law' or whether he wishes them to 'advise' him as well (68–9).[40] After listening to them both expound and advise, he then goes to 'look at the laws of Draco on the stele' (71). Clearly, the plaintiff does not know the relevant laws until he consults the interpreters and then checks the writings on the stele.

Note also that the litigants in Athenian court cases often explicitly denied that they had a full knowledge of the law, or else issued a sort of apology for their apparent expertise. For example, the plaintiff in Demosthenes' *Against Conon* claims that his opponent's outrageous behavior has forced him to study the lawcode:

> There are, for example, penalties for abusive language (for, on account of this man, I have been compelled *to investigate and learn* [ζητεῖν καὶ πυνθάνεσθαι] these things); *they say* (φασί) that these originated for the following reason—so that men who have vilified one another are not led to blows. Again, there are penalties for battery; and *I hear* (ἀκούω) that these exist for the following reason. . . . (54.17–18)

Here, the plaintiff acknowledges that he has learned the laws on this issue under compulsion; his suggestion that the material he is presenting has been explained to him by others ('they say'; 'I hear') is a further indication that he did not possess this knowledge to begin with and thus had to seek out expert guidance. The same note is sounded in Hyperides 3, where the plaintiff says to his opponent: 'You have caused me such great fear that I will be ruined by you and your cleverness that I have been investigating and studying the laws night and day (τοὺς τε νόμους ἐξετάζειν καὶ μελετᾶν νύκτα καὶ ἡμέραν), and neglecting all other affairs' (3.13).

Why did the litigants need to apologize for scrutinizing the laws? Although this is a rhetorical strategy and cannot be taken as representing literal truth, the very existence of the topos attests that at least some Athenians believed that the possession of legal expertise would separate them from ordinary citizens and arouse the suspicion if not the hostility of the jurors.[41] It was therefore necessary to claim that they studied the laws only under duress. As Todd has shown in his recent discussion of legal expertise in Lysias 30, 'Nikomachos is powerful because he is an expert; and yet his expertise is (ironically) at the same time his weakness: the expert, and particularly the expert upstart, is dangerously isolated and therefore hated.'[42]

Demosthenes offers evidence that a small minority of Athenians did in fact possess significant legal expertise, even if they would not admit it. In *Against Leptines* 20.93–4, he tells us that Solon had established rules for repealing any old law that was contradicted by a new one 'so that there would be one law concerning each subject, and that these contradictions would not confuse the ordinary citizens (τοὺς ἰδιώτας) and put them at a disadvantage compared with the men who know all the laws (τῶν ἅπαντας εἰδότων τοὺς νόμους)'. In this passage, Demosthenes draws a clear distinction between 'ordinary citizens' and 'men who know all the laws'. In addition, he suggests that these fine institutions of 'Solon' are no longer working properly, since Leptines

[40] As Svenbro has shown (*Phrasikleia: An Anthropology of Reading in Ancient Greece*, trans. J. Lloyd [Ithaca, 1988], pp. 118–22), the verb *exêgeisthai* should be translated by 'expound' (to convey 'the exact vocalization of traditional formulas [the expounders] have committed to memory') rather than by 'interpret'.

[41] See Todd, *Athenian Law* (n. 1), p. 54 and Humphreys, 'The discourse of law' (n. 22), pp. 476–7.

[42] Todd, 'Lysias against Nikomachos' (n. 1), p. 115.

has managed to get a law passed which directly controverts established laws that were not repealed. As a result, the ordinary citizens are placed at a disadvantage, and the legal experts are given the opportunity to manipulate legislative activity with little opposition. Again, we need to remember that the speaker may well be exaggerating the confusion of the ordinary citizen as well as the power wielded by the experts.[43] But it is unlikely that his reference to a group of men 'who know all the laws' is a complete invention; for blatant fictionalizing on this issue could only undermine his larger point.

This last passage also suggests that, in spite of the Athenians' efforts to keep the laws consistent and to prevent the hasty adoption of new laws (especially in the fourth century), the laws did in fact change and for this reason the code fell far short of perfect coherence. As Demosthenes says in the same speech,

> In the olden days . . . [the Athenians] used existing laws and were not in the habit of making new ones; but ever since certain politicians gained ascendency . . . and contrived to get the power to make laws whenever and in whatever way they wished, there are so many inconsistent laws that for a long time you have commissioned men to pick out the contradictory ones, yet the business is not any closer to completion. (20.91–2)

Other texts from this period offer further evidence that, at least in some people's eyes, laws were accruing so rapidly that the code had become unwieldy and difficult to understand or use. In *On the Peace* 50, for example, Isocrates claims that the Athenians 'pass a multitude of laws' (πλείστους δὲ τιθέμενοι νόμους) but pay them little heed. In the *Areopagiticus*, moreover, Isocrates says that in the good old days, the members of the Council of the Areopagus

> did not believe that an increase in virtue came from written laws but from the habits of daily life. . . . In addition, they held that the presence of numerous and highly specific laws in a city was a sign that it was badly managed. . . . Cities that are properly governed, on the other hand, do not need to fill their stoas with written laws, but to possess justice in their souls. For cities are managed well not by decrees but by morals, and men who are reared badly will venture to break even laws which are written up with great specificity, while those who are brought up properly will happily abide by a simple code. (40–1)

While this may reflect a conservative and even anti-democratic viewpoint, it is noteworthy that this echoes the very point made by Demosthenes in *Against Leptines* (20.91–2).[44] And consider, finally, Demosthenes' claim in *Against Timocrates*:

