

What Makes a Law Good? Plato on Legal Theory in the *Statesman*

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Summary

Plato's legal epistemology is simultaneously context-sensitive and generalist. Particularly in the *Statesman*, Plato prefers a competent individual to the rigid rule of laws (294a), but it seems implausible that he does so on the basis of a moral particularism. Although nowhere utilizing the word *epieikeia* to appeal to a perfect personal knowledge distinct from written rules, Plato outlines a competence quite similar to Aristotelian *epieikeia*: He introduces a twofold "art of measurement" (*metrêtikē*) whose second part is concerned with "the mean, and the fit, and the opportune and the due, and with all those words, in short, which denote a mean or standard removed from the extremes" (πρὸς τὸ μέτριον καὶ τὸ πρέπον καὶ τὸν καιρὸν καὶ τὸ δέον καὶ πάνθ' ὁπόσα εἰς τὸ μέσον, 284e6–7). This competence can deal with the shortcomings of written law. What he describes as the insufficiency of the law is that it does not perfectly comprehend "what is noblest and most just for all" and that it "therefore cannot enforce what is best". Plato tells us that "the differences of men and actions, and the endless irregular movements of human things, do not admit of any universal and simple rule, and no art whatsoever can lay down a rule which will last for all time" (294b2 ff.; transl. B. Jowett). Apparently, the *metrêtikē* under discussion is the competence to find the mean and the fit which makes Plato's perfect leader superior to the written laws. As we are told in the *Statesman*, laws are no more than necessary substitutes for the perfect knowledge of the man who possesses full insight. Plato's political personalism, however, is certainly not founded on a particularist idea of decision-making. The underlying Platonic epistemology tends to favour an absolute expert who is in possession of an ideal type of abstract knowledge, not of practical experience. What Plato seems to have in mind is a sort of infallible and invariant knowledge, not a radically context-dependent Wittgensteinian capacity of deliberation and judgment.

Introduction

In his late dialogue *Statesman*, Plato famously gives us a list of six political constitutions which he orders according to their quality or normative value as follows: 1. monarchy, 2. aristocracy, 3. good democracy, 4. deviant democ-

racy, 5. oligarchy, and 6. tyranny (291c–292a and 302b–303b). One of the two criteria that determine the order of this list is lawfulness: the three better constitutions, i.e., monarchy, aristocracy, and good democracy, are based on law, whereas the three worse ones, i.e. deviant democracy, oligarchy, and tyranny, are lawless. The other criterion which is relevant for the ranking is the number of ruling persons: Plato believes that, under conditions of lawfulness, it is better to have only one or few rulers (since then abidance by law is more likely to be guaranteed) while, under conditions of unlawful rule, the governance of the multitude (or a greater number of persons) is preferable to that of a sole reign because a bigger group of rulers is considering a wider range of interests. An isolated ruling individual, as Plato apparently assumes, is more likely to follow his arbitrary political ideas and his personal desires.

Manifestly, the criteriological role as formulated by Plato grants law an eminent role within political thought. Let us call, in what follows, such an appreciation of law “legalism”. We can say then that Plato is a legalist at least to a considerable extent. But there is also a criticism of law in the *Statesman* which should make us cautious before we unambiguously characterize Plato as a legalist. He regards law, due to its generality, as inappropriate to determine the best for everyone; lawgiving cannot proceed in as detailed a manner (*akribôs*, 294b1) as it should in each individual case: the legal order of a polis must hence ideally be replaced by the rule of an insightful person who can judge individually. Such a ruler would transcend the rigidity of legal orders. Laws in an optimal city of this type can at best serve the purpose of aids to memory (*hypomnêmata*, 295c4) given by the person who possesses the *basilikê technê* to thus compensate for his temporary absence. This kingly ruler can – like a trainer or a physician – individually prescribe the best for the citizens; and as long as he is present, i.e., under ideal conditions, he will do so, at least approximately, in every single case. Law is suboptimal due to its generality; but still, it has some value if it is given by an insightful legislator for limited purposes.

We see from this that Plato is both a legalist and an anti-legalist. His anti-legalism amounts to what one might call his “political personalism”. The best case of a constitution would be the rule of an insightful individual – a form of government that outweighs law and is hence better than the six constitutions of the list mentioned above. The ideal ruler is for Plato the person who possesses the “kingly art of weaving” which is described in one of the main parts of the dialogue (277c–283b).

