

## CONTENTS

Introduction	1
Editorial Note	11
1 The Form of the <i>Laws</i> : An Overview	13
<i>Late Style</i>	13
<i>From Encounter to Synthesis</i>	14
<i>The Walk</i>	16
<i>The First Focal Point: The Great Divide</i>	17
<i>The First Theologico-Political Treatise</i>	17
<i>Law between Form and Content</i>	19
<i>Two Critical Prologues (Books 1 to 3)</i>	20
<i>Slow Beginnings (Books 4 and 5)</i>	24
<i>The Second Focal Point: The Retreat</i>	26
<i>Specifying the Laws</i>	26
<i>The Centrality of the General Preamble</i>	28
<i>Constitution and Laws (Books 6 to 12)</i>	28
<i>A Meta-Constitutional Law</i>	30
<i>A Last Complication</i>	30
<i>The Bare Bones of the Laws</i>	31
2 Paradigms and Utopias	32
<i>From the Laws to the Republic</i>	32
<i>A Republic in Two Acts and an Epilogue</i>	33
<i>From Best to Possible</i>	35
<i>Approximating Approximation</i>	38

viii CONTENTS

	<i>From lexis to praxis</i>	40
	<i>The Philosopher as Craftsman</i>	41
	<i>Contradictory Signals</i>	43
	<i>The Possibility of the Wise Ruler</i>	45
	<i>The Moot Question of Utopia</i>	50
3	Paradigm and Retreats	53
	<i>The Duplication of the Paradigm</i>	53
	<i>Completion and Revision</i>	55
	<i>A Parallel with the Timaeus</i>	56
	<i>Types of Distancing</i>	58
	<i>What Is the Second City Second To?</i>	60
	<i>A Note on the Titles Republic and Laws</i>	62
4	What Is Human?	64
	<i>A City for Human Beings</i>	64
	<i>Plato's Anthropology</i>	65
	<i>A Wonderful Puppet</i>	67
	<i>The Fragility of Choral Dance</i>	69
	<i>Aspects of the Human Wonder</i>	71
5	The Multiplication of Goals	74
	<i>Aims and Targets</i>	74
	<i>Freedom Comes In</i>	77
	<i>Sparta, Ancient Persia, Ancient Athens</i>	80
6	Mixtures, Blends, and Other Metamorphoses	86
	<i>Middle and Mean</i>	86
	<i>Balance</i>	88
	<i>Two Equalities</i>	90
	<i>Kinds of Freedom</i>	96
	<i>Voluntary Servitude to the Law</i>	99
	<i>Statutory Freedom and Its Obligation</i>	102

CONTENTS ix

7	Construing the Preambles	107
	<i>The Violence of the Law</i>	107
	<i>Correcting the Past</i>	110
	<i>Poet and Lawgiver on 'Measure'</i>	110
	<i>The Medical Analogy, First Version</i>	113
	<i>An Example: Marriage</i>	118
	<i>Preamble vs. Law</i>	119
	<i>The Medical Analogy, Second Version</i>	120
8	A Rhetoric in the Making	124
	<i>Three Scales</i>	124
	<i>Two Typologies</i>	125
	<i>Appealing to Reflection (On Marrying)</i>	128
	<i>Praise and Blame (On Hunting)</i>	130
	<i>From Argument to Incantation (On the Choice of a Spouse)</i>	131
	<i>The Reintroduction of Threat</i>	133
9	Two Exceptional Preambles	136
	<i>Socrates Implemented</i>	136
	<i>The Theological Foundation of the Law</i>	142
	<i>A Structural Paradox</i>	145
10	Plato's Best Tragedy	149
	In Retrospect	154
	<i>Appendix A. On the Status of the Statesman</i>	159
	<i>Appendix B. On a Supposed Evolution of Plato's Psychology</i>	169
	<i>Appendix C. Aristotle and Posidonius on Plato's Preambles</i>	177
	Notes	181
	Bibliography	235
	Index Locorum	253
	General Index	269

# Introduction

I HAVE BEEN interested in Plato's *Laws* since the 1980s, a time when the work had not yet attracted much attention from students of ancient philosophy, or for that matter of philosophers in general. Things have changed, and the conditions for studying the *Laws* in a philosophical perspective, however one conceives of a philosophical perspective, are incomparably better. The level of discussion is today more refined, and above all more challenging than it was forty years ago. There is now a general consensus that the *Laws* does important conceptual work and that it may consequently be an important source of reflection on questions concerning, for example, psychological motivation, the rationality of emotions, and the function of choral performance, to mention three topics that feature prominently in the currently rather abundant scholarly production on the dialogue.

The motif around which my earlier studies revolved is not foreign to these preoccupations, far from it, but it did not address them directly. My interest went and still goes in the first place to the notion of 'law' / *nomos* and to the conceptual net Plato weaves around it, starting from the idea of a city that is "second to the best" because it is geared to 'human beings' rather than gods (or 'heroes' of yesteryear) and broadening to include the interrelated notions that structure this move away from the best paradigmatic city, such concepts as virtue and possibility,<sup>1</sup> persuasion and obedience, equality and freedom, excess and mean, which I will seek to articulate in my essay. Articulation, however, becomes a challenge, as well as an additional motif of interest, on account of a series of traits that are, to be sure, not alien to Plato's dialogues in general, but which have been less appreciated or even ignored in the case of the *Laws*, perhaps because of its dogmatic outlook. Among these are the complexity of its overall literary construction, its perplexing oscillation between terminological flexibility and the demand for precision, and above all the degree to which

implicitness is at work in its argument (whether intentionally or not is a further question). All of these features must be taken into account if one is to get the crucial point in a number of key passages.

Plato's *Laws* (*Nomoi*) is radically novel in its project and of fundamental importance for the history of political thought, even more so, one could argue, than the *Republic* (*Politeia* lit. "constitution" or "political regime"). Its novelty lies, paradoxically at first glance but in fact quite understandably, in its very subordination to the *Republic*, for the gaze it casts on the political question is a distinctly anthropological one. Although it is undoubtedly different in its philosophical vision from Aristotle's attention to 'human affairs,' it looks in the same direction.

To be sure, the *Laws* builds, explicitly (sometimes) or implicitly (usually) on an already rich and complex lineage of legendary and historical lawgivers (Lycurgus, Solon); relevant poetic and dramatic works (Hesiod, Pindar, Aeschylus' *Eumenides*, the *Prometheus Bound*); historical and philosophical reflections of various kinds and scopes, such as Herodotus, Thucydides, Protagoras (possibly the author of a *Peri politeias/On Constitution*); Xenophon's *Education of Cyrus*; as well as, possibly, the anti-democratic pamphlet *The Constitution of the Athenians* and such utopian projects as those of Phaleas and Hippodamus of Miletus which Aristotle criticizes alongside Plato's *Republic* and *Laws* in the second book of his *Politics*. But as far as we can judge, the way in which the *Laws* brings together a systematic investigation into the foundations of legislation with a concrete examination of detailed laws is without precedent. The *Republic* is no exception; it is rather, an exceptional member of the older lineage.<sup>2</sup>

As for the *Laws*' influence, much of it has admittedly been indirect and channeled through works that had a more immediate impact and thus have contributed to obfuscate the source: Aristotle *Politics* in the first place, which, for all the criticisms it addresses to the *Laws* in Book 2.6 (after having dealt with the *Republic*), owes much to it (especially, but not exclusively, in Books 7 and 8); Polybius, who in Book 6 of his *History* analyzes Rome's constitution and gives it credit for the Empire's rise and eventual domination of the ancient world, in the light of a constitutional scheme advocated in the *Laws*; Cicero, who took the pair *Republic/Laws* as a model for his diptych *De re publica/De legibus*; and, perhaps less appreciated, the Church Fathers, who had a soft spot not only for the work's commanding theological agenda but also for its homiletic quality. The intrinsic power of the *Laws*, however, which explains its impact and its adaptations over the course of history, comes from the cluster of four basic principles at its core: that without accountability power corrupts,

that law should rule, that a constitution that came to be somewhat misleadingly characterized as ‘mixed’ is the best human beings can achieve, and that laws require preambles. By “preambles” is meant not the kind that we are familiar with from modern constitutions or from other legal usages of the term; in the *Laws* their role is, rather, to persuade the citizen to comply with the law. This is not to suggest that there were no antecedents for most of these concepts, as is notably the case for the ‘rule of law,’ which was a traditional byword all through Athens’ political history.<sup>3</sup> But the philosophical elaboration of these principles and their embeddedness in a global, powerful anthropology is unique, and this is what gave the *Laws* its remarkable momentum.<sup>4</sup>

Two lines of influence can be distinguished here, although they interacted to various degrees over the course of history. There is, first, the considerable influence that the *Laws* exercised over constitutional theory and constitutional practices, a sway much more profound than that of the *Republic*, which, for all its philosophical depth and literary brilliance, played more often the role of a utopian foil than of a conceptual resource for shaping cities and states—and this for sound reasons.<sup>5</sup>

A second factor responsible for the *Laws*’ primacy in the subsequent history of political philosophy (and one with more diffuse but in a sense even more wide-ranging consequences) is that it develops a theological conception of law (i.e., of “true law” / *alêthês nomos*, 7.817b8). Its highest principle is the anti-Protagorean assumption that (a) god, and not (some) man, is the measure of political order. This theological anchoring of political laws, which Plato inherits from a remote past, is the counterpart of the anthropological turn that shapes the *Laws*’ constitutional and legislative theory. It bestows on the *treatise* a seminal place in the debate over the proper relationship between theology and politics—the so-called theologico-political issue.

This compound phrase, which emerged at the beginning of the 17th century, some years before Spinoza’s *Tractatus theologico-politicus* (1670) made it famous, is anachronistic when applied to the *Laws*, since its default frame of reference is the religions of the Book. The anachronism, however, also provides an appropriate entry into the work, for the theologico-political question initiated its fateful modern course centuries before it was named. Efforts to harmonize Plato’s political theory with the Mosaic revelation of the law on the Sinai, for Jews like Philo of Alexandria or Christians Fathers who embraced this latter orientation, had sociopolitical dimensions from the start; it took a decisive turn with Constantine’s promotion of Christianity, Eusebius’ apologetic *Ecclesiastical History*, and Augustine’s anti-Eusebian dissociation between

the City of God and the worldly city. In the twentieth century, the expression has been most often linked to Carl Schmitt's thesis about modern political concepts being secular versions of theological antecedents, and to the ensuing discussion on his so-called political theology.<sup>6</sup> The way in which Leo Strauss involved the *Laws*, in the 1930s, in a discussion pursued under the sign of what he called "the theologico-political predicament," would require independent examination. It will be enough to say here that Strauss, in the wake of his criticism of Spinoza's enlightened rationalism and of his reading of Maimonides and al-Farabi, came to look at Plato's *Laws*, which he misleadingly considered "the most ironical of Plato's works," as a clue to the question of the relationship between philosophy, politics, and the revealed Law.<sup>7</sup> What is true is that the *Laws* engages with traditional accounts of gods 'revealing' their laws to the cities and pursues a philosophical project consisting in a rationalization of law, *in as much as that is possible* (a restrictive phrase that is crucial for the whole project), and, by way of consequence, the rationalization of god himself, which is its foundation. To clarify the way in which this works, with all the complexities—and obscurities—that go with this clarification, is the main objective of the present essay.

Although Plato does not spell out the distinction in those terms (here is one case of implicitness, of which there will be more), his argument makes clear that he takes the law to be both a certain content—a deontic proposition ultimately dictated by 'reason' / *nous*<sup>8</sup>—and a specific discursive form, an order or command usually followed by the threat of punishments in case of its infringement. To the extent that threat is a kind a violence (*bia*), it is an antipolitical element that should be eliminated as far as possible. Accordingly, Plato's project in the *Laws* is twofold. Besides fleshing out the content of a law as anchored in its ultimate principle, which bears different names at different junctures (*theos*/god, *nous*/reason, *metron*/'measure'), it aims at stripping the law of its threatening component through the introduction of persuasive 'preambles.' It is a remarkable fact that Plato emphasizes the novelty of this second, communicational objective, rather than the first, substantial one (the structuring of a second-best constitution and the related laws), which, for all its use of traditional views and institutions, is no less radically novel.

Two directions open here, which in the *Laws* receive a strikingly asymmetrical treatment. Command and threat can either yield to rhetoric, which looms large in the dialogue; or it can move toward philosophy, the rare and allusive but crucial appearance of which provides to the bulky environment something like a vanishing point (to use a pictorial metaphor): an alternate,

quasi-Socratic way of educating the citizens. In between lies a scale of possibilities that reflect the notion, already at work in the *Republic*, that models are there to be approximated.<sup>9</sup> Discursive scalarity, which is grounded in Plato's paradigmaticism, is the path that Plato explores the most insistently in the *Laws*, but the scheme evidently also applies to the constitutional and legislative contents themselves, which remain caught in an insuperable tension between the logical possibility of the paradigm and the conditions limiting its implementation and 'feasibility,' which are variable. Plato's second city itself serves as a paradigm for many others, which are fleetingly but unmistakably evoked in the course of the work.

