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The Law in Plato's *Laws*: A Reading of the 'Classical Thesis'

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Abstract: Plato's *Laws* include what H.L.A. Hart called the 'classical thesis' about the nature and role of law: the law exists to see that one leads a morally good life. This paper develops Hart's brief remarks by providing a panorama of the classical thesis in *Laws*. This is done by considering two themes: (1) the extent to which *Laws* is paternalistic, and (2) the extent to which *Laws* is naturalistic. These themes are significant for a number of reasons, including because they show how *Laws* might be viewed as a sophisticated forerunner of natural law theory. The upshot is that Plato's metaphysical commitments about legal ontology allow him to base the truth of legal propositions on the way they relate to the truth of corresponding moral propositions.

Key words: Plato; *Laws*; paternalism; natural law.

In the opening paragraph of his essay, 'Social Solidarity and the Enforcement of Morality', H.L.A. Hart describes what he calls 'the classical thesis' about the role of the law:

> It is possible to extract from Plato's *Republic* and *Laws*, and perhaps from Aristotle's *Ethics* and *Politics*, the following thesis about the role of law in relation to the enforcement of morality: the law of the city state exists not merely to secure that men have the opportunity to lead a morally good life, but to see that they do. According to this thesis not only may the law be used to punish men for doing what morally it is wrong for them to do, but it should be so used; for the promotion of moral virtue by these means and by others is one of the Ends or Purposes of a society complex enough to have developed a legal system.[2]

Hart then explains the nature of the law with respect to the classical thesis:

> This theory is strongly associated with a specific conception of morality as a uniquely true or correct set of principles—not man-made, but either awaiting man's discovery by the use of his reason or (in a theological setting) awaiting its disclosure by revelation.[3]

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[2] H. Hart, 'Social Solidarity and the Enforcement of Morality', *Chicago Law Review*, 35:1 (1967), p. 1.
[3] Ibid.

Hart concludes the opening paragraph of his essay by saying that he will not discuss the classical thesis further. In one sense, this seems appropriate because Hart's well-known version of legal positivism is at odds with the classical thesis. There are nevertheless good reasons to make sense of the classical thesis, not least of which is that it might be thought of as both friend and foe to many contemporary theories of law. This paper develops Hart's rumination on the classical thesis by addressing it directly in the context of Plato's *Laws*. Although Hart refers to both the *Republic* and *Laws* in his essay, it is safe to say that the *Republic* has received more attention from commentators.[4] The goal here is thus to provide a panorama of the classical thesis in *Laws* by drawing out two themes on which Hart touched: (1) the extent to which *Laws* is paternalistic, and (2) the extent to which *Laws* is naturalistic. The paper assumes generally that *paternalistic* laws are those that enter one's life to somehow make one better off. And it assumes generally that *naturalistic* theories treat the law as universal because it is somehow based upon nature, rather than human use or convention.

The extent to which *Laws* is paternalistic has not been appreciated fully. It is a nuanced paternalism that takes many forms, but at its core is a principle that opposes the basic idea about the nature and limits of the law in most contemporary theories. To be sure, since at least the emergence of John Stuart Mill's harm principle—the principle that the law should be limited to preventing harm to others—one of the guiding themes in contemporary jurisprudence has been that the law should be rather limited in terms of advancing one's moral well-being.[5] Plato takes

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[4] The literature on *Laws* is relatively sparse, with Christopher Bobonich noting that '[T]he *Laws* has often been considered to be one of the most arid and, from a literary point of view, least sophisticated of Plato's dialogues'. C. Bobonich, 'Reading the *Laws*', in *Form and Argument in Late Plato*, ed. C. Gill & M. Margaret McCabe (Oxford: Oxford University Press, 2000), p. 249. Included among the key works on *Laws* is the translation and commentary used in this paper: T. Saunders, *The Laws* (London: Penguin Books, 1970). More recent work includes C. Bobonich, *Plato's Laws. A Critical Guide* (Cambridge: Cambridge University Press, 2010) and *Plato's Utopia Recast* (Oxford: Oxford University Press, 2002); and M. Schofield, *Plato: Political Philosophy* (Oxford: Oxford University Press, 2006).

[5] See J. Mill, *Utilitarianism, On Liberty and Considerations on Representative Government* (London: Dent, 1976).

the opposite view, providing a sustained argument that the law's role—indeed, the law's most important role—is advancing one's well-being in virtually every respect. The different manifestations of paternalism in *Laws* will be examined to show how they fit into Plato's larger project of establishing a new political society.

The second theme that the paper examines—legal naturalism—is what serves as the foundation of the law's paternalism. Plato sets forth a notion of the law that is inextricably intertwined with an absolute standard of morality, and it is the law's relationship to morality that justifies its paternalism. This is significant for a number of reasons, including because it shows how one might view *Laws* as one of the earliest, most sophisticated forerunners of natural law theory. For example, contemporary natural law theories typically embrace two metaphysical commitments regarding legal ontology, as can be seen in Michael Moore's naturalistic commitments about the law: '(a) moral qualities such as justice exist (the existential condition); and (b) such qualities are mind- and convention-independent (that is, their existence does not depend on what any individual or group thinks—the independence condition)'.[6] In *Laws*, one can likewise see a rough approximation of these commitments, namely: commitments that allow Plato to base the truth of legal propositions on the way they relate to the truth of corresponding moral propositions. The paper's goal is thus to make better sense of the classical thesis in Plato's *Laws* by taking a closer, chronological look at the neglected themes of paternalism and naturalism.

This goal is admittedly idiosyncratic. Speaking the language of contemporary analytic philosophy in the context of *Laws* is not without its difficulties. Chief among those difficulties is the impossibility of fully reconciling many important differences in meaning and significance

[6] M. Moore, 'Law as a Functional Kind', in *Natural Law Theory*, ed. R. George (Oxford: Oxford University Press, 1992), p. 190.

between ancient and contemporary thought. Prominent examples include the roles that *physis* and *nomoi* play in Plato's work and, respectively, the roles that nature/natural and law/legal play in contemporary work—particularly with respect to questions of objectivity and subjectivity. But if these difficulties can be—perhaps grudgingly—put to the side, the result is a significant payoff in the form of situating *Laws* within natural law theory. And the result can be surprising: Although *Laws* may share superficial components of, say, the Thomist tradition, it does not seem to be predominantly a precursor of Christian conceptions of law and morality articulated by that tradition. Rather, as will be seen, *Laws* seems to operate as a discourse on a divergent path of natural law theory that is focused upon a substantive moral dimension distinct from Thomist and similar theories. To put it another way, *Laws* paradoxically speaks the language of contemporary analytic philosophy by setting forth a conception of law that is interconnected with an absolute standard of morality. It is the law's interconnections with morality that justify its paternalistic character, including because a legal proposition's truth depends upon the way it relates to the truth of corresponding moral propositions.