1.

There exists, in Plato's *Statesman*, a manifest evaluative ambiguity between a high appreciation of law and an even higher estimation of individual competence. How can we reconcile the aspects of legalism and personalism? The simple answer to this question is that law should be followed in a polis whenever there is no ideal ruler in office: whereas the insightful individual makes use of his optimal knowledge (i.e., of the kingly art of weaving), the law at least protects us from the crude arbitrary decisions made by a tyrant. By following law, the polis proceeds ordinarily and regularly. To be sure, it is part of Plato's convictions that order and regularity is preferable to chaos and arbitrariness. But is this all a law can achieve – to give us a better instruction for our agency than that of a (potentially) stupid and covetous tyrant? And is that true for any given law? Laws, we would object, can be highly defective – both in their efficiency and in their morality. Should we, in such cases, see orderliness as sufficient to make a political regime good?

Here we are facing a second, much deeper interpretive problem about the relationship between Plato's legalism and his personalism: namely the question of what makes law valuable in the first place. Is law constitutive for a good political constitution only if it is given by an insightful legislator? By which sort of quality then: by its efficiency or morality or by something else? Or is any law valuable, simply by the fact that it stabilizes the community, hence by the simple aspect of providing order and regularity? In this case, Plato would subscribe to some sort of legal positivism. He should then say that citizens must strictly obey the laws – which he in fact explicitly does (293d4–e5). Or can there, according to Plato, arise better and worse legal orders, even in the absence of an ideal governor, depending on a legislative competence which can also be shared by ordinary people (i.e., those who are below the status of Plato's "kingly rulers")?

The difficulties become even more demanding when we take into consideration what Plato says in the passage 297e–299e of the *Statesman*. There, the Eleatic Stranger introduces the image of a noble navigator and an indispensably valuable doctor who are completely unappreciated and even maligned by their fellow citizens. These two characters represent the kingly rulers who, when they emerge, are malevolently ignored by the nescient multitude. The text apparently has the character of a simile: simple-minded people may have the same suspicion against competent politicians as against excellent physicians. Also, these doctors are suspected to arbitrarily decide whom to cure and whom to mutilate and kill, even if they receive money for the treatment of their patients. Likewise, excellent navigators are (erroneously) suspected by the multitude of harming their customers. Now, people sharing

these suspicions when discussing in a council (*boulên*) decide that these arts should not be allowed to rule any longer unlimitedly (*archein autokratori*, 298c1). Instead, the ignorant people establish a practice of doing navigation and medicine based on the decisions of an assembly (*ekklêsian*, 298c2) and collecting the contributions of everyone to these fields of expertise. In the end, they even engrave rules on wooden columns and on blocks of stone (*grapsantas en kubersi tisi kai stêlais*, 298d7) or follow questionable unwritten traditions (*agrapha patria themenous ethê*, 298e1). What must be meant here regarding the written rules is that people establish *new* laws out of ignorance and then strictly prescribe them to the city. Following these new laws of the community, the rulers are selected annually from the multitude by lot; they are required to act in strict accordance with these laws. After their time in office, those who are selected have to give an account of what they achieved and can easily be accused by everyone.

What Plato gives us here, in an abstract form, is obviously a harsh criticism of contemporary Athenian democracy. This becomes thoroughly clear from the passage which alludes to the fate of Socrates: a real medical or nautical specialist, we are told, is under these circumstances disparaged as a star-gazer and a babbling sophist (*meteôrologon, adoleschên tina sophistên*, 299b7–8) who spoils young people (*hôs diaphtheironta allous neôterous*, 299b8) and tries to convince them to rule ships and treat patients independently of the laws. Such a figure will then be severely punished by a court since “nothing is allowed to be wiser than the laws” (*ouden gar dein tôn nomôn einai sophôteron*, 299c6–7). What so far might have appeared as a mere thought-experiment now turns out to be entirely a description of political reality. Young Socrates, the interlocutor of the Eleatic Stranger, concludes from the Stranger’s remarks that if the arts were generally practiced according to such a paradigm, they would perish. He mentions as explicit examples arts such as military strategy, hunting, painting, house-building, fabrication of instruments, agriculture, horse breeding, divination, board games, arithmetic or mathematics. All of these arts would collapse and never come back if there were laws instead of research. Finally, young Socrates adds that life (which already now is difficult: *chalepos*) would then no longer be worth living (*abiôtos*, 299e8).