An authentic political community, in Plato's *Laws*, requires the presence, on the rulers' side, of an 'expert wisdom' (signaled by three closely related words, *nous*/reason, *tekhnê*/expertise, and *phronêsis*/wisdom) and, on the side of rulers and citizens alike, of an unconditional though 'voluntary' (*hêkôn* and kindred words) obedience to the law in order to guarantee 'friendship' (*philia*) within the city—'friendship' being an awkward but hardly dispensable placeholder for the deep social bond and civic solidarity or 'fellowship' that guarantees civil peace.<sup>10</sup> The two demands clash, as the *Laws* shows, or rather as it stages, more than any other dialogue. In the *Republic*, political friendship and obedience to the philosopher-rulers is made possible by a discursive 'fiction' (*pseudos*)—the myth of the three human races, golden, silver and bronze, united by their common birth from Mother Earth—and a certain 'lie' (also *pseudos* in Greek) meant to preserve the high quality of offspring—Plato's infamous 'eugenics';<sup>11</sup> but the dialogue does not discuss persuasion in its own right.<sup>12</sup> Its visibility becomes greater in the *Statesman*, where the distinction between voluntary and constrained obedience plays a central, if ambivalent, role. But it is arguably only in the *Laws* that Plato faces *head-on* the question of persuasion's limits through an analysis of the term *nomos*/'law' for which there is no equivalent in the rest of the corpus. Aristotle regretted that "the greatest part of the *Laws* happened to be laws," wishing that Plato had said more about constitutions.<sup>13</sup> But the characterization is biased, for the *Laws*, which does talk also about "constitutional laws," is above all a metalegislativ work that thematizes the tension between the normative character of law and the conditions of its acceptance.

Plato calls his second-best constitution—the best that human beings, in their present condition, can wish for—"the finest and truest tragedy." This is surely a provocation—not the only one in a work that also talks about voluntary obedience to the law in terms of "servitude." At a general level, the claim



testifies to Plato's enduring hubris, voiced in his farewell to Homer, whom he means to replace as the father of the tragic genre (*Republic* 10.606e1–607b3), thus laying superior claim to the very foundations of Greek culture. But if we look for a tragic work that is particularly appropriate to serve as a rival as well as a foil to the *Laws*, then Aeschylus' *Eumenides*, staged in 458 BC, four years after the Areopagus was deprived of its ancient privileges by Ephialtes' reform, comes first to mind. This is not only or even principally because the constitution of *Laws* aims at holding a 'middle' ground that avoids the two extremes of despotic tyranny and democratic anarchy, thus fulfilling the wish expressed by the tragic chorus, although the reference is certainly not out of place.<sup>14</sup> What really makes of Plato's *Laws* his *Eumenides* is that, in both works, threat and fear retain in the end a secured place within human political institutions.

[*Athena speaks:*]

This is what I am doing in my kindness  
towards these citizens [the Athenians], in settling firmly here  
divinities [the Erinyes] that are great and hard to please,  
For these are the ones that have been allotted to manage  
all human affairs.

AESCHYLUS, *EUMENIDES*, 927–930

The reasons and modalities of this integration are, to be sure, very different in the two works, and this is not the place to engage in a detailed comparison between them.<sup>15</sup> The relevant point is that divine retaliation and human threat, in Plato's *Laws*, mark the limit of a program that can be legitimately called 'eumenistic,' since the aim of Plato's legislative preambles is to be kind to the citizens and reduce the violence of the laws as much as possible in order that they be "of a good disposition" (*eumenôds*) toward the content of the law and that political friendship be achieved.<sup>16</sup>

Because the highly normative nature of its political proposals, the *Laws* inevitably raises the question of its actuality, of its actualization, and eventually of one's own political positioning, as may be seen, to take a particularly instructive example, in the role it played in ideological battles in Cosimo's fifteenth-century Florence, between aristocratic patricians and their republican opponents.<sup>17</sup> There is little doubt that the *Laws*, which in this respect does not differ from the *Republic*, can be read focusing not on the philosophical intricacies that it articulates, but rather on its political message which is also and inextricably part of its agenda.<sup>18</sup> The "second city" that is depicted in the *Laws*, for

all its importance in the emergence of constitutionalism and republicanism, and in spite of the concessions it makes to ‘human nature’ and to the perceptible humanization of certain practices that were part of Plato’s world,<sup>19</sup> accentuates rather than alleviates the most unpleasant tendencies of the *Republic*. Indeed, it shows a great number of traits that are at best, questionable, and at worst, to use another anachronistic term, ‘totalitarian.’ The word is of course inappropriate if one links it exclusively to the circumstances for which it was coined in the twentieth century; others have been proposed, in particular ‘holism.’<sup>20</sup> Taken in an etymological sense, however, it captures a feature that is surely relevant in Plato’s political thought and names a legitimate question.<sup>21</sup> The protest voiced by Schleiermacher in 1828 in his introduction to the *Republic* “from the standing point of Christianity,” of which he was an eminent (Protestant) representative, has become the common property of Plato’s liberal critics: the institutions advocated in the *Republic*, and above all the abolition of the family, are something “at which our more moral austerity is with justice shocked and dismayed.”<sup>22</sup> Schleiermacher’s indignation would not have abated had he instead applied himself to the *Laws* (which he did not have the time, or perhaps even the desire, to do<sup>23</sup>): for even if Plato’s second best city now requires marriage and households—in keeping with the ‘anthropological turn’ taken in the *Laws*—everything yet remains subordinate to the well-being of the political community; the control of artistic production is as absolute as ever; an unredeemable atheism, the radical embodiment of ‘free thinking’ (in the modern sense of the term) is grounds for the death penalty. Cornford powerfully summarized the dark side of “Plato’s Commonwealth” by drawing an intriguing parallel between the *Laws* and Dostoyevsky’s Grand Inquisitor scene in *Brothers Karamazov*: if Socrates were to visit the city of the *Laws* and there promote the principle of free discussion, he would be arrested, expelled, and asked never to return, like Christ in Dostoyevsky’s parable, or for that matter Homer, and the tragic poets should they approach Plato’s second city.<sup>24</sup> The parallel is misleading, in particular because it is all but clear that Socrates, at least Plato’s Socrates, has no role to play in Plato’s second city, not only as an embodiment of virtue, but also a philosophical inquirer, even if philosophical activity is either restricted in the *Laws* to the highest political body (the Watch) or considered as an unrealizable ideal. But it is not as easy as one would wish—through contextualizing, historicizing, distancing, or transposing—to get around the challenge encapsulated by Popper’s reading of Plato political projects in terms of a “closed society.”<sup>25</sup> On the other hand, the discussion about the political principles that are put to work and articulated in Plato’s second constitution—expertise, freedom, equality, friendship—can

be detached, up to a certain point, from their embodiment in particular norms and practices that can be legitimately criticized, or for that matter defended, and evaluated in their own right.<sup>26</sup> I have tried to make of this possibility a methodological requirement, which does not mean that the dissociation is always an easy one.

I have not undertaken to write a commentary on the *Laws* (obviously not, given the modest dimensions of the present volume), nor for that matter on any of its sections (save a few minor ventures in this direction). Glenn Morrow's both synthetic and detailed exposition of Plato's 'Cretan City' and Klaus Schöpsdau's admirable commentary in three volumes discuss many more topics than I touch upon here.<sup>27</sup> Mine is a schematic essay of restricted scope. If I refer to this study as an essay, however, it is not only because of my deliberate selectiveness in the face of the daunting range of material that the *Laws* has to offer. It is also and above all because of its speculative nature. By 'speculative,' I am not only thinking about suggestions that come to mind when the text abandons us (which happens), but also and above all about a mode of reading that is sensitive to the promptings that emerge from the text itself in the absence of explicit statements or clarifications. Assuming implicitness is obviously moving onto slippery ground. But Plato's philosophical writing *is* slippery. This is why it is appropriate to signal here that several of my claims depend on two main assumptions: first, that in spite of a perceptible lack of final polishing, the *Laws* is an extremely refined literary construct, something that the reader must keep in mind in order to capture the scope and implications of some crucial episodes and sentences; and second, that my ultimate, all-things-considered interpretation relies on a small number of short, cryptic or sinuous passages, echoes, syntactical peculiarities, and stage directions. The slimness and fragility of these elusive passages stand in inverse proportion, so to speak, to the monumentality of the work they support.<sup>28</sup> The fact that these crucial passages most often coincide with what may well be conceptual blind spots in Plato's political thinking adds, it seems to me, to their philosophical interest. But they also provide rich material for anyone who is prone to conceive of philology as a springboard for philosophical reflection, and not only as the limiting frame that it also is.

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The book is based on a series of previously published studies listed in the bibliography, and it contains several self-quotations of variable length. But all

that I have taken up has been re-thought and re-written. Some objections raised against my former work on the subject, especially by Luc Brisson, Francisco Lisi, and Melissa Lane, concerning the function of legislative preambles, the issue of feasibility, and the question of freedom, have helped me reformulate a line of thought that has not, however, changed in its basics, which does not mean that I hope to convince, when disagreements depend not on matters of fact, which can in principle be settled, but on hermeneutics, which are quite another matter.<sup>29</sup> During my stay at Princeton in 2017–2019, where this project took shape, René de Nicolay and Owen Philipps translated from the French large sections of my 2005 book, *Médiation et coercition*, which I re-worked to fit the present essay. The conclusion is a shortened version of Christopher Rowe's translation of Laks 2010. Seminars taught by Melissa Lane and myself at Princeton in the spring semester of 2018, and the discussion group she organized during that academic year, which included Amanda Greene, Matthew Landauer, and René de Nicolay, furnished various impulses. So, too, in the course of the same year, did a short conversation with Rachel Barney about 'approximation.' Special thanks go to Carlotta Santini, who, among many other colleagues and friends too numerous to name, helped me find my way to many texts not available to me in Mexico, especially as Covid 19 imposed its laws on academic life; to Jeremy Reid, Melissa Lane, and the readers of Princeton University Press, who improved my English draft at different stages; to Amanda Greene, who spent much time revising with me my translations from the *Laws*; to David LévyStone, René de Nicolay, and Michael Vatter, for their reading of earlier versions of the manuscript and sharing with me their thoughts and works in progress, as well as to Pierre Judet de La Combe and Glenn W. Most for their observations on the draft of this introduction; to Eva Jaunzems, who did more to improve the text than copyediting it. A final word of gratitude goes to Ben Tate, who manifested his interest in the project during a conversation we had on the lawn of Princeton University in Spring 2018 and encouraged me to pursue it.

