

## Chapter 2

# The Platonic Dialogues and Legal Critique

**Abstract** Plato's corpus is not systematic, but dramatic. This chapter introduces the drama of legal critique in his dialogues. Following a brief introduction to Plato and his chronology, with a glance at Platonism in the *longue durée*, the motif of legal critique is then traced up the dialogues that concern us in later chapters. Plato's dramatization of the trial and death of Socrates (*Euthyphro*, *Apology*, *Crito* and *Phaedo*); his sustained critique of legal positivism and his first law-code (*Gorgias* and *Republic*); and his formal critique of law and second law-code (*Politicus* and *Laws*) are introduced in concise, original résumés. This chapter therefore retraces the chronological arc of Plato's dialogues—from the *Apology* to the *Laws*. It is proposed, in conclusion, that *Laws* XII ends with a dark coda. Socrates' trial is chillingly reprised in the last pages that Plato ever penned.

### 2.1 Introducing the Platonic Dialogues

Plato said that the truth is the sweetest sound.

—DIOGENES LAERTIUS, *Life of Plato*<sup>1</sup>

The inconsistencies of Plato are a long story.

—CICERO, *De Natura Deorum*<sup>2</sup>

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<sup>1</sup>DIO. LAER. *Lives* III 39. Cf. XEN. *Hier.* 1.14: 'Praise [is] the sweetest sound ... Abuse, on the contrary, is the most offensive of all sounds.'

<sup>2</sup>Cic. *Nat. Deor.* I 12.30: *de Platonis inconstantia longum est dicere*. Note that this sentence is voiced by an Epicurean—and as such, is polemical.

The Platonic dialogues are texts which were designed to be read out, and to be heard.<sup>3</sup> It must be underscored that Plato himself never speaks in these texts.<sup>4</sup> As Diogenes Laertius observes, he ‘puts everything into the mouth’ of *dramatis personae*.<sup>5</sup> This is not a minor point. Platonic philosophy survives as a drama in which Plato himself is silent.<sup>6</sup>

The dialogues feature dozens of Socrates’ friends and rivals, who are not infrequently the acquaintances—or even relatives—of a young Plato.<sup>7</sup> Many of these *personae* are drawn with great vividness. ‘I seem to have actually *lived* with them’, Cicero enthuses in *Academica*.<sup>8</sup> (He elsewhere compares Socrates’ wit to Plautus’ Roman comedies.)<sup>9</sup> Yet Plato himself is only mentioned in a couple of dialogues, very much in passing.<sup>10</sup> He is never Socrates’ interlocutor.<sup>11</sup>

<sup>3</sup>This is true of all philosophical texts in the Platonic milieu. Cf. PL. *Parm.* 127a–d: ‘Socrates and many others ... wanted to hear (*akousai*) Zeno’s writings (*grammatôn*) ... so they heard only a little that remained of the written works (*epakousai tôn grammatôn*)’; PL. *Ph.* 97b: ‘One day I heard (*akousas*) a man reading from a book (*ek bibliou*), as he said, by Anaxagoras’. Plato’s early dialogues exploit this to the full, however. He even acts as though the *Theaetetus* is worked up from shorthand notes that Socrates had a hand in editing. Cf. PL. *Theaet.* 142d–143c, here 143c: ‘While we are resting, the boy shall read aloud to us ... Here is the book [= Plato’s *Theaetetus*].’

<sup>4</sup>The extent of Plato’s authentic corpus is a vexed question. There is no consensus regarding the number of authentic dialogues or letters by Plato. In any case, the definition of a Platonic dialogue offered by Albinus in the second century CE, at ALB. *Eis.* 1, helps to sharpen our sense of his chosen genre: ‘[A Platonic dialogue] is nothing other than a discourse (*logos*) composed of question and answer, concerning some sort of political or philosophical topic, with an appropriate characterization (*êthopoiias*) of the persons taking part and the arrangement of their diction.’

<sup>5</sup>DIO. LAER. *Lives* II 5.45.

<sup>6</sup>The term is necessarily imprecise, and I am unable to deal here with the question of Plato’s *Epistles*. A fine study of this ‘silent philosopher’ is Diskin Clay’s *Platonic Questions*. Note especially his contrast of Plato with the magisterial voices of Heraclitus, Parmenides and Empedocles: Clay (2000, 80–83).

<sup>7</sup>Cf. Grote (1888), Nails (2002).

<sup>8</sup>Cic. *Acad.* II 74: *vixisse cum iis equidem videor* ... Note that Cicero is referring primarily to Socrates, as the dialogues’ protagonist. I include the other Platonic *personae* in this statement, but this is not much of a liberty. ‘Can I speak with more certain knowledge of any other persons?’ Cicero asks in a hyperbolic mood. ‘I seem to have actually *lived* with them, so many dialogues have been put in writing (*ita multi sermones perscripti sunt*) which make it impossible to doubt that Socrates held that nothing could be known.’

<sup>9</sup>Cic. *Offic.* I 29.104: ‘the books of Socratic philosophers’ (*philosophorum Socraticorum libri*) are full of ‘urbane, clever and witty’ (*urbanum, ingeniosum, facetum*) conversation, much like the plays by ‘our own Plautus and the Old Comedy of Athens’. There is a not dissimilar observation in ARIST. *Polit.* II 3.3: ‘All the discourses of Socrates (*tou Sôkratous logoi*) possess cleverness (*to kompson*), originality (*to kainotomon*) and keenness of inquiry (*to zêtêtikon*).’ Note that in both passages, Plato is referred to—but not by name, and not to the exclusion of other Socratic authors.

<sup>10</sup>Clay (2000, 11) points out that Xenophon ‘figures as a character in some of the [Socratic] dialogues of the *Memorabilia*’.

<sup>11</sup>In the *Republic*, by way of contrast, Plato’s brothers Adeimantus and Glaucon hold a protracted conversation with the philosopher. Cf. *Rep.* I 327a–c, etc.

In the *Apology*, as we have seen, Plato is one of those who stand by Socrates at his trial.<sup>12</sup> Then, in the *Phaedo*, he is noted for being one of Socrates' inner circle who is *not* present at his death in Athens' prison.<sup>13</sup> This is Plato's final appearance in the dialogues,<sup>14</sup> and it could just as well be called a disappearance.

No less striking than Plato's absence from Socrates' death-scene is the vagueness with which he registers it in the *Phaedo*. 'Plato was ill, *I think*', is the line he has this dialogue's narrator, Phaedo of Elis, speak to a Pythagorean interlocutor, Echecrates of Phlius.<sup>15</sup> If Plato will not tell us with any conviction where he was on the day of Socrates' death, how far can we trust him to tell us of Socrates' life?

This is an ancient question.<sup>16</sup> Diogenes Laertius reports a tradition in which Socrates, 'on hearing Plato read aloud from the *Lysis*, interjected: "Heracles! What a number of lies this youth is telling about me!"' Diogenes then clarifies: Plato had 'included in the dialogue much that Socrates never said'.<sup>17</sup> The question of Plato's truthfulness, however, is subtler and deeper than this—even in the *Lysis* tradition which Diogenes transmits. For the *Lysis* is a dialogue 'on friendship' (as its subtitle informs us), and Plato concludes the dialogue with a frank confession. 'We have not yet succeeded in discovering', he has Socrates say to a circle of handsome boys, 'what a friend is'.<sup>18</sup> Whatever the essence of friendship may be, it is surely not the place of one friend to 'tell lies about' (*katapseudesthai*) another. Yet this is exactly what Socrates—according to this tradition—accuses Plato of doing in the *Lysis*.<sup>19</sup>

Is Plato, then, a real friend of Socrates?<sup>20</sup> Is he an authentically 'Socratic' philosopher?<sup>21</sup> Are the Platonic dialogues—or at least, the early ones—inspired by

<sup>12</sup>PL. *Apol.* 33d–34b, 38b.

<sup>13</sup>PL. *Phaed.* 59b–c.

<sup>14</sup>Cf. DIO. LAER. *Lives* III 37: 'Nowhere in his writings does Plato mention himself by name, except in the dialogue *On the Soul* [= *Phaedo*] and the *Apology*.'

<sup>15</sup>PL. *Phaed.* 59b: *Platón de, oimai, êsthenei*. For Socrates' connection to Phaedo: DIO. LAER. *Lives* II 5.31.

<sup>16</sup>Consider for instance: AUL. GELL. *Noct.* XIV 3.1–6.

<sup>17</sup>DIO. LAER. *Lives* III 35. A.S. Riginos (1976, 55) writes of the *Lysis* episode: 'It is not unreasonable to suppose that such stories were circulated early in the tradition, perhaps even during Plato's own lifetime.' There is a parallel tradition regarding Plato's *Phaedo*. This time, it is not Socrates—whose death the *Phaedo* recounts—but Phaedo of Elis who objects to Plato's high-handed style: Riginos (1976, 108). And finally, there is a derivative tradition in which the rhetorician Gorgias of Leontini is scandalized on hearing Plato's *Gorgias* read aloud: Riginos (1976, 93–94). Unlike the *Lysis* and *Phaedo* traditions, this is chronologically impossible—and presumably, a late variation on the theme.

<sup>18</sup>PL. *Lys.* 223b.

<sup>19</sup>DIO. LAER. *Lives* III 35. Socrates' interjection is: *Hêrakeis, eipein, hôs polla mou katapseudeth' ho neaniskos*.

<sup>20</sup>Clay (2000, 5) points out that 'Plato does not even figure' in Xenophon's catalogue of the 'true associates' (*hoi ekeinoi synêsan*) of Socrates at XEN. *Mem.* I 2.48.

<sup>21</sup>Cf. von Daniels (2014, 628): 'For the way Plato brought philosophy to the world, it is not an unhappy fact that Socrates was already dead at the time, but a necessary precondition. Even as

Socratic habits and convictions?<sup>22</sup> Socrates' shock at the *Lysis* is only a single, brief moment in a very long history of post-Platonic tradition.<sup>23</sup> The vast bulk of that tradition is now—like the vast bulk of all ancient philosophy—lost to us, and most of what survives can neither be corroborated nor refuted. It can only be received *as* tradition.<sup>24</sup> Regardless of its origins, then, the *Lysis* tradition shows that Plato's veracity—or, in modern terms, the dialogues' historicity—was held to be a *question* in antiquity. Plato is undeniably a disciple of Socrates—but even a disciple's kiss can be treacherous.<sup>25</sup>

### 2.1.1 Interpreting the Dialogues

It is hard to perceive Plato's convictions on crucial matters.

—AUGUSTINE OF HIPPO, *City of God against the Pagans*<sup>26</sup>

If it is unclear how Plato stands with regard Socrates' convictions,<sup>27</sup> it is also unclear how he stands with regard to his own. There is no doubt that truth—the innermost proportions of a divine eternity from which this temporal world is derived—is Plato's passion. Whether his passion for truth coalesces into a body of Platonic doctrines (*dogmata*), however, is very much in doubt.

A number of positions have been taken on this question—which is, in brief, the question of 'Platonism'—and they quite naturally affect the interpretation of Plato's dialogues. (Crucially, they also affect the *reception* of dialogues. Scholars may, or may not, receive a given dialogue as authentic, depending on how they treat the question of 'Platonism'.) In crude outline, it is possible to hold that:

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(Footnote 21 continued)

Plato wrote his dialogues, no one could ask the historical Socrates, "what do you think about this?" or "Plato wrote this, do you agree with it?"

<sup>22</sup>Cf. Cic. *Rep.* I 10.16: 'Since he [= Plato] had a singular affection for Socrates and wished to attribute everything to him (*cum Socratem unice dilexisset eique omnia tribuere voluisset*), he interwove Socrates' charm and subtlety in argument with the obscurity and ponderous learning of Pythagoras ...'.

<sup>23</sup>For one other *Lysis* testimony: Riginos (1976, 55).

<sup>24</sup>Cf. Cic. *Laws* I 1.3–4, here 1.3: *sic enim est traditum*.

<sup>25</sup>Or for a less extraneous image, see Riginos (1976, 54–55). She discusses, here, a dream which is reported in the mid-second century BCE by Athenaeus, and which visualizes Plato's 'bad character' (*kakothēia*). In Riginos's summary: 'Socrates dreamed that Plato became a crow, jumped onto his head, and began to peck at his bald spot and to croak.'

<sup>26</sup>AUG. *Civ.* VIII 4.

<sup>27</sup>According to a scheme sketched by Diogenes Laertius—to which a thousand later variants could be added—Plato 'mixed the doctrines of Heraclitus, the Pythagoreans, and Socrates'. His political philosophy derives from Socrates, his ontology of 'the intelligible' comes from the Pythagoreans, and his theory of 'the sensible' stems from Heraclitus: DIO. LAER. *Lives* III 8.