> But the politicians in our city, gentlemen of the jury, rarely let a month go by without making laws which serve their own interests. . . . In addition, they repeal the laws of Solon tested over the ages—laws which their ancestors established—and they think that it is right for you to use their own laws, which they lay down to the detriment of the city. (24.142)

Scholars disagree about the significance of these passages. Hansen, for example, argues that Demosthenes' criticism of Athenian legislation in these speeches 'is rebutted by numerous other passages in the orators [Hansen cites Aeschin. 1.177–8,

[43] Scholars are divided over the question whether specialized knowledge of the law or of other political issues translated into power and authority: to what extent (if at all) did the minority of people who had achieved legal expertise have the ability to control and manipulate the demos? For some different positions on this issue, see Ostwald (n. 39), Ober (n. 21), Hansen, *Athenian Democracy* (n. 1), L. Kallet-Marx, 'Money talks: rhetor, demos, and the resources of the Athenian empire', in R. Osborne and S. Hornblower (edd.), *Ritual, Finance, Politics* (Oxford, 1994), pp. 227–52.

[44] Thomas, 'Law and lawgiver' (n. 1), pp. 128–30.

Dem. 25.20–4, and Lycurg. 1.4], which actually praise the procedure of legislation and stress respect for the laws, and the importance of laws for the preservation of democracy. Assertion rebuts assertion . . .'[45] But it is not clear why Hansen's favoured assertions should be taken to rebut the others, rather than vice versa; indeed the very notion of the 'rebuttal' of one topos by another seems out of place in a discourse as fluid as Athenian oratory. Clearly, the orators were able to call on these conflicting topoi when the occasion demanded. For my own purposes, it is enough that an orator would venture to suggest that the Athenian laws were too numerous and, in some cases, inconsistent. Given that this topos echoes statements made by the critics of the democracy, it is unlikely that an orator would choose to deploy it unless he felt that it had some claim to truth and would be acknowledged as such by the jurors. According to Thomas, passages such as the ones cited above betray 'hints of deep unease and nostalgia for a simple legal past and the single authority of Solon. . . . these statements reflect a diffidence about new and recent law that implicitly undermines the value of the new fourth-century arrangements, and confidence in them'.[46] Even allowing for rhetorical exaggeration, there is at least some evidence that legislative practices in the fourth century were increasing in complexity and that the 'code' of the laws was, in certain respects, difficult for the layperson to use. This is no doubt part of what encouraged the rise of logography.

It is worth mentioning an actual piece of legislation that bolsters my contention that the Athenian laws were not fully known or understood by the ordinary citizens. This is the law that prescribes the death penalty for anyone who, in a court proceeding, 'produces a law that does not exist' (ἐάν τις οὐκ ὄντα νόμον παράσχηται).[47] Clearly, there would be no need for such a rule if the Athenians had learned all the laws; it is only possible to invent a non-existent law in a city which possesses numerous laws which are not fully known by the ordinary citizen. Indeed, the severity of the penalty suggests that this crime was both practicable and serious.

Let us consider, finally, the role of the *dikastai* in the Athenian courts. As Todd suggests:

> It was not the task of the court to know or to discover what law or laws applied in particular circumstances; rather, it was the litigant's right to bring forward any law(s) which he felt would support his case. . . . It may have created some embarrassment at Athens if rival litigants produced laws which appeared to contradict each other, but the oath sworn by the *dikastai* obliged them in such circumstances not to discover what was 'the law' in a particular situation, but rather to reach a verdict while giving proper weight to those laws which had been cited in evidence before them.[48]

This suggestion that laws serve as 'evidence' is in fact made explicit by Aristotle in the *Rhetoric* (1.15, 1375a24–5), where 'laws' are listed as one of five kinds of 'proof' (*pistis*) which make up the general category of *pisteis atechnoi* (i.e. proofs which

[45] Hansen, *Athenian Democracy* (n. 1), p. 176; cf. Thomas, 'Law and lawgiver' (n. 1), pp. 128–30 and *passim*. Note that in Aeschines 3.34–48, the orator claims that the lawcode could not possibly contain inconsistent laws, since the Thesmothetai would have 'searched them out' and expunged them (40). But Aeschines' assertions are designed to combat the position that there are indeed contradictory laws concerning the conferral of crowns (35–6), and his discussion of the 'Dionysiac law' (which his enemies are citing) shows that, even if it does not contradict the earlier law in the strictest sense, it is nonetheless vague enough to lead to confusion; indeed, the situation itself would not have arisen if it were obvious from the beginning that Ctesiphon was making a proposal that was contrary to law.

[46] Thomas, 'Law and lawgiver' (n. 1), p. 129.

[47] Demosthenes, *Against Aristogeiton* 2.24.

[48] Todd, *Athenian Law* (n. 1), pp. 59–60.

require no special skill or invention on the part of the orator). The five kinds of proof are: laws, witnesses, documents concerning agreements and contracts, torture (i.e. the evidence given by slaves), and oaths. To the modern reader, the suggestion that laws are just one among many kinds of proof seems counter-intuitive. But we should keep in mind that 'laws are cited by the litigants rather than by the court, and they have persuasive but not compelling force'.[49] In stark contrast to the British and American legal systems, the Athenian jurors were not simply trying to ascertain whether the defendant was breaking the law. At the heart of the Athenian trial was a complex of political, social, and moral issues; these generally took precedence over the bare question of legality.

