

# Natural Law and Political Order



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## FOREWORD

**T**he concept of “natural law” is undoubtedly part of the pantheon of the most important philosophical terms, which from antiquity to the twentieth century have lit the way of human thought. Times have changed, however, and this concept has now been subject to censorship. When some should refer to natural law in contemporary debates, one can be almost sure that protests shall arise. It is seen as untactful, as the confusion of two completely different orders, the introduction of unphilosophical, or even ideological thought, which in effect closes the door to sensible discussion. This concept has always rightfully been associated with the moral teachings of the Catholic Church. As such it has been considered by some as an instrument for imposing the principles of Christian morality, and founding a social order according to the doctrinal

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182 demands of that faith. On the other hand, it would be difficult to ignore the fact that those issues which have always been closely tied to natural law have not vanished — on the contrary, they are ever-present, though labeled differently, intensively reflected upon and developed. What I have in mind is, above all, the issue of human rights, as well as reflections on justice, and freedom as the foundations of a political order. In the sphere of intellectual discourse, confusion has reigned: the voices of those who defend the tradition of natural law in the name of causes which are not always philosophical, intermingling with the replies of others, who continue to cultivate philosophical reflections on the laws of human nature, but who would be embarrassed by the very use of the term.

One of the main sources of this confusion comes from the perhaps rightful, though insufficiently insightful conviction that the concept of “natural law” is closely connected with the teachings of the Church, which results in those detached from Christianity rejecting the idea. In the forward to his already widely acknowledged classic work *Natural Right and History* (1953), Leo Strauss observes: “The issue of natural right presents itself today as a matter of party allegiance. Looking around us, we see two hostile camps, heavily fortified and strictly guarded. One is occupied by the liberals of various descriptions, the other by the Catholics and non-Catholics disciples of Thomas Aquinas.”<sup>1</sup> In yet another important work, *Natural Law and Natural Rights* (1980) John Finnis comments on Strauss’s statement, while affirming that, “Things have changed in the last twenty-five years, and the debate need no longer be regarded as so polarized.”<sup>2</sup> he adds that the Catholic Church remains the only institution in the contemporary world which considers itself the authoritative propagator of the concept of natural law.<sup>3</sup>

Obviously, the official declarations of the Church, their constant reiteration that we need consider the perspective of natural law,<sup>4</sup> may provoke a certain anxiety among those who do not feel attached to the Church in any way, especially as this is an institution whose project of social order likewise draws from Divine Law, from principles learned through Revelation. This anxiety is even magnified by those zealous Catholics who make reference in public debates to the demands of the natural law through “party politics,” creating the impression that they should form the basis of the legislative order of State, not because these laws are rational and sensible, but mainly because they are acknowledged and accepted by the Church. The whole issue is based on a profound misunderstanding of the relationship between the laws of nature and Divine law. The grace of the “gift of Revelation” by no means changes or negates nature, it is rather founded on it.<sup>5</sup>

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<sup>1</sup> L. Strauss, *Natural Right and History*, University of Chicago Press, Chicago 1953, p. 7.

<sup>2</sup> J. Finnis, *Natural Law and Natural Rights*, Oxford University Press, Oxford 1980, p. vi.

<sup>3</sup> *Ibid.*, p. vii.

<sup>4</sup> John Paul II, *Veritatis Splendor*, no. 36, 40.

<sup>5</sup> Cf. Thomas of Aquinas, *Summa Theologiae*, Ia q. 1 a. 8 ad 2 (*gratia non tollat naturam, sed perficiat*).

Natural law needs no additional imperative coming from Revelation in order to oblige, for in a certain respect it is a universal revelation, a revelation that is given and accessible to *all*. In other words, we are dealing not with a theological category (of a particular religious community), but with a philosophical one (of universal importance). In accepting natural law as an essential element of its teachings, the Church demonstrates a healthy sense of reality, and in doing so, defends basic rational thinking by showing its faith in the rational order of the world.<sup>6</sup>

The issue of natural law is nothing more than the issue of the rationality of reality. It assumes that such a rational order simply exists, though its form and its internal structure as described by rational law still remain open. One should even acknowledge that as a thinking being (that is, as one who searches within himself and in the world that surrounds him, and seeks understanding) man naturally thinks in categories of natural law, even though we may avoid applying this term. Obviously, one can find those who would deny all this with full conviction. They are not the first to do so. One of their ancient predecessors, Gorgias of Leontini, argued that there is nothing, and even if there is something, it cannot be knowable, and even if it could be known, it cannot be communicated in words.

Only one thing can be said to the skeptics of all time: at least a part of that which exists can be — albeit imperfectly — known and expressed in words. Besides, it would be difficult to find a way of convincing others of the rationality of this world other than through the systematic presentation of its laws. Should one insist to ignore those laws and the order that they create, however, then there is nothing we can do. As Hegel observed, “Whoever looks at the world rationally will find that it in turn assumes a rational aspect; the two exist in a reciprocal relationship.”<sup>7</sup>

Putting aside the intellectual excesses of rational skepticism, the thesis of the rationality of the world does not seem particularly controversial when we take into account the part of the world which we identify with the natural kingdom. “A thought of this kind, — that Nature is an embodiment of Reason; that it is unchangeably subordinate to universal laws, appears no way striking or strange to us. We are accustomed to such conceptions, and find nothing extraordinary in them.”<sup>8</sup> We easily perceive various regulations in the world of nature to which we belong. Moreover, we are able to use many of them for our purposes, which only confirms our sense of an omnipresent order. This order is studied by various natural sciences, with the philosophy of nature at the forefront, while the fundamental assumption of this sensible study is the conviction that this rational order exists, and is accessible to our reason: “The philosophy of nature originates from the problem of the rationality of nature and lives on it. [...] Generally speaking, by the rationality of nature we should

<sup>6</sup> John Paul II, *Fides et Ratio*, no. 43, 44.