- (i) There is a static body of Platonic doctrine, and it is stated in Plato's dialogues. This is a dogmatic interpretation of Platonism, which gives a title to Alcinous' *Handbook of Platonic Doctrines* in the second century CE,<sup>28</sup> and is still the handbook interpretation of Platonism. Thus, for instance—as Alcinous puts it—Plato defines a *form* as 'an eternal model of things that are in accordance with nature'.<sup>29</sup> To be a Platonist is to believe in eternal forms.
- (ii) There is a static body of Platonic doctrine, but it is *not* stated in the dialogues. This is an esoteric theory of Platonism. On this theory, Plato only communicated his true convictions in speech—never in writing. The dialogues are therefore meant to lead towards, but not to reveal, the Platonic doctrines. It is Plato, after all, who swears in *Epistle VII* that 'there will never exist any treatise (*syngamma*)' which sets out 'the thing itself' (*to pragma auto*) that most concerns him.<sup>30</sup> He surely meant this. Thus, he never set down an open expression of his core convictions.<sup>31</sup>
- (iii) There is a *fluid* body of Platonic doctrine, and a flux of doctrine is perceptible once the dialogues have been chronologically ordered. This is a historicist theory of Platonism. It asserts that Plato held patiently defined beliefs, which he communicated in writing—but that they changed over time. It is therefore mistaken to assume that the 'Platonism' of the late dialogues will run in the same channels as the 'Platonism' of the early dialogues. To be sure, Plato introduces a theory of eternal forms, or 'self-subsisting entities', in his early and middle-period dialogues.<sup>32</sup> But he then offers a 'demolitionary' critique of that theory in his late dialogue, *Parmenides*.<sup>33</sup> The theory of forms is clearly not itself a Platonic form: Plato himself outlived it.

<sup>28</sup>For questions concerning this epitome's author, date, and title ('the balance of probability is in favour of *Didaskalikos tōn Platōnos dogmatōn*'): Dillon (1993, xi–xiii).

<sup>29</sup>ALC. *Did.* 9.2.

<sup>30</sup>PL. *Ep.* VII (341a–e). But *is* it Plato who says this? The authenticity of *Epistle VII* is controverted. In any event, there is an incontestably Platonic passage in the *Phaedrus* which mirrors the strictures of *Epistle VII*. One who 'has knowledge of the just, the beautiful, and the good'—says Socrates—will not set down his knowledge in 'words which are powerless to defend themselves by argument, and powerless to pass on the truth effectively': PL. *Phaed.* 276b–278b, here 276c.

<sup>31</sup>But are the Platonic dialogues even covered by the generic term for 'treatises' (*syngammata*) in this passage?

<sup>32</sup>For the expression 'self-subsisting entities': PL. *Tim.* 51b–c. Ostwald (1977, 46) reminds us that although the 'forms' are 'Plato's most revolutionary contribution to philosophy, [and] are usually referred to as "Forms", because Plato uses the Greek equivalents, εἶδος and ἰδέα, more frequently than any other expressions to describe them'; nevertheless, "'Form" never becomes a technical term in Plato. In many other cases, a number of different expressions, including "the just itself", "the good itself in its own terms", etc., are used to differentiate the absolutes.'

<sup>33</sup>Cf. Ryle (1966, 16–17).

- (iv) There is *no* body of Platonic doctrine, and a suspicion of doctrine is perceptible throughout the dialogues. This is an aporetic interpretation of Platonism.<sup>34</sup> A mood of discontent which pervades Plato's dialogues is taken to be the unmistakable sign of Socrates' influence. What Cicero later calls the 'confession of ignorance' is held to be the alpha and omega of Socratic philosophy.<sup>35</sup> Throughout his dialogues, Plato communicates a passion for truth—and for *precisely* that reason, he never asserts 'truths'. What is Plato's comment on the Delphic line about Socrates' wisdom?<sup>36</sup> 'Human wisdom is of little or no value'.<sup>37</sup> To be a Platonist is to accept this.

It is possible to say, very crudely, that (i) the dogmatic and (iv) the aporetic positions defined Platonism—or less anachronistically, 'the Academy'—in antiquity.

- (i) A dogmatic conception of Platonism was defended by the 'Old Academy'. In the early first century BCE dogmatic Platonism was reasserted by the Platonic scholar Antiochus of Ascalon. It was then brilliantly reconceived in the third century CE by the ascetic philosopher Plotinus and his successors—Porphyry of Tyre, Iamblichus of Chalcis, and many others who are now called 'Neoplatonists'. From late antiquity to the early modern period, in the Byzantine sphere and the Islamicate zone as in Europe, it is primarily dogmatic Platonism—heavily mediated by a certain number of pagan and Christian writers of late antiquity—which secured the continuity of Plato's influence. And indeed, to this day, it is hard for us *not* to think of Plato as a dogmatist. He is a firm believer in eternal forms, immortal souls, divine justice, and so on.

This has not always been the case, however. Skirting positions (ii) and (iii), for a moment:

- (iv) The 'New Academy' cultivated a non-dogmatic interpretation of Plato's dialogues. This aporetic interpretation was in the ascendancy for more than a century of the Hellenistic period—namely, in the period between the Platonic scholar Arcesilaus (d. ca 240 BCE) and Carneades (d. ca 130 BCE).<sup>38</sup> And as

<sup>34</sup>Cf. Opsomer (1998, 12): 'A more appropriate way [than "sceptical"] to characterise the philosophy of the New Academy ... is to call it "aporetic" or even better "zetetic": never satisfied with the obvious answers, the Academics undertook a continuing and open-minded *search* (ζήτησις) *for truth*.'

<sup>35</sup>Cic. *Acad.* I 12.44: *sed earum rerum obscuritate ... ad confessionem ignorationis adduxerant Socratem et iam ante Socratem Democritum, Anaxagoram, Empedoclem, omnes paene veteres ...* The patristic reception of aporetic Platonism and its 'confession of ignorance' is marked in Augustine of Hippo, especially in his *Confessions*: Dusenbury (2014, 73–80).

<sup>36</sup>Cf. *Pl. Apol.* 20d–21a.

<sup>37</sup>*Pl. Apol.* 23a: *anthrôpinê sophia oligou tinos axia estin kai oudenos*.

<sup>38</sup>For the survival of aporetic or 'New-Academic' tendencies after Antiochus' reform, in the so-called 'Middle Platonists': Opsomer (1998).

Cicero reminds us in *Academica*, this sort of terminology—‘old’ and ‘new’—is never wholly innocent:

They call this the ‘New Academy’. To me it seems old – at least, if we count Plato as a member of the ‘Old Academy’. In his books nothing is asserted (*nihil affirmatur*) ... all things are inquired into, and no dogmatic statement is made (*nihil certi dicitur*).<sup>39</sup>

According to Cicero, the Old Academy’s dogmatization of ‘Platonism’ marks a corruption of the tradition. The New Academy’s only doctrine, as it were, is that there is no Socratic–Platonic doctrine. Plato wrote dialogues, rather than treatises, precisely because he recognized that philosophical inquiry is interminable.

Thus, in the very last pages of *Laws* XII—and the last pages he ever wrote—Plato urges us to ‘proceed on the path along which the god, *perhaps* (*schedon*), is conducting us’.<sup>40</sup> Note the caveat; it is essential. He then concludes *Laws* XII by posing the question of the ‘formation’ (*paideia*) of his law-state’s councillors. This is a question, he says, which must ‘now be *taken up* in our dialogue’ (*tês nun au kekinêmenês tois logois*).<sup>41</sup> Plato closes this dialogue—and with it, his corpus—by opening a question. He ends with a new beginning. And what is more, he stresses in the *Laws*’ last sentences that this is a question on which ‘it is not yet possible ... to legislate’.<sup>42</sup> The luminous arc of the Platonic dialogues therefore ends in uncertainty (*aporia*).

Positions (ii) and (iii)—the esoteric and historicist positions—have only been taken up in a systematic way since the nineteenth century. It could nevertheless be argued that (ii) was staked out in antiquity, and that (iii) was at least dimly intimated by Aristotle. Consider the following:

- (ii) Augustine of Hippo, under the influence of Cicero,<sup>43</sup> writes in the early fifth century CE that ‘it is hard to perceive Plato’s own convictions on crucial matters’.<sup>44</sup> He attributes this to the fact that Plato, in the dialogues,<sup>45</sup> takes over the ‘defining habit’ (*notissimum morem*) of Socrates—namely, that of ‘concealing (*dissimulandae*) his own knowledge or opinions’.<sup>46</sup> *Dissimulatio*

<sup>39</sup>Cic. *Acad.* I 12.46.

<sup>40</sup>Pl. *Laws* XII 968b.

<sup>41</sup>Pl. *Laws* XII 969a.

<sup>42</sup>Pl. *Laws* XII 968c: *Ouketi nomous ... peri tôn toioutôn dynaton esti nomotheteîn*.

<sup>43</sup>Cf. Cic. *Acad.* I 4.15–16, I 12.45–46, II 74; *Tusc.* V 4.11, etc.

<sup>44</sup>Aug. *Civ.* VIII 4: *etiam ipsius Platonis de rebus magnis sententiae non facile perspicere possint*.

<sup>45</sup>Augustine appears to differentiate between Plato’s direct voice in the epistles, and his indirect voice in the dialogues, at Aug. *Civ.* VIII 4: ‘Certain tenets which appear in his writings ... [were] recounted and written down by him as having been expressed by others (*ab aliis dicta*), and apparently approved by him (*sibi placita viderentur*).’

<sup>46</sup>Aug. *Civ.* VIII 4.

is Augustine's technical term for Socratic irony (*eirōneia*),<sup>47</sup> and this Latin term, like the Greek, denotes 'self-concealment' (or 'deception').<sup>48</sup> For Augustine, then, Plato's dialogues are an elaborate testament to Socrates' habit of self-concealment (or deception).

In the *Phaedo*, Crito asks Socrates, moments before he drains the poisoned cup: 'How shall we bury you?' Socrates' reply is: 'However you please'. But he then adds, laughing gently: 'If you can catch me, and I do not get away from you!'<sup>49</sup> There seems to have been a suspicion in antiquity—even in a late-antique author such as Augustine, whose knowledge of the dialogues is scant—that Socrates and Plato 'get away' from us. And it could be, of course, that we cannot 'catch' them because we are not meant to—at least, not in the dialogues.<sup>50</sup>

- (iii) The historicist optic of the nineteenth century is basically foreign to the pre-modern tradition, in which the tendency is to reify Plato's thought—and often, to harmonize it with Aristotle's<sup>51</sup>—rather than to temporize it. Still, it is interesting to note that when Aristotle introduces his comparison of Plato's *Republic* and *Laws*, he observes that they differ because the *Laws* were 'written later' (*hysteron graphentas*) than the *Republic*.<sup>52</sup> Similarly, on the topic of inequality, Aristotle refers to what 'Plato thought when writing the

<sup>47</sup> Augustine says that Socrates' habit was 'either to confess his ignorance (*confessa ignorantia*) or to conceal his knowledge (*dissimulata scientia*):' AUG. *Civ.* VIII 3. Cicero is doubtless Augustine's authority for this Latin rendering of *eirōneia*. Cf. CIC. *Acad.* II 5.15: *Socrates ... libenter uti solitus est ea dissimulatione quam Graeci εἰρωνείαν vocant*; and *Offic.* I 30.108: *... in omni oratione simulatorem, quem εἰρωνᾶ Graeci nominarunt, Socratem accepimus*. The last passage is especially revealing, since Cicero then proceeds to contrast Socrates' cultivation of irony with those 'who think that nothing should be done by underhand means or treachery (*nihil ex occulto, nihil de insidiis*); they are lovers of truth, haters of fraud (*veritatis cultores, fraudis inimici*):' CIC. *Offic.* I 30.109.

<sup>48</sup> An important discussion of *eirōneia* is Opsomer (1998, 105–126), here 112: 'It is a (chiefly linguistic) behaviour of dissembling, of simulating a certain attitude towards an utterance. ... The Greek εἰρωνεία maintains the ambiguity between irony and deception.'

<sup>49</sup> PL. *Ph.* 115c–d. Note, however, that in *Ph.* 115b, Plato has Socrates say to his inner circle that a sort of path has been indicated by his conversations with them, and that they should walk 'step by step' (*kat' ichnē*) in this path.

<sup>50</sup> Cf. CIC. *Acad.* (ed. post.) fr. 21 = AUG. *C. Acad.* III 20.43: '[Cicero] says that they had a habit of concealing their conviction (*occultandi sententiam suam*), and that their custom was not to disclose it (*aperire*) to anyone who had not lived with them right up to old age (*nisi qui secum ad senectutem usque vixissent*).'