This paper's other idiosyncrasy is that it proceeds in chronological order through each book of *Laws*, irrespective of the amount of attention books have hitherto received in the literature. This is in part because many books in *Laws* have not received—even at this late stage—a great deal of attention. And it is for this reason (in addition to reasons of scope and practicality) that the paper will pursue its analysis through an examination of Plato's text only, relegating important secondary literature to the notes. Although this may result in a missed opportunity occasionally, the hope is that the paper's single-minded sense of purpose is redeemed by its avoidance of unwieldy discursions. As things stand, there is already little room

to discuss the general, literary narrative in *Laws*. That said, here is a brief overview to set the scene before jumping into the text itself.

The *Laws* consists of a dialogue between an Athenian—who one might describe as Plato's spokesperson—and two interlocutors, Megillus and Cleinias. The purpose of the dialogue is to describe a colony, Magnesia, to be founded in Crete in the fourth century B.C. Accordingly, the Athenian and his interlocutors discuss both abstract issues regarding the nature and role of the law in the new colony, as well as concrete proposals for specific laws in the new colony.[7] Recent commentators have described the primary project of *Laws* as specifying a political society that is 'second best' after that in the *Republic*, yet still capable of making its citizens virtuous. In other words, Plato perhaps intended for *Laws* to describe a political society that might be realized actually.[8] Because it might be construed as 'second best', *Laws* should not necessarily be interpreted as a set of philosophical-political principles that lawgivers ought to implement directly as a universal paradigm. It might rather be construed as a more pragmatic way (than the *Republic*) to engage practical problems. This interpretation tends to temper the extent to which recommendations in *Laws* are paternalistic, suggesting instead that they express preferred political reforms for practical problems. However, one of the surprising conclusions yielded from my analysis is that the 'second best' and the natural law theory interpretations are not mutually exclusive, as Plato states: '[R]eflection and experience will soon show that the organization of a state is almost always bound to fall short of the ideal…the right procedure is to

[7] See T. Saunders, *The Laws*, Introduction. For a general overview of the modes of exposition and argumentation employed by Plato in *Laws*, see C. Bobonich, 'Reading the Laws', in *Form and Argument in Late Plato*, p. 250, in which Bobonich provides the following description of *Laws*: 'In addition to elenctic and non-elenctic argument among the interlocutors, we find, among other modes: (1) a self-conscious attempt to widen the participants in the argument by the use of imaginary dialogues with a variety of interlocutors; (2) the extended use of history or idealized history to arrive at agreement on political or ethical principles; (3) the detailed statement of proposed laws for the new city of Magnesia along with their penalties; and (4) persuasive preludes to particular laws and to the law code as a whole'.

[8] See M. Schofield, 'The *Laws'* two projects', in *Plato's Laws: A Critical Guide*.

describe not only the ideal society but the second and third best too…men should keep this [ideal] state in view and try to find the one that most nearly resembles it' (739a-e). To put it another way, although practical theorizing might involve dealing pragmatically with the world as it exists, such theorizing can and should keep the ideal in sight.

I. Welfare and Moral Paternalism

It is not difficult to become distracted by all the talk of drinking parties in Book I. The dialogue's three interlocutors engage in lengthy discussions ranging from the misguidedness of teetotalers to the benefits of drunkenness generally (632d-650a). One reason for these excursions is obvious: Properly conducted drinking parties may teach one to resist pleasure and cultivate temperance (640d-650a). It is important, then, to consider the role of drinking parties and other virtue-enhancing activities in a broader context. Such activity is one of the first examples of how paternalism shapes the law in *Laws*. The purpose of the law is to maximize both the welfare interests—or *human benefits*—in a person's life and the moral interests—or *divine benefits*—in a person's life (631b). The former may be thought of in terms of welfare paternalism and the latter may be thought of in terms of moral paternalism.[9]

That *Laws* should take a decidedly paternalistic tone comes as no surprise. The authoritarian bent of Plato's earlier dialogues is in keeping with many aspects of *Laws*. Early in Book I, the Athenian sets the tone of the dialogue by introducing the lawmaker as one who reconciles his members 'by laying down regulations to guide them in the future' and enacting 'his every law with the aim of achieving the greatest good' (627e-628e). The way in which the lawmaker accomplishes this goal is clear: The lawmaker achieves the greatest good by laying

[9] See G. Dworkin, 'Paternalism', *The Stanford Encyclopedia of Philosophy* (Summer 2010 Edition), URL = http://plato.stanford.edu/archives/sum2010/entries/paternalism/, for a general overview of welfare and moral paternalism.

down laws that inculcate virtue in its entirety (630e). But *Laws* is more specific in its paternalism than this. Indeed, sound laws will produce happiness in those who observe them by yielding two types of benefits: human and divine (631b).

The list of *human benefits* includes practical things that make one's life easier to live, both physically and emotionally. For example, the Athenian explains that *health* is the leading human benefit, followed by *beauty*, *strength*, and 'clear-sighted' *wealth* (631c). Hence, it is clear that if the lawmaker's purpose is to achieve these sorts of benefits for his citizens via the law, then the law and the lawmaker are motivated by welfare paternalism. To be sure, this is the lawmaker's very purpose. The Athenian continues his exposition on the law and human benefits by explaining that the lawmaker 'must inform the citizens that the other instructions have these benefits in view' (631d). From this passage one can see that welfare paternalism is a central concern of the lawmaker. Moreover, it is a central aspect of the law itself: 'At every stage the lawgiver should supervise his people…he must use the laws themselves as instruments for proper distribution of praise and blame' (631d-632a). The broader point is that the purpose of legislation in *Laws* is to guide every practical aspect of a citizen's life: how citizens acquire money, how citizens associate with one another, and so on. The lawgiver's role is one of 'organizing the entire life of the state,' while conferring honors on those who comply with the laws (632b-c).

One can likewise see that the lawmaker and the law are motivated by moral paternalism based on their aim of achieving *divine benefits* for their citizens. Divine benefits are those that enhance the moral well-being of a citizen. These benefits include *good judgment*, *self-control* of a soul that uses reason, *courage*, and *justice* (631c-d). Divine benefits naturally take precedence over human benefits, and human benefits depend upon divine benefits. Everything that has been

said about human benefits thus applies to divine benefits. Just as the lawgiver and the law are intended to produce welfare benefits in citizens, they are also intended to produce divine benefits for citizens. It is for this reason that moral paternalism is at the center of the law's purpose, and it is for this reason that Plato embarks on the seemingly digressive path to drinking parties.[10]

The interlocutors first engage in a discussion regarding activities that Spartan lawmakers use to promote courage—activities that expose one to pain and fear so that resistance to pain and fear may be fostered (633a-e). However, the Athenian notes quickly how the Spartan lawmakers instruct their citizens to keep away from 'attractive entertainments and pleasures, and to refrain from tasting them', yet the lawmakers do not provide instruction regarding how to resist such pleasures (635b-e). It is here that the role of drinking parties and drunkenness is placed within the context of moral paternalism that yields divine benefits. The Athenian suggests that citizens ought to be exposed to pleasures so that the divine benefit of *self-control* may be inculcated. Accordingly, the interlocutors' discussion shifts to an examination of the ways in which drinking parties might be used as an educational institution (641a-650b). The general theory behind these detailed excursions into drinking parties is clearer in the context of moral paternalism. If the law's purpose is to produce divine benefits, then the lawmaker ought to promote drinking parties inasmuch as drinking parties produce divine benefits such as self-control. Divine benefits, coupled with the examples of human benefits, demonstrate the important ways in which