<sup>7</sup> G.W.F. Hegel. *Lectures on the Philosophy of World History*, trans. H.B. Nisbet, University of Cambridge Press, Cambridge 1975, p. 29.

<sup>8</sup> *Ibid.*, p. 34.

184 understand that property of nature which allows it to be investigated (i.e. that is subject to investigation). Attributing to nature that property means assuming a tacit affirmation not only of the philosophy of nature but also of the natural sciences. There is only meaning in turning to nature with rational questions when we can expect that it can provide us with rational answers.”<sup>9</sup>

It would be much more justified to raise the question of the rationality of the man-made world of social and political relations: “For what does it avail to praise and to recommend the excellence of the creation in the irrational kingdom of nature; if the part of the great theatre of Supreme Wisdom, which comprises the end of all this — the history of the human species — shall remain in a continual objection against it, the sight of which forces us to turn our eyes away from it with indignation, and while we despair of ever meeting therein with a finished rational design, brings us to that pass, to hope for it in another world.”<sup>10</sup> Contrary to the order that rules over nature, the world of human relationships, replete with all the nonsense and horrors one can imagine, and those which defy imagining, may seem to contradict reason and to be the domain of chaos. Should we not be amazed by the mere fact that, in experiencing the reasonable order of the natural world in our everyday lives, we have the basis to question the existence of what we have created ourselves? Why is it that man, the only rational creature on Earth, can create an irrational world, as if he was gifted not with reason, but with some strange instrument for the anarchization of the world, the questioning of its binding laws? This is, essentially, the question of that most critical moment in human nature — of human freedom and its consequences.

The order that we find in the world of social relations is certainly not as evident as that found in the natural world. It is governed by another rationality, less by a “mathematical” rationality,<sup>11</sup> than by that which considers what is particular and most important in man. And because through his freedom, man not only infinitely surpasses the entire natural world, but gains absolute value, a reason exists for the rationality that governs human relationships, which might be called “the logic of absolute beings.”

To avoid misunderstandings, one should immediately stress that this book does not deal with the history of philosophy.<sup>12</sup> It is not my aim

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<sup>9</sup> M. Heller, *Filozofia przyrody. Zarys historyczny* [Philosophy of Nature. A Historical Survey], Krakow 2004.

<sup>10</sup> I. Kant, “An Idea of an Universal History in a Cosmopolitan View,” in: *Essays and Treatises on Moral, Political and Various Philosophical Subjects*, vol. 1, trans. J. Richardson, London 1798. p. 431.

<sup>11</sup> “[...] nature is mathematical. This assumption forms the tacit basis of empirical sciences, sciences which employ a method that involves building a mathematical model and the fitting it into — and with such great success — experimental situations. [...] The problem of the mathematicality of the world is a new version of the problem of the rationality of the world, a version attested to by the form of investigating the world which is represented by modern empirical sciences” (M. Heller, *Filozofia przyrody*, op. cit., p. 227).

<sup>12</sup> For readers interested in this aspect of the problem, I recommend other books, e.g. L. Strauss, *Human Right and History*, University of Chicago Press, Chicago 1953.

to outline the long and intricate history of the concept of “natural law”: 185 the evolution of the meaning, the paradigm shift, and the debates on interpretation.<sup>13</sup> This book is founded on the conviction that the human world, including the world of politics, should be apprehended rationally, and that the greatest thinkers, who did precisely this, essentially said the same thing: that the foundation of the political order is engraved in human nature. The task which I set before myself is to attempt to decipher this code and to apply it to a concrete law, according to which the orderly life of a community may be organized. What is dealt with here, in other words, is the eternal problem of “the ideal state,” which is none other than the search for a rational model, and should inspire all legislatures deserving of that name.

Who is man? What is his nature? What are the consequences of this understanding of nature for interpersonal communities? It is, of course, difficult to respond to such fundamental questions without seeking guidance from those who have tried to face these questions before. Reason itself tells us to seek advice from the authorities. On the road of our inquiries, we shall be accompanied by the following thinkers: Plato, Thomas of Aquinas, Thomas Hobbes, Immanuel Kant, and Georg W.F. Hegel. The choice of these guides requires no extensive justification. Plato, to whom all of philosophy is but a footnote, Thomas of Aquinas, author of the classical concept of natural law, and who has become a constant element of the moral teachings of the Catholic Church since the end of the nineteenth century, Hobbes, the Father of modern political thought, Kant, certainly the greatest philosopher of freedom, and Hegel, the master of philosophical synthesis. It would certainly be difficult to find better teachers, though whether others should be included in this list is another question. All of these thinkers use the idea of human nature, all remain deeply interested in the rational shape of political order; moreover, all, perhaps with the exception of Thomas of Aquinas, display a true zeal and passion for this topic.

Our choice of references is one thing, but how we use their intellectual writings is another. St. Augustine has cautioned that he who seeks to learn his teacher’s thoughts behaves imprudently.<sup>14</sup> The reader should

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<sup>13</sup> The above-mentioned John Finnis even claims that such a long, systematic and historical understanding of natural law bores the reader, rather than awakening interest in this topic. Cf. J. Finnis, *Natural Law*, op. cit., pp. v–vi].