The passage 297e–299e significantly increases the problem of how to reconcile Plato’s legalism with his personalist anti-legalism. If it is true that democracy is to be seen as the rule of the incompetent multitude that establishes arbitrary laws which, nevertheless, must be strictly followed, then legislation and law-abidance, for Plato, must be things of a much lesser value than we expected them to be. Hence, the most demanding element of the theory of law in the *Statesman* is in the passage 297e–299e: here, democracy

is blamed for its establishment of a legal order, although it follows the principle of lawfulness; and even worse, regulation by law is here generally relativized compared to the possession of a *technê*.

These difficulties have first been pointed out by Christopher Rowe,¹ who believes that Plato should not be seen as a legalist at all. Instead, Rowe thinks that his appreciation for law is only apparent; what Plato really values is an insight-based rulership and nothing else.² This thesis appears implausible to me; and like some other scholars I reject it.³ Following an article in which I deal with this problem,⁴ I want to draw the attention to the fact that Plato, in our passage (*Polit.* 297b–303d), gives us three indications for his genuine appreciation of lawfulness: (1) In 298e1, we are told that the misguided form of doing medicine or seamanship might include, besides written texts, the use of ancestral unwritten customs (*agrapha patria ... ethê*). (2) According to 299a4–5, the officer-holders cannot only be charged on the basis of written rules, but also based on “ancient customs of their ancestors” (*kata ta palaia tôn progonôn ethê*). And (3), in 299d1, we hear that someone who wants to be “wise” could, according to the critics of the *technai*, easily learn the contents of written materials and of “those established by ancestral customs” (*patria ethê keimena*). These three passages are taken up again in 301a2–3, where the Stranger says that one should “never do anything contrary to what is written and contrary to ancestral customs” (*mêden poiein para to gegrammena kai patria ethê*). In my eyes, the mistake identified by Plato consists exclusively in an inadequate establishment of newly formulated laws, but also in a stupid way of following traditional rules. Therefore, rule-following, regardless if directed towards written or unwritten rules, can be fatal (if it is mindless) or valuable (if it is based on an insightful practice of legislation). And Athenian democracy, despite not being lawless, belongs to the group of constitutions establishing bad laws.

In what follows, I want to make two important additions to this reading. First, I will raise the question whether personal insight, for Plato, is better in

1 C. J. Rowe, *Plato: Statesman*, Oxford 2005; *id.*, *The Politicus and other Dialogues*, in: Ch. Rowe – M. Schofield (eds.), *The Cambridge History of Greek and Roman Political Thought*, Cambridge 2000, pp. 233–257; *id.*, *The Statesman and the Best City*, in: A. Havlíček – J. Jirsa – K. Thein (eds.), *Plato’s “Statesman”: Proceedings of the Eighth Symposium Platonicum Pragense*, Prague 2013, pp. 40–50.

2 In this interpretation, Rowe is followed, e.g., by M. Lane, *Method and politics in Plato’s Statesman*, Cambridge 1998, and D. El Murr, *Savoir et gouverner: essai sur la science politique platonicienne*, Paris 2014.

3 See, e.g., F. Ricken, *Platon, Politikos: Übersetzung und Kommentar*, Göttingen 2008, and A. D. Sørensen, *Plato on Democracy and Political technê*, Leiden – Boston 2016.

4 Ch. Horn, *Does Law Abidance Make Life Impossible? Plato’s Theory of Law in the Statesman (297b–303d)*, in: *Plato’s Statesman*, PDP Oslo 2018 (forthcoming).

a radical, incommensurable sense or not: does Plato believe that true competence as it is held by the insightful politician should be in terms of what we, in modern meta-ethical debates, call particularism? Should a normatively appropriate instruction in moral and political philosophy, according to Plato, be generated by a situation-relative judgment, instead of being derived from a generalized rule? I don't think so; I will argue that Plato is a generalist, and so his seeming anti-legalism itself is basically built on a certain form of legalism.