[10] Much of the literature on Book I is focused upon Plato's view of human psychology. See S. Meyer, 'Pleasure, Pain, and 'Anticipation' in Plato's *Laws*, Book I', in *Presocratics and Plato: A Festschrift in Honor of Charles H. Kahn*, ed. R. Patterson, V. Karasmanis and A. Hermann (Las Vegas: Parmenides Publishing, 2012), p. 328, for an analysis of Book I that focuses upon 'the complexity and variety of the roles that pleasure and pain play in human motivation'; C. Bobonich, 'Images of irrationality' in *Plato's Laws: A Critical Guide*, ed. C. Bobonich (Cambridge: Cambridge University Press, 2010), pp. 149-171, for a discussion of the extent to which '[a]n individual's character, virtuous or otherwise, is essentially constituted by the content, structure, and ways of regulating his knowledge, beliefs, emotions, desires, pleasures, and so on'; and C. Bobonich 'Akrasia and Agency in Plato's Laws and Republic', in *Essays on Plato's Psychology*, ed. E. Wagner (Lanham: Lexington Books, 2001), p. 214, for a discussion of 'strict akratic action', or, choosing what knows is a worse course of actions when one knows one has a better course of action.

paternalism shapes the law in *Laws*. The lawmaker's goal of producing human benefits via the law is a case of welfare paternalism, while the lawmaker's goal of using drinking parties to produce divine benefits via the law is a case of moral paternalism—albeit an eccentric one.[11]

II. Artistic Paternalism

To what extent is popular appeal an appropriate aesthetic criterion? More directly, do the things that produce comfortable pleasures in the man on the street—anybody and everybody—have artistic merit? These questions are answered in the negative in Book II of *Laws*, where Plato argues for a stringent form of *artistic paternalism*: Proper forms of pleasure ought to be 'enunciated by the law and endorsed as genuinely correct by men who have high moral standards and are full of years of experience' (659d). For example, the pleasure derived from a puppet-show is not a proper artistic criterion because it is presumably not the sort of thing that would bring pleasure to one who is well-steeped in the virtues (658e-659a). The law should thus dictate the extent to which pleasure is an artistic criterion. Plato reaches this conclusion by arguing that if the law does not establish appropriate artistic standards, then the arts will be left to the fickle whims of the majority. The central objective of the lawmaker in *Laws* II is to make citizens better off by creating laws that dictate artistic standards.

The interlocutors' first step in supporting this objective is to identify a paradigmatic case. The Athenian introduces Egypt as just such a case because Egyptian legislators use the law to put correct art on a firm footing (657a). The Athenian recounts how the Egyptians are known to have compiled a list of the 'correct' movements, tunes, and paintings, prohibiting any changes or innovations with respect to the list (656e). This blatant artistic paternalism is not viewed as a

[11] For additional perspectives on the *Laws'* goal of promoting virtue via legislation, see R. Kraut, 'Ordinary Virtue from the *Phaedo* to *Laws*'; J. Annas, 'Virtue and law in Plato'; and T. Irwin, 'Morality as law and morality in the Laws'; all in *Plato's Laws. A Critical Guide*.

stifling or draconian measure, but rather ‘a supreme achievement of legislation’ (657a). In light of the welfare and moral paternalism of *Laws* I, it is not surprising that the law is intended to interfere with the lives of citizens for their own artistic good. If there exists even a crude understanding of what correctness is in matters of art, then there should be no hesitation in pursuing a systematic expression of that correctness via the law (657b).

But it is crucial that the everyman does not decide the extent to which pleasure is a criterion in the arts. Otherwise, it would be impossible to establish correct artistic standards because those standards would be driven by the whims of particular audiences: Some would prefer epic poetry, others lyric songs and music, some tragedy, others comedy, and still others puppet-shows (658c-e). In a significant passage that highlights the law’s omnipresence, the Athenian argues that the process for establishing aesthetic standards involves two steps: First, the correct standards should be ‘enunciated by the law’, and, second, those standards will be ‘endorsed as genuinely correct by men who have high moral standards and are full of years and experience’ (659d). This is also how children are to be educated. They must be prevented from feeling pleasure and pain in ways that are not approved by the law. In short, the law codifies objective artistic standards that are based upon the values of those with discerning taste, courage, and experience, and children are to be taught these laws.

A different—but parallel—argument is made regarding the extent to which pleasure and justice are compatible. In the same way that the law is used to identify the correct standard of pleasure for purposes of an artistic criterion, the Athenian argues that the law must be used to demonstrate how a just life is the most pleasurable life (662b-663d). The interlocutors discuss how there are seemingly two sorts of life that one can live, ‘the supremely just’ and ‘the most pleasurable’, which are incompatible with each other (662d). But this is a false dichotomy. The

just life is in fact inseparable from the pleasurable life because just things (fame, praise from the gods, neither injuring others nor being injured oneself) are pleasant, not unpleasant (663a). Importantly, it is the lawgiver's responsibility to persuade citizens of this point via the law. The Athenian uses an art metaphor to connect this responsibility of the lawgiver with the lawgiver's aforementioned responsibility of establishing artistic standards: The lawgiver 'will persuade us that our ideas of justice and injustice are like pictures drawn in perspective. Injustice looks pleasant to the enemy of justice, because he regards it from his own personal standpoint, which is unjust and evil; justice, on the other hand, looks unpleasant to him. But from the standpoint of the just man the view of justice and injustice is always opposite' (663c). The lawgiver's paternalism thus reaches far and wide. The lawgiver must wield the law to obtain unanimity in the entire community with respect to the role that pleasure plays in establishing artistic standards, as well as the role that pleasure plays in motivating a just life (664a).

III. The Law as Harmony

One can see the beginning of a theme in Books I and II: The purpose of the law is to paternalistically balance the different aspects of the citizen's life. In Book I, the purpose of the law is to maximize both the welfare interests—or *human benefits*—in a person's life and the moral interests—or *divine benefits*—in a person's life (631b), while in Book II the role of the law is to enunciate an aesthetic standard that balances the rational and the pleasurable (659d). The theme of balance continues in Book III, where the Athenian assigns the lawgiver the central role of *harmonizer*: '[A] state ought to be free and wise and enjoy internal harmony, and…this is what the lawgiver should concentrate on in his legislation' (693b). The backdrop for this objective is that the lawgiver's failure to achieve balance in the law will result in a failed

political system. With this backdrop in mind, one can see how the chief role of the lawgiver is to shield the state and its citizens from 'crass' ignorance by framing laws that balance pleasure and rationality.