<sup>14</sup> “Do teachers ever claim that it is their own thoughts that are grasped and retained, rather than the branches of learning themselves which they purport to transmit by their speaking? What foolish curiosity could ever prompt a man to send his child to school in order to have him learn what the teacher thinks? But when the teachers have made use of words to explain all those branches of learning which they profess to be teaching, including even those dealing with virtue and wisdom, then those who are known as pupils reflect within themselves whether what has been said is true, contemplating, that is, that inner truth according to their capacity. It is then, therefore, that they learn. And when they discover within themselves that what has been said is true, they praise their teachers, unaware that they are not so much praising those who have taught, provided, however, that the teachers also know what they are saying.” St. Augustine, *The Teacher, the Free Choice of the Will, Grace and Free Will*, trans. R.P. Russell, Catholic University of America Press, Washington, D.C. 1968, p. 59.

186 not expect an exhaustive presentation of these thinkers' philosophical systems, none of which will be the main subject of investigation. They have been chosen for our guides only because they might help us reach our main aim. This is also why, during the analysis of each of these philosopher's thoughts, one thing shall concern us: to come close as possible to the reality that they are describing, perhaps even closer than how these thinkers have approached these problems themselves, when they have been prone to doubt and to pause midway. For this reason, I have completely set aside all the interpretative debates that have taken place within these particular schools, among the Platonists, Thomists, Kantists, and Hegelians, as inessential from our perspective. We are interested in the "thing itself" — man and the world that he has created, and what man truly is. And despite the centuries that have separated the epochs in which our guides created their works, despite the conceptual and linguistic difficulties, debate should and must be held, far beyond the divisions.<sup>15</sup>

In writing this book, I have sometimes had the impression of taking part in a philosophical feast, similar to the "Symposium" which Plato described, during which the invited guests, one after the other, could give their reflections. And since the gathering has taken place somewhere beyond time and space, in the world of eternal ideas, each of the philosophers could address the voices of his interlocutors, raising questions to those present which they would not have raised themselves, as they emerged from within another epoch, another experience, and another language. It would improper to pretend that my participation in the debate is limited to a faithful presentation of their arguments. As the one who formulated the topic, who invited these philosophers to the debate and not others, and who extracted well-defined arguments from their reflections, I contributed to the discussion with my own viewpoint and my own doubts and questions, raised from the perspective of someone living here and now, in Poland at the turn of the twentieth and twenty-first centuries, from the perspective of one who contemplates himself and the world that surrounds him, so as to simply understand a part of it.

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<sup>15</sup> My philosophical credo seems to be found on the antipodes of the approach to philosophy, characterized by what C. S. Lewis has called the Historical Point of View: "The Historical Point of View, put briefly, means that when a learned man is presented with any statement in an ancient author, the one question he never asks is whether it is true. He asks who influenced the ancient writer, and how far the statement is consistent with what he said in other books, and what in the writer's development, or in the general thought, it illustrates, and how it affected later writers, and how often it has been misunderstood (specially by the learned man's own colleagues) and what the general course it has been for the last ten years, and what is the 'present state of the question.' To regard the ancient writer as a possible source of knowledge — to anticipate that what he said could possibly modify your thoughts or your behavior — this would be simply rejected as simple-minded." C.S. Lewis, *The Screwtape Letters*, Macmillan, New York 1982, pp. 139–140.

The primary experience of that which has been termed “natural law” in the philosophical tradition is the situation where we become aware of the injustice of an existing norm, which regulates our lives within a public order. What is at stake here is not a mere sense of injustice engendered when someone has harmed us, when a physically violent act is committed, our property has been harmed, or we have been improperly judged. There is something more: that such acts are not simply arbitrary acts of violence committed by individuals, they are accompanied by the claim to be acknowledged as right and lawful; in other words, that they are in themselves a reflection and a consequence of a pre-existing order. In refusing to sanction and legalize unjust acts, we bear testimony to the political order in which we have been made to live, that it is not our only point of reference, but that we are likewise residents of another, more perfect world.

One of the oldest and best-known literary testimonies of this conflict is the dilemma of Antigone, as described by Sophocles. When her brothers, Eteocles and Polyneices, are killed in a fratricidal battle and only Eteocles, defender of Thebes, is solemnly buried, Antigone openly defies the law declared by the King Creon, and buries her second brother, thus appealing to another, far more important law:

I heard it not from Heaven, nor came it forth  
From Justice, where she reigns with Gods below.  
They too have published to mankind a law,  
Nor thought I thy commandment of such might  
That one who is mortal thus could overbear  
The infallible, unwritten laws of Heaven.  
Not now or yesterday they have their being,  
But everlastingly, and none can tell  
The hour that saw their birth. I would not, I,  
For any terror of a man’s resolve,  
Incur the God-inflicted penalty  
Of doing them wrong.<sup>16</sup>

For Antigone, as for many others who in the course of human history have found themselves in a similar situation, a sense of being rooted in a higher order of eternal norms supports a detached approach to the laws established by rulers, and thus becomes the basis of judging them as just or unjust.<sup>17</sup>

<sup>16</sup> Sophocles, *Antigone*, in: *Seven Plays in English Verse*, trans. L. Campbell, Oxford University Press, Oxford 1918, ll. 450–461.

<sup>17</sup> Contrary to popular interpretations of Sophocles’s tragedy, the dilemma that he presents here is hardly clear at all, for Creon is not simply a despotic ruler guided by his caprices and his own will. He defends righteous principles, and like Antigone, may call upon eternal laws, which state that a traitor should suffer a just punishment. One may say, however, that in figures like Antigone and Creon it is not an issue of natural law that is illustrated, but the tragedy of human fate, the internal conflict within man in the face of fundamental and contradictory values.