III

Plato wrote the *Laws* in the late 350s/early 340s B.C.E. By this time, as we have seen, the Athenians had grown more 'document-minded' and were beginning to place real trust in written texts. They had also developed a fairly sophisticated legal system, and written texts of the laws were openly available to all citizens who wished to peruse them. As I have suggested, however, the ordinary Athenian did not need to study these texts in order to judge and vote in the Assembly or lawcourts; the written texts of the laws made them accessible to everyone, but the principle of accessibility did not depend on the practice of perusal. It should be clear by now that Plato had a very different model in mind for the city of Magnesia. Where, then, did Plato find the model for a sacred text of laws which is virtually unalterable and completely binding?

In order to locate this model, we must briefly discuss an important contemporary debate circulating in intellectual circles on the topic of the rule by written law. Consider first Plato's discussion of written law in the *Statesman*. This discussion occurs near the end of the dialogue, where the Stranger who leads the conversation explicates the difference between rule by an expert statesman and the rule of law. Note, first of all, that the Stranger repeatedly associates the rule of law with writing and the rule of the true statesman with a *technê* that eschews writing.[50] So, for example, at 296e4–297a2, the statesman is compared to a helmsman who guards the welfare of his ship and crew 'not by instituting written laws but by furnishing his *technê* as a law'. Again, at 300c10–d2, the Stranger asserts that the statesman will 'conduct many of his activities by *technê*, paying no regard to written prescriptions'.[51] Written codes of behaviour, he insists, are at odds with the art of statesmanship and, indeed, with the arts in general. When the Stranger asks at 299e3–5 what a city would be like if all its activities 'were done in accordance with written prescriptions and not by *technê*', his interlocutor responds: 'it is clear that all the arts would be utterly destroyed' (e6–7). But what exactly is the problem with written rules of law? According to the Stranger, these rules cannot deal with the particularities and vicissitudes of human life

[49] S. Todd, 'The purpose of evidence in Athenian courts', in P. Cartledge *et al.* (edd.), *Nomos: Essays in Athenian Law, Politics and Society* (Cambridge, 1990), p. 32.

[50] Though he indicates at 295a6–7 that both written and unwritten laws are inflexible and unable to respond to the particular exigencies of events and individuals (cf. 298d7–e1, 299d1–2, 301a4).

[51] Other passages that explicitly develop this dichotomy between the written laws and the rule by a statesman unfettered by written laws are, e.g., 297d5–7, 299c4, 300a1–3, 300c1–2, 300c5–7; see also 296b–c: if a doctor who has knowledge compels his patients to do something, even if it is against the written rules, he is not unscientific; likewise, if a statesman compels his subjects contrary to the laws, he is not unjust (cf. 293a–b, 295e–296a, 299a).

(294a–b). For this reason, the rule of law is 'like a stubborn and ignorant man (ὥσπερ τινὰ ἄνθρωπον αὐθάδη καὶ ἀμαθῆ) who does not permit anyone to do anything contrary to his orders or to ask any questions, not even if something new occurs to someone which is better than his own injunctions . . .' (294c).[52]

As a *technê* or art, then, statesmanship cannot be conducted 'by the book'; though the statesman may opt to use laws, he himself will always retain the right to alter or abandon them in response to shifting circumstances. This notion of the right relationship between a ruler and his own laws is brought into better focus by a striking analogy at 295c–d:

> . . . when a doctor or trainer is intending to go abroad and he thinks that he will be separated from his charges for a long time, if he thinks that the patients or pupils will not remember his orders, he would want to leave written instructions for his charges, would he not? . . . But what if he comes back sooner than he had planned? Would he not venture to lay down rules that differ from the written ones, if these happened to be better for the patients . . . ?

Clearly, a good doctor—a 'physician who is worth as much as many others', as the Stranger calls him at 297e, quoting from Homer—will privilege his own expertise over any written prescriptions. He will not be bound by written rules, even those which he himself has authored. A bad doctor, by contrast, is one who believes that

> it is not right for anyone to transgress the ancient laws (τὰρχαῖά ποτε νομοθετηθέντα), neither he himself by instituting new ones nor the sick person by venturing to do anything contrary to the written rules, on the grounds that these rules are medicinal and conducive to health, and that any other course of action is unhealthy and unscientific. (295d)

The bad doctor, then, will defer to the written prescriptions, which are here referred to as 'ancient laws'.

The use of the craft analogy pervades Plato's work. But this particular analogy requires further investigation. The doctor and the trainer, of course, serve as an analogue for the lawgiver. In fact, the notion of a doctor/trainer leaving written prescriptions before going abroad clearly conjures the narratives of lawgivers like Solon and Lycurgus, both of whom (according to tradition) went abroad after instituting lawcodes in their respective cities.[53] Solon, as is well known, left Athens for ten years after establishing his laws. In Herodotus' account, he is said to have departed 'in order that he would not be compelled to repeal any of the laws that he had instituted; for the Athenians themselves were not able to do this, since they were bound by powerful oaths to obey for ten years whatever laws Solon should make' (1.29).[54] In the narrative of Lycurgus, the lawgiver is said to have gone abroad after

[52] Note also that, in the Atlantis story in the *Timaeus-Critias*, there is no reference to the early Athenians using written laws (though Critias does refer to their *ancestral* 'laws' and constitution at *Timaeus* 24a–d). The kings of Atlantis, by contrast, govern their mutual relations by inscribed laws, though they do not use written laws in their rule over the people (*Critias* 119c–d); in fact, the kings even made a ritual of cutting a bull's throat directly over the pillars containing the inscriptions of the laws (119e–120a, see also 120c). It is difficult to know what to make of these details; in particular, it is unclear why the Atlantan kings—who are, after all, sons of Poseidon—actually need written laws. One could argue that Plato injected this element into the narrative as a subtle reminder that rule by written laws is inferior to rule by good statesmen (assuming that the rulers in Athens—who are said to be the 'wisest of men' and to resemble their '*philosophos*' patron-goddess, Athena [*Timaeus* 24c–d]—are governing as statesmen using *politikê technê*).