The Athenian's dialectic is based upon the identification of historical political systems that have succeeded and failed. Balance, particularly in the context of pleasure and rationality, is identified as the central mark of a successful law, lawgiver, and political system. The theme of balance in the law is introduced by the example of how one often prays for what one desires, not what one needs. One prays for things that ought to not be granted when one is young and irresponsible, and one prays likewise when one is old, senile, and impulsive. Such unchecked desires and 'vehement' prayers lead to wretched deaths (687c-d). It is for this reason, then, that one should pursue one's desires through prayer only if those desires 'are supported by…rational judgment' (687e). This balance of desire and rationality is not limited to an individual's prayers, but rather it is to be extended more generally to the law and the lawgiver: A rational outlook 'should always be the aim of a state's legislator when he frames the provisions of his laws' (688a). The lawgiver must therefore strive for a harmonious political system that balances pleasure with rationality.

Left unchecked, the directive to maintain a balanced, rational outlook would seem to be an obvious and unremarkable goal of the law and the lawgiver. However, the seemingly banal nature of the directive dissipates when juxtaposed with other legal theories in play. The Athenian refers to the interlocutors' prior discussion in Book I regarding whether good legislators ought to construct their entire legal code with a view toward war. The Athenian objected to such a one-sided political theory, instead arguing that the legislator ought to implement a theory that balances all the virtues—particularly 'judgment and wisdom, and a

strength of mind such that desires and appetites are kept under control' (688b). Thus, the law and the lawmaker must temper desire with rationality or else the result will be the opposite of what is desired. And if the supreme desire of the law is the success of the state, then the opposite of that desire is the destruction of the state. The thing that is most likely to cause this destruction is described as 'crass ignorance', which is a particular sort of ignorance that results from a failure to harmonize pleasure and rationality (688e-689a).

More specifically, crass ignorance is the sort of ignorance involved when one dislikes something one believes to be good and likes what one believes to be wicked. In other words, there is an imbalance—a dissonance—with respect to pleasure and pain on the one hand and rational judgment on the other hand. Crass ignorance impacts the part of the soul that experiences pleasure and pain, and it this part of the soul that corresponds to the common people of the state (689b). To be sure, no citizen with crass ignorance should be given any power. Unsuccessful legislators do not have a sense of proportion; they are like those who 'fit excessively large sails to small ships, or give too much food to a small body' (691c). Rather, the successful lawgiver is characterized by balance and harmony: 'A first-class lawgiver's job is to have a sense of proportion and to guard against this danger [of corrupted judgment]' (691d). Hence in Book III one can see that the central responsibility of the lawgiver is to protect the state and its citizens from crass ignorance by enunciating laws that harmonize pleasure and rationality.[12]

[12] See M. Schofield, 'The *Laws'* two projects', in *Plato's Laws: A Critical Guide*, for a discussion of how Book III and Book IV illustrate that the political society described in the *Laws* is intended to be a society that might actually be implemented.

IV. The Beginnings of a Natural Law Theory

The first three books of *Laws* focus upon the law and the lawgiver's role in making one better off. This is achieved by harmonizing one's moral, welfare, and artistic interests. The lawgiver is charged with wielding the law to accomplish what is best for the citizen and the state, as well as guarding the citizen and the state from destructive, crass ignorance. If the first three books of *Laws* are about the lawgiver's privileged access into these interests, then Book IV is about the source of that access. In other words, from where does the lawgiver derive the correct standards in setting forth laws that harmonize the citizen's and the state's most fundamental interests? One gets a multifaceted answer to this question in Book IV: God, chance, and skill. This answer, coupled with the notion that the law is both supreme and divine, gives the law a naturalistic tone. The law is not subject to the whims of particular factions within the government, but rather is a natural standard facilitated by God.[13]

One of the chief backdrops for Book IV is the difficulty of constructing a new colony. In addressing these difficulties, the Athenian determines ultimately that the lawgiver is best served by the support of a dictator—one who will enforce the lawgiver's laws (709e-710a). But just prior to this discussion, the Athenian provides an interesting glimpse into the tripartite source of the law. The topic is introduced with the provocative claim that, in fact, men never legislate in their own right, but rather 'accidents and calamities' are the 'universal legislators of the world' (709a). The law is at the mercy of innumerable contingencies—poverty, disease, and so on—that play a direct role in legislation. Shortly thereafter, however, the Athenian argues that in the same way that men do not legislate in their own right, neither does chance. Rather, 'the all-controlling agent in human affairs is God' (709b). Chance and the skill of the lawgiver are thus

[13] As will be discussed more in parts X and XII, the natural, divine standard on which the law is based is tied closely to the virtue *reason*.

secondary influences on human affairs. In short, the lawgiver's success depends upon chance—for which he must pray—and skill, but God facilitates both of these influences ultimately (709c-d).

This initial nod to a sort of natural law is bolstered in *Laws* 714b-716c, in which the notion of a supreme, natural law is juxtaposed with the notion of the positive law of a particular government. The Athenian begins by describing how many states consist of those who believe that the law of the land and the definition of justice is based upon merely which element of government is in control at a particular time—the strongest element of government (714c). Accordingly, those in power will always call their laws 'just'. But, for the Athenian, these sorts of arrangements do not constitute a legitimate political system: 'laws which are not established for the good of the whole state are bogus laws…and people who say those laws have a claim to be obeyed are wasting their breath' (715b). To put it another way, there seems to be some sort of inherent goodness—some sort of natural truth—in the laws of a legitimate state that may be contrasted sharply with the self-serving laws of 'party-men'. The Athenian puts the point even stronger when he argues that a state will be destroyed if its law is subject to another authority. On the other hand, if the law reigns supreme over the government, then 'men enjoy all the blessings that the gods shower on a state' (715d).

God, chance, and skill facilitate the law set forth by the lawgiver, and it follows that the correct law is not beholden to the subjective interests of particular governments. The Athenian's suggested address to the colonists of a new state is in keeping with these themes: Justice 'takes vengeance on those who abandon the divine law' (716a). In Book IV, then, one can begin to see the rough approximation of natural law.[14]

[14] For a discussion of the theological themes in Book IV, see R. Mayhew, 'The theology of the *Laws*', in *Plato's Laws. A Critical Guide*.