<sup>51</sup> A hundred texts could be adduced here, but of particular interest—since Cicero is a New-Academic Platonist—is CIC. *Acad.* I 4.17: 'Originating with Plato, a thinker of manifold variety and fertility, there was established (*instituta*) a philosophy that, although it had two designations—Academic and Peripatetic—was really a single system (*una ... philosophiae forma*), differing in name but agreeing in substance (*rebus congruentes*).'

<sup>52</sup> ARIST. *Polit.* II 3.1 (1264b27–29).



*Laws*'.<sup>53</sup> The implicit contrast is to what he thought when writing the *Republic*.<sup>54</sup>

It is not necessary, here, to decide between these hermeneutical positions and traditions. They all illuminate aspects of Plato's corpus, and of this essay. It is necessary, however, to briefly introduce the dialogues that structure this essay—namely, the *Apology* and *Crito* (Chap. 3), *Gorgias* and *Republic* (Chap. 4), *Politicus* and *Laws* (Chap. 5)—and before that, to glance at the question of their chronology.

### 2.1.2 Dating the Dialogues

It is an ancient discourse (*palaion ... logon*), and I heard it from a man not young.

—PLATO, *Timaeus*<sup>55</sup>

Plato treats the *Timaeus* as a sequel to the *Republic*,<sup>56</sup> and Aristotle takes it as given that the *Laws* were 'written later' than the *Republic*.<sup>57</sup> Plato's *Republic* is therefore an earlier dialogue; the *Timaeus* and *Laws* are later dialogues. There is no reason to doubt this basic chronology, but it is also vague and radically incomplete. The dialogues' chronology is likely to remain that way. Most of Plato's dialogues—unlike the *Timaeus*—lack hard chronological markers which permit us to determine the order in which they were written, and Aristotle's comment on the *Laws* is exceptional. In fact, the preoccupation with dates and order of composition is a recent one.

Until the nineteenth century, the lack of a Platonic chronology was not even felt.<sup>58</sup> Conrad Ritter was the first to hazard a comprehensive periodization of Plato's dialogues into early, middle and late, in his *Untersuchungen über Platon* (1888).<sup>59</sup> Ritter argued from variations in the frequency of 'reply formulae' in the dialogues, drawing on earlier calculations made by Wilhelm Dittenberger and Morris Schanz in the philological journal *Hermes*.<sup>60</sup> Since then, a number of scholars have drawn

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<sup>53</sup>ARIST. *Polit.* II 4.2 (1266b6–8): *Platôn de tous Nomous graphôn mechri men tinos ôieto dein ean ...*

<sup>54</sup>Cf. ARIST. *Polit.* II 2.1–9 (1262b37–1263b29).

<sup>55</sup>PL. *Tim.* 21a.

<sup>56</sup>PL. *Tim.* 17a–20c.

<sup>57</sup>ARIST. *Polit.* II 3.1 (1264b27–29).

<sup>58</sup>For a sense of how Plato's dialogues were organized in late antiquity, with a total disregard for the question of chronology: ALB. *Eis.* 3–4.

<sup>59</sup>For a brief critique of Ritter's methods: Keyser (1992, 63–64).

<sup>60</sup>For a report on the findings of Dittenberger and Schanz: Keyser (1992, 60–61).

up new periodizations.<sup>61</sup> And perhaps more significantly, the stylometric method underlying all the Platonic chronologies has been savaged in a fascinating article by classicist Paul Keyser.<sup>62</sup>

In the fine grain, Platonic chronology defies certainty. For our purposes here, though, and without entering into it further:

- i. It not controversial to treat the *Apology* and *Crito* as very early Platonic dialogues (as in Chap. 3).
- ii. The placement of Plato's *Gorgias* and *Republic* is more variable, but it is common to treat the *Gorgias* as an 'early-transitional' or middle-period dialogue, and the *Republic* as a middle-period dialogue (as in Chap. 4).<sup>63</sup>
- iii. Finally, there is a stable consensus that the *Politicus* and *Laws* are to be treated as very late dialogues (as in Chap. 5).

Thus, in broad outline, *Platonic Legislations* retraces the chronological arc of Plato's dialogues—from the *Apology* (very early), to the *Republic* (middle-period), to the *Laws* (very late).

It is by no means inessential to this essay's argument that the *Laws* postdates the *Republic*, and that the *Republic* postdates the *Apology*. It is asserted here that legislators must reckon with time, and that Plato's reflection on law encodes a reckoning with time—from the *Apology*, to the *Republic*, to the *Laws*. But this reckoning is not only chronological; Plato's reflection on law is intrinsically dramaturgical.<sup>64</sup> And it is therefore necessary to introduce the dramatic logic of the dialogues that underlie our argument.

## 2.2 The Drama of Platonic Legislation

### 2.2.1 Early Dialogues: *Apology* and *Crito*

Do you conclude (*iudicas*) that Socrates was mistreated because he drank the poison which the city-state had mixed for him as if it were a tincture of immorality, and discoursed on death up to the moment of his death?

—SENECA, *On Providence*<sup>65</sup>

The trial and death of Socrates structure a number of Plato's early dialogues. The *Apology* and *Crito* are linked, in dramatic terms, to the *Euthyphro* and *Phaedo*. It is

<sup>61</sup>Cf. Brandwood (1990). For a useful tabulation of Paul Friedländer's and Charles Kahn's proposals: Clay (2000, 285–286); and for Gilbert Ryle's 'timetable': Ryle (1966, 216–300).

<sup>62</sup>A strong argument for the *non liquet* is Keyser (1992). A more sanguine assessment is Kahn (2002).

<sup>63</sup>Cf. Ledger (1989, 85, 212, 222–225), Brandwood (1990).

<sup>64</sup>Cf. Folch (2015), Peponi (2013).

<sup>65</sup>SEN. *Prov.* 3.12.

reasonable, then, to introduce Plato's account of the last days of Socrates in this cluster of dialogues, rather than to isolate the *Apology* and *Crito* (as in Chap. 3).

The *Euthyphro* takes place in the shadow of the Porch of the King-Archon, the law-court in which capital cases were tried at Athens.<sup>66</sup> Socrates is waiting there to fight the charges that have been brought against him by 'a young and unknown (*agnôs*) person'—in other words, a punk—by the name of Meletus.<sup>67</sup> Socrates tells his zealous young interlocutor, Euthyphro, that he hopes to pass his time in court with 'jests and laughter' (*paizontas kai gelôntas*). He suspects, however, that his accusers will take themselves 'seriously' (*spoudasontai*).<sup>68</sup> Unfortunately, he is right.

Plato's *Apology* is set within the Porch of the King-Archon. It is a stylized reconstruction (or re-conception) of Socrates' speeches during his one-day trial in 399 BCE. The *Apology* can be read as a monologue in several acts, but it is nevertheless a sort of dialogue. Socrates' accusers, judges, and supporters figure decisively in his speeches—not least, in his cross-examination of Meletus.<sup>69</sup> Socrates returns in the *Apology* to his premonitions in the *Euthyphro*. He now calls Meletus' accusation a 'serious joke'.<sup>70</sup> (The idea is not much changed in our phrase 'frivolous lawsuit'.) However, there is not much laughter in the *Apology*. Socrates senses that the democratic regime at Athens has turned on him, and he abrasively tells the bench that he is on trial because of 'the mistrust and hostility of the multitude (*tôn pollôn*)'.<sup>71</sup>

In democratic Athens, even the bench is a 'multitude'; and predictably, Socrates is convicted by the court's 500 or 501 citizen-judges.<sup>72</sup> Later the same day, during the trial's sentencing phase, the citizen-judges vote to put him to death. Capital sentences in Athens tended to be met with tears and wild lamentations.<sup>73</sup> The bench liked to see histrionics.<sup>74</sup> ('You would have liked to hear me shrieking and moaning', Socrates tells his judges.)<sup>75</sup> Convicts had the right to plead for a less

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<sup>66</sup>For the precise location of this structure ('the Stoa of the Basileus'), in front of which 'the revised code of [Athenian] laws was displayed' at the dramatic date of the *Euthyphro*: Rhodes (1981, 134–135).

<sup>67</sup>PL. *Euth.* 2a–3e, 15e–16a.

<sup>68</sup>PL. *Euth.* 3d–e.

<sup>69</sup>PL. *Apol.* 24c–28a. A subtle commentary on this part of the *Apology* is Reid Smith (1995).

<sup>70</sup>PL. *Apol.* 24c: ... *adikein phêmi Melêton, hoti spoudêi charientizetai, rhaidiôs eis agôna kathistas anthrôpous* ...

<sup>71</sup>PL. *Apol.* 28a.

<sup>72</sup>MacDowell (1978, 202).

<sup>73</sup>This Athenian legal custom is condemned at PL. *Laws* XII 949b.

<sup>74</sup>PL. *Apol.* 34b–c, 38d–39b. Harris (2017, 230) convincingly shows that 'the theatrical expression of emotion arouses suspicions of insincerity' in Athenian law-courts during this period. But forensic psychology was—and is—so complex that a taste for histrionics, and a distrust of it, can be attributed to the same legal culture without contradiction.

<sup>75</sup>PL. *Apol.* 38d–e.

severe penalty.<sup>76</sup> Instead, Socrates urges the court that there would be fewer innocents killed in Athens ‘if you had a law ... that cases involving death should not be decided in a single day’.<sup>77</sup> Needless to say, the court is unimpressed. It is not the place of a convict to emend the laws under which he has been convicted. The *Apology* ends with Socrates being committed to custody.<sup>78</sup>

The *Crito* is set in Socrates’ prison cell. It becomes clear in the *Crito*’s opening scene that a ship which the Athenians sent every year to the city of Delos is making its return crossing.<sup>79</sup> ‘It is a law (*nomos*) of the Athenians’, as Plato clarifies in the *Phaedo*, that ‘that no one may be executed by the city-state (*dēmosiai*) until the ship has crossed to Delos and back’.<sup>80</sup> A priest of Apollo consecrated this ship on the day before Socrates’ trial,<sup>81</sup> and a stay of execution is in place until its solemn crossing is complete. Socrates will die when the Delos ship is docked at Athens.

During Socrates’ trial, his friend Crito had joined Plato in proposing a fine as a counterpenalty to death.<sup>82</sup> In the *Apology*, the court refused this offer. And in the days following his condemnation, Crito had arranged—in concert with certain ‘foreigners’ (*xenoi*)<sup>83</sup>—to spirit Socrates out of prison and to convey him to Thessaly.<sup>84</sup> In the *Crito*, Socrates refuses this offer. He points out that Thessaly is a city-state which is notorious for ‘disorder’ (*ataxia*).<sup>85</sup> He has no desire to live in a decadent polity. More conclusive, however, is Socrates’ argument in a long propopoeia of ‘the Athenian Laws and the City-State’ (*hoi nomoi kai to koinon tēs poleôs*).<sup>86</sup> By ventriloquizing his Laws and City-State, Socrates contrives to show

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<sup>76</sup>Cf. PL. *Apol.* 37b–e. In one of his court-room speeches, Lysias points out that death is ‘the most extreme penalty (*eschatên dikên*) that we have the power to inflict’: Lys. *Erat.* 37. According to Plato’s mature penal theory, however, death is both the harshest punishment and ‘the least of evils’ (*elachiston tôn kakôn*) that a convict can suffer: PL. *Laws* V 735e, IX 854e, IX 862e–863a.

<sup>77</sup>PL. *Apol.* 37a–b.

<sup>78</sup>PL. *Apol.* 42a.

<sup>79</sup>PL. *Crito* 43c–44b.

<sup>80</sup>PL. *Ph.* 58a–c.

<sup>81</sup>PL. *Ph.* 58a.

<sup>82</sup>PL. *Apol.* 38b: ‘Plato here, men of Athens, and Crito, Critobulus, and Apollodorus tell me to propose a fine of thirty minas, saying that they are sureties for it.’ Cf. PL. *Ph.* 115d–e: ‘Give security for me to Crito’, says Socrates to his inner circle, in the moments before his death, ‘the opposite of that which he gave the judges at my trial. For Crito gave security that I would remain [in Athens], but you must give security that I shall *not* remain when I die, but shall go away ...’.

<sup>83</sup>PL. *Crito* 45b; cf. *Ph.* 59c: ‘Were any foreigners (*xenoi*) present [= at Socrates’ death-scene]?’ ‘Yes, Simmias and Cebes of Thebes, and Phaenonides—and from Megara, Euclid and Therpsion.’ Montuori (1981, 189) takes this as a confirmation of Socrates’ anti-democratic politics: ‘Even young men from cities at war with Athens were attracted to [Socrates]’, he writes, citing a number of young aristocrats from Thebes, Megara, Sparta and Crete who were ‘opposed to the democratic principle of quantity over quality, mathematics over geometry.’

<sup>84</sup>PL. *Crito* 44b–45c.