## INDEX LOCORUM

- Aeschylus  
*Eumenides*  
526–531, 86  
927–930, 6
- Alexander of Aphrodisias, *De mixtione*  
3, 208n3  
6.14–7.1, 208n3
- Aristotle  
*Constitution of the Athenians*  
8.558c5–6, 231n11  
*On generation and corruption*  
1.10 328a5–18, 208n3  
2.7, 208n3  
*Generation of animals*  
2.1 734b10, 203n18  
*History of animals*  
9.24 605a4–6, 222n10  
*Magna Moralia*  
1.1 1182a23–24, 232n26  
1.2 1183b20–27, 223n5  
*Metaphysics Alpha*  
2.983a12–15, 203n19  
2.983a14, 203n18  
*Movement of animals*  
6.701b17, 203n18  
*Nicomachean Ethics*  
1.7 1098a18–20, 228n14  
1.12 1101b10–27, 223n5  
1.13 1102a27–28, 232n26  
2.5 1106a26–2.7 1108b10, 88  
3.1 1110a4–b9, 101  
4.1 1120b27–28, 214n53  
5.10, 210n21  
10.7 1177b24–25, 228n14  
10.9 1180a5–14, 177
- Poetics*  
6.1449b24–25, 228n13  
6.1450a16–17, 151  
13.1452b36, 229n23  
13.1453a10, 229n25
- Politics*  
2.1 1261a8–9, 191n14  
2.2–6, 36  
2.2 1261a21–22, 191n14  
2.3 1261b30–32, 191n14  
2.6 1265a1–4, 31, 201n39  
2.6 1265a2–4, 198n13  
2.6 1265b33–35, 206n13  
2.6 1265b37–38, 78  
2.6 1266a4, 206n13  
2.6 1266a14–22, 211n27  
2.7 1266a39–40, 209n18  
2.7 1267a1–2, 210n18  
2.9 1270b28, 207n14  
3.9 1280a7–31, 210n18  
4.9 1294a35–b13, 208n3
- Rhetoric*  
1.3 1358b8, 221n8  
1.9 1366a23–33, 221n8  
1.9 1367b26–28, 221n8  
1.9 1367b38–68a10, 221n9  
3.10 1410b17–18, 232n20  
3.13 1414b3, 221n9  
3.17 1417b36, 221n9

Bodleian ms. Or. Marsch 539	9.93–95, 196n52
206n3	9.319, 210n18
	12.378–383, 196n56
Cicero	12.445–449, 196n56
<i>Republic (De re publica)</i>	20.285–287, 196n56
2.3, 196n60	<i>Odyssey</i>
2.52, 196n60	17.218, 216n22
<i>Laws (De legibus)</i>	19.178–179, 185n16
2.6.14, 198n13	
2.13, 185n19	Josephus, Flavius, <i>Against Apion</i>
2.14, 200n38	2.165, 18
2.14–16, 177	
Clement Alexandria, <i>Stromata</i>	Lycurgus, <i>Against Leocrates</i>
2.11.1, 202n12	102–3, 218n43
4.79.1, 202n12	Origen, <i>Against Celsus</i>
	5.47, 224n8
Diodorus of Sicily	
12.20–21, 185n19	Pindar
Diogenes Laertius, <i>Lives of Eminent Philosophers</i>	Frag. 169a Maehler
3.37, 184n6	215n4
7.121, 213n40	Philo
	<i>De Abrahamo</i>
Eusebius, <i>Evangelical Preparation</i>	73, 202n12
12.16.4, 206n3	<i>De fuga</i>
	46, 202n12
Herodotus, <i>The Persian Wars</i>	<i>De opificio mundi</i>
1.56, 184n10	117, 202n12
1.65, 184n11, 207n14	<i>Quaestiones in Genesin</i>
2.48, 203n18	1.24, 202n12
Hesiod, <i>Works and Days</i>	Plato
156–173, 196n56	<i>Alcibiades I</i>
275–289, 215n6	130c1–3, 201n2
287–290, 204n28	<i>Charmides</i>
Hippocrates	156d3–157d6, 222n10
<i>Aphorisms</i>	156d4–157c1, 219n51
7.87, 217n32	157a3–5, 219n51
<i>The Surgery</i>	157c1–6, 219n51
3.2, 218n36	169a8–c1, 191n11
Homer	<i>Cratylus</i>
<i>Iliad</i>	384d7, 215n1
1.247–249, 196n52	385e4–386e4, 186n26
1.271–272, 196n56	388d12, 215n1
4.43, 101	396b3–7, 187n31
5.302–304, 196n56	406a3–6, 205n35
7.324–326, 196n52	408c5–d2, 229n20

<i>Critias</i>	1.628a3, 77
108c5–6, 230n2	1.628c6–d1, 76
109a4–113b6, 191n22	1.630b1, 207n19
110c3–d4, 191n22	1.630b2, 140
<i>Epinomis</i> [attributed to Philip of Opus]	1.630d9–e4, 74
976e1–4, 190n64	1.630e1, 205n1
<i>Euthydemus</i>	1.631a5, 205n1
289e4–6, 222n10	1.631b3–632d1, 21
<i>Gorgias</i>	1.631b6–d2, 75
447a5–c4, 221n8	1.631c5–6, 75
454e3–4, 220n55	1.631c5–d1, 206n6
463d2, 114	1.631c5–d2, 20, 74
464b2–465e1, 214n55	1.631c7, 75, 207n19
464b2–465e2, 114	1.631c8–d1, 187n34
464b2–c3, 114	1.631d2–632d1, 29
464b4, 217n32	1.631d3, 29
465d6–e1, 114	1.632a5, 29
467c5–10, 115, 214n55	1.632b2, 29
479a9–10, 217n32	1.632b3–c1, 29
482e6, 215n1	1.632c2–4, 29
484b1–c3, 215n3	1.632c4, 29, 189n63
502b1–c8, 227n6	1.632d1–3, 21
504d5–6, 227n10	1.632e2, 205n1
506d5–6, 116	1.633c8–634c4, 75
507e6–508a8, 209n16	1.636d5, 187n35
521e8–522a2, 116	1.636e8–637b6, 65
551d6–8, 116	1.637a2, 201n5
<i>Laches</i>	1.638b7, 188n38
187d2–3, 218n38	1.641d9, 16
<i>Laws</i>	1.643a4–5, 211n28
1.624a1–2, 17	1.643d1, 201n2
1.624a3–4, 17	1.644b6–645c6, 21
1.624a4, 16, 17	1.644b6–c1, 66
1.624a7–b4, 16	1.644b9–645c1, 76, 170
1.625a6, 187n35	1.644c1, 67
1.625a6–7, 16	1.644c1–645c1, 65
1.625b2, 16	1.644c4, 170
1.625b4–5, 185n17	1.644c4–d3, 175
1.625e5–626a5, 202n6	1.644c6, 66, 170, 175, 232n23
1.626d1–2, 65	1.644c6–d3, 170
1.626d1–e5, 76	1.644c9, 170
1.626e2–5, 65	1.644d1, 170
1.626e2–627b8, 202n13	1.644d2–3, 66, 67, 108, 231n17
1.626e4–5, 76	1.644d4–6, 232n23
1.626e7–8, 65	1.644d6–7, 67

Plato, <i>Laws</i> ( <i>continued</i> )	2.658e6–659c5, 71
1.644d7, 183n28, 203n18	2.659a1–b2, 187n34
1.644d8, 170	2.659b5–8, 204n33
1.644d8–9, 68	2.660a3–8, 111
1.644d–645c1, 107	2.660e1, 71, 205n34
1.644e1, 66, 232n22	2.665d9–666c6, 21
1.644e2–3, 66, 170	2.668b6–7, 228n15
1.644e4, 170	2.669c3–8, 103
1.644e4–6, 170	2.674b7, 215n1
1.644e6, 170	3.676a2, 187n35
1.644e6–645a2, 66	3.676a8–b1, 187n36
1.644e6–645a4, 224n14	3.677a4–6, 187n36
1.644e6–645e2, 67	3.678a3–9, 187n36
1.645a1, 67, 199n23	3.681c1–d10, 187n36
1.645a5, 66	3.682b7–8, 187n36
1.645a5–6, 108	3.682e3–4, 184n10
1.645a7, 67, 76	3.682e8–693c5, 22
1.645a7–8, 67	3.683a2, 184n10
1.645b1–2, 67, 76	3.683a2–3, 14
1.645b1–3, 67	3.685a6–8, 185n17
1.645c1–6, 65	3.685a7, 16
1.645d6–7, 232n22	3.687a7, 80, 207n16
1.648a9–b2, 21	3.688a3–b4, 205n1
1.648c7, 188n39	3.688a6–b4, 74
1.648c7–e5, 21	3.688b1–3, 75
1.649a4–5, 21	3.688b2–4, 101
1.649d4–650b10, 21	3.688d6–9, 104
1.688a6–b4, 206n5	3.689a7–9, 77
2.653a3, 21	3.689d6–7, 77
2.653b1–c4, 65	3.690c1–3, 100, 108
2.653b2–6, 20, 77	3.691d8–692b1, 81
2.653d7–654a7, 69	3.691d8–e1, 22, 78
2.654a4–5, 204n25	3.691e2, 78
2.655a1–2, 205n34	3.691e3, 78
2.655b9–e1, 204n25	3.692a7–8, 78
2.655c8–d2, 70	3.693b2–3, 78
2.655d1, 71	3.693b3–4, 207n20
2.655d5, 71	3.693b3–5, 22, 78
2.655d7, 204n29	3.693b5, 75
2.655e2, 70	3.693b5–6, 79
2.656c1–d2, 111	3.693b5–c5, 79
2.656c4–5, 205n34	3.693c2, 183n28
2.658b7–c1, 203n18	3.693c7–d1, 80
2.658c1, 203n18	3.693d2–e3, 80, 88



3.693d4-5, 89	4.710e6-7, 195n47
3.693d8, 88	4.711a2, 48, 190n1
3.693e5, 89	4.711a2-3, 48
3.694a3-b6, 81	4.711b7-9, 48
3.694b2, 82	4.711b8-c4, 48
3.694b6, 207n25	4.711d1-712a7, 230n8
3.696b6-697c4, 75	4.711d2-3, 49
3.696b6-c1, 75	4.711d6-7, 195n51
3.696c2-7, 75	4.711d6-712a3, 49
3.696c8-10, 77	4.711e1-3, 49
3.696c8-11, 75	4.711e4, 49, 55, 200n25
3.697a2-3, 186n30	4.711e8-712a3, 49
3.697b2-4, 75	4.712a1-3, 211n28
3.697b2-6, 207n20	4.712a2, 49
3.697c7-d3, 82	4.712a4-5, 50
3.698b1-6, 100	4.712b2-5, 19
3.698b2-6, 83	4.712c2-5, 95
3.698b5-6, 101	4.712e9-713a2, 18
3.700a3-5, 82, 100	4.713a2-4, 19, 22
3.700a6-701b3, 84	4.713a3-4, 99
3.701c2, 83	4.713a9, 19
3.701d7-9, 22, 78	4.713b3-4, 19
3.701d8-9, 207n25	4.713c8-d5, 19
3.702b4-6, 23	4.713e4-6, 18
3.702b4-d5, 14, 16, 24	4.713e6, 19
3.702c1-8, 23	4.714a1-2, 19
3.702c2, 23	4.714a2-4, 95
3.702c7-8, 23	4.715a1-2, 144
3.702d1-2, 23	4.715a7-716a2, 142
3.702e2-3, 53	4.715d3-6, 45, 98
4.704a1-705c6, 185n11	4.715d7-e1, v, 45
4.705d2-706a4, 74	4.715e3-4, 110
4.709b7-c3, 225n22	4.715e3-5, 23
4.709d2, 48	4.715e3-718a6, 25
4.709d9-710a1, 195n48	4.715e7, 136
4.709d10-712a7, 45, 48	4.715e7-716a2, 18, 111
4.709e6, 48, 190n1	4.715e7-716b7, 134
4.710a5b2, 206n3	4.715e7-718a6, 23, 26, 28, 138
4.710c7, 48	4.716b4, 134
4.710c8, 48	4.716b4-5, 134
4.710d1-711a3, 195n47	4.716b5-6, 134
4.710d8, 48	4.716b5-7, 136
4.710e3, 190n1	4.716b6, 111
4.710e3-5, 95	4.716b6-7, 217n23

Plato, *Laws* (continued)

4.716c1, 134, 137	4.720e7–721d6, 118
4.716c3, 111	4.720e10–721e3, 27
4.716c4, 139	4.720e11, 118
4.716c4–6, 18, 111	4.721b1–3, 27, 109, 128
4.716c5–6, 139	4.721b4–e3, 27
4.716d1, 111	4.721b6–7, 129
4.716d1–4, 139	4.721b6–c8, 26, 128
4.716d2, 111	4.721b6–d6, 131
4.716d4–e2, 139	4.721b7, 119
4.717d7–e1, 112	4.721b7–8, 222n17
4.718b6, 107	4.721c2–3, 129
4.718c3–6, 23	4.721c7, 129, 132
4.718d3, 111, 201n4	4.721c8–d6, 128
4.718e1–719a3, 70	4.721d5–6, 218n42
4.719a7–723d4, 110	4.721d7–723, 119
4.719a7–e5, 30	4.721d8–e3, 119
4.719b1–2, 111, 112	4.721e4–722a5, 188n44
4.719b4–7, 111	4.722a2–5, 198n10
4.719d1–2, 112	4.722a7–b1, 119
4.719d4–7, 112	4.722b3–4, 119, 121
4.719d1–e5, 229n21	4.722b4–c1, 17, 110, 223n26
4.719d7–e3, 112	4.722b6, 119
4.719e7–720a6, 114	4.722b6–7, 220n55
4.719e7–720e6, 110	4.722c1, 131
4.719e7–721e6, 113	4.722c2, 20
4.719e8, 113	4.722c8, 17
4.719e9, 109	4.722d3–6, 71, 120
4.720a1, 113, 217n26	4.722d6–7, 120
4.720a2, 113	4.722e1–4, 120
4.720a4–6, 117	4.722e1–7, 17
4.720a7, 117	4.722e6, 119
4.720b3, 117	4.722e7–8, 20
4.720b4, 117	4.722e7–723a4, 109
4.720b5, 122	4.723a3–4, 120
4.720b8–e2, 114	4.723a3–7, 221n6
4.720c3–5, 118, 183n28	4.723a5, 109
4.720c6–7, 117	4.723c1–d4, 217n27
4.720d1–e2, 121	4.723c6–8, 220n3
4.720d3–4, 118	4.723c8–d2, 220n3
4.720d5–6, 118, 122	4.724a7–b5, 188n45
4.720e2–5, 118	5.726a1–730a9, 138
4.720e3, 118	5.726a1–734e2, 23, 25, 26, 28
4.720e4, 118	5.726a3, 139
	5.726a5, 139