V. Paternalistic Preambles

Paternalism returns with a vengeance in *Laws* V. In fact, the theme of paternalism is never very far from the Athenian's remarks on the law and the lawgiver in the first four books of *Laws*. Even when the theme is less obvious—as in the case of Book III's emphasis on harmony in the law and Book IV's emphasis on the objectivity of the law—a paternalistic theme lies just below the surface. One does not have to look below the surface in Book V. The Athenian's lengthy preamble to the legal code in Book V is a paradigm of both paternalism and moralism. The preamble to the law bestows upon the citizen all manner of advice, particularly with respect to how one will be better off if one embraces the virtuous life. Even if one does not have to look below the surface to see the paternalism in the Athenian's preamble to the law, one does have to look back to Book IV—in which the theme of paternalism is perhaps less obvious—for context. To be sure, the example of the two kinds of doctors in Book IV is of central importance in explicating the nature of the paternalistic theme in Book V.[15]

In 720a, the Athenian suggests that there are two types of legislators that are analogous to two types of doctors. The first type of doctor (D1) does not provide treatment based upon any type of systematic knowledge, but rather acquires his skill by simply watching and obeying the example of his master. The second type of doctor (D2) has not only acquired systematic knowledge by his own right, but also passes that knowledge on to his pupils (720b). D1 does not provide an account of his patient's illness or even listen to his patient; rather, 'he simply prescribes what he thinks best in the light of experience, as if he had precise knowledge, and with the self-confidence of a dictator' (720c). On the other hand, D2 learns something from his patient through consultation, while also giving the patient as much instruction as possible. Prior

[15] See M. Schofield, 'The *Laws'* two projects', in *Plato's Laws: A Critical Guide*, for a discussion of how Book V details the *Laws'* attempt to establish a 'second best' society after the *Republic*.

to prescribing treatment, D2 coaxes his patient into consenting to treatment, the ultimate goal of which is to restore health completely (720d).

The Athenian concludes with this question in 720e: 'Which of the two methods do you think makes a doctor a better healer, or a trainer more efficient? Should they use the *double* method…or…the less satisfactory approach that makes the invalid more recalcitrant [the single method]?' His interlocutor responds that the double method is better; the Athenian agrees and proceeds to show how the double method can be applied in law. At this point, then, the conclusion is simply that the double method can be thought of as better and more efficient generally: The best and most efficient doctor restores a patient's health by both dictating knowledge to the patient and persuading the patient as to the correct path to health.

In a similar way, the legislator who uses the double method (both 'compulsion and persuasion') produces law that is 'twice as valuable for practical purposes as the other' (722b). The Athenian further clarifies in 722e-723a, stating that the 'double' laws are more accurately laws that have *two elements*: (1) law and (2) preface to law. The law corresponds to the 'dictatorial prescription' of the 'slavish doctor' (D1), while the preface to the law is the 'persuasive' part that is analogous to the 'preamble of a speech' (as with D2). Accordingly, the most efficient legislator is one who not only threatens disobedience of the law with a penalty (legislator L1), but also persuades the citizen to follow the law (legislator L2): A legislator such as L2 gives the preamble 'to make the person to whom he promulgated his law accept his orders—the law—in a more co-operative frame of mind and with a correspondingly great readiness to learn' (723a). The 'double method' is thus the better method in part because it is a practical and efficient way of bringing about acceptance of the law.

One might see the different methods of L1 and L2—and D1 and D2 by analogy—as opposing accounts regarding the extent to which the law and the lawgiver are paternalistic. However, these methods are not mutually exclusive, but rather work in tandem to accomplish the goal of legal instruction efficiently. The persuasiveness of the lawgiver's preambles—both regarding individual laws and regarding the legal code as a whole—are thus intended to facilitate the efficient accomplishment of the law and lawgiver's objective, namely, to account for every aspect of a citizen's moral and practical wellbeing. In other words, the law is paternalistic any way you slice it. And the law is indeed sliced into healthy helpings of paternalism in Book V. The Athenian asserts that the legislator ought to 'classify certain things as disgraceful and wicked and others as fine and good' so that one's soul will be honored (728a-b). From here the legislator's gaze sweeps far and wide among the interests of his citizens: one's body ought to be physically balanced (728d), one's wealth ought to be balanced (729a), one should practice what one preaches in raising children (729c), and so on. Very few aspects of a citizen's life go untouched by the law's preamble in Book V. To achieve the desired impact, the effective lawgiver will follow the double method.[16]

VI. Procedural and Substantive Equality

Laws may be divided broadly into two categories: *procedural* and *substantive*. The first five books have focused primarily on the substantive aspects of the law. These books described the law and the lawgiver's role of harmonizing the citizen's moral, welfare, and artistic interests.

[16]See C. Bobonich, 'Reading the Laws', in *Form and Argument in Late Plato*, pp. 250-51, for a discussion of how the doctor-lawgiver analogy informs the lawgiver of the method of addressing citizens: 'Plato explicitly raises the question of the appropriate form that a lawgiver's discourse with citizens should take. How should the lawgiver address the citizens and what is the appropriate role for texts and discourses in their ethical and political education? Plato offers as a model to the lawgiver a free doctor who treats free patients'.

While the theme of paternalism has been present throughout these books, it perhaps culminated in Book V. There, one can see how the law's preamble touches upon almost every aspect of the citizen's life, from the balance of one's body (728d) and finances (729a) to the way in which one raises one's children (729c). One might describe the protection of these interests as an instrumental justification of the law. In other words, one becomes better off by following the law—wealthier, healthier, and more virtuous—and these good effects help justify the paternalistic role of the law and the lawgiver. Turning to Book VI, one begins to see more and more of the procedural side of the law: the methods of selecting officials to run the state, the administration of elections, and so on. Within this broadly procedural category, one may further divide Book VI's notion of *equality* into both procedural and substantive elements. The procedural aspect of equality is a democratic decision procedure—casting lots—that is necessary to placate 'the man on the street', while the substantive aspect of democracy is the 'strict justice' of granting those what they truly deserve (757a-758a). Examining these different notions of equality, one can see how each is philosophically interesting in its own way.

The general backdrop of Book VI consists of the processes and procedures that will allow a new colony to function. One of the more theoretical aspects of this backdrop is the different ways that the state and its laws should conceive of equality. The first way to conceive of equality—the procedural notion of equality—seems rather banal at first glance. It is simply the dictate that 'equal awards' should be distributed by lot (757b). According to the Athenian, this sort of selection procedure is necessary to placate the masses so that each citizen feels that he has an 'equal chance in the lot' (757e). Of course, one might think the procedure of casting lots is a rather undemocratic decision process when compared to contemporary notions of majority rule. To be sure, casting lots may very well have the result that unpopular views (i.e., non-majority

views) carry the day, with the further result of a potentially discontent majority. It is for this reason that the idea of majority rule rings true to modern ears: Political societies seem to progress more efficiently and more stably when unified as a body. Still, voting by lot retains equality in a pure way (of 'measures, weights and numbers') (757b), and prevents the problem of permanent minorities in societies based upon majority rule. But preventing a so-called tyranny of the majority is not what the Athenian has in mind. Indeed, it is only 'force of circumstances' that compels a state to make use of procedural equality, and it should be used as little as possible because its success depends merely upon luck (757e-758a). This leads to the Athenian's notion of 'genuine equality' (or what might be called substantive equality), which is what the state and its laws should be based upon (757b-d).