<sup>85</sup>PL. *Crito* 53d–54b.

<sup>86</sup>PL. *Crito* 50a–54d.

Crito that it would be immoral for him to leave Athens—or indeed, to leave his prison cell—‘without the consent of the Athenians’.<sup>87</sup>

Crucial to my interpretation of the *Crito*, in Chap. 3, is Socrates’ singular attachment to his city. This is commented upon in a number of Plato’s dialogues. ‘You strike me as the *strangest* person (*atopôtatos*)’, a charming youth says to Socrates in the *Phaedrus*. ‘You *never* leave the city’—i.e. Athens—‘and it seems to me that you never even venture beyond the city walls’.<sup>88</sup> Having situated himself immovably within Athens, Socrates believes—and argues in the *Crito*—that he must submit to the fate the city has imposed on him. Socrates reiterates this with great clarity in the *Phaedo*, shortly before the city’s poisoner comes to him:

The real cause [of my present circumstance] is that the Athenians have decided that it was better (*beltion*) to condemn me, and therefore I have decided that it was better (*beltion*) for me to sit here, and that it is more just for me to stay and to suffer whatever penalty they impose. ... These sinews and bones of mine would have gone off to Megara or Boeotia long before now, conveyed there by an opinion of what was best (*tou beltistou*), if I did not think it was more just ... to suffer any penalty the city may inflict, rather than to flee (*pheugein*).<sup>89</sup>

The question of flight—including flight from the truth, in order to survive in a law-court, or flight from the punishment imposed by a law-court—lies at the centre of Chap. 3, and of ancient Greek legal culture. ‘The avoidance of [a] verdict by flight was accepted and almost codified by Attic law’, as Mario Montuori reminds us. Moreover, Montuori convincingly argues that Socrates’ accusers and judges—that is, the democratic regime at Athens—had *wanted* him to flee, ‘just as Anaxagoras and Protagoras had done before him’. Instead, Socrates ‘*refused* to avoid the verdict of the judges’ (in Plato’s *Apology*), and then ‘*refused* to the avoid the punishment’ imposed by the judges (in his *Crito*).<sup>90</sup> The Platonic dialogues concerning Socrates’ trial and imprisonment are therefore, in a salient sense—like the dialogue concerning his death—a Platonic account of Socrates’ *choice* to be condemned, and to die.

Like the *Crito*, the *Phaedo* is a prison-house dialogue. Plato alerts us in the *Phaedo*’s first sentence that it contains a narration of ‘the day when Socrates drank the poison’.<sup>91</sup> We will recall that Plato was ill that day<sup>92</sup>; he therefore creates an

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<sup>87</sup>PL. *Crito* 48e.

<sup>88</sup>PL. *Phaed.* 230c–d.

<sup>89</sup>PL. *Ph.* 98e–99a.

<sup>90</sup>Montuori (1981, 197–199). Note that Montuori makes a number of radical—and highly questionable—claims, but that this is not one of them. The unexcitable Bury (1900, 580) says precisely the same: ‘The penalty proposed [for Socrates] was death; but the accusers had no desire to inflict it; they expected that, when the charge was lodged in the archon’s office, Socrates would leave Attica, and no one would have hindered him from doing so.’

<sup>91</sup>PL. *Ph.* 57a.

<sup>92</sup>PL. *Ph.* 59b.

‘eyewitness’ account by Phaedo of Elis (who himself authored dialogues).<sup>93</sup> The *Phaedo* concludes with Socrates’ last words—a subtle theological joke—and with the moment of his death. It is Crito, we are told, who closes Socrates’ eyes.<sup>94</sup>

Early on in the *Phaedo*, Socrates asks one of his disciples, Simmias: ‘Do we think that death exists (*ti ton thanaton einai*)?’ Simmias replies: ‘Certainly’. Socrates then defines death as ‘the state in which the body is separated from the soul and exists alone by itself (*auto kath’ auto*)’.<sup>95</sup> A corpse is a body shorn of its soul. And Socrates’ question in the *Phaedo* is whether a philosopher—a *real* philosopher<sup>96</sup>—can believe that the soul, after death, ‘will exist alone by itself (*autê kath’ autên*), separated from the body’.<sup>97</sup> In other words, is the soul immortal?

One of Socrates’ circle reminds him that ‘humans are prone to unbelief (*apis-tian*)’. ‘They fear that when the soul leaves the body’—this comment is made by Cebes—‘it flies away and is no longer anywhere, scattering like a breath or smoke (*hôsper pneuma ê kapnos*)’.<sup>98</sup> The Roman materialist Lucretius (d. 55 BCE) will later return to this image in his attack on the hopes and fears of human immortality. In his relentless brief for ‘mortal life’ and ‘immortal death’,<sup>99</sup> Lucretius writes that the soul, at death, pours out of the body like ‘mist and smoke’ (*nebula ac fumus*); it then dissolves into the elements.<sup>100</sup> Socrates, however, is unconvinced. He hopes and believes—though he never asserts—that the soul outlives the body.<sup>101</sup> And the *Phaedo* is his—or rather, Plato’s—luminous brief for immortality.

It is important to note that the *Phaedo* is linked to the *Apology* by more than dramatic chronology. When he introduces the *Phaedo*’s line of reasoning on the soul, Socrates says to his friends, in a jocular vein: ‘I will try to make a more convincing defence (*apologêsasthai*) before you than I did before the citizen-judges’.<sup>102</sup> He later reiterates his desire to be ‘more persuasive in convincing you by my defence (*apologiai*), than I was in convincing the Athenian

<sup>93</sup>The *Phaedo*’s narrator says emphatically, ‘I was there myself’: PL. *Ph.* 57a. The dialogues of Phaedo are not extant, but it cannot be ruled out that Plato may have drawn on them—including, perhaps, Phaedo’s account of Socrates’ last hours—in writing his own. Cf. Boys-Stones (2004).

<sup>94</sup>PL. *Ph.* 118.

<sup>95</sup>PL. *Ph.* 64c.

<sup>96</sup>PL. *Ph.* 64e: *hôs alêthôs philosophos*.

<sup>97</sup>PL. *Ph.* 66e–67a.

<sup>98</sup>PL. *Ph.* 69e–70a.

<sup>99</sup>Cf. LUCR. *Rer. Nat.* III 869: ... *mortalem vitam mors cum immortalis ademit*.

<sup>100</sup>LUCR. *Rer. Nat.* III 425–444, here 436. The same image appears in *Wisdom of Solomon* (*Sophia Salômônos*), a book redolent of Hellenistic philosophy (and most approvingly, of Platonism), which seems to have been written at Alexandria in the first century BCE. (It is roughly contemporaneous with Lucretius, then.) In *Wisdom* 2:1–5 (LXX), pseudo-Solomon warns that one who ‘reasons erroneously’ (*logisamenoi ouk orthôs*)—i.e. an Epicurean or a Sadducee—will conclude that ‘the breath in our nostrils is like smoke’ (*hoti kapnos hê pnoê en rhisin hêmon*), and that our souls vanish into the sky at death ‘like the trace of a cloud’ (*hôs ichnê nephelês*).

<sup>101</sup>PL. *Ph.* 63b–c; cf. *Apol.* 40c–41c.

<sup>102</sup>PL. *Ph.* 63b.

citizen-judges'.<sup>103</sup> And further on in the dialogue, he interrupts himself, self-mockingly: 'I seem to be speaking like a legal brief (*syngraphikôs*)!' <sup>104</sup> Plato evidently conceives of the *Phaedo* as a sort of Socratic apology. It is a reflection *in extremis* on the philosopher's relation to law, and to judgement.

Are there obligations which extend beyond 'this time which we call life'—that is, to 'all time'? <sup>105</sup> Are there judgements which occur, and penalties which may be imposed on the soul, once the body is dead? <sup>106</sup> In the *Apology*, Socrates suggests that there are <sup>107</sup>; and in the *Phaedo*, he defends this belief. The question of immortality is not thematised in this essay, but it should be kept in mind that the afterlife is a constitutive horizon Plato's hypothetical legislations—in the *Republic*, and in the *Laws*.<sup>108</sup>

### 2.2.2 Middle-Period Dialogues: Gorgias and Republic

Beautiful laws subordinate the bestial elements of our nature to the human.

—PLATO, *Republic*<sup>109</sup>

Plato's *Gorgias* is a dialogue on rhetoric, but rhetoric has its origins in the first forays of Greek democracy.<sup>110</sup> In a democratic regime, it is rhetoric that 'preserves us in the law-courts'<sup>111</sup>; and ultimately, it is rhetoric that steers a democratic law-state. Rhetoric is therefore the decisive technique of democratic governance. It is 'a manufacturer of persuasion' (*peithous dêmiourgos*).<sup>112</sup> Precisely because the *Gorgias* sets out a vigorous critique of rhetoric, it mounts a critique of Athenian legal culture. Socrates' death is on the horizon throughout the dialogue, because

<sup>103</sup>Pl. *Ph.* 69e.

<sup>104</sup>Pl. *Ph.* 102d. The context gives *syngraphikôs* its legal colouring, here. The word's legal signification derives from the office of *syngraphês*, a 'commissioner appointed to draw up legal measures': Liddell and Scott (1996, 1661), s.v. συγγραφεύς.

<sup>105</sup>Pl. *Ph.* 107c: ... *eiper hê psychê athanatos, epimeleias dê deitai ouk hyper tou chronou toutou monon, en hoi kaloumen to zên, all' hyper tou pantos* ...

<sup>106</sup>Pl. *Ph.* 113d–114c.

<sup>107</sup>*Apol.* 40c–41c.

<sup>108</sup>Cf. Pl. *Laws* XII 959a–b, 966d–968b.

<sup>109</sup>Pl. *Rep.* IX 589c–d.

<sup>110</sup>Cf. Detienne (1996, 117): 'Sophistry is indissociable from rhetoric. The latter first appeared in Magna Graecia, also in a political context—either in relation to deliberations on early "democracy" or in association with the workings of argued justice. ... Sophistry and rhetoric, products of the same political culture, thus encouraged indissociable mental techniques.'

<sup>111</sup>Pl. *Gorg.* 511b–c.

<sup>112</sup>Pl. *Gorg.* 453a. Cf. Detienne (1996, 118): 'The aim of sophistry, like rhetoric, is persuasion (*peithô*), trickery (*apatê*). In a fundamentally ambiguous world, these mental techniques allowed the domination of men through the power of ambiguity itself. ... Plato was correct to regard them as masters of illusion.'

Plato's contemporaries know that rhetoric will not preserve *him* in Athens' law-courts.<sup>113</sup>

This dialogue features and takes its name from Gorgias of Leontini (d. 376 BCE), a rhetorician from a Greek colony on the island of Sicily.<sup>114</sup> A number of ancient sources claim Gorgias as a disciple of the philosopher Empedocles of Acragas (d. 433 BCE).<sup>115</sup> In any case, he became one of the most distinguished purveyors of the 'sophistic' culture that emerged in Athens and other Greek city-states in the fifth century BCE. Socrates jokes in the *Symposium* that if he ever came face to face with 'the eloquent Gorgias' head—a play on the Gorgon's head in Homer's *Odyssey*—he would be stunned into silence.<sup>116</sup> In the first phase of this dialogue, however—in which Socrates faces Gorgias in person—he is garrulous. His interrogation of the elderly rhetorician is high-spirited, and has the feel of a 'satire' (*diakômôdein*).<sup>117</sup>

Polus of Acragas is one of Gorgias' protégés, and in the second phase of the *Gorgias*, Socrates converses with him. Socrates admits that he has read Polus' handbook on rhetoric,<sup>118</sup> but he is not yet convinced that rhetoric is a genuine technique (*technê*). Irreverently, Socrates classifies rhetoric as a 'branch of flattery'.<sup>119</sup> Since flattery is the operative mode of discourse in a corrupt political regime (a point we will return to in Chap. 4), he later calls rhetoric the 'simulacrum' (*eidôlon*) of a branch of political technique'.<sup>120</sup> Rhetoric is spin, smooth talk, posturing that passes as rational political discourse.

The *Gorgias* is set in the house of a brash aristocrat, Callicles of Acharnae,<sup>121</sup> and in the third phase of the dialogue Socrates takes the fight to his host. (Significantly, the *Gorgias*' first word is *polemos*—'war'.) Callicles is a hot-headed advocate of a radically 'sophistic' politics. To his mind, immoralism is the logical core of legal positivism, and legal positivism is the formal link between tyranny and democracy. The multitude, like the tyrant, imposes by diktat what it feels to be just. This—and nothing but this—is the essence of positive law. Politics is imposition, and law is a modality of violence. In the city, as in the wild, justice is sovereign violence. The sophist's task is to steer that violence; Socrates' task is to refute the sophist. It is only after this refutation has been made that Platonic legislation can begin, and it begins in the *Republic*.