# INDEX LOCORUM 259

S.727a1, 139	S.732d7, 139
S.727a2-7, 139	S.732d8-734e2, 139
S.727a5, 139	S.732e2-3, 141
S.727a7-b3, 141	S.732e3, 200n25
S.727a7-b4, 139	S.732e4, 141
S.727b1, 142	S.732e4-7, 72, 224n14
S.727b3, 139	S.732e6, 141
S.727b4-c1, 139	S.733a8-d6, 141
S.727c1, 139	S.733a9-c1, 141
S.727c1-4, 140	S.733d2, 224n14
S.727c4-7, 140	S.733d2-4, 224n14
S.727c7-d5, 140	S.733e3-5, 141
S.727d6-e3, 140	S.734b4, 141
S.727e3-728a5, 140	S.734e3, 189n56
S.728c2-5, 223n28	S.734e3-4, 188n45
S.728d6-e5, 140	S.734e3-6, 26
S.728e2, 140	S.734e3-735a7, 25
S.728e5-729a2, 140	S.734e5, 25, 63, 136
S.729a2-b2, 224n10	S.734e6-735a4, 161
S.730b1, 138	S.735a5, 136
S.730b1-3, 138	S.735a5-6, 25, 27
S.730b3-4, 138	S.735a6, 136
S.730b4, 140	S.735a7, 25
S.730b5-734e2, 138	S.735a7-736c4, 26
S.730b5-c1, 221n6	S.735d5-736b4, 200n31
S.730c1, 139, 140	S.735d7, 26
S.730c2-3, 139	S.735e3-7, 134
S.730c4, 140	S.736a3-5, 194n36
S.730c6-d2, 140	S.736c5-747e11, 26
S.730d2, 140	S.736d1-3, 196n55
S.730d2-7, 141	S.737c1-738a1, 199n19
S.730d2-e3, 141	S.737c1-738b1, 186n30
S.731a1-4, 141	S.737e1-2, 27
S.731b4-d5, 141	S.738a1, 26
S.731c2-5, 141	S.738b3, 26
S.731c5, 142	S.739a1, 56, 58
S.731d6-732b4, 141	S.739a1-3, 32, 54
S.731e4, 141	S.739a1-e5, 17
S.732a4-b2, 141, 148	S.739a1-e7, 58
S.732b5, 140	S.739a2, 26
S.732b6-7, 140	S.739a4-5, 26, 162
S.732c1-4, 224n13	S.739a5-6, 32
S.732d4, 224n14	S.739a5-b7, 24
S.732d6, 140	S.739a7, 57, 188n47

Plato, *Laws* (*continued*)

5.739a13, 207n17	6.752e6–7, 211n32
5.739b3, 188n47	6.753b4–d6, 212n32
5.739b3–7, 24	6.754c6–7, 211n32
5.739b8–c2, 122	6.755b6–756b6, 208n2
5.739b8–d5, 60	6.755e4, 210n25
5.739c1–3, 61	6.756b7–e8, 90, 208n2
5.739d5–e3, 59	6.756b8, 186n30
5.739d6, 49, 200n25	6.756e5–6, 94
5.739d6–7, 134	6.756e9–10, 87, 89
5.739d6–8, 64	6.756e9–758a2, 91, 208n2
5.739d6–e1, 52	6.757a1, 92, 210n24
5.739d7, 201n3	6.757a1–2, 209n14
5.739d8, 199n19	6.757a2–3, 92
5.739e1, 26	6.757a7–b1, 93
5.739e1–3, 54, 125	6.757b1, 210n24
5.739e3, 190n1	6.757b2, 93
5.739e4, 26, 183n28, 230n11	6.757b2–3, 93, 211n28
5.739e5, 57, 188n47	6.757b5, 186n30
5.739e8–740a7, 56	6.757b5–6, 99
5.739e8–741a5, 58	6.757b6, 93
5.741a6–c6, 26	6.757c1–6, 93
5.741b7–e3, 26	6.757c2, 186n30
5.741e1–6, 104	6.757c7–8, 92
5.741e6, 126	6.757c8–d1, 199n19
5.741e7, 26	6.757d1, 188n47
5.741e7–746e6, 54	6.757d5–6, 199n17
5.742e1–4, 198n6	6.757e2, 94
5.744a8–745b2, 207n27	6.757e3, 93
5.745d8–e2, 210n22	6.759b7–c6, 210n22
5.745e7–746a1, 54	6.762e1–5, 98
5.745e8–9, 54	6.763e2–3, 210n22
5.746b5, 54	6.764a3, 210n25
5.746b5–d2, 24, 54	6.765a6, 210n25
5.746b8–c4, 197n4	6.765d4–5, 65
5.746c2, 54	6.765e2, 65, 96
5.746d4–5, 186n30	6.768a5, 210n25
6.751a3–b2, 29	6.768b1–c2, 210n22
6.751a4, 27	6.768d7, 189n56
6.751a4–b2, 27	6.768d7–e3, 27
6.751a5, 189n51	6.768e3, 27
6.751c6, 211n28	6.768e4–771a4, 27
6.752d7–755b6, 208n2	6.769a1–2, 185n17
6.752d7–e2, 211n26	6.770a5–7, 185n17
	6.770b4–8, 198n12

6.770c7-e1, 74	7.811c7, 17
6.771a5, 27	7.812c5-6, 223n31
6.771a5-772d4, 27	7.813a7-817e4, 149
6.772d5, 27	7.816d3-9, 103
6.772e7-774a1, 131	7.816e5-10, 103
6.773a1-2, 133	7.817a2-d8, 31, 226n2
6.773a6, 132	7.817b, 228n16
6.773a7-b4, 132	7.817b3-5, 149
6.773b4-5, 132, 203n14	7.817b6, 149
6.773b6-7, 132	7.817b7-8, 149
6.773c6, 132	7.817b8, 3, 151
6.773c8-d4, 87	7.817c5-6, 149
6.773d1, 132	7.817c6-7, 152
6.773d6, 133	7.817d4, 152
6.773e2, 133	7.817e1-818a2, 104
6.773e3, 132	7.817e5-822de, 93
6.773e3-4, 216n13	7.818b9-d1, 196n54
6.773e4, 132	7.819a8-b2, 104
6.773e5, 133, 217n26	7.819b4, 186n30
6.773e6-774a1, 222n14	7.822d3-824a19, 130
6.773e6-774c1, 132	7.823a3-5, 131
6.774a1-3, 133	7.823a4-6, 113
6.777e4-778a2, 104	7.823a5, 113
6.778b5-c1, 198n12	7.823b1-c1, 130
6.778d3-779c4, 200n31	7.823c7-d2, 113
6.779c5-d2, 198n12	7.823d1, 131
6.780d5, 215n1	7.823d3, 113
6.781d9-e3, 16	7.823d7-e2, 103, 131
7.786c6-814c1, 222n25	7.823e2-4, 130
7.790a5-6, 219n50	7.823e5-824a2, 103
7.793a10, 29	7.824a8-9, 131
7.795a1, 215n1	7.824a9, 130, 187n34
7.799e10-12, 218n45	7.824a10, 130
7.803c4-5, 68	7.824a11-19, 130, 131
7.804b5-6, 68	7.824a16-17, 131
7.806d7-807b, 201n5	8.828b3-5, 198n12
7.806d7-807c1, 214n57	8.829a6-b2, 206n9
7.806d7-807d5, 30	8.829a8-832d8, 188n39
7.807c1-e2, 106	8.832b10-c3, 95
7.808b5-c2, 222n20	8.832c9-d2, 85
7.808d4-5, 201n4	8.835e5, 215n1
7.811b6-c2, 190n66	8.836e4, 215n1
7.811b8, 190n66	8.837c2-842a2, 220n3
7.811c6, 190n66	8.838c4, 229n26

Plato, <i>Laws</i> ( <i>continued</i> )	9.863b1–c2, 175n
8.838c4–7, 152	9.863b2–3, 174
8.838c7, 153	9.863b3, 232n22
8.840e2–841c2, 200n31	9.863b6–9, 224n14, 232n25
8.841c6–7, 196n55	9.863b8–9, 175
8.842e6, 126	9.863c1–2, 175n
8.847e2, 186n30	9.863c1–6, 148
8.848d2–3, 184n9	9.863e2–3, 202n13
9.853a1–10.910c4, 126	9.863e3, 174
9.853a5, 29	9.863e6–8, 176
9.853b4, 30	9.863e7, 175n
9.853b4–d4, 133	9.864a1, 175n
9.853c3–7, 50, 134, 200n25	9.865d–3, 105
9.853d3, 133	9.870a2, 201n4
9.853d8–10, 221n5	9.870d5–e3, 134
9.853d10–854a1, 133	9.870e1–2, 134
9.854a3, 133	9.870e4, 134
9.854a4–5, 135	9.871a4, 210n25
9.854a5–6, 135	9.872c7–d7, 133
9.854a6, 135, 217n26	9.872d6, 135
9.854b1–4, 135	9.872d7–e1, 134
9.854b4, 135	9.872e1–2, 135
9.854b5, 135	9.872e2–3, 135
9.857b2, 106	9.872e3, 135
9.857b3–864c11, 31	9.873a3–4, 135
9.857b4–8, 121	9.873c2–d1, 223n33
9.857b8–864e7, 220n3	9.874e7–875d6, 220n3
9.857c1–3, 110	9.874e8–875d5, 45
9.857c4–5, 121	9.875b, 46
9.857c4–e1, 121	9.875b3–4, 47
9.857c7–e1, 122	9.875b3–c6, 205n40
9.857d2, 122, 183n28	9.875b4, 47, 48
9.857d2–4, 135	9.875b4–5, 47, 195n44
9.857d3–4, 121	9.875b7, 223n8
9.857e2, 122	9.875c, 46
9.857e3, 219n52	9.875c3, 194n41
9.857e4–5, 122	9.875c3–d2, 24
9.857e8–858a6, 16	9.875c4, 194n40
9.857e10–858a6, 199n17	9.875c6–d2, 97
9.857e10–858c1, 20	9.875d, 46
9.858b4, 14	9.875d3, 162, 183n28,
9.859b8–c2, 20	195n44
9.860e6, 184n9	9.875d4–5, 162
9.863b1–9, 175	9.880a7, 217n26

9.88od8, 29	10.891c3, 145
9.88od8-e3, 133	10.891d6, 146
9.88oe4-6, 199n17	10.891d7-e3, 146
9.881a8-b2, 135	10.891e3, 146
10.885b6-9, 142	10.892a8, 145
10.885c8-d4, 146	10.892c2-5, 145
10.885d2, 226n31	10.892d2-893a7, 225n27
10.885e1-3, 226n31	10.895b5-6, 144
10.885e5, 226n31	10.895e10-896a2, 144
10.886c2-3, 143	10.896b10-c3, 144
10.886d4-e2, 143	10.896c2-3, 144
10.887a2-8, 144	10.896c9-d3, 145, 225n28
10.887a3, 142	10.896d5-899d4, 144
10.887b1-2, 144	10.896d7, 145
10.887b8-c2, 142	10.897a1-3, 145, 225n28
10.887c7-888a4, 147	10.897b1-2, 186n24
10.888a2, 225n19	10.897b1-4, 145
10.888a3, 147, 148, 225n19	10.897b7-899d3, 145
10.888a6, 135	10.897c4-5, 145
10.888c2-7, 142	10.897c4-899a10, 216n20
10.888d2, 225n19	10.897c6, 216n20
10.888d3-4, 147	10.897c7-9, 145
10.888d4, 147, 225n19	10.898c2-5, 145
10.888d7-899d3, 142	10.899b3-9, 145
10.888d8, 143, 225n19	10.899d4-905d3, 142
10.889a4, 143	10.899d6, 217n26
10.889b3-c6, 143	10.904a9, 215n1
10.889b5, 144	10.904c9, 215n1
10.889c5-6, 144	10.905a1-c1, 223n29
10.889c6-d6, 143	10.905d3-907b4, 142
10.889d1, 143	10.906a2-6, 216n16
10.889d8-e1, 143	10.906a2-b3, 153
10.889e1, 143	10.906a7, 203n22
10.889e3-5, 144	10.907b5-d3, 224n17
10.889e5-6, 144	10.907d1, 142
10.889e6, 215n1	10.907d4, 142
10.889e6-890a2, 144	10.907d4-6, 224n17
10.890a2-5, 144	10.907d6, 224n17
10.890b3-891b4, 186n24	10.907d7-909d2, 226n35
10.890d4, 215n1	10.908a4, 190n63
10.890e1-3, 144	10.909a3-4, 190n63
10.890e4-6, 218n43	10.909a5-8, 226n35
10.890e6-891a7, 216n13	11.913a1-932d8, 126
10.891b8-896d4, 144	11.913c1-d3, 220n3