My second point is based on the question: can we learn something additional from the *Laws* that might help us to resolve the tension between legalism and anti-legalism in the *Statesman*? Actually, I think we can. We find in this work ample evidence for philosophical considerations of what makes a law good. I will discuss these questions in the following two sections.

2.

In contemporary metaethics, there is a debate about generalism and particularism which has also some importance for our view of Plato's theory of law.⁵ Whereas generalism gives us a rule-oriented account of practical normativity, particularism provides a perception-based model. Generalism, as we know it, e.g., from Kantian and other deontologist types of moral philosophy, assumes that concrete practical rules must be derived from general ones. Thus, what should be done in a certain situation (someone may, e.g., be wondering if she is obliged to violently stop an aggressor who is about to kill innocent people) should be derived from a general rule (such as "emergency assistance is at least permitted, if not mandatory under certain conditions"). Particularism, by contrast, signifies the standpoint for which all adequate normative judgments must be grounded on perception of the morally relevant features of a given situation. Particularists typically claim that it amounts to a mistake to take for granted a rule such as "lying is morally prohibited" since there are cases in which telling a lie can be the right thing to do. According to particularism, there is a fundamental "incommensurability" between the different practical situations we have to deal with, such that a generalized procedure would be inappropriate.⁶

5 On this debate, see the informative volume of B. W. Hooker – M. Little (eds.), *Moral Particularism*, Oxford 2000.

6 Important supporters of contemporary particularism are John McDowell (*Virtue and Reason*, in: *The Monist*, 62, 1979, pp. 331–350), David Wiggins (*Incommensurability. Four Proposals*, in: R. Chang [ed.], *Incommensurability, Incomparability, and Practical Reason*. Cambridge [Mass.] 1997, pp. 52–66), or Jonathan Dancy (*Ethics without Principles*, Oxford 2004).

Is Plato a particularist in the modern sense? One aspect of his political thought that in fact points into a particularist direction is his personalism. As we saw, Plato believes that in order to establish and protect a sound polis, we have to rely on outstanding individuals. The decisive factor for the well-being of states are persons, not institutions, rules, offices, or procedures. Therefore, in his *Republic*, the topic of law is almost absent, and also the institutional design of the ideal city, the *kallipolis*, is hardly even discussed. Everything depends on the presence of competent individual rulers, the philosopher-kings and philosopher-queens. Also in the *Statesman*, Plato defends an unambiguously personalist model of good governance; even the politician described there is not a philosopher like the philosopher-king in the *Republic*. He explicitly says that the best constitution for a state is to be governed by a “kingly man with insight” (*andra ton meta phronêseôs basilikon*, 294a8) and that a polis which is thus ruled exceeds the other constitutions “as a god should be separated from human beings” (*ekkriteon hoion theon ex anthrôpôn*, 303b4). Plato’s personalism in both dialogues seems to imply that political expertise cannot be formulated in the form of general rules – rules that could also be applied by incompetent people. For him, it takes a brilliant individual, not a set of rules, to adequately deal with all possible political challenges.

On the other hand, there is a strong argument against a particularist reading of Plato: the sort of expertise that qualifies the philosopher in the *Republic* and the politician in the *Statesman* is far from being founded on perception (*aisthêsis*) or experience (*empeiria*). The competence achieved by the philosopher is based on his or her knowledge of the Forms, and the competence possessed by the politician is the “art of weaving”, i.e. an integral combination of politically relevant skills and arts. Plato nowhere says that it takes a certain perception of the present situation to correctly deal with a given challenge, and he doesn’t claim that the decisive feature of an excellent ruler is being experienced about concrete political reality. Rather, Plato assumes that the best possible ruler has some sort of abstract knowledge, derived from his or her insight into universals. What makes him or her additionally unique is the way in which he or she knows how to apply it. This description would clearly fit a generalist position.

To confirm this conclusion, let us look at two of the crucial passages of our dialogue. To begin with, Plato says in *Statesman*:

Stranger: In a sense, however, it is clear that law-making belongs to the science of kingship; but the best thing is not that the laws be in power, but that the man who is wise and of kingly nature be ruler. Do you see why?
Younger Socrates: Why is it?