[53] For an excellent discussion of the narratives surrounding the ancient lawgivers, see A. Szegedy-Maszak, 'Legends of the Greek lawgivers', *GRBS* 19 (1978), 199–209.

[54] See also Aristotle, *Ath. Pol.* 7.2, 11.1; Plutarch, *Solon* 25.1.

making the Spartans take an oath that they would not alter his code until his return; the code remained permanently binding since he never returned home.[55]

As Szegedy-Maszak observes about these and other stories of the early Greek lawgivers, '. . . the fact that the lawgiver himself retained the power to change the code made him a potential threat to its operation. In the legends, the danger is relieved in two ways, by the death of the lawgiver or by his departure into self-imposed exile.'[56] In Plato's narrative, however, the doctor (= lawgiver) returns home after only a brief period, and his own authority thus collides with that of the written prescriptions. By bringing the legislator back onto the scene, Plato is able to bolster his own argument that rule by statemanship is better than rule by written laws: only the legislator who transgresses the laws can prevent the deterioration of the city. Like the good doctor, the good lawgiver will set aside the written rules; he will, in short, choose to govern by the *technê* of statesmanship.

We are not yet done with this analogy. Note, first of all, that Plato begins the passage by referring to doctors and trainers, but then abandons the trainer for the doctor.[57] Why introduce a doctor into a discussion of statemanship and lawgiving? Why this talk about doctors 'trangressing the ancient laws'? Surprisingly, scholars have not seized upon the obvious answer to this question, namely that there existed in this period actual doctors who were legally obligated to abide by written prescriptions.[58] These were Egyptian doctors, and their practices were being used by Athenian intellectuals to illustrate the problems inherent in the rule by written law. As Aristotle observes in the *Politics*:

> Those of the opinion that it is advantageous to be governed by a king think that laws articulate only general principles but do not give directions for dealing with particular circumstances; so that in an art of any kind it is foolish to proceed in strict accordance with written rules (and indeed in Egypt physicians may alter their prescription only after four days, and if anyone alters them before this he does so at his own risk) . . .[59] (3.15, 1286a9–14)

As this passage reveals, the analogy of the doctor refers to a specific cultural practice rather than to doctors in the abstract: the Egyptian custom of 'doctoring by the book'. Note also that Aristotle refers to a group of unnamed individuals (in the plural) who have argued that none of the arts can be reduced to written rules, and that the rule by written law is therefore an inferior form of government. This indicates that there was a debate about the value of written laws taking place in the middle of the fourth century. As these passages from Plato and Aristotle attest, this was an important question in the Academy and Lyceum. But the issue was not

[55] See esp. Plutarch, *Lyc.* 29. As D. M. MacDowell, *Spartan Law* (Edinburgh, 1986), p. 18 suggests, there is a very great probability that Plutarch's primary source for the life of Lycurgus was the *Lacedaimoniôn Politeia* of Aristotle.

[56] Szegedy-Maszak (n. 53), p. 207.

[57] Note, for example, the way that τοὺς γυμναζομένους ἢ τοὺς κάμνοντας at 295c3–4 gives way to τοῖς κάμνουσι and τὸν κάμνοντα at 295d1 and d4.

[58] I have found no reference to Egyptian doctors in commentaries on the *Statesman*. J. Jouanna, 'Le médecin modèle du législateur dans les *Lois* de Platon', *Ktema* 3 (1978), 77–91, who devotes an entire article to the doctor-analogy in late Plato, also neglects to mention the Egyptian doctors.

[59] Note that the fact that the doctors could venture beyond the written prescriptions after four days is completely occluded in philosophers' deployment of the analogy of the doctor and ruler: as we will see, the point of this analogy is to draw a simple distinction between rule by an expert statesman who is above the law and rule by written law, in which everyone (including a city's leaders) is bound by the law. The practice of the Egyptian doctor is the analogue for the latter.

merely academic, since the philosophers were (at least in part) responding to the Athenian legal system, which was being assessed and criticized in this period by advocates of the democracy as well as by its detractors.

Aristotle makes another reference to the same practice when he turns to criticize this analogy:

> There seems to be no truth in the use of the arts as a paradigm for governance, [which argues against the rule of law saying that] it is a bad thing to 'doctor in accordance with a book' (τὸ κατὰ γράμματα ἰατρεύεσθαι), but preferable to use those in possession of scientific expertise. For doctors never act contrary to principle because of friendship, but earn their fee when they have healed their patients, whereas men in political offices make it their custom to do many things out of spite or to win favor . . .[60] (*Politics* 3.16, 1287a32–7)

Clearly, Aristotle is referring to the very same issue that Plato is addressing in the *Statesman*, although he disagrees with the conclusions reached in that dialogue. To be sure, Plato does not identify the bad doctor in his narrative as 'Egyptian', but his contemporary readers would immediately identify a doctor who elevates the written prescriptions and 'ancient laws' over his own expertise as the Egyptian doctor. Plato's analogy of the doctor in the *Statesman* thus takes its place in a contemporary debate about written law—a debate in which anti-democratic thinkers like Plato were using the Egyptian medical practices to bolster their criticism of rule by written law.