Plato, *Laws* (continued)

11.919d3–4, 184n9  
 11.919e2–5, 105  
 11.923c2, 217n26  
 11.928a1–2, 217n26  
 11.935b7, 210n25  
 12.946b1–3, 210n22  
 12.946b6, 184n9  
 12.946c5–7, 104  
 12.951b4–c4, 231n19  
 12.951d4–5, 189n63  
 12.951d6–7, 190n63  
 12.958c7–959a3, 229n21  
 12.958c7–d3, 221n4  
 12.960b1–6, 30  
 12.960b5–969c2, 30  
 12.961b6, 190n63  
 12.962b5–6, 210n26  
 12.962d2–3, 74  
 12.962d3–5, 74  
 12.963a1–4, 74  
 12.963a1–965e7, 76  
 12.963a6, 205n1  
 12.963c5, 205n1  
 12.963c5–d7, 76  
 12.963d6–7, 76  
 12.963e1–8, 187n34, 206n4  
 12.963e6–7, 206n4  
 12.964c7, 76  
 12.965c2, 76  
 12.965c10, 76  
 12.965d6–7, 76  
 12.966d9–967a5, 186n24  
 12.967c5–d2, 219n49  
 12.967e2–3, 205n35  
 12.969c4–d3, 16

*Lysis*

214a6, 216n22

*Menexenus*

238c5–239a4, 211n30  
 238d1–2, 211n30  
 238d4–5, 211n30

*Meno*

87b8–c1, 207n18

*Phaedo*, 228n15

58b5, 215n1  
 60d8–61b8, 205n35  
 62b6–9, 203n22  
 62b6–c4, 222n22  
 62bd1–3, 203n22  
 65b9, 192n31  
 83d4–8, 231n12  
 83d7, 172  
 114d8–115a3, 212n39  
 114e4–115a1, 99  
 115a5–6, 229n20

*Phaedrus*

256d7, 215n1  
 259a1–b2, 222n20  
 261a7–b2, 120  
 266d7–8, 185n19  
 268c5–d2, 229n22  
 275d5–9, 216n13  
 277c3–6, 220n55

*Philebus*

14a3–4, 202n14  
 23c4–d8, 162  
 26d8, 162  
 27b8–9, 162  
 32b9–c2, 202n8  
 36c6–e13, 99  
 47e1, 150  
 50b1–4, 150, 229n20  
 55d10–56a2, 209n17  
 67b6, 205n35

*Protagoras*

337d2–3, 187n33, 215n3  
 337e2–338b1, 218n43  
 347a2, 194n41  
 353c1–354e2, 141

*Republic*

1.329c3–4, 213n42  
 1.344a4–b1, 34  
 1.347b9–d2, 190n2  
 1.354b4–5, 33  
 2.367e1–5, 33  
 2.369a5, 36  
 2.369a5–6, 40



2.369a6, 33, 53	4.444d3-e3, 34
2.376e2-3.412b6, 36	4.445a5-b4, 33, 34
2.377a12-b3, 194n36	4.445b5-7, 34
2.379a5-6, 18	4.445c1-2, 34
2.383c3-5, 193n35	4.445d6, 44
3.387c9-d3, 229n22	5.449b1, 44
3.395b8, 202n14	5.449c2-450a2, 36, 200n31
3.396d4-5, 195n44	5.450c1-5, 36
3.398a8-b4, 228n10	5.450c6-6.502c7, 36
3.413a3-d2, 232n15	5.450c6-d2, 36
3.416c5-d1, 35	5.451c1-3, 191n8
3.416d4-6, 35	5.451d4-457b6, 36
3.417a3, 35	5.452a7-c2, 219n50
3.417a6, 35	5.452c2, 36
4.423e6-7, 35	5.453d2, 35
4.423e6-424a2, 35	5.454a4-9, 37
4.427e6-444e6, 75	5.454c9, 37
4.428a11-429a7, 33	5.455d6-e2, 37
4.429a8-430c7, 33	5.456c4-457a2, 37
4.430d6-431b5, 132n15	5.457b7, 36
4.430d6-432b1, 34	5.457b7-471c2, 36
4.430e6-431a1, 65	5.457b8, 36
4.431a4-5, 66	5.457c4-5, 36
4.432b2-434c3, 34	5.457c7, 35
4.433d3, 212n34	5.458b1-7, 37
4.434c8, 223n8	5.458b9-471c3, 37
4.434d1, 34	5.462a9-e3, 200n31
4.435a4, 34	5.471c3, 34
4.435c4-440c7, 171	5.471c4, 37
4.435c4-441c8, 66	5.471e4, 37
4.435c5, 231n9	5.471e4-5, 191n16
4.435c9-d5, 232n20	5.472a1-473b2, 38
4.436a8-b2, 231n9	5.472a3, 191n10
4.439d2, 202n8	5.472b1, 191n19
4.439d4-8, 202n7, 231n9	5.472b3-6.502c8, 37
4.440e2-441a3, 202n7	5.472b3-473b3, 43
4.440e4-6, 171	5.472b7-c2, 192n32
4.442b11, 172	5.472c, 40
4.442b19, 231n9	5.472c1, 183n28, 192n32
4.442c4, 231n9	5.472c4, 33
4.442c5, 172	5.472c4-d1, 38, 191n19
4.442c10-d1, 169, 172	5.472d4-7, 38
4.443d1-7, 174	5.472d4-9, 40
4.444c5-6, 224n14	5.472d9-10, 38

Plato, <i>Republic</i> ( <i>continued</i> )	7.527c1–3, 197n61
5.472e7, 39, 191n4	7.531d7–535a2, 192n29
5.473a1–3, 41, 42	7.531e4–5, 218n38
5.473a5–b1, 39, 125	7.533d7–e2, 207n18
5.473a5–b2, 37	7.534b3–6, 218n38
5.473a6, 192n30	7.535a3, 186n30
5.473a7, 193n32	7.540a9, 40
5.473a8, 41, 183n28, 193n32	7.540e5–541a7, 43
5.473b1, 183n28	7.540e5–541b1, 193n34
5.473b4, 41	7.541b2–3, 191n5
5.473b4–6.502c7, 42	8.545b9, 44
5.473b6, 193n33	8.546a1–3, 44
5.473c3, 193n33	8.546a2–3, 189n54
5.473c4, 42	8.548b8–c1, 205n35
5.473c7–8, 191n10, 219n50	8.553b8, 231n11
5.473c11–d3, 195n51	8.553d1, 231n11
5.473c11–e2, 18, 43	8.554c11–d3, 172
5.473c11–e5, 24, 205n41	8.558c5–6, 210n18
5.473c11–e12, 42	9.571d6, 174
5.473e1–2, 41	9.571d6–572b1, 174
5.474c1, 43	9.572a5–6, 174
5.475e4, 192n31	9.572a7–8, 192n31
5.476e3, 192n29	9.580d7–581e5, 169
6.484c7–8, 40	9.580d10–581a1, 169, 173
6.498d8, 193n35	9.581a6, 231n9
6.498e3–499a2, 193n35	9.581d–588b, 224n14
6.498e4, 192n32	9.587a10, 215n1
6.499a11–d5, 45	9.587c2, 215n1
6.499b1–d5, 44	9.587d12–e4, 34
6.499b3–6, 195n50	9.588b1–591b8, 34
6.499b3–c2, 195n51	9.589a7b1, 201n2
6.499c4–5, 48	9.590e3–4, 192n27
6.499d3–4, 205n35	9.591b8, 33
6.500c9–d1, 193n35	9.591c1, 34
6.500d10–501c8, 193n34	9.591c1–592b6, 34
6.500e3, 40	9.591e1, 192n27
6.501a2, 193n34	9.592a8–9, 195n50
6.501a9–c4, 193n34	9.592b2, 40
6.502c5–7, 36, 38	9.592b2–3, 40
6.502c7, 191n19	9.592b3, 192n27
6.504c9–d3, 232n20	10.600e6, 192n31
6.510c6–7, 218n38	10.604a10, 215n1
7.514b6, 203n18	10.604b6, 215n1
7.520e14–521a8, 190n2	10.604b12–c1, 152

10.604e2–5, 228n10	293a6–d2, 164
10.605c10–606e1, 152	293e3–6, 165
10.606e1–607b3, 6	293e4, 165
10.607a2–8, 227n7	294a6–296a4, 162
10.607a7, 215n1	294b2–6, 162
10.607b5–6, 204n32	294b8–c4, 216n13
10.608a6–7, 192n31	295a5, 162
10.608d2–612a6, 232n20	295c7–e2, 162
10.621b8, 202n14	297c1–4, 165
<i>Sophist</i>	298a1–c3, 167
216d2–217a2, 229n2	300b1–6, 231n19
218b6–c1, 229n2	300c2, 162
218d8–9, 40	300c5, 183n28, 230n19
220a7–223b7, 130	300c5–7, 165
222b7, 201n4	300d10–301c4, 165
223b4–5, 130	300e11–301a4, 162
229c1–10, 148	301a10–d6, 164
230e6–231a6, 226n34	301c9–d6, 193n35
263e3–5, 138	301d8–e4, 165
265d7, 220n55	301e2–4, 24
<i>Statesman</i>	301e3, 165
258a3–b5, 229n2	301e3–4, 231n19
261e5–7, 207n18	303e10–304a2, 116
268d5–274e3, 187n32	304a1, 120
275a4, 163	309c1–3, 176
275b1–7, 189n52	309c1–310a6, 230n9
276e1–14, 163	309d2–3, 205n35
277d1–2, 40	310a7–311a2, 132,
278b4–5, 40	230n9
278c4, 40	<i>Symposium</i>
278e9, 40	182a7, 215n1
283b1–c6, 218n43	184b5–c7, 100
283c3–285c2, 88	206c1–207a4, 119, 129
284a5–b2, 209n17	206e7–207a4, 129
284e4–5, 88	<i>Theaetetus</i>
284e6–8, 88	152a2–4, 186n26
284e7–8, 217n24	164a1, 202n14
284e9–10, 88	167d3–4, 202n14
285b7, 217n24	172d8–9, 218n43
285c8–d8, 159	174a4–8, 219n50
288c3, 228n15	176a5–8, 216n16
291d1–292d1, 164	186e4, 192n31
292e1–5, 165	189e6–190a2, 138
293a6–c3, 116, 214n55	201a7–c7, 220n55

Plato ( <i>continued</i> )	54d2–55c6, 199n17
<i>Timaeus</i>	56c5–6, 198n17
17a2, 230n2	60e2, 215n1
17c1–19b2, 191n22	69c5–d1, 176
19b3–c8, 199n18	69d1, 202n8
21e4–6, 191n22	69d1–4, 176
22c7–d3, 187n36	69d6–70a7, 176
23e4–24d6, 191n22	72d4, 176
24a2–4, 191n22	89d6, 193n34
27a3–b6, 230n2	90e6–92a1, 222n15
28a6–7, 57	Plutarch
29d7, 56	<i>Lycurgus</i>
29e1, 57	26, 207n14
30a3, 193n34	<i>On moral virtue</i>
30a3–6, 57	7.446d, 226n41
30c3–d1, 57	
31a3–4, 57	Seneca, <i>Letters</i>
37d2, 193n34	94.2–94.17, 233n4
38c1, 193n34	94.37, 215n8, 233n5
39d4, 187n36	Stobaeus, <i>Anthology</i>
41a7–b6, 194n37	II.2.7, 206n3
41a7–d3, 222n15	IV.2.19.123.12–127.19, 185n19
41b6–c5, 203n23	
42e2, 193n34	Theodoretus, <i>Therapy of Greek Diseases</i>
47e5–48a5, 198n17	6.34, 206n3
48e4–49a1, 57	Theophrastus, <i>Characters</i>
49a1–55c6, 57	6.4, 203n18
51d3–e6, 220n55	Thucydides, <i>History of the Peloponnesian</i>
51e6, 195n44	<i>War</i>
52a8–53a8, 42	8.97.2, 206n13