An awareness of the co-existence of these two different understandings of law seems so obvious that it has been expressed in perhaps all of the languages of our cultural circle. Language itself differentiates between the righteous and the lawful<sup>18</sup> (δικη — νόμος<sup>19</sup>, *ius* — *lex*, *droit* — *loi*, *Recht* — *Gesetz*, *prawo* — *ustawa*, *право* — *закон*), which illustrates that, on the one hand, we have rules of conduct, whose essential feature is the direct reference to the righteous and just (δικαιος, *iustus*, *droit*, *gerecht*, *prawo*, *правый*), and on the other, we also have those for which the essential feature is in their being established by man. Of course, in daily discourse these two words are often used interchangeably, their meanings are hidden and often confused. Nonetheless, language itself provides us with a clear valuation or even hierarchization of these two concepts. The righteous stands above the lawful. The former is the unit of measurement and a point of reference for the latter, which is established law. What is in accordance with what is “right” is righteous and just. Laws may submit to human alteration, and may be thus evaluated by criteria, which are permanent and unchanging. To speak in general terms, the issue of natural law is an attempt to demonstrate and justify such criteria, which would allow us to form an objective perspective on the law operating at a given time within a state.

That the differentiation of these two spheres — of righteous law as the unchanging, compulsory principles of justice, and of established law, i.e. laws which truly oblige in a given state — is universal, to avoid the term “natural,” does not exclude the fact that certain opinions have emerged to question such a distinction.<sup>20</sup> This in turn means that they

<sup>18</sup> Although other European languages have maintained the semantic distinction of the nouns “right” and “law,” as best illustrated in the examples provided, the English language has slightly lost this distinction in the noun form. However, the differentiation is preserved in other words, such as “righteousness,” as in what is right or righteous, as opposed to “lawfulness,” i.e. what is in accordance with the law and thus lawful (Translator’s note).

<sup>19</sup> For more on the philosophical development of the concepts “δικη” and “νόμος” cf. F.E. Peters, *Greek Philosophical Terms. A Historical Lexicon*, New York University Press, New York 1967, pp. 38–40; 131–132.

<sup>20</sup> The existence of these two orders does not mean that they are easily distinguishable. Herodotus, who lived at the same time as Sophocles, transmitted a story which was supposed to be interpreted as a polemical footnote to Antigone’s dilemma. Apparently a Persian King Darius, “who once called from his kingdom Hellenists, who were living within his terrain and asked them, for what price would they agree to consume their deceased fathers? They replied that they would not put any price. Darius then later called on the Callatians, an Indian tribe, who would eat their parents and asked them in the presence of the Hellenists, whose reply was explained, for what price would they agree to burn their parents on the stake? They then made threatening cries and challenged him to curse such godless words.” Herodotus then comments that: “Thus then these things are established by usage, and I think that Pindar spoke rightly in his verse, when he said that ‘of all things law is king’.” (Herodotus, *The History*, III, 38). The saying from Pindar (*Nemean Odes. Isthmian Odes. Fragments*, 169 a 1–2) literally is “Law is the King of all, of mortals and immortals” — it is quoted by Plato as well (*Gorgias*, 484b). While Herodotus narrates the story to stress the conditionality of law which particular peoples claim to be irreversible and holy, at the same time they involuntarily demonstrate, under perhaps completely different burial customs, that one thing lies as a common denominator of all people: the one and same deep respect for the deceased.

negate the existence of an order of immutable rules of justice; for the existence of an established law would certainly be difficult to contradict, unless one is a radical skeptic, in the habit of contradicting everything. 189

Indeed, not only law, but also the concept of nature, present since ancient Greece, has introduced many difficult ambiguities, which were inherited by other European languages. Nature (φύσις)<sup>21</sup> primarily meant all that surrounded man. To speak in simpler terms, it meant the physical world. However, from a certain moment onward, this term was also used as a synonym of essence. In pointing out the nature of a given thing, the ancient Greeks indicated what was essential in a given object. Juggling these two meanings, one could say that if man, as Aristotle defined him, is an animal gifted with reason, then it is in his nature to transcend nature.

What is interesting is that this duality allows for established law to be seen as unjust from a “biological” perspective, understood as the laws of nature, which remain disconcertingly dissonant with the obvious intuition of man’s rational nature. In the Platonic dialogue *Gorgias*, the Sophist Callicles preaches the following lesson: “I am under the impression that they, who create laws, are in fact weak people, and they are many. They establish laws, ratify articles and formulate punishments for themselves, for their own advantages, as they fear clever individuals amongst people, who would manage to have more than they. [...] However, nature itself demonstrates that it is just that a better individual should have more than the worse one, and the more powerful more than the weaker one. And this is revealed in many things, that is how it is in relationships between animals, and in peoples between states and clans, that that which is settled is what is just: so that the man who is stronger should rule over the weaker and should possess more than them. For what justice did Xerxes possess, when he won in Hellades, or his father with the Scythes? (not to speak of numberless other examples). Nay, but these are the men who act according to nature; yes, by Heaven, and according to the law of nature: not, perhaps, according to that artificial law [...]”<sup>22</sup> As we can see, the law of nature to which Callicles refers is identified with the natural law of the animal world, where a continuous battle for survival takes place, and the most powerful triumph. Established law, in his conviction, tries to bring force within the walls of a human community in an unjust way, and not entirely in accordance with the natural order of things. These laws in fact restrain

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<sup>21</sup> The concept of nature (φύσις) was used by the pre-Socratic philosophers to mean at least three things. It was used to describe: 1) the process of extracting or the conception of things; 2) pre-created objects, from which all were later created; 3) the internal principle that organized the structure of things. This last meaning, which indicated the essence of things, is present in Heraclitus and Democritus. Cf. F.E. Peters, *Greek Philosophical Terms*, pp. 158–159; cf. also Plato, *Laws*, in: *The Dialogues of Plato*, trans. B. Jowett, Oxford University Press, Oxford 1892, nn. 891c–892c. All texts by Plato were accessed online at [oll.libertyfund.org](http://oll.libertyfund.org); Aristotle, *Physics*, in: *The Complete Works of Aristotle*, vol. 1, ed. J. Barnes, Princeton University Press, Princeton, NJ 1984, nn. 189b, 193a, 193b.