This analogy is brought into better focus by the detailed account of the Egyptian physicians in Diodorus Siculus:

> The [Egyptian] physicians draw their support from public funds and administer their treatments in accordance with a written law which was composed in ancient times by many famous physicians. If they follow the rules of this law as they read them in the sacred book (ἐκ τῆς ἱερᾶς βίβλου) and yet are unable to save their patient, they are absolved of any charge and go unpunished; but if they disobey the law's prescriptions in any respect, they must submit to a trial with death as the penalty, the lawgiver holding that few physicians would ever show themselves to be wiser than the mode of treatment which had been closely followed for a long period and had been originally prescribed by the ablest practitioners. (1.82.3)

As this passage shows, the Egyptians considered their ancient medical texts to be sacred and binding. These texts, in fact, functioned as a kind of lawcode, complete with the authority to inflict severe penalties for deviants. Clearly, this Egyptian practice attracted the attention of Greek intellectuals because it illustrated, in microcosm, the collision between traditional wisdom and artistic innovation and, even more importantly, the problematic authority of written rules. The practices of the Egyptian doctors thus play into a number of questions that were being debated in fourth-century Athens: Is rule by written law the best kind of government? Should written laws be sovereign over every citizen (including a true expert in political

[60] See also *Politics* 2.8, 1269a9–24: 'For just as with the other arts, so with the structure of the state it is impossible that it should have been framed aright in all its details; for it must of necessity be couched in general terms, whereas our actions deal with particular things. These considerations do seem to show that it is proper, at times, for some laws to be altered. But if we consider the matter in another way, it would seem that this requires great caution. For in cases when the improvement would be small, since it is a bad thing to accustom men to repeal the laws lightly, it is clear that some mistakes of the legislators and of the magistrates should be tolerated; for the people will not be benefited by making an alteration as much as they will be harmed by growing accustomed to disobeying their rulers. *And the analogy from the case of the arts is fallacious, since changing an art is different from changing a law*; for the law has no power to compel obedience beside the force of custom, and custom only comes into being over a great span of time, so that to allow for the easy alteration of existing laws to new laws is to weaken the power of law.'

affairs)? Should the laws be subject to alteration? If so, how and when should this be carried out?

IV

The *Laws* both reflects and responds to this debate about the rule by written law. In this dialogue, Plato describes written law as a 'tyrannical prescription' (*τυραννικὸν ἐπίταγμα*, 722e): it 'orders and threatens like a tyrant or despot who writes his decrees on the wall and is done with it' (*κατὰ τύραννον καὶ δεσπότην τάξαντα καὶ ἀπειλήσαντα γράψαντα ἐν τοίχοις ἀπηλλάχθαι*, 859a4–6). This, of course, echoes the statements made about written law in the *Statesman*, but Plato now suggests that the lawgiver can soften the brute dictates of law by adding 'preludes' or 'preambles' to the laws proper.[61] The Athenian begins his discussion of the preludes by presenting two types of lawgiver: one who merely tells people 'what to do and not to do, threatening them with punishments', and one who adds to his code 'exhortation and persuasion' (*παραμυθίας δὲ καὶ πειθοῦς*, 720a1). The approaches of these two lawgivers are, in turn, illustrated by an analogy with two kinds of doctors. Note that these two doctors are quite different from the good and bad doctors introduced in the *Statesman*. For in the *Laws*, we find instead the 'slave' doctor, who administers to slaves by way of a skill acquired by observation and practice, and the 'free-born' doctor, who administers to free-born patients by way of scientific knowledge. The slave doctor behaves 'like a tyrant' (*καθάπερ τύραννος*, 720c6): he does not 'give or receive an account' of the ailments of his patients, but merely 'issues his orders' and moves on (720c). The freeborn doctor, by contrast, 'investigates' the ailments, 'talks with the patient and his family', 'learns from the sick' and 'offers them instruction' (720d). Before issuing any orders or prescriptions, he 'makes the sick person gentle by means of persuasion' (d7–e1).

When the Athenian turns to apply this illustration to the lawgivers, he focuses on the dichotomy between the language of threats or commands and that of persuasion or exhortation (721e, 722b–c, 722e–23a). The ordinary lawgiver, of course, resembles the slave doctor: he merely issues commands. The good lawgiver, by contrast, uses the persuasive language of the preludes 'to ensure that he for whom the lawgiver has made the law will accept the injunction . . . with good will and, because of this good will, with better understanding' (723a; cf. 718d). By adding preludes to the lawcode, the good lawgiver tames the 'fiercer' language of brute command, thus using the 'gentlest' approach to legislation (720a5–6, see also 885e). The good lawgiver, then, like the free-born doctor, uses persuasion and instruction in his efforts to elicit lawful behaviour.