## GENERAL INDEX

- Aeschylus, 2, 6, 86, 182n15, 219n29  
 aim, as distinguished from ‘goal’ and ‘target,’  
     25, 26, 31, 54, 74, 75, 78, 79, 107, 116, 117, 130,  
     154, 189, 210n26  
 analogy: between body and soul, 114; be-  
     tween city-in-speech and Form, 41, 218;  
     between human beings and puppets, 21,  
     59, 66, 69, 107, 108, 155, 170, 201n2, 202n13,  
     204n27; between medicine and politics,  
     doctor and lawgiver, 28, 110, 113, 115–22, 133,  
     145–47, 163–64, 217n33, 223n26; between  
     ruler and shepherd, 19, 26; between soul  
     and city, 33, 34, 40, 84, 176, 200n36  
 Anaxagoras. *See nous*  
 anger, 140, 147, 150, 174–76, 202n13, 214n51,  
     232n25; noble, 141. *See also* pity  
 animal, 144, 222n10; political, 132; tame and  
     wild, human and divine, 65, 69, 72, 201n4,  
     204n24  
 anthropology, 3, 65–67. *See also* human  
     being; *Laws* (Plato), substantial features  
 Antiphon, 108  
 Apollo, 16, 17, 186n23  
 approximation, 9, 38–40, 42, 62. *See also*  
     paradigm  
 Archelaus, 225n4  
 Archytas of Tarentum, 93, 209n15  
 Argos, 22, 97  
 argument: human vs. divine, 59; rational,  
     philosophical, 62, 106, 121, 128, 130, 132  
 aristocracy, aristocratic, 6, 19, 44, 78, 84, 95,  
     164, 172, 211n30, 214n54, 222n21  
 Aristophanes, 51, 144, 197n66, 225n25  
 Aristo the Stoic, 178, 233n4  
 Aristotle: on equality, 209–10n18; on the first  
     mover and on nature, 143, 145; on liberality,  
     105; on the mean, 88; on metaphor, 174;  
     on mixed constitutions, 208n3; on Plato’s  
     *Laws*, 2, 5, 31, 36–37, 151, 176, 177, 191n14,  
     198n13, 201n39, 206n13, 211n27, 214n50,  
     233; on rhetorical terminology, 127–28,  
     130, 138, 221n8; on Sparta’s constitution,  
     78, 228n13; on tragedy, 228nn13 and 14,  
     229nn23 and 25; on voluntariness, 101;  
     on wonder (*thauma*), 67–68  
 Assembly, 83, 85–87, 87, 95, 167, 208n1,  
     210n25  
 Athens. *See* constitution; *Laws* (Plato); Persia  
 Atlantis, 199n18, 230n2  
 Augustin, 3  
 authority: and freedom, 15, 22, 81, 83, 90, 92;  
     moral and political, 18, 27, 95, 98, 112, 132,  
     179, 195n52, 209n8, 210n26  
 autocrat, 47, 67, 195n44. *See also* despot; tyrant  
 belief, 46, 66, 130, 134, 143, 172, 175, 176, 194n38,  
     195n44, 202n15, 215n1, 231n12. *See also* law  
 best vs. second-best: city, 1, 4, 5, 7, 20, 26,  
     57–62, 64, 137, 141, 150, 156, 165–66, 201n5;  
     constitution, 4, 7, 31, 49, 65, 86, 150, 156,  
     189, 206n13, 214n57; in the *Statesman*,  
     160. *See also* city, first and second city;  
     constitution  
 board game, 32, 58, 199nn21 and 22  
 Bodin, Jean, 181n4  
 Brucker, Jacob, 32, 50, 51, 192n20, 197n22

- chance (vs. god, craft, nature), 143, 145, 189n51, 195n50, 225n22; encounter of philosophy and political power by, 43, 48, 55
- Charondas, 185n19
- checks and balances, 86, 155, 209n5
- children: gods and children of gods, 49, 58, 64, 134, 200n25, 201n3; human beings as, 72, 113, 117, 129, 194n36; public possession of women and, 35–37, 40, 58, 60, 191n7, 198n11, 200n32, 214n57. *See also* education
- Chrysippus, 233
- city, first and second, 5–7, 42, 50, 52, 54, 55, 57, 58–60, 64, 72, 85, 86, 123, 125, 137, 155, 161, 165, 195, 197–99; the *Laws*’ ‘first city,’ 60–62; third, 57, 188, 197, 199. *See also* best vs. second-best; immortality; paradigm
- closed society, 7
- command. *See* law, form of
- common meals (*sussitia*), 201n5, 214n57
- constitution (*politeia*): associated with laws, 1, 3, 5, 23, 26, 44, 49, 64, 65, 76, 86, 95, 137, 151, 189, 206; of Athens, 83, 100; ‘constitutional laws,’ 25, 28, 31, 136; mixed, 15, 22, 23, 78, 79, 81, 87, 119, 156, 206, 209, 210; of Sparta, 22, 81, 86–88, 207; true, 24, 164–65, 167, 231n19. *See also* aristocracy; Aristotle; best vs. second-best; democracy; *Laws* (Plato); middle; monarchy; oligarchy; tyranny
- constitutionalism, 7
- corruption. *See* power
- Council, 62, 78, 81, 86–89, 90, 94, 96, 166; councilors, 95, 166, 210. *See also* selection; Watch
- craft, craftsman, 33, 41–42, 52, 56–57, 115, 116, 118, 122, 143–145, 222n10, 225n22; skill, 21, 116, 187n36, 214n57. *See also* Demiurge; expertise
- Cretan colony, 15, 23, 24, 31, 55, 57–58, 59, 110, 150, 200n29
- Cyrus, 15, 22, 27, 57, 61, 207n22
- dance: choral dance, 21, 65, 69–71, 103, 104, 149–50, 188n40, 204n25, 222n18; performance, 1, 103, 120
- Demaratus, 78
- Demiurge, 42, 57, 189n54, 193n34, 194n37, 198n17, 203n23, 222n15
- democracy, 6, 18, 19, 22, 48, 80, 82–85, 87–90, 92, 95, 164, 195, 208–211; democratic principle, 81, 155; dubbed ‘theatrocracy,’ 83; representative, 94
- desire: appetite, 66, 131, 171–73, 175; rational, irrational, 75, 99, 101, 103, 129, 135, 141, 169–70, 173, 175–177, 205n35, 222n15. *See also* love
- despot, despotic, 6, 18, 45, 83, 92, 97–98, 100, 101, 117, 118, 209n8; despotism, 22, 78–80, 82, 86, 89, 95, 96. *See also* master; tyrant
- dialogue: Plato’s dialogues, 1, 13; discussion within the *Laws*, 110, 118, 121, 135; philosophical, 62, 123–25
- Dionysus, 83, 188n40
- Dionysus I, 161
- Dionysus II, the Younger, 48, 161
- distribution (*dianomē*): of a booty, 210n18; of the five geometrical solids, 199n17; of land, 56, 58; by lot, 91; of/by *nous*/reason, 19; of powers and honors, 87, 89, 93, 209n11; various types of, 186n30
- divinization, 69–70. *See also* god
- doctor: abusive, 163, 166; assistants, 117, 218n36; free and slave, 106, 113–14, 117–19, 120–22, 124, 145–48; 218n37; quasi-philosophical discussion with patients, 122, 124, 147, 148. *See also* analogy; master; Zalmoxis
- Dorians, 22, 23, 97, 184n10, 185. *See also* education
- Dostoyevsky, 7
- dream, 50, 196n60, 205n35
- drinking party (*symposium*), 21, 188nn38 and 39, 198n6, 201n5. *See also* common meals (*sussitia*); wine
- economy, 26, 54, 82, 83, 104, 189n53, 201n23; economic laws, 27, 31. *See also* household
- education: aiming at virtue, 15, 23, 149; of children, 43, 93, 104, 153; curator of, 65, 94, 96, 211n18; deficient, 30, 70, 133; definition of, 21, 130, 149, 150, 211, 222;

- degrees of, 56, 70, 91, 161, 214n50; Dorian, 15; early, 29, 69, 101, 190; educational program, 93, 130, 149–50, 186n30; extending throughout life, 57, 72; in general, 84, 126, 155, 179, 188nn38 and 40, 201n2, 209n17; highest, 190n64; and hunting, 222n19; and leisure, 105; musical and choral, 71, 187n35; and praise, 221n6; in the *Republic*, 36–38; 149. *See also* music; virtue; wine
- egoism, selfishness, and self-love, 58, 132, 139, 140–142
- ephors, 78, 81, 86, 88, 89, 207n14
- equality: 1, 7, 37, 75, 81–82, 89; arithmetic (democratic) vs. geometric (proportional), 91–94, 209, 217; as a fourth legislative target, 93; and freedom, 1, 7, 95–96, 186, 204n28; and friendship, 90, 98; true, 90–93, 99, 155
- equity, 210n21; and indulgence, 91, 94
- etymology. *See* name(s)
- Eusebius of Caesarea, 3
- excellence (*aretê*). *See* virtue
- excess: of confidence, 21; of freedom, 83–84; and mean, 1, 88–89, 195n44, 217n24; of pleasure, 155; of power, 58, 82, 166; of self-love, 141
- exhortation, 28, 62, 111; and incantation or blame, 133; and persuasion, 113; self-exhortation, 135
- expertise: medical, 114–16; political and legislative, 5, 7, 24, 46, 48–49, 114, 118, 122, 159, 161–63, 166, 189n50. *See also* craft; knowledge
- al-Farabi, 4
- feasibility. *See* possibility
- Ficino, Marsilio 181n4, 203–204n24
- fight: cosmic, 153; legislative, 110, 119, 134, 216n16, 202n6; for national independence, 78–81; between rational and irrational desires, 170, 212n35
- flexibility. *See* name(s); preamble
- foreigners, 137, 138, 221n5
- form: of government, 18; Plato's Forms, 40–41, 43, 57, 72, 76, 154, 162, 198n6, 220n55. *See also* law; *Laws* (Plato)
- Founding Fathers, 181n4
- freedom: conceptions of, 99, 102, 105, 106, 212, 213, 218; excessive, 83–34; free life, 83, 222; and friendship, 96, 117, 148n42; as independence (national or otherwise), 78–79, 81, 84, 99, 207n15–16, 212n40; as a legislative goal, 22–23, 75, 77–85, 88–89; and leisure, 19, 105; as liberality, 105, 214; the poet's claim to, 111; political, 79, 92; of speech, 81, 82, 102; statutory, 85, 97, 102–106; and temperance, 79, 106; true, 99, 103, 155. *See also* democracy; equality; servitude; target; theater (theatrocracy); virtue
- friendship: meaning of, 5; as a legislative goal, 6–7, 22, 63, 74–75, 77–82, 92, 93, 95, 132, 133, 155–56, 188n42, 206n2, 207n25, 209n14. *See also* equality; freedom
- Georg of Trebizond, 181n4
- goal, legislative, 20, 22, 23, 74–80 116, 127, 155, 179, 205n1, 206n2; of marriage, 119. *See also* aim; middle; target
- god(s) (*theos*): existence of, 72, 142, 143, 147, 225n19; first word of the dialogue, 17; holds the beginning, the middle, and the end, 18, 111; law on impiety, 111, 126, 136, 137, 142, 226; Plato's gods, 186n24, 196n54; secondary gods, 203n23; servitude to, 83, 98, 99, 125, 131, 134, 139; traditional, 4, 155, 186n28. *See also* chance; divinization; goods; human being; knowledge; justice; *nous*/reason; puppet; rationality; rule; sacred items; servitude; soul; theology; theo-noo-nomocracy
- good(s): divine, 139; division of, 21, 29, 75, 138, 140; leading, 75–76; psychic, 75; worthy of honor vs. of praise, 138–39, 221n6. *See also* virtue
- Gramsci, Antonio, 182n18
- guardians: Guardians of the law in the *Laws*, 94, 96, 189n63, 190n63, 198n12, 208n2, 210–12n12, 212n33; in the *Republic*, 26, 33–36, 60–61, 172, 193n35
- Gyges' ring, 33