<sup>22</sup> Plato, *Gorgias*, 483b–e.

190 and limit people who are biologically gifted with greater vital force and destined to dominate over weaker individuals.

The dual meaning of the word “nature” leads one to ask what exactly the term “natural law” means; in other words, how the law of nature pertains to man. Does it reflect only man’s biological nature, as Callicles would have it, or does it rather mean “nature” — in the sense of the “essence” of man that is his rationality? Or would concentrating on no more than the rational aspect of human existence — as Plato once did in his dialogues<sup>23</sup> — lead to the danger of treating him like the gods instead on truly focusing on man, as if it were he were in his essence pure spirit, accidentally and temporarily imprisoned in matter? Does not Aristotle — who demonstrates in defining man as a rational animal that it is in his nature and essence to possess this duality, a particular fusion of animal corporeality, and thus nature in the sense of physical nature and biological nature — constantly transcend with his spiritual, and even divine rationality? Should we acknowledge with Aristotle that this duality belongs to the very nature/essence of humanity, then the question of the mutual relation of these two aspects of nature remains open. Certainly, we could agree to affirm that reason should be not only a sophisticated instrument to serve our animal nature, which should facilitate and organize the satisfying of passions.<sup>24</sup> On the contrary, reason, as the highest aspect of our nature/essence, has a natural, essential power over the natural world, precisely because it transcends it. But is the power of reason over our corporeality an absolute power, or is it rather a concern for what has been given and granted to us, and thus belongs to our essence? Does the capacity, then, to think emerge as a kind of service to our animal nature? Apart from our biological nature and the capacity to think as necessary elements of our human way of existence, do we not find in our ourselves something which can condition human behavior, sometimes more powerfully than the laws of biology or the principle of reason, such as habits or customs which ancient thinkers called “second nature?”<sup>25</sup> Or perhaps what most powerfully differentiates man should be something else, that strange capacity for self-creation, which makes him, of all creatures, the only one capable of forming and determining his own nature?<sup>26</sup>

All of these doubts and questions related to the fundamental problem of man and his true nature/essence constantly accompany all attempts to reflect upon what directs his actions and what constitutes the basic

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<sup>23</sup> Cf. Plato’s reflections on the body as the prison of the soul in *Phaedo*, nn. 79a–84b.

<sup>24</sup> Callicles’s interpretation could be interpreted precisely in this way. A similar standpoint can be found in the other protagonists of Plato’s dialogues, Thrasymachus and Glaucon, whose viewpoints shall later be presented, along with Thomas Hobbes, who performed such an interpretation in the Modern period.

<sup>25</sup> “Habit is, as it were, second nature,” (*Consuetudo est altera natura*) Cicero, *De finibus*, 5, 25, 74. Aristotle wrote similarly on this earlier, “For habit is like nature,” Aristotle, “On Memory and Reminiscence,” in: *Complete Works*, op. cit., 452a 27.

<sup>26</sup> Pico della Mirandola was one of the first to comment on this in his *On the Dignity of Man* (*De hominis dignitate*) published in 1486.

## CHAPTER I. PLATO — THE TROPE OF JUSTICE AND REASON

The sense of injustice which is aroused in us when faced by distressing or unjust regulations naturally leads one to question justice itself, its meaning and origin. The genesis of philosophical reflections on justice and, at the same time, its localization in the very heart of all reflections on political order derives from Plato. While it is true that we do not yet encounter the term “natural law”<sup>27</sup> in Plato, we do encounter its equivalent: the concept of “just law.” It is widely known that many of Plato’s contemporary Sophists considered the law (νόμοι) that ruled over men as completely subject to consensus.<sup>28</sup> Contrary to this standpoint, Plato affirmed that, beneath the changing and conventional law, one can perceive an ideal, rational, and obliging model. All of his dialogues devoted to politics and the proper organization of the state order reflect one fundamental thought: “Political activity is, *for us*, really nothing more than the application of the principles of justice to life.”<sup>29</sup>

### JUSTICE AND ITS MEASURE

The first of the political dialogues, *Republic*,<sup>30</sup> which the author intended to be on justice, had after many years been redeveloped and supplemented with reflections on the form of the ideal political community. The initial fragment, which covers about one and half books of the ten in total, is particularly interesting for the purposes of this discussion. Plato’s Socrates and his interlocutors reach a definition of justice which later becomes acknowledged as the classical definition of “giving to each what is due or proper to him.”<sup>31</sup>

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<sup>27</sup> The term “law of nature” (νόμος φύσεως) we find in Ancient Greece for the first time in the texts of Plato, where it appears twice in the cited footnote (no. 22) of the *Introduction to Gorgias* [483 e1-4] and in *Timaeus*, 834e–835a. The term “natural law” (νόμος φυσικός) appears a century after Plato in the work of the historian Neanthes (*Fragmenta*, 31, 9–13), later it appears in Epictetus (*Dissertationes ab Arriano digestae*, III, 17, 5–7). It is used in the Latin language by Cicero, both as *naturalis ius* (*De Republica*, III, 18, 7) and *naturales leges* (*De Natura Deorum*, I, 36, 2).