This second sort of equality is characterized by the idea of *strict justice*: 'granting the 'equality' that unequals deserve to get' (757d). The principle seems to be based upon the idea that equal treatment of persons who are fundamentally different (e.g., master and slave; honest man and scoundrel) is actually an *inequality*; moreover, treating such persons equally is in fact achieved by treating them *unequally* (757a). This sounds like a paradox, but here is an example of what the Athenian means. Substantive equality embodied in strict justice means that more should be granted to the great, less should be granted to the less great. The justification for this principle seems to be that this sort of equality is determined with respect to each person's nature, independent of others. The laws should be framed with an eye toward 'adjusting what you give to take account of the real nature of each' (757c). It is 'equality' in the sense that one is granted an amount equal to one's nature: great people get great amounts, less great people get less great amounts, and so on. Under any other standard, however, the Athenian's substantive notion of equality is paradoxical. For very different reasons and in very different ways, then, the

Athenian's procedural and substantive notions of equality are designed to further the paternalistic goals of the new colony.[17]

VII. Laws and Suggestions

After the first six books, one might think that there is no limit to the paternalism in *Laws*. One would be both right and wrong about this. Although we have seen how the law instructs almost every aspect—central and trivial—of a citizen's life, Book VII introduces an even more far-reaching paternalistic category: suggestions and advice. While these suggestions do not have the status of formal laws, they nevertheless find a prominent home within the legal code. And it is from this home that such pronouncements advise citizens on what might seem to be the most private aspects of life. Indeed, there are parts of Book VII in which the Athenian seems almost embarrassed to create such an all-encompassing legal code. This raises two questions: If this facet of the legal code does not now have the full force of formal law, then what role does it play in the legal code and what relationship does it have with the formal law?

Education is the general theme of Book VII. But it is a comprehensive notion of education that covers far more than academic pursuits, and it is a notion that is tied uniquely to the legal code. As children are born in a new state, the law must begin to look after their interests so that they develop into citizens who are benefits—not detriments—to society (788a). While the very early interests of children pertain to trivial matters that are inappropriate for formal law, the legal code cannot remain silent with respect to these interests because even trivial matters may 'undermine the written statutes…[when] men get into the habit of repeatedly breaking rules' (788b-c). It is this general concern that leads the Athenian to ponder topics as

[17] Book VI is perhaps best known for its discussion of slavery (see 776b-778a). The issue of slavery in the *Laws* is far beyond the scope of this paper, though I will touch upon it briefly in part XI as it relates to the themes herein.

intrusive as the state's role in educating children still in the womb (789a). To be clear, instruction in such areas is not to be thought of as precise legal regulation, but the legal code ought to say something about such areas of private life because the state's guidance acts as 'ancestral customs' that 'shield and protect existing written law' (793b-c). It is for these reasons that the *apparently* trivial suggestions are justified in making the 'legal code a bit on the long side' (793d).

After examining several substantive areas upon which this notion of education touches, Book VII concludes with a clear illustration of the relationship between the legal code's informal suggestions and formal laws. The topic is hunting. Although hunting is not part of the education curriculum, it follows 'the same procedure as before, because the legislator's job is not done if he simply lays down laws and gets quit of business' (822d). This leads to a more full explanation of what suggestions in the legal code amount to. Although the Athenian acknowledges that it would be absurd to think of these suggestions as formal laws, the legislator's job is to incorporate into the formal legal code what is respectable; in turn, the 'perfect citizen must be bound by these standards no less than those backed by legal sanctions' (823a). The suggestions take the form of 'warm recommendations' that the lawgiver 'hopes' will not be denied, while the actual laws take the form and tone of a directive with clearly stated 'must not' statements. For instance, while the legal code's suggestions do not *recommend* night-hunting because it does not cultivate divine hunting, the legal code's formal law would *command* that the night-trapper 'must not be allowed by anyone, at any time or place, to hunt his prey' (824a).

The idea, then, is that the suggestions found within the legal code serve at least two interconnected purposes. First, they establish a foundation upon which formal law rests—a foundation that is akin to ancestral law and a foundation without which the entire legal code

could not survive. While many of these suggestions may seem trivial, they are actually building blocks that establish a comprehensive set of expectations for the citizen. Second, the legal code's suggestions compliment the formal law by setting idealistic standards for the citizen—standards that ought to be pursued regardless of whether a threat of punishment is present (823d). These suggestions do not have the force of formal law, but they are a decidedly paternalistic aspect of the overall legal code in that they express the sentiment that the law knows best how one ought to live one's life (824a).[18]

VIII. Free Love and Pragmatic Paternalism

One finds in Book VIII a continuation of the law's pragmatic restraint with respect to paternalism. Although the legal code's *suggestions* and *advice* did not have the status of formal law in Book VII, these pronouncements are arguably hyper-paternalistic inasmuch as they encroach upon what might seem to be the most private aspects of life. This theme is taken a step further in Book VIII, in which Plato considers how the law should deal with *unnatural* sexual practices. While the topics under consideration in Book VII were at times considered trivial (though they paradoxically established an important foundation upon which the legal code rested), the central topic in Book VIII is 'not a triviality at all' (835b). Indeed, the Athenian affirms that 'nothing is more revolting' than improper sexual conduct, which is deemed 'absolutely unholy' and 'an abomination in the sight of the gods' (838b-c). The stakes are thus high for the paternalistic legal code embodied in *Laws*. However, like in Book VII, the Athenian seeks a compromise between what might be considered an ideal law and what might be

[18] See S. Meyer, 'Legislation as a Tragedy: on Plato, *Laws* VII 817a-b', in *Plato and the Poets*, ed. P. Destrée & F. Herrmann (Boston: Brill, 2011), p. 402, for an analysis of Book VII concluding that 'the true tragedian is not the poet who encourages the human propensity to lament our misfortunes, but the legislator who teaches us that the only misfortune that can befall a person is to fail to achieve virtue'. On this point, see also A. Laks, 'Plato's 'truest tragedy': *Laws* Book 7, 817a-d', in *Plato's Laws. A Critical Guide.*

considered a pragmatic law with respect to sexual practices. This helps illuminate the way in which *Laws* balances perceived violations of natural law with perceived social realities—keeping in mind the ideal in the process.

One must first get clear on the gravity of the problem for Plato. Sexual misconduct is such a difficult problem because it drives a wedge between two of the fundamental facets of a person: *reason* and *passion*. On the one hand, '[r]eason, which is embodied in the law…tells us to avoid the passions that have ruined so many', and, on the other hand, passions involving sexual urges are prominent in both public and private life even though they do not promote virtue (835e-836d). Moreover, while certain sexual acts are a violation of *natural law* (839a), only 'God himself' could convince the many to repress such passion (835c). Therein lies the problem for the legislator: He must find a way to uphold the reason and virtue that is intrinsic in the law—for it should be consistent with natural law—while somehow accommodating the inherent drive to oppose the law in these particular cases.