<sup>113</sup>Cf. Pl. *Gorg.* 454a–b, 471e–472c, 473e–474b, 486a–c, 508a–e, 521b–522e.

<sup>114</sup>Cf. Pl. *Gorg.* 449a, where Socrates dubs Gorgias—with his consent—a 'rhetorician' (*rhêtora*).

<sup>115</sup>Cf. Dillon and Gergel (2003, 47): 'There seems [to be] no reason to doubt that he [= Gorgias] was at least acquainted with him [= Empedocles]. His own pupil Polus hailed from Acragas, giving further evidence of contact.' Note that Acragas and Leontini were both Sicilian cities.

<sup>116</sup>Pl. *Symp.* 198c.

<sup>117</sup>Pl. *Gorg.* 462e.

<sup>118</sup>Pl. *Gorg.* 462c.

<sup>119</sup>Pl. *Gorg.* 463a–c.

<sup>120</sup>Pl. *Gorg.* 463c–d.

<sup>121</sup>Allen (1984, 190): 'We know nothing of him beyond what Plato tells us, but there is no adequate reason to think that he is fictional: his deme is mentioned.'



Plato's *Republic* is set during the feast of a non-Athenian goddess, Bendis<sup>122</sup>; in the house of a non-Athenian weapons manufacturer, Polemarchus; and in the port city of Athens, the Piraeus.<sup>123</sup> The setting of the *Republic* is intentionally liminal. Plato situates his most impolitic dialogue on Athens' borderlines.

The presence of Polemarchus' younger brother, Lysias (d. ca 380 BCE), should be noted.<sup>124</sup> Lysias will become a highly paid forensic orator or 'speech-writer' in Athens<sup>125</sup>—thirty-five of his speeches still survive—and in the *Phaedrus*, Socrates calls him 'the cleverest writer of our day'.<sup>126</sup> (Since the *Phaedrus* is a sustained critique of writing, this is a set-up.)<sup>127</sup> Socrates' most forceful interlocutor in *Republic* I is a sophist, Thrasymachus of Chalcedon (b. ca 460 BCE), whose immoralism and legal positivism recollect Calicles' in the *Gorgias*.<sup>128</sup> (*Republic* I may be roughly contemporaneous with the *Gorgias*.) Beginning in *Republic* II, Socrates converses with Glaucon and Adeimantus, both of whom are 'sons of Ariston'—which is to say, brothers of Plato. Thus, it is not exactly self-deprecatory when Plato inserts a poetic line into *Republic* II which hails his brothers' descent from a 'divine race' (*theon genos*).<sup>129</sup> (Since *Republic* II introduces Plato's attack on poetic theology, however, the line's effect is ironical.) Beyond this, it is not possible to schematize the dramatic logic of the *Republic*. My curt precis of the dialogue, in Chap. 4, is abstracted from its setting.

What cannot go unremarked, here, is that Socrates becomes a legislator in the *Republic*.<sup>130</sup> He extracts from Thrasymachus, in *Republic* I, the concession that 'in attempting to legislate, some laws are correct (*orthôs*) and some incorrect (*ouk orthôs*)'. Once the sophist has granted this—and with it, has granted that legislators are not 'infallible'—the culture of legal positivism that he represents is laid open to Socrates' critique.<sup>131</sup> By *Republic* II, Socrates is himself 'attempting to legislate'. He rapidly deconstructs the political theology that Athenians have derived 'from the

<sup>122</sup>Pl. *Rep.* I 354a.

<sup>123</sup>Pl. *Rep.* I 327a–328c.

<sup>124</sup>Pl. *Rep.* I 328b.

<sup>125</sup>Note that 'speech-writer' is an oxymoronic term; it may have originated as a term of abuse. In the *Phaedrus*, Plato indicates that Lysias had come under attack from an Athenian politician, and that 'all through his abusive speech he kept calling Lysias a "speech-writer" (*logographos*)': Pl. *Phaed.* 257c, cf. 277a–b.

<sup>126</sup>Pl. *Phaed.* 228a: *deinotatos on ton nun graphein*.

<sup>127</sup>Plato's ferocious critique of Lysias in the *Phaedo* should be set in light of the ancient tradition that Lysias wrote a defence for Socrates before his trial, reportedly titled *Sôkratous apologia estochasmenê tôn dikastôn*. Socrates declined to recite Lysias' speech in court. Cf. Montuori (1981, 206–207, 213–214), here 207: '[Lysias' *Apology*] was in circulation even before [Socrates'] death, and it was certainly not withdrawn from circulation after the unfortunate outcome of the trial.'

<sup>128</sup>Cf. Pl. *Rep.* I 338e–339a.

<sup>129</sup>Pl. *Rep.* II 367e–368a.

<sup>130</sup>Any number of passages could be cited here. Socrates is often styled a 'legislator' (*nomothetês*). So are his interlocutors.

<sup>131</sup>Pl. *Rep.* I 339c.

laws (*nomôn*) and the poets',<sup>132</sup> and he institutes new 'laws (*nomôn*) and models concerning the gods'.<sup>133</sup>

The gravity of this 'rejection of poetical theology', in Montuori's phrase, should not be diminished. The Greek poets' chronicles of the gods functioned as the 'gospels' of the Athenian masses; to denigrate them is therefore to attack 'the spiritual structure of the Athenian people'.<sup>134</sup> In spite of this, Adeimantus closes *Republic* II by saying that he would like to see Socrates' critique promulgated 'as laws' (*hôs nomois*).<sup>135</sup> As this indicates, the *Republic* is a hypothetical legislation.<sup>136</sup> Socrates is not merely theorizing the 'optimal regime' in the *Republic*; he is legislating for it.<sup>137</sup>

Plato states this unmistakably in book V of the *Laws*. The regime that is traced out in the *Republic*, he writes there, is optimal precisely in so far as it possesses 'optimal laws' (*nomoi aristoi*).<sup>138</sup> Socrates' task, in the *Republic*, is to draft those laws. Where the existing Greek law-codes are 'against nature' (*para physin*), his new hypothetical law-code must be 'in keeping with nature' (*kata physin*).<sup>139</sup> Hypothetical legislation—which is to say, Platonic legislation—is therefore a form of overt legal critique. It seeks to identify 'whatever is dysfunctional in presently existing regimes', and to alter it.<sup>140</sup>

Plato recognizes that legal critique engenders legal revision. Book IV of the *Republic* shows that Socrates' law-code has an immovable core of fundamental laws.<sup>141</sup> Nevertheless, Socrates is aware that his code is not remotely comprehensive. His optimal laws institute an optimal city in the *Republic*, but this city is authorized to subtilize and ramify its laws in future. Legislation will therefore be ongoing in the first Platonic law-state. Socrates says that his laws are not only to be 'observed' (*peithomenous tois nomois*), but also 'imitated' (*mimoumenous*).<sup>142</sup> What this 'imitation' of fundamental law means—in the *Republic*, and later in the *Laws*—is that the city will, in time, produce new laws. In other words, Platonic legislation envisions post-Platonic legislation.<sup>143</sup>

<sup>132</sup>Pl. *Rep.* II 365d–e.

<sup>133</sup>Pl. *Rep.* II 380c.

<sup>134</sup>Montuori (1981, 194). Where Montuori evokes the Christian gospels, Havelock (1963, 61–86) writes of a 'Homeric encyclopedia'.

<sup>135</sup>Pl. *Rep.* II 383c. Compare this to *Rep.* II 380c, where Adeimantus says to Socrates: 'I agree with you over that law' (*sympôsêphos soi eîmi, ephê, toutou tou nomou*).

<sup>136</sup>Cf. Pl. *Laws* XII 941c: 'The legislator ... knows better than the whole tribe of poets.'

<sup>137</sup>Pl. *Laws* V 739a: *tên aristên politeian*.

<sup>138</sup>Pl. *Laws* V 739a–e.

<sup>139</sup>Pl. *Rep.* V 456b–c.

<sup>140</sup>Pl. *Rep.* V 473b: *ti pote nun kakôs en tais polesi prattetai*.

<sup>141</sup>Cf. Pl. *Rep.* IV 445d–e.

<sup>142</sup>Cf. Pl. *Rep.* V 458b–c.

<sup>143</sup>Cf. *Rep.* IV 425d–e, 427a.

### 2.2.3 *Late Dialogues: Politicus and Laws*

Our city's sovereign: the law.

—Plato, *Symposium*<sup>144</sup>

The *Politicus* is a stark—or perhaps, a ‘weary’ and ‘ugly’—dialogue.<sup>145</sup> There is no setting. It simply occurs. The presence of a mathematician, Theodorus of Cyrene,<sup>146</sup> together with a nameless philosopher from the colony of Elea,<sup>147</sup> links the *Politicus* to Plato's *Theaetetus* and *Sophist*. But apart from the fact that the *Theaetetus* is set in the last days before Socrates' trial, the dramatic effect of this linkage is minimal.<sup>148</sup>

Socrates is himself a supernumerary in the *Politicus*.<sup>149</sup> Plato's ideal legislator in the *Republic* only speaks here to justify his silence. The Eleatic Stranger takes over Socrates' role as the dialogue's protagonist—and weirdly, his interlocutor is a Younger Socrates (*Sōkratēs ho neōteros*). There is no reason to accept Evanthia Speliotis's claim that this boy-child Socrates has ‘no relation to Plato's philosopher’.<sup>150</sup> On the contrary, Socrates opens the dialogue by pointing out that the boy is ‘related to me (*emoi syngeneian*) after a fashion’, adding that he ‘has the same name and appellation, which implies some sort of kinship (*tina oikeiotēta*)’.<sup>151</sup> Plato therefore wishes us to associate Socrates and the Younger Socrates, and he later dramatizes this ‘kinship’ in a crucial passage of the dialogue, in which the Eleatic painstakingly leads the Younger Socrates to concede that the principle of the ‘sovereignty of law’—to lift a phrase from a court-room speech of Lysias<sup>152</sup>—will necessitate the trial of Socrates in 399 BCE.<sup>153</sup> The logic of this scene could hardly be heavier. Plato is forcing a Younger Socrates to consent, as a partisan of the Greek ‘law-state’ ideal, to the *legal necessity* of Socrates' death. We will return more than once to this scene.

Taken on the whole, the *Politicus* is a logical inquiry into sovereignty. The Eleatic Stranger believes that the rational technique (*technē*) of sovereignty is a

<sup>144</sup>Pl. *Symp.* 196c: *hoi poleōs basilēs nomoi*.

<sup>145</sup>Ryle (1966, 285): ‘This weary dialogue ...’; Strauss (2013, 278) (letter to A. Kojève dated 28 May 1957): ‘Generally the *Statesman* is ugly.’

<sup>146</sup>Cyrene was a Greek colony on the African littoral. Note Theodorus' invocation of the Libyan—and later, Egyptian—deity Ammon, at Pl. *Pol.* 257b (And cf. *Theaet.* 143d–e.).

<sup>147</sup>Cf. Pl. *Soph.* 216a: ‘He is a stranger from Elea, one of the disciples (*hetairôn*) of both Parmenides and Zeno, a real philosopher (*mala de andra philosophon*).’

<sup>148</sup>Pl. *Theat.* 210d.

<sup>149</sup>Pl. *Pol.* 257a–258a.

<sup>150</sup>Speliotis (2011, 295).

<sup>151</sup>Pl. *Pol.* 257d.

<sup>152</sup>Lys. *Epit.* 19: *nomou ... basileuomenous*.

<sup>153</sup>Pl. *Pol.* 299b–c.

‘purely intellectual’ one.<sup>154</sup> He splits the genus of *intellectual technique* into a pair of subaltern genera; there are techniques of *judgement*, he says, and techniques of *command*. Sovereignty, he concludes, is a ‘technique of command’ (*epitaktikên ... technên*).<sup>155</sup> Contrary to appearances, there is only one genuine technique of command, which is common to monarchs, oligarchs and democratic politicians.<sup>156</sup> The question of forms of governance—monarchy, oligarchy, democracy—a popular obsession in antiquity, as in modernity—is therefore inessential.<sup>157</sup> The Eleatic—and doubtless, through him, Plato—disparages democracy and justifies his preference for monarchy or oligarchy.<sup>158</sup> Nevertheless, what ultimately matters in the *Politicus* is to not whether one is governed by a certain number of persons (including, or not including oneself), nor whether one is governed according to written laws and procedures (however they may have been drawn up), but whether one is governed by the genuine technique of command.<sup>159</sup> The Eleatic is therefore, in a highly idiosyncratic sense, an advocate of technocracy. Good governance, in the *Politicus*, is governance by those with systematic insight into how to human beings ought to be governed.<sup>160</sup> This is not a tautology, but a deeply contentious hypothesis.