But let us look more closely at the details of this analogy. Note, first of all, that the distinction between the good and bad doctor/lawgiver centres on the way in which they treat their charges *before* they offer prescriptions/laws. In contrast to the slave doctor, the freeborn doctor anticipates his prescriptions by offering a full explanation of the disease and its cure to the patient, thus enjoining him to co-operate in the healing process and to follow the prescribed regimen in the strictest way. Likewise, the good lawgiver will, by way of the 'preludes', offer instructions and explanations to the

[61] For some recent (and diverging) discussions of the preludes, see Morrow, *Plato's Cretan City* (n. 1), pp. 552–60; B. Vickers, *In Defence of Rhetoric* (Oxford, 1988), pp. 143–7; H. Yunis, 'Rhetoric as instruction: a response to Vickers on rhetoric in the *Laws*', *Philosophy and Rhetoric* 23 (1990), 125–135; C. Bobonich, 'Persuasion, compulsion and freedom in Plato's *Laws*', *CQ* 41 (1991), 365–88; Nightingale, 'Writing/reading' (n. 1).

citizens about the laws that he has laid down. It should be emphasized, however, that the good lawgiver differs from the freeborn doctor in several crucial ways. First, his preludes are designed to serve as 'preventive medicine'. Unlike the doctor, the lawgiver does not wait until his charges are sick; citizens who obey the lawgiver's preambles will never be subjected to the threats and penalties contained in the laws proper. As the Athenian says at 854c, if the preludes succeed in persuading the citizens, the law will 'remain silent' (see also 870e–871a, 880a–e, 932a, 941c). Second, and more important, the freeborn doctor is on hand to treat his patients directly, whereas the lawgiver is composing a written lawcode for the benefit of future citizens rather than addressing and administering to real citizens in oral and direct discourse. Both the preventive medicine (of the preludes) and the actual medicine (of the laws) are built into a written lawcode which is designed to operate in the absence of the lawgiver himself.

In contrast to the freeborn doctor, then, the good lawgiver creates his preludes and his legal prescriptions long before he comes across any 'patients'. In fact, he will never 'come across' these individuals all, since he will finish the lawcode before the city even exists. If and when the city is founded, the written lawcode will completely substitute for the lawgiver. There is no suggestion in the *Laws* that the city should find new lawgivers who will change the laws in response to shifting circumstances. On the contrary, Plato makes it quite clear that the text of the lawcode will only be subject to (minor) revisions for a brief period following the founding of the city. Since 'many petty details' (*σμικρὰ καὶ πολλά*) have been left out of the lawcode, the Athenian says, the magistrates of the city should add rules to fill in these gaps, and then 'declare them incapable of modification and thereafter enforce them with the rest of the laws originally established by the lawgiver' (772a–d). The lawcode, then, is represented as not only capable of finalization, but as being very near to that goal already. As Morrow rightly observes, although Plato suggests that his lawcode will need to be amended in extreme cases, he 'seems to have no idea of indefinite progress; one cannot improve upon perfection, and like Bentham he is apparently so confident of his science of legislation as to think that perfection is not very far distant'.[62] Confident that his lawcode will hold good at all times, Plato is adamant that the laws be 'unchangeable' (*ἀκίνητοι*); as the Athenian puts it at 798a–b, 'if by some divine good fortune the laws under which men are brought up remain unchanged for many long ages, so that no one either remembers or hears that they were once different than they are now, then the whole soul will revere them and be afraid to change any of the rules established of old'.[63]

Plato returns to the analogy of the slave and freeborn doctors in a key passage in Book 9. At 857c–d, the Athenian says that a lawgiver who proceeds in the fashion of the freeborn doctor must present to his charges a scientific investigation and analysis of each issue.[64] But in doing this, he adds, the doctor/lawgiver 'is not doctoring the

[62] Morrow, *Plato's Cretan City* (n. 1), pp. 570–1 (see also R. F. Stalley, *An Introduction to Plato's Laws* [Indianapolis, 1983], pp. 80–2; cf. Cohen, *Law, Violence and Community* [n. 1], pp. 50–1). For the discussion of the elaborate procedure laid down for amending the law in extreme cases, see 772c–d.

[63] As Cohen, *Law, Violence and Community* (n. 1), p. 49 observes, 'The paradox of Plato's "rule of law" is that, although he repeatedly insists that the rule of law only comes into existence through the voluntary compliance of free citizens, after they have adopted his constitutional scheme these citizens are educated so as to "forget" this. Their crucial role in the foundation of Magnesia is glossed over by this education in the collective fiction of "sovereign" laws. . . .'

[64] Note that, both here and in the discussion of the doctors/lawgivers in Book 4, the reader is invited to imagine that, like the good doctor, the legislator converses with his charges. It is in fact

patient, but educating him, *as though he needed to be made into a doctor rather than cured of his disease*' (*οὐκ ἰατρεύεις τὸν νοσοῦντα, ἀλλὰ σχεδὸν παιδεύεις, ὡς ἰατρὸν ἀλλ' οὐχ ὑγιῆ δεόμενον γίγνεσθαι*, 857d–e).[65] The citizens of Magnesia, we may infer, will be 'made into doctors' if they learn and obey the language of the laws. By learning and internalizing the text of the lawcode, they will be able to doctor and administer to themselves and the city. As I would suggest, the citizens are being asked to become a particular kind of doctor. Clearly, they will not be the same kind of doctor as the lawgiver, since they are not taught philosophy or even the *technê* of lawmaking. Rather, they are taught to become experts in the lawcode at hand and the value system it represents. In short, they will be very much like the Egyptian doctors, since their primary task is to master and obey the written text of the laws.