<sup>28</sup> Cf. L. Strauss, *Natural Right and History*, op. cit., pp. 117–119.

<sup>29</sup> Plato, *Laws* [757c]. In Plato’s thought and in all the Ancient Greek reflections on justice, other related words are used: δίκη as justice, retribution, compensation, and correctness: a just or rightful man is δίκαιος; justice is derived from δίκαιος; the abstract term is δικαιοσύνη (cf. F.E. Peters, *Greek Philosophical Terms. A Historical Lexicon*, New York University Press, New York, 1967, pp. 38–39.)

<sup>30</sup> Plato, *The Republic*, 332c.

<sup>31</sup> *Ibid.*, 332c.

Let us briefly pause to analyze this definition. It resembles the classical definition of truth, on which all other attempts at defining truth are founded. If we carefully examine the history of political philosophy, the classical definition of justice can be perceived and found at the basis of all the theories that explain the domain of politics, though these vary greatly from each other. For instance, the Aristotelian division of distributive justice, based on proportion, and reciprocal justice,<sup>32</sup> tells us what rightfully belongs to people depending on their area of social life they belong to (for example, in the division of a split profit each should receive a share proportionate to his contribution, whereas in the case of theft a just compensation should be returned to the victim, of the value equivalent to the stolen goods). Even Machiavelli, whose vision of politics would seem to be the most distant from the categories of justice, in principle constantly referred to the same classical definition. When he advises the ruler to fail to keep his promises without attending to scruples, he argues: “If men were all good, then indeed this precept would be bad; but as men are naturally bad, and will not observe their faith towards you, you must, in the same way, not observe yours to them.”<sup>33</sup> Hence, Machiavellianism in politics means merely returning people what rightfully belongs to them, and as dark infidels they deserve what is right and just; darkness and infidelity.

The examples discussed above show how exact and exceptionally extensive the classical definition of justice is. It is so extensive that it can easily accommodate Antigone, who buries her brother and Creon, thereby condemning her to death. This scope is also an essential weakness — for what kind of definition easily accommodates to everything, instead of distinguishing and differentiating?

What is this weakness in the definition of justice? It is insufficient. Though we can easily consent to justice consisting in giving each his own, the question remains: “What is it exactly that belongs to each?”. The classical definition of justice leads us to an additional criterion, which allows us to complete the general formula with concrete content. When we judge whether or not something is just, we affirm something, consciously or unconsciously, by making use of certain measure, which in each application of the classical definition of justice remains present as a hidden assumption. In order to unveil this measure, let us return to Plato’s *Republic*. As the thinker to whom all later philosophers would refer, Plato shows us aspects which serve as model illustrations of the three most important standpoints, which have appeared and are present to this very day in all debates on natural law and politics.

After having formulated the definition of what is just, a conflict arises among the participants of the dialogue, which essentially boils down to the question of the measure and the ultimate criteria of justice.

<sup>32</sup> Cf. Aristotle, *Nicomachean Ethics: Book V*, trans. D. Ross, Clarendon Press, Oxford 1902.

<sup>33</sup> N. Machiavelli, *The Historical, Political and Diplomatic Writings. The Prince*, Chapter XVIII, trans. Ch.E. Detmold, J.R. Osgood and Company, Boston 1882, vol. 2.

The most important and most consistent standpoint is presented first by Thrasymachus and then Glaucon. They are followed by Socrates, whose point of departure differs from his interlocutors' from the very outset. His standpoint is simple: the criteria of justice is granted to us from above. The natural order of things created by God is the measure which allows for the appropriate evaluation of our lives and works. However, for Socrates's adversaries it is not the cosmic, rational order which should be the foundation of justice. They would easily identify with Protagoras's famous statement that "Man is the measure of all things."<sup>34</sup> It later turns out, however, that their visions of a just political order dramatically differ.

Thrasymachus, the first to speak, claims that "that which is just, is none other than that which belongs to the strongest."<sup>35</sup> He illustrates his point with examples: "Each government establishes the law which serves their own interest. Democracy establishes democratic law, dictatorship — dictatorial law, and other governments do the same thing. And when they have thus established themselves, they proclaim to their subordinates, that which lies in the interest of those in government, and those who break these laws, they punish, for they have broken the law and hence they are unjust. It is thus so, worthy soul, for that which I have in mind, that in each state, justice consists in that one and same thing; the interest of the ruling government."<sup>36</sup> In other words, he who has strength and power at his disposal determines for himself and for others what is just according to his own tastes. He may not only hurt others at will, but may also force others to do what only lies in the personal interest of the one in power, and to acknowledge this, despite themselves, as what is right and proper above all others. Thrasymachus naturally identifies with the role of the absolute ruler. He feels strong enough to imagine himself as beyond the cosmic order deserving of all respect, but as the cause and center of the new order and of the new laws, established by the power of his own will.<sup>37</sup>

As is his custom, Socrates twists his interlocutor in contradictory statements with the help of probing questions. Firstly, he forces Thrasymachus to acknowledge that his proposed definition of justice, i.e. the sole focus on one's own interests and the dismissal of others, is simply termed "injustice" in colloquial language; secondly, he demonstrates that such an approach, if one follows it consistently, cannot describe an interpersonal order or an interpersonal community; what follows is a disintegration of

<sup>34</sup> Diogenes Laertius, *Lives and Opinions of Eminent Philosophers*, trans. C.D. Yonge, Bohn 1853 [151e].