Stranger: Because law could never, by determining exactly what is noblest and most just for one and all, enjoin upon them that which is best; for the differences of men and of actions and the fact that nothing, I may say, in human life is ever at rest, forbid any science whatsoever to promulgate any simple rule for everything and for all time. We agree to that, I suppose?

Younger Socrates: Yes, of course.

Stranger: But we see that law aims at pretty nearly this very thing, like a stubborn and ignorant man who allows no one to do anything contrary to his command, or even to ask a question, not even if something new occurs to someone, which is better than the rule he has himself ordained.

Younger Socrates: True; the law treats each and all of us exactly as you describe.

Stranger: So that which is persistently simple is inapplicable to things which are never simple?

Younger Socrates: I suppose so (Plato, *Polit.* 294a6–c9, transl. H. N. Fowler).

According to the quoted text, laws are deeply insufficient because they are unable to grasp the “differences of men and of actions” and because of the “fact that nothing in human life is ever at rest”. We learn from the passage that there exists no *technê* which can deal fully with the transitory character of sensible reality and formulate simple rules for it. With regard to the fluctuant physical world showing permanent change, a written regulation such as law turns out to be “like a stubborn and ignorant man who allows no one to do anything contrary to his command or even to ask a question”. Moreover, an established law makes it impossible to adopt a new and better rule, if the situation changes and a new challenge comes up. If someone acts based on his own, more profound insight, the only way in which a legal order can react is through punishment. As the quotation confirms, Plato still defends in the *Statesman* – as he did in the *Republic* – the idea that it is the knowledge of essential and invariant facts about physical reality that constitute the expertise of a good politician.

If my analysis is correct, however, the difficulty pointed out in the quotation is that one cannot simply *apply* rules since sensible reality is a somewhat unstable copy or image of a well-ordered intelligible reality. Legal rules are too simplistic to cover all cases that occur in political reality. There is, however, nothing intrinsically bad about rules; Plato does not reject generalism. It is only that their generality is inappropriate and that it cannot easily be transferred to the sensible flux of phenomena. The doctrine of two spheres of reality, the invariant intelligible realm and the unstable sensible world, is exactly what we know from Plato’s ontology and epistemology, famously

expressed by the dichotomy of *epistêmê* and *doxa*. This antithesis appears throughout the Platonic writings.⁷ Its fundamental point is that we cannot have knowledge in the full sense of something that is in permanent change. The best thing we can have is knowledge of the Forms (which is, of course, a knowledge of universals) and then apply it to unstable physical reality.

But if it is right that the dichotomy of *epistêmê* and *doxa* provides the background to his personalism, then we are not facing a particularism at all. On the contrary, the insightful ruler is in fact able to adequately judge each given situation using the appropriate general rule. The non-competent multitude cannot do so: they establish some sort of positive law based on limited number of suboptimal general rules – and leave no room for changes and improvements. Not having access to the theory of Forms, they will not be able to formulate the right general rules.

Immediately after the quoted passage above, Plato continues the dialogue with a discussion of the necessity of lawgiving:

Stranger: Why in the world, then, is it necessary to make laws, since law is not the most perfect right? We must ask the reason for this.

Younger Socrates: Yes, of course.

...

Stranger: And so we must believe that the law-maker who is to watch over the herds and maintain justice and the obligation of contracts, will never be able by making laws for all collectively, to provide exactly that which is proper for each individual.

Younger Socrates: Probably not, at any rate.

Stranger: But he will, I fancy, legislate for the majority and in a general way only roughly for individuals, whether he issues written laws or his enactments follow the unwritten traditional customs.

Younger Socrates: Quite right.

Stranger: Yes, quite right. For how could anyone, Socrates, sit beside each person all his life and tell him exactly what is proper for him to do? Certainly anyone who really possessed the kingly science, if he were able to do this, would hardly, I imagine, ever put obstacles in his own way by writing what we call laws.

Younger Socrates: No, at least not according to what has just been said.

Stranger: Or rather, my friend, not according to what is going to be said.

Younger Socrates: What is that?

7 Plato, *Meno*, 96e–97b; *Phd.* 79c–d; *Resp.* V, 474b–480a; VI, 507a–511e; *Tht.* 200e–201c; *Tim.* 27d–28a, 29b–c, 51b–52a; *Philb.* 59a–d.

