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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,¹ 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.²

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.³ 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.⁴

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.⁵

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.⁶ 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.⁷ 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*⁸—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.⁹ 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.¹⁰ 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';¹¹ but the dialogue does not discuss persuasion in its own right.¹² 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.¹³ 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.¹⁴ 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.¹⁵ 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.¹⁶

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.¹⁷ 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.¹⁸ 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,¹⁹ 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.’²⁰ Taken in an etymological sense, however, it captures a feature that is surely relevant in Plato’s political thought and names a legitimate question.²¹ 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.”²² 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 do²³): 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.²⁴ 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.”²⁵ 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.²⁶ 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.²⁷ 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.²⁸ 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.

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.²⁹ 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.

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