<sup>35</sup> Plato, *The Republic*, 338c.

<sup>36</sup> *Ibid.*, 338c–339a.

<sup>37</sup> In his speech, Thrasymachus also refers to the law of nature, but understood in a particular way, completely unlike the classical tradition, which identified the nature of man with his rational essence. For Thrasymachus, nature is simply physical nature, while law understood as such as nature is the struggle for the existence and victory of the most powerful. This same idea is carried on even further, as we have already seen, as expressed in *Gorgias* by Callicles: "nature itself reveals what is just, so those who are better may have more, and those who are stronger may have more than the weak." Plato, *Gorgias*, 483d.

194 all forms of human collaboration. The principle that each should only be guided by his own personal interests “in whom he joins with, be it a state, or a family, or a camp, or whatever else — [makes a man] incapable of activity because of the conflicts and lack of internal unity, and later makes an enemy of his own self and everything which contradicts him, and that which is just.”<sup>38</sup> Naturally, while Thrasymachus himself is clearly lost and entangled in his own postulates, he does not become overly disturbed by this. He mocks Socrates and the powerlessness of his argumentation and continues to voice his arguments, without fear of openly defending the absurd. In the same spirit of unlimited force, he disregards the universally acknowledged rules of justice, and the rules of logical thinking; and one must commend him in his attitude of rejecting all the prevailing principles, demonstrating exceptional consistency and iron consistency.<sup>39</sup>

The next character to appear on the scene in the Platonic dialogue is Plato’s own brother, Glaucon, who continues Thrasymachus’s argument, adding an essential new aspect. He tentatively agrees with Thrasymachus, saying that every man only thinks of satisfying his own needs, and that if left on his own, he would not preoccupy himself with general principles of justice. As illustrated by the mythical story of the ring, which made man invisible and granted him the potential to enjoy life to the fullest, he is convinced that no one would resist the temptation of stealing, seducing and killing at will. However, in his opinion, the awareness of personal strength and impunity held by Thrasymachus has as much in common with reality as the “cap of invisibility.” Glaucon, in turn, states that it is evident that “to cause injury is by nature something good whilst being the victim of that injury as something bad”; but since every man would prefer to cause injury than to be a victim to injury, “those who cannot avoid the former, would allow the latter, then they acknowledge as something useful that to agree to the common consent, that they would not neither cause nor suffer pain.”<sup>40</sup> Therefore, thanks to the contract which prohibits each member of the community from causing others injury, a common measure is founded for all human acts: the established law. By the same token, in a society which does not want to abide by pre-established, universal principles of social order, the lawful intermingles with the just.

What is the value of this kind of justice? It is, so to speak, “something in between that which is the best: when one causes injury, one does not

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<sup>38</sup> Plato, *The Republic*, 351–352a.

<sup>39</sup> The Platonic Thrasymachus appears as an archetype of a man who finds the root and source of all social order and the measure of justice in his own will. A more contemporary incarnation of such an attitude is easily found in all systems of thought which negate the existence of objective and prior criteria that give order to human activity, and thus propose the subjective decision of individuals as the ultimate foundation of order, as in the case for instance of the sublime aristocratic individualism of Friedrich Nietzsche (particularly in his concept of the superman and the Will to Power), or in the practice of contemporary politics of “democratic totalitarianism,” where the decision of power — regardless of whether this decision was reached collectively or individually — becomes the only legally binding source to determine the principle of public order.

<sup>40</sup> Plato, *The Republic*, 358e–359a.

suffer any punishments; and that which is the worst, when the one who has suffered cannot seek revenge. Justice lies between one and the other, hence it is not loved as a good in itself, but it is only valued only because one does not feel strong enough to cause injury to anyone. Why, who would be able to do this, and be truly a man, then he would not agree to compromise with anyone in the world, that he would not cause injury nor suffer it. He would have to be insane.”<sup>41</sup> This understanding of justice does not have any special value. It is simply a useful compromise, which should be less admired than observed, out of a well-conceived self-interest, in accordance with the realistic awareness that our strength is not at all unlimited, and that we, like everybody else, could be hurt, and even destroyed. The ultimate measure of justice, according to Glaucon, turns out to be man himself, who, in contrast to what Thrasymachus suggests, has a sense of his own insufficiency, and cannot fool himself into thinking that he may be the absolute center of the universe.<sup>42</sup>

The last to voice his opinion is Socrates, who argues that it would be easier to grasp the essence of justice if we were to examine it magnified; he thus proposes that we first reflect upon what justice is not with respect to each and every man, but to the state. We have from the very outset a clearly postulated premise of the essential relationship between the order of one’s soul and the order of the political community.<sup>43</sup> However, the real blueprint of a just order is elsewhere to be found. The most basic analogy would be revealed to us immediately if we were to adopt the magnification procedure proposed by Socrates, carrying it much further, to its limits. The ultimate and (at least initially)<sup>44</sup> hidden postulate of Socrates’s argument is a metaphysical vision of reality, perceived not as chaos, but as a cosmos, a differentiated, yet rationally ordered whole. Reason rules the world, and it is to her as the ultimate measure of all things that one should share what rightfully belongs to her: this is obedience. That is why it is only right that reason should govern not only the physical

<sup>41</sup> Ibid., 359a–b.