Stranger: Something of this sort: Let us suppose that a physician or a gymnastic trainer is going away and expects to be a long time absent from his patients or pupils; if he thinks they will not remember his instructions, he would want to write them down, would he not?

Younger Socrates: Yes.

Stranger: What if he should come back again after a briefer absence than he expected? Would he not venture to substitute other rules for those written instructions if others happened to be better for his patients, because the winds or something else had, by act of god, changed unexpectedly from their usual course? Would he persist in the opinion that no one must transgress the old laws, neither he himself by enacting new ones nor his patient by venturing to do anything contrary to the written rules, under the conviction that these laws were medicinal and healthful and anything else was unhealthful and unscientific? If anything of that sort occurred in the realm of science and true art, would not any such regulations on any subject assuredly arouse the greatest ridicule?

Younger Socrates: Most assuredly.

Stranger: But he who has made written or unwritten laws about the just and unjust, the honorable and disgraceful, the good and the bad for the herds of men that are tended in their several cities in accordance with the laws of the law-makers, is not to be permitted to give other laws contrary to those, if the scientific law-maker, or another like him, should come! Would not such a prohibition appear in truth as ridiculous as the other?

Younger Socrates: It certainly would.

Stranger: Do you know what people in general say about such a case?

Younger Socrates: I don't recall it just now off-hand.

Stranger: Yes, it is very plausible; for they say that if anyone has anything better than the old laws to offer, he must first persuade the state, and then he may make his laws, but not otherwise (Plato, *Polit.* 294c10–d3 and 294e8–296a9; transl. H. N. Fowler).

According to this text, law is necessary whenever a polis does not have a competent ruler. We can now explain the seemingly contradictory presence of both legalism and personalism in the *Statesman*: Note that this is an explicit confirmation of legalism, although we learn, at the same time, that law is not the best possible constitutional option. Plato's point is that any legal order consists of a very limited number of rules. They are valid at best "for the majority of cases" (*hōs epi to poly*). The set of laws established in a city may not contain the right – written or unwritten – rules that should be used in a given case. Or the rule is available, but not appropriately applied. Inversely, if a competent ruler is present, this person can successfully

find the right general rules and also apply them to concrete situations. He doesn't simply judge on the basis of context-relative reflections. Instead, as we already said, he knows how to formulate adequate laws as *hypomnēmata* for the time of his absence.

Furthermore, we see that Plato appreciates certain (if not all) legal designs of political communities, e.g., that of ancient Athens (given by Solon), of Sparta (given by Lycurgus), and of Crete (given by Minos and Rhadamanthys). It is certainly not the case that he subscribes to meta-ethical particularism. Plato admits that a lawful polis can in principle be a good one – even if the rule of an outstanding individual is said to be the better option.

3.

Is it justified to look at the *Laws* in order to answer problems that arise in the *Statesman*? I think this is a legitimate move (even a necessary one) given the fact the two dialogues are close to one another in their time of origin and in their content. The *Statesman* appears to be the bridge between the *Republic* and the *Laws* in that it introduces an idea of political science which is not based, at least not explicitly, on the theory of Forms and by inaugurating a real esteem for laws, offices, procedures, and administration. It is not an anti-institutional text, let alone an anti-legalist one. On the other hand, the *Laws* preserve the idea that, in the best possible case, we can hope for a personalized appearance of reason (*nous*), and then all of these non-ideal instruments would become superfluous.

Apparently the two texts are closely interlinked. Personalism is still seen, in the *Laws*, as the best option, and legalism only serves as its unavoidable surrogate. For, unfortunately, as Plato claims in a famous passage, the personal appearance of reason “exists nowhere at all”:

Yet if ever there should arise a man competent by nature and by a birth-right of divine grace to assume such an office, he would have no need of rulers over him; for no law or ordinance is mightier than Knowledge, nor is it right for Reason to be subject or in thrall to anything, but to be lord of all things, if it is really true to its name and free in its inner nature. But at present such a nature exists nowhere at all, except in small degree; wherefore we must choose what is second best, namely, ordinance and law, which see and discern the general principle, but are unable to see every instance in detail (Plato, *Leg.* IX,875c3–d4; transl. R. G. Bury).