Threading this needle, as it were, requires a taxonomy of what is and is not an unnatural sexual practice. For example, although there is merely an unwritten law against incest, most people have no interest in incestual acts because such acts are spoken of only as the most revolting and unholy of abominations. Accordingly, with respect to other unnatural sexual practices, a winning tactic for the legislator might be to 'try to make everyone…believe that the common opinion has the backing of religion' (838d). There are at least three sexual practices for which this strategy would be appropriate because they violate natural law: (1) 'homosexual relations', (2) 'the sowing of seeds on rocks and stone', (3) and intercourse with 'any female 'soil' in which we'd be sorry to have the seed develop' (838e-839a). Forbidding these acts would also 'check the raging fury of the sexual instinct that so often leads to adultery', which,

perhaps conveniently, is not listed in the above grouping of acts that violate natural law (839a). Ideally, then, the law would forbid all such practices and permit only intercourse for its 'natural purpose' of procreation (838e).

But this is where the Athenian takes a pragmatic turn. For while he has provided a tactic for implementing such laws effectively and permanently (obtain sufficient religious backing), it is still possible that one will lose the battle over pleasure (e.g., if the body is not given hard work as a distraction); in other words, if one fails to develop the quality of self-control, then one might still be corrupted by pleasure in spite of the law's religious backing (840a-e). Accordingly, while legislators must first insist upon the ideal standard established above, they must also frame a second-tier law to account for those citizens who are corrupted by 'free' love (840e). This nonideal legal standard is one of decency and privacy: To the extent one is corrupted by pleasure, one ought to conform to a minimal standard of decency by keeping one's sexual acts private (841b). In practice, this means that while sodomy would still be forbidden entirely, one might engage in adultery if one does so discreetly (841d-e). Book VIII thus reaffirms the law's role of developing a citizen's character by imposing a particular conception of morality. It also reaffirms Plato's willingness to temper such an ambitious goal based upon social reality—while at the same time keeping the goal of the ideal in mind.

IX. Virtue-Yielding Punishment

Book IX of *Laws* focuses upon the state's theory of punishment. The theory of punishment is hybrid in nature, consisting of both utilitarian and retributive elements. Punishment is intended to both deter violations of the law and account for what one deserves. Still, the overarching goal of punishment remains true to the paternalistic thread within *Laws*:

Punishment is intended to make those who are punished more virtuous (854d-e). More specifically, punishment is intended to cure the soul of the one being punished.

On the one hand, the Athenian justifies punishment based upon a mix of practical benefits: 'We have to lay down laws…to deter…' (853b-c). The theory of punishment may thus be viewed in broadly utilitarian terms in that the punished 'will be of service to others, by being a lesson to them when…ignominiously banished from sight beyond the borders of the state' (854e-855a). On the other hand, the theory of punishment proposed by the Athenian also entails a clear strand of retributivism. For example, in discussing the various kinds of murder (those who have killed with premeditation verses those have killed without previous intent), it is evident that deterrence is not the only concern. The extent to which one *deserves* punishment is also of chief concern: 'Something which resembles a greater evil should attract a greater punishment, whereas a lesser penalty should be visited on that which resembles a lesser evil' (867b). There is of course no contradiction here. The practical benefits of utilitarianism may be combined with retributivism. A theory of punishment might be intended to have the overall effect of deterrence, while also embracing the notion of desert in particular cases. However, such prudential reasons are not the only—or even the primary—way in which *Laws* justifies punishment.

The central justification of punishment is steeped in paternalism. This justification is stated succinctly in a brief passage regarding punishment for those who rob from temples: 'No penalty imposed by law has an evil purpose, but generally achieves one of two effects: it makes the person who pays the penalty either more virtuous or less wicked' (854d). The Athenian draws out this point by making an interesting comparison to the two types of doctors—who may be thought of as legislators analogously—discussed in Book V (720a-e). Slave doctors practice

by rule of thumb and are not concerned with theory, while gentlemen doctors act as philosophers and are concerned with the patient's entire body. The Athenian treats law like the gentleman doctor treats medicine: 'tutoring the citizens, not imposing laws on them' (857c-e) For it is the legislator—not, say, writers and poets—who is most justified in giving advice to citizens about virtue and how to conduct one's life (858d-e). Indeed, the law may be thought of as paternalistic in an almost literal sense: The legislator should strive to promulgate a theory of punishment 'like a loving and prudent father and mother' (859a).

This justifies the Athenian's conclusion that 'shocking' punishments (e.g., death) are justified. Unlike the ordinary man, the interlocutors see that there is no contradiction in saying that a shocking punishment is just and good: 'Anything done *to* us, which has the quality of justice, is to that extent agreed to be *good*' (860a). In other words, the theory of punishment is based upon the simple notion that punishment—no matter how shocking—is good to the extent that it is justly imposed upon a citizen in order promote the citizen's ultimate well-being. Of course, there is room to speculate how exactly the punishment of death might be viewed as making one better off (perhaps death is for the best if one is *not curable*). But the central point is clear regarding one who breaks the law and *is curable*: 'We must cure on the assumption that the soul has been infected with disease' (862c).

The ultimate goal of punishment is thus paternalistic inasmuch as it seeks to maximize one's moral well-being. The Athenian combines this philosophical goal with utilitarian and retributive goals in order to establish a general policy of punishment: 'When anyone commits an act of injustice, serious or trivial, the law will combine instructions and constraint, so that in the future…the criminal will never again dare to commit such a crime voluntarily…and in addition, he will pay compensation for the damage he has done' (862d). It therefore seems appropriate to

view the Athenian's theory of punishment as hybrid in nature. While punishment is intended to both deter future violations of the law and account for what one deserves, its central goal is steeped in paternalism in that it is intended to make one more virtuous.

X. Nature and Natural Law

Ostensibly, Book X of *Laws* is about theological themes only.[19] The book is focused upon the refutation of three heresies. However, the discussion and refutation of these heresies develops important issues regarding the nature of the law that were first raised in Book IV. There, Plato provided a sketch of how the lawgiver derives correct legal standards, particularly with respect to setting forth laws that harmonize the citizen's and the state's most fundamental interests. While God, chance, and skill facilitated correct legal standards, the underlying theme of Book IV was a consideration of the extent to which the law is both supreme and divine. We saw that the law is not subject to the whims of particular factions within the government, but rather the law is a natural standard supplemented by God (714c-715b). Put another way, there seemed to be a rough approximation of natural law in Book IV. More specifically, there seemed to be some sort of natural truth in the law of a legitimate state that may be contrasted sharply with the self-serving laws of 'party-men'. The Athenian made this point most clearly by arguing how a state will be destroyed if its law is subject to another authority, but the state will be blessed if the law reigns supreme over the government (715d). Book X works to complete this sketch by providing a more robust account of the extent to which the law is based upon a natural standard.

[19] For a discussion of the theological themes in Book X, see R. Mayhew, 'The theology of the *Laws*', in *Plato's Laws. A Critical Guide*.