To be sure, Plato does not explicitly mention the Egyptian doctor in the *Laws*. But there is good reason to think that he is following the basic paradigm represented by the sacred medical texts used by Egpytian doctors. For, in the *Laws*, Plato describes with great enthusiasm another Egyptian practice which is in the same conceptual orbit. As the Athenian says in Book 2, Egypt possesses a law that is 'marvellous to hear':

> Long ago, it seems, [the Egyptians] established . . . that the youths in the cities must habitually practice postures and songs that are good. They dictated what—and of what sort—these were, and they published these in the temples. The painters and all other creators of postures and likenesses[66] were forbidden—and still are forbidden—to introduce any innovation or invention (*καινοτομεῖν οὐδ' ἐπινοεῖν*) beyond those things sanctioned by tradition, whether in these arts or in any other artistic genre. And you will discover if you look there that the things written and painted 10,000 years ago (and I really do mean 10,000) are neither better nor worse than the things which are produced today, but are created with the same technique. (656d–657a)

This practice attracts Plato for several reasons. First, it involves establishing fixed laws governing the creation of and participation in all areas of artistic endeavour. Second, these laws are inscribed and placed in the temples, and have such force that they positively preclude alteration and innovation.

The Athenian returns to this topic at 799a–b, where he suggests that the Magnesians should follow the Egyptians in their practice of 'consecrating (*καθιερῶσαι*) all dancing and all songs':

> If anyone introduces other hymns or dances besides [those established by law] for any festival, the priests and priestesses, together with the Law-guardians, will be acting in accordance with religion and with the law when they expel him from the festival; and if he is unwilling to be expelled, for the rest of his life he can be prosecuted for impiety by anyone who chooses. (799b)

In this passage, Plato suggests that the Egyptians have succeeded by sacralizing—'consecrating'—their laws: because they have yoked their artistic laws to religion,

this depiction of the preludes as personalized conversations that gives them the appearance of contrasting starkly with the 'tyranny' of the written laws. But the content of the preludes is not determined by the legislator's 'encounter' with the citizens. In fact, there no such 'encounter', since the code is created before the founding of the city.

[65] The Athenian says that these are the words that an ordinary doctor would say about a freeborn doctor. But he himself agrees with the essential point in the passage that follows (857e–858a).

[66] I follow England in reading *ὁμοιώματα* for *ὁποῖ' ἄττα* (which is in the mss., but is not retained by Burnet in the *OCT*).

they are better able to prevent innovation and deviance.[67] As the Athenian remarks at 657a–b, 'to effect this [consecration] is the task of a god or a godlike man, just as in Egypt they say that the songs preserved through this great length of time are the compositions of Isis'. To defy the norms of music, in short, is to commit a sort of sacrilege.[68] Note, finally, that this practice resembles that of the Egyptian doctors in that both involve an inscribed text of rules and laws which carries a divine authority (recall that Diodorus 1.82.3 referred to the Egyptian medical texts as a 'sacred book').

It should be emphasized that Plato is treating the Egyptian practice of 'consecrating' the rules of art as a model for the proper approach to law in general. Indeed, Plato makes this quite clear in a passage dealing with the history of Athens in Book 3 (698a–700a). In the olden days, he says, the Athenians were 'enslaved' to their laws and thus lived and governed wisely (699c, 700a). After the Persian Wars, however,

> there arose as leaders of an unmusical lawlessness poets who . . . had no knowledge of what is just and lawful in the domain of the Muses. These men . . . blended together dirges with hymns and paeans with dithyrambs and imitated songs for the flute in cithara-tunes and mixed all the genres up with one another. In their ignorance, they unwittingly slandered art, saying that it does not have any standard of correctness, and that it is judged correctly by the pleasure of the auditor, regardless of whether he is a good or a bad man. . . . Thus these poets engendered in the populace a contempt for artistic norms and the bold conceit that they were capable of judging these things. (700d–e)

It is, at first, rather surprising to find Plato discussing the Athenians' treatment of art and music in a passage dealing with the city's legal and political system. But Plato connects the laws of art with laws in general by suggesting that the Athenians' trangression of artistic laws was in fact the cause of other kinds of lawless behaviour:

> For if a democracy of free men had arisen only in the case of music, this would not have been such a terrible thing. But, as it turned out, these musical practices gave rise to a general conceit of comprehensive knowledge and a contempt for law, and liberty followed in their train. For, thinking that they had knowledge, the people grew fearless, and the lack of fear begat shamelessness. (701a)

Following from the transgression of musical norms, he concludes, the people began to defy their parents, the rulers, the laws, and even the gods (701b–c). A city's treatment of artistic norms, in short, will determine their relation to laws in general.

Note also that, in this passage, the Athenian musical customs are placed in diametrical opposition to those of the Egyptians. For the Athenians have abandoned their early musical norms and practices, and have allowed the audience to decide what is good and bad art: they have, as Plato puts it, developed from an aristocracy into a 'theatrocracy' (*θεατροκρατία*, 701a). Athens' alteration and destruction of her musical norms is in stark contrast to the Egyptian practice of sacralizing the laws of music and art and keeping them intact for thousands of years. This contrast provides further evidence that Plato was deliberately deviating from the Athenian approach to rule by written law. Although Plato clearly did find many individual Athenian laws useful and worth keeping, he did not consider the contemporary Athenian legislative process a success. For, in spite of the fact that they had laid down many good laws, the

[67] For passages dealing with the notion of 'consecrating' rules or laws, see 657a–b, 813a, 799a, 838a–e, 839c.

[68] For a more detailed discussion of 'Plato on Egyptian art', see W. M. Davis, *Journal of Egyptian Archaeology* 65 (1979), 121–127.