The Eleatic then reasons that this technique of command is human—not divine—on the strength of a myth which will be recounted in Chap. 5. The basic idea conveyed by this myth in the *Politicus* is that the human city is ‘deprived of the care of the deity (*daimonos*)’.<sup>161</sup> The Eleatic is not hereby denying divine providence<sup>162</sup>; he is criticizing the political theology of archaic city-states, in which the king is revered as a suzerain (or a son) of the gods. Francis Dvornik observes that the fifth-century BCE office of king-archon (*archon basileus*) at Athens is still ‘the heir of the Mycenaean priest-king’<sup>163</sup>; and Plato’s Eleatic severely denigrates the archaic priest-king template in the *Politicus*.<sup>164</sup> His myth implies that human

<sup>154</sup>PL. *Pol.* 259b: *tên technên autên basilikos*; 258e: *tên de monon gnôstikên*. Cf. *Pol.* 259c–260c.

<sup>155</sup>PL. *Pol.* 260c, cf. 267a–c.

<sup>156</sup>Cf. PL. *Pol.* 258e, 259d, 267c, 289c–d, etc. The Eleatic Stranger stipulates at *Pol.* 291e that ‘monarchy’ (*monarcheia*) is a generic term which can be resolved into ‘tyranny’ (*tyrannis*) and ‘royalty’ (*basileia*).

<sup>157</sup>PL. *Pol.* 292c.

<sup>158</sup>Cf. PL. *Pol.* 293a, 300e–301a, etc.

<sup>159</sup>PL. *Pol.* 260c.

<sup>160</sup>PL. *Pol.* 292d: *epistêmê ... peri anthrôpôn archês*.

<sup>161</sup>PL. *Pol.* 274b.

<sup>162</sup>Pace Leo Strauss in a letter to Alexandre Kojève, in which he suggests that the ‘massive meaning’ of the *Politicus* myth is the ‘denial of Providence’: Strauss (2013, 278) (letter dated 28 May 1957).

<sup>163</sup>Dvornik (1966), I:138–157, here 155.

<sup>164</sup>PL. *Pol.* 290c–e. It should be remembered that this ‘priest-king template’ outlived Plato by many centuries. It reached new heights in the Hellenistic world-order, and informed—perhaps most momentously—the pivotal reign of Constantine I and the Christianization of the Roman empire: Dvornik (1966), II:635–646.

sovereignty cannot be deflected to the gods. In ‘the present epoch’, he suggests, it is an error to ascribe sovereignty—*de jure* political sovereignty—to ‘a god, and not to a mortal creature’.<sup>165</sup>

This mythic critique of theocracy leads into a formal critique of the law-state’s highest principle: ‘the sovereignty of law’.<sup>166</sup> The Eleatic—and doubtless, through him, Plato—insists that ‘it is *not* best for the laws to be sovereign’.<sup>167</sup> The legal critique that follows is formal in that it seeks to lay bare the imperfections of law qua law. It is not a historical or material critique, but concerns what Plato later calls ‘the form of a law’ (*schêmati nomou*).<sup>168</sup> In a sustained argument (see *Politicus* 291e–302b), the Eleatic elicits from the Younger Socrates a concession that injustice is not only a consequence of the enforcement of *bad* laws; injustice is instead a necessary consequence of governance by *laws*. The ‘form of a law’ is incommensurate with the ideal of perfect justice. To the precise extent that democracy is conceived as a form of governance by laws (and not by humans),<sup>169</sup> this argument doubles as a critique of democracy. The imperfections of law qua law will of course vitiate any form of governance by laws—but most visibly, in Plato’s milieu, the governance of democratic city-states.

‘It is not best (*ariston*) for the laws to be sovereign’, the Eleatic reasons, because positive law is ‘not the most perfect right (*orthotaton*)’.<sup>170</sup> He bases the latter proposition on a set of incontrovertible, yet seemingly inconsequential facts. Positive laws, he reminds the Younger Socrates, are issued in *time* and extend in *space*.

- (i) *Time*. In contrast to a decree (*psephisma*), the duration of which is limited, the formal pretension of a law (*nomos*) is that it should remain in force ‘for all time’ (*epi panta ton chronon*).<sup>171</sup> In other words, law is promulgated as a *permanent* norm.<sup>172</sup> The Eleatic’s critique of this pretension is disarmingly simple: ‘None of the human things is ever at rest’.<sup>173</sup> To his mind, the flux of human things reveals positive law to be incommensurate with law’s ideal.

<sup>165</sup>Pl. *Pol.* 274e–275a. Note that at *Pol.* 303a–b, the Eleatic Stranger warns that real theocracy—that is, direct governance by God—cannot even be inscribed on his table of the six forms of human governance (monarchy, oligarchy, and so on). He clarifies: ‘It must be set apart from all the other forms of governance, as God is set apart from humankind (*hoion theon ex anthrôpôn*).’

<sup>166</sup>Lys. *Epit.* 19.

<sup>167</sup>Pl. *Pol.* 294a.

<sup>168</sup>Pl. *Laws* IV 718b–c.

<sup>169</sup>Note in this connection that the twentieth-century jurist Hans Kelsen often returned to the Latin maxim, *non sub homine, sed sub lege*: Kelsen (1942, 66; 1945, 36), etc.

<sup>170</sup>Pl. *Pol.* 294a–d.

<sup>171</sup>Pl. *Pol.* 294b: *epi panta ton chronon*.

<sup>172</sup>Cf. Canevaro (2015, 2016). His sharp description of *nomoi* as ‘general permanent norms’ and *psephismata* as ‘ad hoc enactments’ informs my reconstruction, here, of the Eleatic’s reasoning—in which, note, there is no mention of *psephismata*. The distinction between *nomos* and *psephisma* helps to sharpen the *Politicus*, but is extraneous.

<sup>173</sup>Pl. *Pol.* 294b.

Justice is timeless, and therefore never obsolete. The enforcement of archaic laws, however, can eo ipso constitute a gross injustice. Positive law is therefore not the most perfect right. The law-state defines itself by a temporal instrument—positive law—which time itself renders obsolete.<sup>174</sup>

- (ii) *Space*. In contrast to a decree (*psephisma*), the logic for which is ad hoc and the applicability of which may be tightly circumscribed, the formal pretension of a law (*nomos*) is that it should extend to ‘all things’ (*peri hapantôn*) designated in its statute and present within the law-state’s territory.<sup>175</sup> In other words, law is a *general* norm. Again, the Eleatic’s critique is very basic. He merely gestures towards ‘the dissimilarities (*anomoiotêtes*) of human persons and their actions’, and then denies that any ‘unitary rule’—which is to say, any law or code of laws—could conceivably satisfy the subtlest demands of justice.<sup>176</sup> Positive law, he argues, necessarily betrays the citizen-subjects of a law-state in their ‘singularity’ or ‘dissimilarity’ (*anomoiotês*). Positive law is therefore not the most perfect right. The law-state defines itself by a general instrument—positive law—which its citizen-subjects, in their singularity and dissimilarity, elude.

Plato’s formal critique of law in the *Politicus* is therefore grounded in the formal pretensions of ancient Greek legislation—to permanence, and to generality. The Eleatic Stranger nevertheless ends his provocative critique by conceding to the Younger Socrates that ‘we are obliged ... to compose written laws’.<sup>177</sup> Crucially, this concession—which signals, in context, the need for Plato to compose written laws—is coupled with a passage which can be read as a call for the systematic, non-democratic revision of ancient Greek law-codes.<sup>178</sup> This is the task that Plato takes up in his last—and longest—dialogue: *Laws*.<sup>179</sup>

Unlike the *Politicus*, which has no backcloth, the setting of Plato’s *Laws* is salient and symbolic. The dialogue is set on the island of Crete, which the Greeks regarded as ‘the cradle of legislation and codified law’.<sup>180</sup> What is more, the archaic

<sup>174</sup>‘Let this be the law (*nomos*)’, says the Athenian legislator in the last book of the *Laws*. He then continues: ‘Expenditure on [a Magnesian citizen’s] funeral cannot exceed five minas for a member of the highest property-class’, and so on. Even a slight fluctuation in currency values would of course begin to distance this positive law from the ideal of justice which it is meant to reflect: PL. *Laws* XII 959d.

<sup>175</sup>PL. *Pol.* 294b: *peri hapantôn kai epi panta ton chronon*.

<sup>176</sup>PL. *Pol.* 294b.

<sup>177</sup>PL. *Pol.* 301d–e.

<sup>178</sup>PL. *Pol.* 300b–301a.

<sup>179</sup>André Laks (2005, 263) writes that ‘certain features of the *Laws* ... suggest that Plato died before he could put the finishing touches to his work’, and that ‘it is generally assumed that Plato’s pupil Philip of Opus edited the text after his death’. The authorship of the *Laws*’ supplement (or ‘thirteenth book’) *Epinomis* is still contested, but since antiquity it has been attributed, with some consistency, to the same Philip of Opus who edited the *Laws*. Cf. DIO. LAER. *Lives* III 37.

<sup>180</sup>Hölkeskamp (1992, 52).

Greek legislators ‘were invariably believed to have been divinely inspired’.<sup>181</sup> In Plato’s day, as he reminds us in the *Laws*’ first lines (citing Homer),<sup>182</sup> the Cretans claimed that their ancestral laws had been revealed by Zeus to a prophetic legislator, Minos, who had met with the god in a cave on Mount Ida. According to myth, Minos had gone out from the city of Cnossus every ninth year and climbed to the god’s cave, where he had received new laws in oracular form.<sup>183</sup> It is on the road from Cnossus to Mount Ida—which is to say, in the footsteps of Minos—that Plato sets his *Laws*.

Socrates is not present in the *Laws*, and his name does not appear in the dialogue’s twelve books. (Plato has by no means forgotten him, however.) The dialogue has three interlocutors: a citizen of Cnossus named Clinias; a Spartan named Megillus; and a nameless Athenian whom the others call ‘stranger’ (*xenos*). Clinias represents the law-code of Crete (revealed by Zeus to Minos); Megillus the law-code of Sparta (revealed by Apollo to Lycurgus)<sup>184</sup>; and the Athenian a more complex legal tradition exemplified by Solon (who proudly composed his own *thesmoi* in verse).<sup>185</sup> Crudely put, Clinias and Megillus speak for the legal culture of archaic Greece. The Athenian legislator is fiercely anti-democratic and intensely critical of the culture of legal innovation that produced democracy in the fifth century BCE,<sup>186</sup> yet his critical approach to ancestral laws (*patrioi nomoi*) and his willingness to alter fundamental institutions (*patrios politeia*) nevertheless reflect his Athenian origins. A reactionary in Athens, he is a visionary on Crete. Most commentators believe that the Athenian legislator speaks for Plato.

Throughout the *Laws* these ‘old boys’ (*paides presbytai*),<sup>187</sup> as Plato lightly calls them,<sup>188</sup> are climbing towards the cave of Zeus. They converse, along the way, ‘about forms of governance and about laws’.<sup>189</sup> As they converse, they also legislate, in a hypothetical mode, for a new colony which they call Magnesia.<sup>190</sup> It is

<sup>181</sup>Hölkeskamp (1992, 53). Cf. Camassa (2013), Hölkeskamp (1999, 44–59).

<sup>182</sup>Cf. Pl. *Laws* I 624a–b; Hom. *Od.* XIX 178–179.

<sup>183</sup>Pl. *Laws* I 624a–625b.

<sup>184</sup>Cf. Montuori (1981, 184): ‘The Spartan εὐνομία ... was not [held to be] the work of men, but of god and of the Delphic Apollo himself who dictated it to Lycurgus. Hence the veneration of Apollo, the wise legislator, and the praise of Lycurgus for having made the Spartans obedient to laws received from the god.’

<sup>185</sup>It is worth noting, here, that Cicero will later echo a Roman tradition which links ‘the laws written by Lycurgus and Solon’ to the XII Tables (*duodecim tabulas nostras*): Cic. *Acad.* II 44.136. However weak this link may be in historical terms, it takes on a measure of reality—which is to say, real force and influence—in the Roman legal tradition.

<sup>186</sup>Cf. Camassa (2012), Canevaro (2015), Schwartzberg (2004).

<sup>187</sup>Pl. *Laws* IV 712b.

<sup>188</sup>Antonio Capizzi (1990, 372) suggests that ‘the Athenian character of Plato’s *Laws* ... thinks rather like the comics of the preceding century’—i.e. the poets of Attic Old Comedy. To pivot from Capizzi’s thought, there is perhaps more wry humour in the *Laws* than is commonly believed.

<sup>189</sup>Pl. *Laws* I 625a: *peri te politeias ... kai nomôn*.