This standard becomes manifest through the Athenian's critique of a doctrine that purports to explain the existence of things. The doctrine states that all things that have existed, exist now, and will exist in the future are attributed to 'nature, art or chance' (888e). The Athenian's problem with the doctrine is the way nature, art, and chance are often ordered and prioritized. More specifically, the Athenian takes issue with those who believe that *nature and chance* have produced fire, water, earth, and air, as well as 'secondary physical bodies' like the earth, sun, moon, and stars (889a-b). Moreover, those who take this position further assert that the cause of such things 'was neither intelligent planning, nor a deity, nor art' (889c). This view is particularly damning for any sort of natural notion of law because things like government and legislation supposedly have little to do with nature. Accordingly, under the doctrine, 'legislation is never a natural process but is based on technique, and its enactments are quite artificial' (889d-e).

If this doctrine holds, then, gods vary among conventions, as does any standard of goodness: 'goodness according to nature and goodness according to the law are two different things, and there is no natural standard of justice at all' (889e). Rather, moral standards may be altered upon a whim, though 'every change becomes binding from the moment it's made, regardless of the fact that it is entirely artificial, and based on convention, not nature in the slightest degree' (889e-890a). To refute this doctrine, the Athenian sets forth an argument that reorders and reprioritizes the cause of things, placing the soul prior to nature and chance. The soul is thus 'the chief cause of all…[the] alterations and transformations [of physical things]' (892a). For purposes of this paper, the most important aspect of the Athenian's position is that 'anything closely related to soul will necessarily have been created before material things', and the *law* is one of those things closely related to the soul (892a-b).

Here is the upshot of the argument with respect to the nature of the law. The reordering of the soul and physical things means three things in the legal domain: First, there is a natural standard of goodness and thus a natural standard of justice. Second, moral standards are not subject to the whims of the populace; artificial standards are not binding because they are not law at all, but rather akin to mere words on a piece of paper, so to speak. Third, and related to the second point, moral standards are not based upon convention. With these points in place, one can perhaps say a few more things about the nature of the law. Central among those things is the simple position that moral standards in the law exist (like justice), and such standards do not depend upon what the populace thinks—they are rather what one might call natural. Accordingly, this implies that the existence and content of law is governed ultimately by the existence and content of the moral law. Therefore, to the extent that the Athenian refutes the doctrine of the priority of nature and chance, he also refutes what we now would call legal positivism in his denial that the law can be determined by social practice alone. He rather establishes the rough workings of a natural law theory.

XI. Conclusion: The Juxtaposition of Virtue and Slavery

Plato's *Laws* set forth a uniquely paternalistic thesis about the nature and role of the law: The purpose of the law is not merely to protect one's interests, but rather to make one better off in every respect. To put it another way, the law is intended to not only form the foundation of a well-functioning colony, but also to secure a good and virtuous life for the citizens of the colony. While we have seen how the law embraces pragmatism in many instances, ideal goals involving the promotion of virtue are just below the surface of every pragmatic tactic. We have also seen how Plato's theory of law is motivated by a particular account of morality and a particular

account of the law's relationship to that morality. This account of morality is not determined by convention, use, or the whims of those who happen to be in power, but rather is an independently true standard to which the lawgiver must appeal. For Plato, philosophical reasoning shows one the primacy of the law in the same way it shows one the primacy of theological concepts like the soul. It is this point that justifies the paternalistic thesis. Together, the themes of paternalism and naturalism illustrate what Hart called the classical thesis in the *Laws*.

Of course, there are many aspects of the so-called black letter law that have not been addressed. Book XI is a good example. On the one hand, one gets more of the same: The law is involved in even the most minor aspects of one's life, such as dealings with craftsmen (920e) and the censorship of comedies (935d). On the other hand, this book reminds us of the shortcomings of *Laws*. While slavery is featured more prominently in Book VI (776b-778a), Book XI's aloof treatment of the issue is perhaps even more disappointing. To be sure, the law deals with slaves quite matter-of-factly: If a slave steals property then 'he should be soundly beaten by any passer-by who is not less than thirty years of age', while free men who commit theft ought to be 'thought ungentlemanly and lawless' and must repay the owner ten times the value of the item taken (914b). One might note that such black letter law is not justifying the existence of slavery as an institution, but rather it is simply dealing with the reality of an institution that is firmly entrenched. However, these aspects of *Laws* and others quite plainly fail to take any sort of innovative or transformative stand: 'Anyone who wishes—provided he's in his right mind—may seize his own slave, and (within the permitted limits) treat him as he likes' (914e). Moreover, a slave is an item of property just like anything else and is to be dealt with as such. The *Laws* unabashedly specifies the return policy for those who have purchased diseased slaves, for

example (916a). One can make only the unsatisfying observation that the notion of slaves being movable property was near universal in the Greek world.[20]

The juxtaposition of the law's treatment of slavery and its goal of securing virtue in the citizen is extreme; this dichotomy cannot be reconciled, but only acknowledged. However, looked at in a different way, the law's treatment of these issues is perhaps consistent—to Plato—with the paternalistic thesis. Rightly or wrongly, the law's ubiquitous presence and coordination of every aspect of one's life—including those aspects relating to slavery—are intended to make one virtuous and secure a good life. This thesis began in Book I and continued throughout the *Laws*: The purpose of the law is to maximize both the practical, human interests of the citizen—what we might call welfare paternalism—and the divine, virtuous interests of the citizen—what we might call moral paternalism (631b). Plato reaches this conclusion—and the conclusion of the classical thesis—by appealing to a moral standard that is taken to be universal.

XII. Postscript: The Nocturnal Council

One task remains. The Athenian begins the final section of Book XII with this crucial passage:

> [E]ven when you have achieved or gained or founded something, you have never quite finished. Only when you have ensured complete and perpetual security for your creation can you reckon to have done everything that ought to have been done. Until then, it's a case of 'unfinished business' (960b-c).

With this passage we see the Athenian's concern for preserving and protecting all that has been established in the *Laws*. Even if the hard work of expounding a legal code has been completed, there is still left the job of taking care to safeguard that code. This is the job of the *nocturnal council*, a body charged with ascertaining absolute moral standards through philosophical and

[20] See T. Saunders, *The Laws*, p. 407.

legal study and ensuring that those moral standards become manifest in the legal code.[21] In other words, it is the council's job to ensure that the law is always focused upon virtue and does '*not* take erratic aim at one target after another' (962d-963a). The Athenian reiterates that the leading virtue and 'power among the heavily bodies' is *reason*, thus continuing the natural law theme that has been apparent throughout the *Laws*. The nocturnal council must be well steeped in the doctrine of reason—as well as the doctrine of the priority of the soul—in order to 'frame consistent rules of moral action' (967e). The classical thesis, then, is affirmed anew. Plato has set forth a conception of the law that is interconnected with an absolute standard of morality, and it is the law's interconnections with morality that justify its paternalistic character. In the *Laws*, a legal proposition's truth depends upon the way it relates to the truth of corresponding moral propositions. And the nocturnal council exists in order to see that it stays that way.

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[21] See G. Klosko, 'The Nocturnal Council in Plato's *Laws*', *Political Studies* XXXVI (1988), pp. 74-88, for a discussion of competing theories regarding how the nocturnal council fits in with Plato's earlier books.

[22] For their helpful comments, I am grateful to Dominic Scott and the anonymous readers at *Polis*.