Athenians were, in Plato's eyes, a lawless society. The adoption of a radical democracy had destroyed the power of law and the authority of tradition.[69] In this kind of government, moreover, the law was considered man-made. Solon authored the law-code without divine aid, and the people of Athens were themselves involved in the ongoing process of creating and repealing laws.[70] In Magnesia—as in Egypt—the laws are the product of divine wisdom. As Plato puts it in Book 6, 'service to the laws is service to the gods' (762e). Note also the Athenian's claim in Book 10 that *the prelude for the laws against impiety is in fact a prelude for the lawcode as a whole* (887b–c). As this lengthy prelude makes clear, the Magnesians are required by law to believe not only that the gods exist and are good, but that the laws are the product of divine *nous*.[71] To break any law, then, is act of impiety; as the Athenian observes,

> in those cities where a mortal, not a god, is the ruler, there will be no escape from toils and evils. We must therefore imitate in every way the life of the Age of Cronus, obeying that part of our souls which is immortal . . . giving the name of 'law' (*νόμον*) to the arrangements of reason (*τὴν τοῦ νοῦ διανομήν*). (713e–714a)[72]

Athens, then, is not Plato's model for the rule by written law. But why turn to Egypt? What was wrong with Crete and Sparta, cities which were famous for their *eunomia*? Interestingly, Plato suggests that, among Greek cities, only Crete and Sparta resemble Egypt in their refusal to allow any innovations in the rules for dance, song, and the other arts (660b). Another point of resemblance is the notion that the laws are divinely inspired and sanctioned. Indeed, the very first lines of the *Laws* refer to the divine aid conferred upon the Cretan and Spartan lawgivers, Minos and Lycurgus. Note also that the three interlocutors in the dialogue—the Athenian, Clinias, and Megillus—are themselves making a journey from Cnossos to 'the cave and sanctuary of Zeus' (625a–b). No definite occasion is adduced for so long and arduous a pilgrimage, but we can safely infer that it reenacts the journey of the Cretan king Minos, who is said at the opening of the dialogue to have visited his father Zeus every ninth year in order to receive instructions concerning the legislation of Crete (624b).[73] The journey of the interlocutors, in short, is a palpable reminder that the lawcode they are creating, like that of Minos, will have the sanction of Zeus.

Crete and Sparta, then, do offer a model for the notion of divinely created laws. But Plato wanted to go further than even the most strict Greek polities. For he wanted to control the Magnesian citizens' discourse and thoughts as well as their actions. This required a quite new kind of constitution—one in which a written code of correct

[69] The *Republic* offers a similar portrait of the lawlessness exhibited by radical democracies (8.559d–563e).

[70] Szegedy-Maszak (n. 53), pp. 199–209, and Thomas, 'Written in stone?' (n. 1) discuss the unusual secularity of Athenian law in the context of other Greek lawgivers and codes of law in the archaic and classical periods.

[71] See esp. 889b–d, 890d, 891b, 892b–c, 898a–c.

[72] Note that, whereas the *Statesman* sets *technê* in opposition to *nomos* (see esp. 297a) and ranks the former above the latter, the *Laws* creates a quite different hierarchical scheme: *nomos* is aligned with *technê* and *nous*, and all three are placed over and against chance and chaos. Good and true laws are now conceived as the product of divine *technê* and *nous*.

[73] See also *Minos* 319e (a passage which bears a striking resemblance to the opening of the *Laws*), which explicitly says that Minos went to the 'the cave of Zeus' every nine years. This parallel is significant even if the dialogue was not written by Plato. Morrow, *Plato's Cretan City* (n. 1), pp. 35–9 summarizes the arguments for and against the dialogue's authenticity; he believes that Plato did write this dialogue, and that it may even have been a sketch for the opening of the *Laws* which was later abandoned.

discourse and conduct in all areas of life would be the master-mind in the city. What is lacking in Crete and Sparta is the use of an extensive written lawcode as a sacred text. It is for this reason that Plato must look to Egypt for a code of detailed rules that is both 'divinely' authored/authorized and inscribed in sacred books. The notion of 'doing things by the book' is alien to the Greeks, and thus must be imported from Egypt, where the ideology and the practice of writing presented a very different model for the operation of a written code of laws.

Plato had not forgotten his own critique of writing when he composed the *Laws*. As we have seen, the written text of the lawcode is still described as a 'drug', but the drug is now beneficial, since it provides non-philosophers with an 'antidote' to bad discourse. According to the *Phaedrus*, written *logos* is ambiguous and easily misunderstood; it therefore needs the presence of its father to defend it (275d–e). In the *Laws*, Plato sets out to create a new kind of text in which interpretative ambiguities are minimized. As the Athenians remarks at 719c–d, although poets may say different things on a single subject, 'it is not possible for the lawgiver to say two things about one matter in his lawcode, but he must always publish one statement about one thing'. A lawcode, moreover, differs from other written texts in that it gains authority precisely by the disappearance of its author (Solon, Lycurgus, etc.). Plato constructs in the *Laws* a text which both anticipates and accommodates his own imminent death. He thus builds the voice of the father—and indeed, of god—right into his dialogue, thereby creating a text which claims for itself the authority of ancestral and divine wisdom.

Ironically, Plato may not have actually finished writing this dialogue when he died; as Diogenes Laertius indicates, Philip of Opus is reported to have '*μετέγραψεν* the *Laws*, which was contained in wax tablets' (3.37). It is unclear whether *μεταγράφειν* in this passage means 'transcribe' a completed text onto papyrus, or 'revise' and therefore finish a work which was not yet complete. Plato's lawcode, then, may have been unfinished; certainly it was not yet fixed, but consigned to that most malleable and perishable of substances, wax.

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