<sup>190</sup>The name appears very late in the dialogue: Pl. *Laws* VIII 848d, IX 860e, XI 919d, XII 946b, XII 969a.



important to recall, here, that Plato is ‘heir to a period of colonization’,<sup>191</sup> and that Greek colonization (*apoikismos*) in this period involved ‘not only the choice of a site but the creation *ex novo* of a new society’.<sup>192</sup> The *Laws*’ Athenian, Cretan and Spartan legislators are engaged in tracing out—with great patience, and in unparalleled detail—the legal and institutional contours of a new society in the ancient Mediterranean.

Plato’s legislators never reach the cave of Zeus. This means that the twelve books of Plato’s *Laws* contain a *human* law-code.<sup>193</sup> It is not the work of an immortal, but of a ‘mortal legislator’.<sup>194</sup> To be sure, Plato’s legislators call upon Zeus to bless their labours.<sup>195</sup> They invoke the god, however, precisely because he is not perceptible to them—as he had been to Crete’s prophetic legislator in his cave. Plato legislates ‘outside the cave’, we might say—and the symbolism of this, in his *Laws*, is precisely the inverse of the cave-imagery of his *Republic*. In the *Republic*, to be ‘outside the cave’ is to behold the light of god; whereas, in the *Laws*, to be ‘outside the cave’ is to lack the god’s discernible presence. ‘We are humans’, the Athenian legislator underscores in *Laws* IX, ‘and we are legislating now for the offspring of humans’.<sup>196</sup> Set on Crete, outside the cave of Zeus, Plato’s *Laws* lay out a deeply pious,<sup>197</sup> but a rigorously demystified,<sup>198</sup> law-code which institutionalizes legal critique and revision.

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<sup>191</sup>Goldman (2009, 448).

<sup>192</sup>Malkin (1989, 136).

<sup>193</sup>Even Karl-Joachim Hölkeskamp, who has reservations about using the term ‘code’ (and derivatives) to describe *nomoi* in Plato’s period, refers to the *Laws* as a “‘Gesetzeskodex’ oder Gesetzbuch”: Hölkeskamp (1999, 34). And that Plato occasionally gives his law-code and its institutions the epithet ‘divine’—see *Pl. Laws* XII 957c (*ho theios hēmin kai thaumastos nomos*), XII 965c (*tēs theias politeias*), XII 969b (*ho theios ... syllogos*)—should not mislead us. He himself states that a positive law (*nomos*) or code of laws is ‘divine’ insofar as it reflects and inculcates reason (*nous*). This is a distinctly Platonic sense of ‘divine’, which naturally draws upon a more common Greek sense of the term—see *ARIST. Nic. Eth.* VII 3 (1145a28–33), for instance—without, however, intersecting with the archaic tradition of ‘divine’ legislation symbolized by the dialogue’s Cretan locale.

<sup>194</sup>*Pl. Laws* IX 873a: ... *tou thnētou nomothetou nomos*.

<sup>195</sup>*Pl. Laws* IV 712b.

<sup>196</sup>*Pl. Laws* IX 853c: *anthrōpoi te kai anthrōpōn spermasi nomothetoumen ta nun*.

<sup>197</sup>*Pl. Laws* XII 966c–968a.

<sup>198</sup>Plato’s Athenian legislator expresses a measure of contempt for Greece’s ‘divine’ law-codes in the first pages of *Laws* I. ‘I could have wished (and I wish it still)’, the Athenian says, ‘that you had explained how all these regulations’—that is, the *nomoi* which can be derived from and systematized by ‘reason’ (*Pl. Laws* I 632c)—‘are inherent in the reputed laws of Zeus and in those of the Pythian Apollo which were ordained by Minos and Lycurgus, and how their systematic arrangement (*taxin*) is so evident to him who ... is an expert in law, although it is by no means obvious to the rest of us’ (*Pl. Laws* I 632d). Soon after this, however, at *Pl. Laws* I 634d, the Athenian pays his respects to ‘the Laconian and Cretan polities’, whose ‘laws are drawn up in a circumspect way’, while Plato makes use of a precept of ‘that noble man’—and Plato’s ancestor—Solon, at *Pl. Laws* XI 913c–d, etc.



‘Our legislation is nearly perfect (*telos*)’, the Athenian legislator says in the *Laws*’ final pages; but he then immediately reminds the Cretan and Spartan legislators that ‘our whole law-code is imperfect (*ateles*)’.<sup>199</sup> There is no contradiction here, and this is no great confession for Plato to make at the end of his literary and legislative output. For Plato believes that law-codes are constitutively imperfect—qua code, and qua law. At the close of *Laws* XII, therefore, it is at once true that the law-code *drafted* by Plato is ‘perfect’ and ‘complete’ (*telos*), and that the law-code *introduced* by him is ‘imperfect’ and ‘incomplete’ (*atelês*). Plato is finished legislating, but his legislation is necessarily unfinished.

## 2.3 The Vicious Circle of Plato’s Laws

No one, they say, should be wiser than the laws.

—PLATO, *Politicus*<sup>200</sup>

Law is a deaf and inexorable thing.

—IMMANUEL KANT, quoting LIVY’s *History of Rome*<sup>201</sup>

It will be suggested at the close of this essay that the Platonic legislations—and indeed, the Platonic dialogues—form a vicious circle. This suggestion derives from a new reading of Plato’s statute in *Laws* XII concerning Magnesia’s envoys (*theôroi*), citizens who are sent out to observe ‘the legal institutions of other peoples’ and then report back to the colony.<sup>202</sup> Since this reading seems to constitute a *novum* in the history of Plato-interpretation, and can only be briefly stated in Chap. 5, there is reason to introduce it here.

### 2.3.1 The Last Pages of Plato’s Corpus

In Plato’s *Laws*, legal critique is not a citizen’s prerogative. Free speech (*parrhêsia*) is never permitted to touch Magnesia’s laws and institutions. Nevertheless, provision is made for legal critique and revision in the city. Because Plato’s law-code is

<sup>199</sup>PL. *Laws* XII 960b–c: *schodon hê nomothesia telos an hêmin echoi ... proteron d’ ateles einai to holon*.

<sup>200</sup>PL. *Pol.* 299c.

<sup>201</sup>LIVY *Hist.* II 3.4: *leges rem surdam, inexorabilem esse*. Quoted by Kant (1968, 338) in his 1794 essay, ‘The End of All Things’: ‘lex est res surda et inexorabilis. Livius.’

<sup>202</sup>PL. *Laws* XII 952b.

not divine, it can be criticized and revised; because his polity is not democratic, there is no right to criticize this law-code in the open. Magnesia has envoys who are tasked with recommending new laws to a closed-door deliberative body,<sup>203</sup> the Nocturnal Council of Rulers (*archontôn nykterinon syllogon*).<sup>204</sup> This Nocturnal Council is Plato's last, unrealized institution. As Glenn Morrow observes in *Plato's Cretan City*, 'there is no parallel to this Council in the government of any historical Greek city'.<sup>205</sup> Reflecting the Council's novelty, Plato calls it a sort of 'dream-state' (*oneiratos*) assembly.<sup>206</sup>

Hastily sketched in the last pages of *Laws* XII—and thus, of Plato's corpus—the Nocturnal Council is an oligarchical body with considerable *sui generis* powers. The Athenian legislator cautions that 'it is not possible ... to impose laws on such a body before it has been duly formed (*kosmêthêi*)'. It is only in the future—which is to say, in a *post-Platonic* future—that the Council's powers could be formally delineated by law. And crucially, it is the Council itself that Plato tasks with delineating its powers. 'The councillors must themselves legislate', the Athenian concludes, 'concerning the powers (*kyrious*) they should possess'.<sup>207</sup>

Whatever powers the Council may obtain in this hypothetical future, its vital function in the *Laws* is to supplement and emend Plato's law-code. The Council's *raison d'être* is to preside over the deliberate and indefinite flux of Platonic law. Shockingly, however, the Athenian legislator states in *Laws* XII that this Council should put to death free-speaking critics of Magnesia's law-code—and the figure he evokes is that of Socrates. The free-speaking Athenian whose condemnation inspires the Platonic reflection on law (Chap. 3), and who drafts a law-code in Plato's middle-period *Republic* (Chap. 4), is himself condemned to death, *post mortem*, by one of the last statutes in Plato's *Laws* (Chap. 5).<sup>208</sup> How could this be? What could this mean? And how could Plato's commentators have failed to notice it?

The last question cannot detain us. The staid George Grote *sensed* this tragic shadowplay in the 1880s, when he compared Plato in the *Laws* to Socrates'

<sup>203</sup>Pl. *Laws* XII 950d–952d. Cf. Dareste (1893, 148): '... un conseil spécial, chargé de la surveillance et du perfectionnement des lois.'

<sup>204</sup>Pl. *Laws* XII 968a, cf. XII 961a–c, 964e–965a, 968a–969c. At Pl. *Rep.* V 463a, Glaucon notes that democratic regimes use the term 'rulers' (*archontas*) where oligarchies and monarchies use 'masters' (*despotas*).

<sup>205</sup>Morrow (1960, 509).

<sup>206</sup>For 'dream-state': Pl. *Laws* XII 969b.

<sup>207</sup>Cf. Pl. *Laws* XII 968c: 'It is not possible ... to impose laws on such a body before it has been duly formed (*kosmêthêi*). Once it has been formed, the councillors must *themselves* legislate concerning the powers (*kyrious*) they should possess.'

<sup>208</sup>See Sect. 5.5 and Supplement 3.

accusers in the *Apology*.<sup>209</sup> (Other commentators have been less perceptive.)<sup>210</sup> Still, Grote missed the specificity of Plato's indictment in his statute concerning envoys.<sup>211</sup> The Athenian legislator is not merely indicting a sophistic figure like Socrates in *Laws* XII; he is indicting *Socrates*.

### 2.3.2 *Magnesia's Socrates*

The evidence for this is not hard to muster:

- (i) In his statute concerning a 'corrupted' (*diephtharmenos*) envoy in *Laws* XII 952c–d, the Athenian legislator distinctly echoes *Politicus* 299b–c. (See Supplement 3a, at the back of the volume.)

This echo has gone unregistered in the literature. Most commentators, however, recognize that:

- (ii) At *Politicus* 299b–c there is a 'perfectly plain' echo of the charges levelled against Socrates, and of his conviction in the *Apology*.<sup>212</sup> (See Supplement 3b.)

It is therefore reasonable to conclude, on the strength (i) of the *Laws*' recollection of the *Politicus*, and (ii) of the *Politicus*' recollection of the *Apology*, that:

- (iii) There is a conscious recollection in *Laws* XII 952c–d of Socrates' legal ordeal in the *Apology*—and ultimately, of his execution—by way of *Politicus* 299b–c.

<sup>209</sup>In his remarks on PL. *Laws* XI 937e–938c, Grote (1888, IV:411) writes this: 'The vague and undefined character of this offence, for which Plato denounces capital punishment, shows how much his penal laws are discharges of ethical antipathy and hostility ... On this matter the Athenian public had the same ethical antipathy as himself; and Melétus took full advantage of it, when he brought his accusation against Sokrates. ... Both Aristophanes and Melétus would have sympathised warmly with the Platonic law. If there had been any Solonian law to the same effect, which Melétus could have quoted in his accusatory speech, his case against Sokrates would have been materially strengthened.'

<sup>210</sup>For less than this: Dareste (1893, 148); Ritter (1896, 344); England (1921), II:595; Morrow (1960, 500–515); Diès and Gernet (1968), cc–ccii; Friedländer (1969), III:440–444; Piérart (1973), 213–216; Mackenzie (1981, 195–204); Bertrand (1999, 392–394); Clay (2000, 274–279); Rowe (2001, 63–76); Mouze (2005, 346–347, 347 n. 220); Schöpsdau (2011, 550–552); Lutz (2012, 171–182).

<sup>211</sup>Grote (1888), IV:414. Similarly, in the last paragraphs of his 1935 essay on 'Plato's Commonwealth', F.M. Cornford (1967, 66–67) conjures a scene in which Socrates is brought 'for a second trial before the Nocturnal Council'. Plato is his accuser. There is no indication, however, that Cornford takes his inspiration from *Laws* XII.

<sup>212</sup>Cf. Rowe (1995, 230), Ricken (2008, 198). The phrase quoted here is from Harold Fowler's marginal note to his 1925 translation of the *Politicus*: 'This passage obviously refers to the trial of Socrates ... and the reference of the words διαφθείροντα ἄλλους νεωτέρους to the accusation brought against him by Miletus, Anytus, and Lycon ... is perfectly plain.'

What is shocking is not, of course, that Plato would recollect Socrates' trial and death in the last book of the *Laws*. That could be predicted. What makes this coda to the Platonic legislations—and corpus—distressing is its parricidal aspect. The Athenian legislator—and through him, Plato—*sanctions* the trial and death of Socrates. An exhaustive interpretation of this coda is out of the question. The meanings and possible meanings of Magnesia's Socrates call for a book-length investigation of their own. Plato is a writer of tremendous subtlety and studied elusiveness. As Grote once remarked, he is a philosopher who 'loves to dive'.<sup>213</sup> This is nowhere more true than in Plato's final pages.