- Harington, James, 181n4
- harmony. *See* music
- Heidegger, Martin, 230n6
- Heraclitus, 203n14
- Hesiod, 2, 70, 111, 196n52, 204n28, 215n6, 225n21
- heteronomy. *See* law
- Hippias of Elis, 108–109, 187n3
- history: natural vs. human, 57; past vs. future, 21–22, 71, 89, 187n36; of utopian thought, 36–37, 51
- holism. *See* totalitarianism
- Homer, 6, 7, 101, 150, 193n34, 227n6
- homily, homiletic, 2, 28
- honor(s) (*timai*), 29, 90, 91, 93, 134, 210n18, 218n42. *See also* good(s)
- household (*oikos*), 7, 26, 27, 56, 58, 59, 166, 186n30, 199n17, 212n37, 223n8
- human being
- creation of, 129, 230n2; in general, v, 3, 52, 64–73, 102, 200nn2 and 4; vs. gods and heroes 1, 17–18, 19, 49–50, 55, 56, 134, 139–40, 166, 193n34, 194n41, 196nn54 and 56, 200n25; measure of things, 18, 111; nature and condition, 7, 20, 26, 46–47, 54, 58–60, 64–73, 78, 110, 133–35, 154–56, 167, 190n1, 195n44, 200n13, 205n40, 222n17, 224n14; perpetuation of humankind, 119, 129–32; plaything of the gods, 68, 69, 203n20; servants of the gods, 222n14
  - human life, 29, 31, 65, 118, 126, 137, 151, 156, 200n55; human drama, 228n15; human vs. divine awards, 33; human wonder, 72, 147–48
  - political aspect: human affairs, 2, 6; human institutions, 6, 77, 95, 137, 153, 161, 201; human justice, 153; as legislative material, 25, 39, 41, 57, 195n45; and power, 49, 95, 96, 161, 166, 208n1
- See also* animal; children; history; law (rule of); praise; punishment; puppet; soul
- ideal, idealization, 7, 39, 40, 51, 62, 105, 113, 121–24, 144, 145, 197n63, 200n38, 211n30, 220n55, 222n19, 223n4; ideal-type, 38. *See also* utopia
- ignorance, 77, 140–41, 148, 175, 179, 232n25
- immortality, 129, 132, 230; of the city, 26, 162, 189n54; immortal bonds of marriage, 230n9; of a part of the soul, 176; personal, 64, 119
- impiety. *See* god
- incantation (*epôidê*), 128, 131, 133–34, 219n47, 220n54, 221–22n10
- indulgence. *See* equity
- Jean de Serres, 181n4
- justice (*dikê*): divine and cosmic vs. human, 134–35, 153; inescapability of, 223n29. *See also* virtue
- Kant, Immanuel, 32, 51, 192nn20 and 21
- king(ship), 19, 61, 78, 81–82, 85, 88, 97, 116, 167, 196n52, 207n25; Persian, 97; shepherd-king, 189n52, 211n30, 215n4; and tyranny, 63, 117, 163–67, 187n32. *See also* knowledge; rulers (philosophers-kings)
- Knossos, 14, 15, 17, 23, 211, 32
- knowledge: basic, 130; coincidence with power, 38, 41–42, 45–47, 166; of Forms, 220n55; of a free person, 104–106; of general principles (*decreta*), 178; of gods, 68; kingly, 195n44; philosophical, 41, 43, 49, 154, 159, 166, 178, 190n64; political and legislative, 38, 39, 42, 45, 47, 73, 159, 164–65, 194n38, 195n44; stronger than the law, 97; technical (medicine), 114, 117–18, 144, 164
- Kojève, Alexandre, 230n14
- Kronos, 19, 160, 163, 164, 187nn31 and 32
- law (*nomos*): common belief of a city, 67, 108; human heteronomy, 99, 183n26; meaning of the term, 187n33, 215n1; as a musical genre, 185n20, 207n28, 215n1, 228n45; as rational distribution (*dianomê*), 19; rule of, 3, 45, 59, 61, 95, 96–98, 100,



- 108, 156, 161, 189n50, 212n37; true, 3, 18, 70,  
108, 109, 145, 151, 153, 154–56, 202n11, 228n15  
—form of, 4, 25, 27–28, 62–63, 107,  
112, 118, 121, 123, 146, 148, 154, 156,  
179; as a (tyrannical) command  
or order, 4, 20, 27, 29, 46–47, 97,  
104, 106, 108–109, 113 (cf. 114),  
116–19, 122, 123, 128, 130–31, 162,  
163, 178; its irrationality, 20, 123,  
153; written/unwritten, 29, 115,  
132, 163, 165, 216n13, 218n45, 219n52  
—legislative cycle, 25, 126; kinds of  
infractions to, 121  
*See also* constitution; economy; goal;  
god; knowledge; marriage; master;  
preamble; punishment; rational-  
ity; servitude
- lawgiver, *passim*; true, 20, 45, 48
- Laws* (Plato)  
—formal features: composition,  
13–31, 63, 92, 122; focal centers, 32,  
56, 58; as a handbook, 31, 190n66;  
implicitness, 2, 4, 8, 29; ring-  
composition, 30, 141; style, 11, 13,  
14, 107, 183; vanishing point, 4, 123  
—reception: 2–3, 177–79, 181n4  
—substantial features: anthropologi-  
cal turn, 7; middle-mixed consti-  
tution, 86–96; synthesis between  
Athens and Sparta, 15  
*See also* Aristotle; dialogue; Posido-  
nius; Rousseau
- liberalism, 103–105; Plato's liberal critics, 7
- liberality. *See* freedom
- lot. *See* selection
- love (*erôs*) 17, 20, 43, 75, 77, 100, 101, 103, 129,  
131, 150, 177, 192, 195. *See also* desire; egoism;  
tyrant
- Lycurgus, 2, 16, 78, 184n11, 186n23
- Machiavelli, Niccolò, 181n4
- marriage: on the choice of a spouse, 129,  
131–133; departure from the *Republic*, 7;  
first law of the cycle, 25, 29, 128, 189n57,  
215n9; and procreation, 27, 29, 35, 36, 119,  
129, 132; in the *Statesman*, 161, 230n9
- master (*despotês*): doctors and assistants,  
114, 117; a god, 19, 99, 139; human, 48;  
law, 45, 74, 79; master/slave relationship,  
85, 90, 92, 97, 98, 104, 212–13n40; the  
Persians, 81; tyrannical, 101, 209n12.  
*See also* despot
- mean. *See* middle
- measure: god vs. human beings as the measure  
of all things, 18, 139, 140, 208n4; of political  
order, 3, 78, 91–93, 111–12, 214n57; right,  
due, appropriate, 61, 81, 88, 90, 91, 92, 115,  
132, 161; as ultimate principle, 4, 111, 137.  
*See also* temperance; virtue
- medicine. *See* doctor
- Mersenne, Marin, 200n26
- Messene, 22, 97
- metamorphosis, 86, 95, 102
- metaphor: cases of, 54, 152, 171–174, 192n27,  
193n35, 196n54, 204n25, 205n35, 212nn33  
and 37, 213n44, 228n16, 231n11, 233n7; and  
synecdoche, 212n37
- middle (and mean): centrality of the notion  
in the *Statesman* and in the *Laws*, 88, 162;  
'middle' constitution, 31, 59, 61, 72, 87, 90,  
92, 95, 156, 200n27, 208n3; vs. mixture,  
87–89, 160, 162, 208–209n5, 210n23; as a  
political principle, 18, 87–89, 111, 112, 140;  
and virtue, 208n4. *See also* Aristotle
- Minos, 16, 185n16
- mixture. *See* constitution; middle
- moderation. *See* temperance
- monarchy/monarch, 18, 19, 48, 87–90, 95,  
120, 164, 205n40; despotic monarchy,  
92, 209n12; monarchic principle, 81–83,  
90, 155; true monarch, 61, 120. *See also*  
king(ship)
- Montesquieu, 181n4
- More, Thomas 51, 197n65
- movement, 68, 105, 120; celestial, 147; orderly,  
57, 69–71; origin of, 68, 122, 143–45, 203;  
self-movement, 144, 225n27. *See also*  
nature; soul

- music: basis of education, 57, 69–71, 204n27; correctness of, 70, 222n24; decline of musical rules, 83–84; harmonization, of a soul's motivations, 21, 69, 174; musical proportions, 209n16; philosophy as 'the greatest music,' 205n35; place of in the *Laws*, 218n43, 219n47; prelude and song, 119–20, 172, 174, 185n19; wisdom (*sophia*) as 'the greatest harmony,' 77. *See also* choral dance; law (*nomos*); opinion; pleasure
- muthos*: authoritative utterance, 132; and *logos*, 134–35; relative to single words, 76, 152, 202–203n14, 222n23; in rhetoric, 221n10; traditional story, 50, 128; and wish, 196n55
- myth: of Er, 34, 228–29n19; and exhortation, 225n19; of Kronos, 19, 160, 163–64, 187n32; *muthologia* and *theologia*, 186n28; and persuasion, 216n15, 226n31; of retaliation, 134; of retribution, 229n27; of the three human races, 5. *See also muthos*
- name(s), naming: coinages, 18, 25, 223n8; etymologies, 19, 97, 141, 187n31, 204n25, 205n35, 217n28; terminological flexibility, 1, 76, 79–80, 87, 101, 207n18, 209n17, 216n12, 217n26
- nature: against, 108, 187n33; by or according to, 18, 43, 46, 68, 72, 91, 97, 100, 111, 120, 132, 134, 141, 144–45, 162, 215n4, 216n20, 220n3, 221n4, 224n14; 'ever-generative,' 222n14; of a given item, 37, 44, 47–48, 49, 65, 83, 91, 106, 109, 114, 117–18, 121, 123, 124, 146, 149, 193n34, 226n2. *See also* chance; human being, nature and condition
- Nestor, 49, 50, 195–96n52
- nomos*. *See* convention; distribution; law
- nous*/reason: Anaxagoras', 187n31; cosmic principle, 144–45; its freedom, 46, 97, 99, 212n35; and god, 18, 19, 22, 95; kinship with and superiority over *nomos* (law), 4, 20, 61, 107, 153, 162; and *phronêsis*/wisdom, 5, 75, 77–78, 206nn3 and 4, 207n25; seldom possessed by human beings, 34, 195n44; semantic scope, 182n8; as the virtue of the soul, 186n14, 187n3. *See also* rationality
- office, officeholders, 189n51; assigned laws, 27, 29, 136, 150; control of officeholders, 104; helped by the just citizen, 141; higher, 65, 90, 91, 94, 96, 208n1, 210n26, 211nn28 and 30; minor, 30; poets as potential officeholders, 207n29; and political bodies, 25, 62–63, 86, 98; selection of officeholders, 25, 63, 95, 96, 161; submission to the law, 45, 83, 98, 100. *See also* rulers; selection
- oligarchy, 18, 19, 48, 78, 81, 95, 164, 172–174, 195n47, 208n3, 211n27
- ontology, ontological, 41, 44–45, 155–56, 162, 185n18, 186n26, 191n19, 198n6, 227n6, 229n2
- opinion: of the best, 175; common, 152, 167; component of wisdom, 75, 206n5; as a faculty of the soul, 145; of its inferior parts, 169, 172; relationship to music, 71; unanimity of feelings and of, 60; unstable, 220n55
- order: cosmic order and disorder, 42, 72, 118, 129–130, 134, 136, 143, 193n35, 197n4, 198n17, 209n16, 229n27; divine, 20, 129–30, 145, 195, 152; kinetic, 71, 145; political, 3, 40, 83, 84, 106, 152, 209n16, 192n27, 214n57; psychological, 57, 69–71, 174, 192n27, 193n35, 212n35. *See also* law
- Orphic tradition, 18, 111, 225n21
- pain. *See* pleasure
- paradigm: of dance, 69; for the Demiurge, 57; of divine reason, 155; duplication of, 53–55, 182n9; of the Forms, 42; of the Good, 40; its logic, 161; meaning of the term, 39–40; model for a painter, 38; paradigmatic city, 1, 39, 40, 42, 44, 57, 123, 165, 192n27, 199n18, 200n38; paradigmatic decadence, 34; paradigmaticism, 1, 5, 26, 45, 50, 59, 157; of philosophical dialogical practice, 123, 156; possibility of, 5, 56, 125, 197n3, 198n12; of relocation of adult citizens, 43; retreats from, 26, 53, 54, 62, 72, 154, 190n1; of weaving, 159. *See also* approximation