The polis based on laws is, according to this quotation, still to be seen as no more than the second-best option. The expression *to deuteron* in *Laws*

IX,875d4 clearly alludes to the formula *deuteros plous* in *Statesman* 300c1, and also the wording *hôs epi to poly* in *Laws* IX,875d5–6 refers back to the *Statesman* (294e1 and 295a5). These observations confirm that the *Statesman* and the *Laws* are consistent in their complicated positions combining personalism and legalism.

Moreover, we find the basic points of the myth of the *Statesman* (268d–274e) repeated in *Laws* IV,713a–714b. In both dialogues, Plato develops the opposition between two eras, that of Cronos and that of Zeus, in a remarkably similar way. The two alternating historical epochs are cosmologically, anthropologically, and politically different from one another. In the Cronos epoch, it was a god who governed human beings, whereas in the era of Zeus, the god is withdrawn from the world and humans must establish a political rule – a situation which has been seen as heavily suboptimal. In both dialogues, Plato maintains that the best thing we can do in the age of Zeus is to emulate the era of Cronos to the highest possible extent. The crucial passage is the following:

And even today this tale has a truth to tell, namely, that wherever a state has a mortal, and no god, for ruler, there the people have no rest from ills and toils; and it deems that we ought by every means to imitate the life of the age of Cronos, as tradition paints it, and order both our homes and our states in obedience to the immortal element within us, giving to reason's ordering the name of "law" (Plato, *Leg.* IV,713e3–714a2; transl. R. G. Bury).

We must emulate (*mimeisthai*) the era of Cronos since, in our present time, the fact that men are ruling over men leads into a chain of political disasters. The most appropriate way to do so is by the obedience to the immortal element within us, giving to reason's ordering the name of 'law.'" The quotation clearly corroborates that Plato is a legalist.

All of these observations justify, in my opinion, reading the more detailed account of legal thought developed in the *Laws* as the standpoint that must already be present in the background of the *Statesman*. As the last quotation additionally shows, Plato defends a kind of political rationalism in that he stipulates the rule of reason. On this basis, he postulates a certain principle of what has a law has to be: namely an "ordering of reason" (*tên tou nou dianomên*, 714a1–2). On this basis, we can distinguish between better and worse laws.

On closer inspection, Plato describes this distinction in much more detail: the criterion of legitimacy is that laws must be directed towards justice (IV,705e), that they must support virtuous actions and attitudes among the

citizens (IV,705e–706a),⁸ and that they must be oriented towards the common good (IV,715b). All of this is far from any legal positivism. For Plato, good laws are following reasonable norms. This includes a certain cautious form of fallibilism. Newly established laws must be a possible object of scrutiny and revision; only after a certain period of probation do they become permanently valid (*Laws* VIII,840e f.). What we see in the *Laws* is that Plato proposes a substitute for the legislation of a competent ruler by a complex institutional design, especially by the “Nocturnal Council”. Plato accepts here a version of a trial-and-error method. According to the *Laws*, legislators do not have absolute authority; instead, the polis has the right to select among the legislative proposals advanced by them (III,702c–d; V,739a–b). Some laws are simply bad: a historical example is, for Plato, the legal regulation of testaments which was not in favour of the common good (XI,923a). The lawgiver has always to keep in mind the goal of unity and harmony of the polis; the city “ought to be free and wise and in friendship with itself, and the lawgiver should legislate with a view to this” (III,693b3–6). As Plato claims, the “fundamental purpose of our laws was that the citizens should be as happy as possible, and in the highest degree united in mutual friendship” (V,743c5–6).

A remarkable detail of Plato’s theory of legislation in the *Laws* is his idea of a “temperate tyrant” in book IV (709d–712a). There, not only are substantive virtues ascribed to the tyrant – he is moderate, insightful, docile, brave, and magnanimous – but also the ability directly to bring about a lawful condition. Thus, this sort of tyrant is described as a “divine piece of luck” (IV,710c–d). Given that the tyrant is normally, especially in the *Republic*, seen as an extremely bad, arbitrarily acting political ruler, this implies that Plato ascribes to the law a deeply transformative power. As Cinzia Arruzza remarks, for Plato “under specific circumstances, tyrannies could be significantly reformed and used as a starting point for the implementation of beneficial policies or the realization of radical political programs.”⁹ The law has the capacity to tame even the worst of people.