The first of many complications facing a parricidal reading of *Politicus* 299b–c and *Laws* XII 952c–d is that Socrates is innocent of the charges on which he is condemned in the *Apology*.<sup>214</sup> In the *Politicus* and *Laws* XII, on the contrary, it is argued that one who is *guilty* of Socrates' charges should be executed. A further complication is presented by Plato's *Euthyphro* (by all accounts, one of his earliest dialogues), whose plot centres on a young zealot who is charging his father with murder (just as a young Meletus is charging Socrates with 'making innovations in divine matters').<sup>215</sup> In the *Euthyphro*, Socrates—which is to say, the young Plato—presses the dialogue's namesake: 'Are you not afraid of doing something unholy (*anosion*) in prosecuting your father?'<sup>216</sup> Surely Plato would have felt that he risked 'doing something unholy' by plotting the judicial murder of Socrates.<sup>217</sup>

### 2.3.3 *The Legal Necessity of Injustice*

The dramaturgical and psychological complexities of Socrates' condemnation in *Politicus* 299b–c and *Laws* XII 952c–d are less interesting than the legal-juridical principle that underlies it. This principle is sharply articulated in Plato's *Politicus*: 'No one should be wiser (*sophôteron*) than the laws'.<sup>218</sup> It is important not to gloss over this principle in the *Politicus* and its implications for the *Laws*, since it is—to

<sup>213</sup>Quoted (or paraphrased) from memory. The source is Grote's three-volume study of *Plato, and the Other Companions of Sokrates* (London, 1888).

<sup>214</sup>It is of course possible to deny Socrates' innocence. In a nineteenth-century essay, *Apologia Socratis contra Meliti redivivi calumniam* (Groningen, 1838), the Belgian philologist Petrus van Limburg Brouwer writes flamboyantly that 'no judgement more legal was ever given in a more legal court than that which firstly found Socrates guilty of not believing in the gods of the state and of corrupting the young, and then sentenced him to death' (cit. Montuori 1981, 39). And in the late twentieth century, Montuori (1981, 245) relitigates the case in hopes of discrediting the Platonic 'myth of the just man condemned'. For Plato, however, Socrates' innocence is never in doubt.

<sup>215</sup>Pl. *Euth.* 3b: *kainotomountos ... peri ta theia*.

<sup>216</sup>Pl. *Euth.* 3e–4e.

<sup>217</sup>Cf. Pl. *Laws* IX 877b–c: 'If a son ... deliberately wounds his parents ... death shall be the penalty.'

<sup>218</sup>Pl. *Pol.* 299c.

Plato's mind—the highest and decisive principle of the law-state ideal. It is also important not to fall back on 'contemporary liberal convictions', but to face 'the philosophical problems left over by Plato', as Detlef von Daniels insists in a different connection.<sup>219</sup>

The right to criticize fundamental laws and institutions in a law-state is a thorny problem of Platonic legal theory, and for that matter, of contemporary legal theory.<sup>220</sup> However 'unholy' Plato's statute in *Laws* XII—and in Chap. 5 the stress will fall on this, in order to correlate the statute's queasy brutality with the Platonic imperative for legal revision—it is nevertheless inspired by this intractable problem. Plato's question in *Laws* XII is how to identify an 'enemy (*polemion*) of well-formulated, established laws',<sup>221</sup> and how to treat 'those who corrupt (*diaphtheirontôn*) the laws with the intent to overthrow the existing legal regime'.<sup>222</sup> His statute condemning a 'corrupted' envoy is intended to halt the erosion of Magnesia's laws.

In Magnesia, the law-code is a despot (*nomos ... despotês*) and the officeholders are its slaves (*douloi tou nomou*).<sup>223</sup> To Plato's mind, this is what constitutes a law-state as a law-state. A free-speaking critic of the laws, however, is not a slave of the law. A free-speaking critic relates to the laws, in a limited and formal sense, like a tyrant. The legal critic is not bound by the laws, even if they observe them. The legal critic is therefore (qua critic), like the tyrant (qua tyrant), *legibus solutus*: 'freed from the laws'.

Now, *legibus solutus* monarchy is Plato's hypothetical ideal. This is argued with great patience in the *Politicus*.<sup>224</sup> His hypothetical ideal is governance by political technique, which for him means that the powers of state must be concentrated in the hands of the one who possesses that technique. (It is axiomatic that a multitude cannot possess it.)<sup>225</sup> In theory, therefore, Plato rejects the ideal of the law-state. On the theoretical plane, he is opposed to governance by laws. His highest political

<sup>219</sup>Von Daniels (2014, 631).

<sup>220</sup>The current form of Plato's problem is the Weimar conundrum, which has come to the fore in a number of recent European debates. The conundrum is this: To the precise extent that a legal state protects the right of citizens and politicians to openly and persistently criticize its fundamental laws, it declines to protect itself (and indirectly, its citizen-partisans). Of course, the whole drama implicit in this conundrum is rarely played out within a single generation (the Weimar Republic is an exception), and is not invariably played out within a single state (thus London and Geneva shelter Lenin, who effects a coup in Russia; Baghdad and Paris host Khomeini, who effects a coup in Iran). A recent treatment of this conundrum, in terms of 'militant democracy' and the 'Weimar fallacy', is Heinze (2016).

<sup>221</sup>Pl. *Laws* IX 860b: *ton tôn eu keimenôn nomôn polemion*.

<sup>222</sup>Pl. *Laws* IX 864d: *tôn tous nomous diaphtheirontôn epi katalysei tês parousês politeias*.

<sup>223</sup>Pl. *Laws* IV 715d.

<sup>224</sup>Pl. *Pol.* 293c–d, etc.

<sup>225</sup>In a city of 1000 male citizens, the Eleatic specifies, it is impossible that even 50 could possess 'political technique', for a city of 1000 will never produce 50 front-rank draught-players: Pl. *Pol.* 292e–293a.

ideal can be stated very succinctly; it is governance without laws by one who is ‘wiser than the laws’ (*tôn nomôn ... sophôteron*).<sup>226</sup>

The *Politicus* reveals, however, that this high Platonic ideal is a purely hypothetical one. This is because, in history, governance without laws never proves to be governance by real political technique.<sup>227</sup> On the contrary, governance without laws invariably proves to be tyranny.<sup>228</sup> This is why Plato concludes, in the *Politicus*, that although:

- (i) Law is ‘*not* the most perfect right’.

And although, as a consequence:

- (ii) ‘It is *not* best for the laws to be sovereign’.<sup>229</sup>

Nevertheless:

- (iii) It is necessary ‘to compose written laws’ (*xyngrammata graphein*).<sup>230</sup>

The *Politicus* is therefore a dialogue which proceeds from an unflattering critique of law to an unflinching defence of the law-state. It is in the latter phase of the dialogue, at *Politicus* 299b–c, that the chilling reprise of Socrates’ trial occurs, and it is only within the dialogue’s disjunctive structure that its logic can be grasped.

Plato’s hypothetical ideal is governance without laws by one who is wiser than the laws; his real ideal, however, is governance by laws and a complex machinery of offices. A ferocious critic of democratic and sophistic legal culture, Plato still ultimately echoes a sophist of Gorgias’ circle, Alcidas of Elea (d. ca 360 BCE), who hails law as the city’s ‘sovereign’ (*basilês*). (This line is quoted in Plato’s *Symposium*.)<sup>231</sup> In a Platonic law-state, law is the undisputed sovereign. A corollary of the sovereignty of law, in the *Politicus*, is that no one may *arrogate the right* to be wiser than the laws. This corollary binds a citizen who *is* wiser than the laws (such as Socrates or Plato), no less than it binds a citizen who is *not* wiser than the laws (such as Gorgias or Alcidas).

Recall here that according to the Pythian oracle in the *Apology*, there is ‘no one wiser’ than Socrates in the Greek city-states.<sup>232</sup> Socrates testifies in court that he is wiser than Athens’ democratic legislators, which makes him wiser, *a fortiori*, than

<sup>226</sup>Pl. *Pol.* 299c.

<sup>227</sup>Pl. *Pol.* 292a: *kai meta grammatôn kai aneu nomôn*.

<sup>228</sup>Pl. *Pol.* 292a: *heni kai oligois kai pollois*. Cf. Pl. *Pol.* 291e–292a, 302b–303b.

<sup>229</sup>Pl. *Pol.* 294a–d.

<sup>230</sup>Pl. *Pol.* 301e.

<sup>231</sup>Pl. *Symp.* 196c: *hoi poleôs basilês nomoi*. Alcidas’ *testimonia* and fragments are collected in Dillon and Gergel (2003, 283–309). Agathon, who quotes Alcidas’ line, is a tragedian—and the *Symposium*’s host.

<sup>232</sup>Pl. *Apol.* 20d–23b, here 21a: ‘The Pythian replied that there is no one wiser (*médēna sophôteron einai*).’

their laws.<sup>233</sup> That Socrates then in the same breath denies that he is 'a wise man' only intensifies his contempt *in facie curiae*.<sup>234</sup> What Plato recognizes in his later dialogues is that before the law there is no difference between Socrates and a sophistic critic of the laws. Insofar as Socrates persists in the illicit critique of laws, he is *legally indistinct* from a sophist, or indeed from a corrupt politician or a thug who persists in illicit critique of 'well-formulated, established laws'.<sup>235</sup> Underlying the Platonic law-state is the unforgiving principle that no one—not a multitude, not a tyrant, not a philosopher—may arrogate the right to be wiser than the laws.<sup>236</sup>

Plato's conception of the sovereignty of law never entails a ban on legal critique *tout court*.<sup>237</sup> What it entails is a ban, in the *Politicus* and in the *Laws*, on illicit and contemptuous legal critique. On Plato's conception, it is the legislator's prerogative to dictate the precise circumstances in which legal critique will be licit. No one in a law-state is freed of the laws (*legibus solutus*), and this includes the Platonic philosopher. A citizen who *is* wiser than the laws is still bound to observe them, and this includes the statutes that restrict free speech and legal critique. Illicit critique of the laws must be punished because it is 'against the laws' (*para tous nomous*).<sup>238</sup> It must be punished even when the critic is Socrates.

Plato never suggests that the punishment of Socrates is just. The reprise of Socrates' trial and death in the *Politicus* and *Laws* is not an ordeal of justice, but of legal necessity. Plato stipulates that he must be punished because he persists in a form of legal critique which is 'against the laws and the statutes' (*para tous nomous kai ta gegrammena*).<sup>239</sup> It is the illegality of Socratic critique, and not its illegitimacy, which necessitates punishment. The condemnation of Socrates in the *Politicus* and *Laws* is therefore a legal-judicial necessity; it is emphatically not a determination of justice. The *Politicus* contains a laborious demonstration that governance by laws is a cause of injustice,<sup>240</sup> and Socrates' trial and death in the late Platonic dialogues is a symbol of that injustice. Plato believes that a philosophical legislator must reckon with the legal necessity of such injustice.

However dark the drama of *Politicus* 299b–c and *Laws* XII 952c–d, Plato's logic must be reckoned with. Nor is this logic totally lacking a connection to his earliest dialogues, in which Socrates refuses to slip out of Athens with the connivance of the democratic regime. In Plato's *Crito*, Socrates insists on suffering the unjust but legally binding penalty handed down by some 500 citizen-judges in the Porch of the

<sup>233</sup>Pl. *Apol.* 21c–e.

<sup>234</sup>Pl. *Apol.* 38c.

<sup>235</sup>Pl. *Laws* IX 860b: *ton tôn eu keimenôn nomôn polemion*.

<sup>236</sup>Cf. Pl. *Pol.* 299c, 300b–c, 300e–301a.

<sup>237</sup>Cf. Pl. *Pol.* 296a, 300d, etc.

<sup>238</sup>Pl. *Pol.* 300b–c.

<sup>239</sup>Pl. *Pol.* 299c.

<sup>240</sup>Pl. *Pol.* 301e–302a, etc.

King-Archon.<sup>241</sup> Socrates reasons there that it is only a convict's death which could prove that he is not a 'corrupter of the laws' and a 'corrupter of the youth'.<sup>242</sup> It is conceivably this reasoning, *mutatis mutandis*, which informs the reprise of Socrates' trial in the last pages of Plato's corpus.

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<sup>241</sup>Cf. Bury (1900, 580), Montuori (1981, 197–199).

<sup>242</sup>Pl. *Crito* 53b–c: *diaphthorea ... tôn nomôn ... nomôn diaphthoreus ... neon ge kai anoêtôn anthrôpôn diaphthoreus*.



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