- penalty. *See* punishment
- performance, 203n18, 221n8, 227n5. *See also* dance
- Persia, ancient and recent: parallel with Athens, 15, 22, 23, 27, 57, 72, 80–89, 207n22. *See also* king(ship); master; war
- persuasion, 1, 153, 179; differentiated (scalar) relationship with violence, 28, 48, 61, 72, 110, 114–119, 142, 156, 160; dissuasion, 109; exercised by the tyrant, 164, 196n52; exhortation, 113; through fear, 134–35; modes of, 127, 128, 132, 216; persuading necessity in the *Timaeus*, 198–99n17; and preamble, 106; and rhetoric, 62, 101; and teaching, 106, 123, 146, 220n55, 226n31; and trickery, 175; visibility of, 5
- Philip of Opus, 14, 184n6, 190n64
- Philo of Alexandria, 3
- philosophy, occurrences of the term in the *Laws*, 122. *See also* argument; dialogue; doctor; knowledge; music; paradigm; preamble; teaching; tragedy
- Pindar, 2, 100, 108, 144, 215n4
- pity: and anger, 141; and disgust, 152
- pleasure: appropriate usage of, 187n35; of artistic festival, 203n18; of the body vs. of learning, 212n39; cause of injustice, 232n15; consonance with reason, 20, 77, 149; correctness of, 70–71, 84; courage against, 75; and the good, 114, 116; of the inferior parts of the soul, 169; irrational drive towards, 139, 148, 153, 155, 205n40, 225n19; of the just life, 224n14; mixture of pain and, 150; and the noble, 177; of ordered movement and music, 57; pleasure and pain, most fundamental human feelings, 46, 59, 60, 66, 72, 137, 140, 141, 170, 175, 176, 202n13, 231n12; and temperance, 188n38; of tragedy, 227n6; true, 99
- Plethon, 181n4
- Posidonius, 177–79
- possibility (feasibility), possible, 1, 32–50, 53–63, 69, 73, 155, 161–62, 166–67, 181n1, 191n14, 194n40, 196n57; ‘as far as possible’ (*vel sim.*), 4, 6, 28, 32, 40–43, 44, 54, 55, 60–61, 118, 125, 135, 154, 165, 192n32, 193n34, 197n61, 219n52, 231n20; real vs. logical, 5, 40, 44–45 64, 154; revisionist definition of, 37–40. *See also* approximation; city, third; Kant; paradigm
- power: autocratic, 46, 67 167, 195n44, 205n40; coincidence and association of power and knowledge, 24, 38n, 41–43, 45, 47–50, 56, 73; and competence, 95; corruption of, 45, 58, 97, 150, 160, 166, 199n20, 220–21n3; of decision (*kratos*), 18–19, 91, 211n28; to empower, 94, 96; forms of political power (regimes), 19; meaning of, 209n8, 211n28. *See also* distribution; excess; human knowledge; tyranny
- praise and blame, 60, 62, 70, 84, 112, 113, 130–132, 138–141; appropriate, 104; regarding the choice of a spouse, 132; of divine behaviors, 139; and epideictic discourse, 221n8; of the ‘highest citizen,’ 113; and honor, 138, 221n6; human vs. divine praise, 141; regarding hunting, 131; of measure, 112; predominant discursive mode among preambles, 72, 127; of truthfulness, 140, 224n11; unanimous, 60; of virtues, 138; of whoever is slave to the laws, 98; of whoever propagates justice, 141
- preamble, *passim*, esp. 107–48  
—definition of, 3, 110; diversity and flexibility of, 125, 128–35, 136–148, 220n2; name of (*prooimion*), 113, 120, 217n28; novelty of Plato’s preambles, 62, 111, 120, 185n19; number of, 125, 220n3; poetical, musical, and rhetorical origin of the term, 120; reception of, 177–79, 233n3; related terms, 217n26, 219n47  
—persuasive function of, 6, 26–27, 62, 102, 109, 121, 129, 156, 164, 271n29; degree of persuasiveness, 127; didactic, philosophical preamble, 142, 145, 148, 225n19; general preamble (exceptionality

- preamble, persuasive function of (*continued*)  
of), 18, 25, 28, 63, 127, 132, 136–141;  
illustration of, 29; overall relationship with law, 107, 135, 190n65;  
preceding the law, 17, 20, 23, 30;  
rationality and irrationality of, 119, 125 (cf. 122), 148, 156, 220n55, 220–21n2; substituting the law, 28, 113, 123, 131  
*See also* myth; persuasion; praise and blame; scalarity; threat; violence
- property, proper (*idion, oikeion*), 56, 58, 60, 139, 141, 160; ownership of spouses, children, and goods, 35–37, 58–60, 198n11, 200n32; private vs. tenure, 26, 30, 56, 125, 132; property classes, 90, 94, 210n23.  
*See also* egoism
- Protagoras, 2, 3, 18, 111, 112, 139, 208n4, 217n25
- punishment, 4, 27; death, 7, 226n5; fine, 90, 218n42; human and divine, 109–10, 134; penalty, 113, 173, 177; post-mortem, 35, 135, 151–53, 229n28; quick, 223n29; severe, 215n8
- puppet (human), 21, 64–71, 99, 138, 149, 183n28, 188n40, 203nn16 and 18, 232n23; plaything of the gods, 69, 203n20; strings vs. parts of the soul, 174–75; wonderful, divine, 68–69, 76, 148, 153, 224n14. *See also* analogy
- Pythagoras and Pythagoreans, 185n19, 233n3
- rationality: convergence of rationality and irrationality, 20, 73; of emotions and feelings, 1, 72; exercise of, 105; of god, 4; rationalization of law, 4; relationship to law and freedom, 103. *See also* nous/reason; preamble
- receptacle, in the *Timaeus*, 57
- responsibility: analysis of, 31; for implementing the proposals of the Athenian, 16; of the officeholders and rulers 25, 47; personal, 134, 135, 139, 170
- retreat. *See* paradigm
- rhetoric: centrality in the *Laws* of legislative rhetoric, 4, 17, 20, 61–62, 124–28, 137, 186n1, 190n66; continuum between legislation and, 28; in the *Gorgias* and the *Statesman*, 114–116; Plato's unwritten rhetoric, 127; as 'royal music,' 205n35.  
*See also* Aristotle; incantation; persuasion; preamble
- Rousseau, Jean-Jacques, v, 96, 99, 181n4, 196n56, 213n40, 231n32
- rule, *passim*; of god, 18–19. *See also* law, rule of
- rulers: number of, 89; philosophers-rulers (or -kings), 5, 18, 40, 43, 73, 150, 154–55, 160, 193n34, 208n1, 215n35. *See also* office
- sacred items: cave, 16; duty, 132; golden cord of reasoning, 66–67, 199n23; humankind's immortality, 129; rivers, 131; 'the sacred,' 58–59; 'the sacred line,' 56, 58, 60, 154, 197n2
- scalarity, 5, 61, 73, 125, 156. *See also* approximation; persuasion
- Schmitt, Carl, 4, 181n6
- selection: by lot, 93; of officeholders and councilors, 25, 27, 63, 87–90, 93–95, 189n52, 208n2, 210n22, 211–12n32
- self-control. *See* temperance
- selfishness. *See* egoism
- self-movement, *See* movement
- servitude: to the beloved, 101–102; freedom as servitude, 106; to the gods, 98–101; to the law, 5, 83, 85, 207n7; voluntary, 95, 99–101, 213. *See also* master, master/slave relationship
- shame, 21, 71, 83, 100, 101, 208
- shepherd. *See* analogy; kinship
- skill. *See* craft
- slavery, slave. *See* doctor, free and slave; freedom, statutory; master, master/slave relationship; servitude
- Solon, 2, 15, 81, 207n2
- sophist, 108, 187, 226, 229; sophistic, 115, 130, 144, 221; sophistry, 43, 116
- soul, *passim*; equivalent to human being, 64, 201n2; organizes the universe, 145; Plato's psychology, 56, 66, 155, 169–76, 182n9,

- 232n26; priority over the body, 143–45, 146; relationship to one's own soul, 137, 139–40; souls as gods, 186n24; source of good and evil, 145; the true self, 142. *See also* analogy; human being; movement, self-movement; music; nature; *nous*/reason; post-mortem punishment; puppet
- Sparta. *See* constitution; Dorians; ephors
- Strauss, Leo, 4, 181n7, 214n54, 230n14
- target, legislative (as distinguished from 'goal' and 'aim'), 31, 74–80, 81, 84, 92–93, 97–98, 132, 137, 155, 188n42. *See* equality; freedom; friendship; wisdom
- teaching: legislative, 123, 134, 144, 146, 156, 179, 223n26, 225; medical, 117–18, 122; philosophical teaching as an ideal horizon, 220n5
- temperance. *See* virtue
- temporalities, human vs. cosmic, 57, 199n18
- Terpander, 219n46
- theater, 70, 203n18; theatrocracy, 70, 83–84, 149. *See also* tragedy
- theology: political, 4, 181n6; *theologia* in the *Republic*, 18, 202n28; theological agenda, 2, 15, 112, 131, 137; theological foundation of the law, 3, 18, 142, 145, 146, 154, 183n24; theologico-political issue, 3, 4, 17, 18. *See also* god
- Thrasymachus, 33, 34, 15
- threat: constitutive element of a law, 4, 6, 20, 27, 62, 108, 109, 113, 128, 133–36, 153, 156, 178, 215n8, 216n10
- totalitarianism, and holism, 7, 182
- tragedy, 149–52, 203n18, 227–28n6, 228n11, 229n20; best, truest, 5, 31, 150, 151, 153, 156, 226–27n3, 229n26; de-theatricalization of the tragic, 150–51; philosophical tragedy, 229n19
- Troy, 49, 50, 55, 200n25
- truth, 41, 64, 99, 140, 143, 165, 192n30, 212n39, 220n55, 226n31, 230n18, 231n20; of nature, 144; and *symposium*, 188n39. *See also* equality; law; lawgiver; pleasure
- truthfulness, 99, 140–41, 224n11. *See also* praise
- tyranny, 6, 15, 19, 20, 22, 33, 48, 95; of *Erôs*, 97; psychic, 99, 176, 195n48; referring to pure power, 190n1; slavish-tyrannical, 118; tyrannical command and law, 20, 62, 109, 122–23, 162, 187n33; tyrannical life, 34. *See also* king(ship); master
- tyrant: meaning, 164, 195n48; temperate, 24, 45, 48, 49, 59, 61; in the usual Platonic sense of the word, 106, 114, 115, 166, 167. *See also* Dionysus I; Dionysus II, the Younger; king(ship); law; persuasion
- utopia, 2–3, 28, 32, 50–52, 195n45, 196n58, 197nn63–66; legislative, as opposed to constitutional, 62, 109, 123, 144, 146, 148, 156, 169, 217n28, 220n56; Plato's place in the history of utopian thought, 37
- violence (*bia*), 4, 6, 20, 29, 48, 61, 107–110, 119, 122, 126, 134, 153, 216. *See also* persuasion; threat
- virtue (*aretê*): as a complex whole, 21, 27, 74, 77, 101, 205n1; education to virtue, 106, 149; embodiment of, 7; with equality, 92; full, 23; in Hesiod, 204n28; liable to measure, 209n17; as a mean, 88, 208n4; meaning 'excellence', 15; relationship with freedom, 79, 98; in the *Republic*, 30–34, 193n35; submission to law vs submission to excellence, 99, 100; superiority to oneself, 67, 93, 202–203n14; as the ultimate legislative goal, 20, 25, 31, 75 80, 93, 155, 189n52; unity of, 30, 76, 137
- courage (*andreia*), 15, 20–22, 33, 48, 70, 74, 75, 77, 99, 130, 141, 161, 187n34, 188n38, 205n36, 206n4, 212n39, 254n57
- justice (*dikaionê*): and equity, 93–94, 210n21; in the *Laws*, 20–22, 71, 74, 75, 77, 91, 99, 141, 145, 188nn38 and 41; political, 77, 116; in the *Republic*, 33–34, 38. *See also* justice (*dikê*)

- virtue (*aretê*) (*continued*)
- temperance (*sôphrosunê*), 20–22, 33, 49, 74, 75, 77, 79, 80, 99, 106, 187, 205–207, 211, 212, 224, 232; as moderation, 11, 140, 141, 161, 187, 193; as self-control, 21, 65, 187, 188, 206, 232. *See also* freedom
  - wisdom (*phronêsis*, *nous*, *sophia*), 5, 20–23, 33, 42, 49, 70, 74–80, 84, 92, 98, 100, 155, 174, 179, 182n8, 187n34, 188n38, 207n25, 211n28; the leading, only unconditional good, 21, 29, 76, 77, 79; privilege of the elderly, 185n17
- See also* education; *nous*/reason (virtue of the soul)
- voluntary (*hekôn*), 5, 95, 99, 101, 109, 156, 163; meaning of the word, 100, 101, 182n12, 216n12. *See also* name(s), terminological flexibility; servitude
- war, 15, 29, 76; civil, 76, 140, 155, 171, 172, 182, 188, 199, 202, 206, 207, 230; Persian, 77; Trojan, 50; war-dance, 149. *See also* fight
- Watch (the so-called nocturnal council), 7, 30, 31, 74, 76, 86, 137, 148, 188–190, 208, 210
- wine, educational use of, 21, 65, 67, 87, 119, 187, 188, 20. *See also* common meals; drinking party
- wisdom. *See* virtue
- wish, 48, 51, 175, 196n59; and prayer, 50; wishful thinking, 44
- women, 35–37, 40, 44, 58, 60, 103, 191, 198, 200, 214, 219, 222, 227
- wonder (*thauma*). *See* Aristotle; human being; puppet
- Zaleucus, 185n1
- Zalmoxis, 219n51
- Zeus, 19, 101, 111, 151, 196n56, 233n7; cave of, 16, 17, 185n16; judgment of, 91; in the *Statesman*, 164–65, 187n32, 189n52