4.

In sections II and III we collected evidence for Plato’s serious appreciation of laws and lawgiving. Now, if we can take it for granted that he genuinely valued a legal order based on insight and competence, why then does he judge Athenian democracy and its procedures of legislation so negatively, as

8 Already in *Gorg.* 504d–e, law is praised for its function of bringing about justice and temperance in the soul of the citizens.

9 C. Arruzza, *A Wolf in the City. Tyranny and the Tyrant in Plato’s Republic*, Oxford 2019, p. 58.

we find in *Statesman* 297e–299e? I think that two explanations can be given which are not mutually exclusive, but can be combined. The first is that Plato wants to criticize Athenian democracy in particular, in spite of its lawfulness – but not every legislative procedure in general. The Athenian procedure of legislation combines, in his eyes, absolute incompetence with stupid rigidity. The second is that Plato wishes to emphasize the deep difference between an ideal law-transcendent rule and any legal order; this difference still exists even if a concrete legislation is a relatively good one.

Concerning the first point, we know that Plato developed his political thought vis-à-vis the Athenian democracy of his time (and also with regard to Athenian tyranny). He makes Athens responsible for the juridical murder of Socrates who firmly obeyed the laws of the city although they were deeply unjust. Socrates, as Plato believes, was “the best, most reasonable, and most just among the men who lived at that time” (*Phd.* 118a). Likewise, in the *Seventh Letter*, Socrates is characterized as the most just individual among his contemporaries (324b–326b). In this context, Plato tells us that he himself immediately turned away from politics under the impression of what happened to Socrates.

For Plato, the principal shortcoming of Athenian democracy is its inadequate tendency towards equality. Democracy, as he sees it, is not oriented towards the common good of the polis. Instead, it violates both the principle of intellectual competence and the principle of moral virtue which lead him towards the idea of expertocracy. Democrats falsely advance an understanding of freedom in the arbitrary sense of living as one pleases. Thereby, they destroy the political community and create a divided society. Thus, democracy is vulnerable to instability since it does not integrate all groups of a society.

As to the second point, one has to take into consideration how profoundly Plato is dissatisfied with the human condition concerning politics. The myth of the *Statesman* is serious in its emphasis on the deep non-ideality of our historical period. The fact is that laws are necessary since otherwise people would radically misbehave. In a passage of the *Laws*, Plato gives us a self-referential evaluation of what he is actually doing by formulating penal laws:

Athenian: It is, in a sense, a shameful thing to make all those laws that we are proposing to make in a state like ours, which is, as we say, to be well managed and furnished with all that is right for the practice of virtue. In such a state, the mere supposition that any citizen will grow up to share in the worst forms of depravity practiced in other states, so that one must forestall and denounce by law the appearance of any such character, and, in order to warn them off or punish them, enact laws against them, as

though they were certain to appear – this, as I have said, is in a sense shameful. But we are not now legislating, like the ancient lawgivers, for heroes and sons of gods – when, as the story goes, both the lawgivers themselves and their subjects were men of divine descent: we, on the contrary, are but mortal men legislating for the seed of men, and therefore it is permitted to us to dread lest any of our citizens should prove horny-hearted and attain to such hardness of temper as to be beyond melting; and just as those “horn-struck” beans cannot be softened by boiling on the fire, so these men should be uninfluenced by laws, however powerful (Plato, *Leg.* IX,853b4–d4; transl. R. G. Bury).

As we learn from this quotation Plato considered it a depressing fact that he had to formulate penal laws for Magnesia which are determined to put human beings under pressure by warning and threatening them. In this context, he reflects on the historical circumstances of our contemporary age of Zeus: whereas former legislators had to establish rules for “heroes and sons of gods”, we nowadays have to do the same job for people who can be profoundly bad and indocile wrongdoers. It seems clear from this passage why Plato saw such an enormous difference between a legal order and insight-based rule: to formulate laws is not only a permanently insufficient business, but also a shameful thing to do – but nevertheless it is a necessary task for a human society.