<sup>42</sup> It is difficult not to observe that the intuition articulated by Plato’s Glaucon would be expressed exactly two thousand years later, and would become the foundation of a philosophical concept of Thomas Hobbes, whose work initiates the modern stream of reflections on the just social order, supported by such thinkers as John Locke, Immanuel Kant, and more recently, by John Rawls, Robert Nozick, or Otfried Höffe, among others. This tendency, in accordance with the principle of “man as the measure of all things,” was in this manner of thinking to try to project its own form of political order, acknowledging that the constitutive moment of being for every man is his freedom. This, however, was not to be an absolute freedom, but a freedom proper to limited beings vulnerable to injury, and would thus demand a guarantee of physical security as a necessary condition.

<sup>43</sup> This analogy is constantly present in the pages of *The Republic*. For example, in Book VIII, when Plato turns to the analysis of various real forms of statehood, we read: “And do you know that [...] many embodiments of human character should exist as types of government? Do you think that political systems arise from somewhere out there, from some tree or from some stone, and not from the customs of people, who are in a state? [...]”. Plato, *The Republic*, 544d.

<sup>44</sup> This postulate of Plato’s is fully unveiled in the last book of *The Republic*, where Plato speaks of the fate of the soul after death awaiting the “last judgement,” in which justice shall triumph, and each and every one shall receive what truly belongs to him.

196 sphere, but also all fields of human life, from particular individuals to the state organs which men have created. The conclusion which Socrates draws is simple: *where reason governs, justice prevails*. We shall examine closely, firstly in *The Republic*, and later in the other Platonic dialogues, what exactly Plato had in mind in stating that, in accordance with the laws of nature, reason must govern.

## THE REPUBLIC — THE RULE OF REASON, OR: THE RULE OF WISE MEN

Despite the complexity of its detailed contents, the basic structure of *The Republic* is extraordinarily simple. Socrates begins his speech with a presentation of what the republic is in its basic components; he then tries to demonstrate that, when it is in keeping with reason, it is just. A republic is simply a human community. Men build it because they are by nature social beings, and thus need each other. On the one hand, no one is self-sufficient enough to completely satisfy even the most basic need, i.e. nourishment;<sup>45</sup> on the other, men differ from each other in their talents and skills, and thus for the benefit of common consumption they can complement each other. The first essential element of each republic is people of different professions, performing different useful jobs and thus building the material foundation of a common existence. A human community differs from a herd of animals in that its needs continually multiply; it is a dynamic community, whose progress requires an ever-wider space, thus building an increasingly complicated network of interpersonal relationships. Preventing this expansion from bringing about the destruction of the republic requires the presence of a group of men whose task is to care for the community as a whole, to care for its identity and physical survival. This group constitutes the second necessary element of the state — these are guardians who, in defending the community against outside enemies, simultaneously maintain a state of internal harmony.

Guardians are, in other words, the men in power. This is why Plato terms them not rulers, but guardians. The same terminology is present in Plato's differentiation between the ruler-tyrant guided by personal interest, and the true rulers,<sup>46</sup> i.e. men for whom all that matters is the common good, the good of the people under their care. Guardians are those men who stand custody over the common good of the entire republic and

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<sup>45</sup> Cf. Plato, *The Republic*, 369d.

<sup>46</sup> "...all who are in any place of command, *in so far as they are rulers*, neither consider nor enjoin their own interest, but that of the subjects for whom they exercise their craft: and in all they do or say they act with an exclusive view to them, and to what is good and proper for them," Plato, *The Republic*, 342e (emphasis mine — ZS). The distinction between true rulers and tyrant-rulers also forms the basis for the division of the political systems — monarchy, oligarchy, and democracy — into just and unjust systems, which Plato presents in *The Statesman* dialogue, 302e–303b. This issue is expanded and developed by Aristotle, cf. *Politics*, Book III 4.7.

all its inhabitants. Their task is a difficult one, a self-sacrificing service to the community, and not a self-motivated rule of profits and privileges. 197

In addition to their function of security against the external enemy, the guardians have to safeguard law and order in the republic, which means that each and every man performs the duty proper to him. Certain talents and competencies are needed to fulfill the role of a guardian well. Courage, strength, and physical endurance are needed, naturally, but they do not suffice. These guardians need to be rational enough to control and temper themselves, otherwise they would turn their weapons upon their co-citizens. Those guardians, who do not possess sufficient talents, may, under the right guidance, continue to fulfill their responsibilities, though their role is limited to auxiliary functions, such as executing commands given by those who deserve the name of proper custodians. This does not mean that those at the forefront of guardianship have no one in the republic who stand before them. They, too, must have a guardian above them, an internal one. They must be guarded and ruled by reason.

In this way, we have outlined the structure of the republic's community. It is composed of three necessary elements: 1) workers or earners, that is, people of different professions who earn for themselves and their families; 2) an auxiliary group, that is, the executive apparatus of the republic, comprised of various services and civil servants, and 3) the guardians, i.e. those who in fact make the most important decisions within the community.<sup>47</sup> A republic organized as such shall eventually become a just republic, if each one does his duty, which means not only performing his job to the best of his capabilities, but simultaneously knowing his place in the republic and knowing to whom he should be obedient.

The knowledge of the fact that “reason should rule” and the readiness to be subject to reason, both in the republic and in the personal life of individuals, Plato terms “temperance” or “self-mastery.”<sup>48</sup> Such knowledge should be possessed by all the inhabitants of a republic without exception. This, however, is still insufficient for the republic to be ruled by a truly just order. Even if the people acknowledge that reason should rule, this does not mean that it does. One must think what should be done so that reason, both in individuals themselves and in the republic that they have created, may truly become the ruler. In consequence, the main part of Socrates's argument deals with describing the functioning of an educational institution, whose aim is to lead citizens to at least a certain level of

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<sup>47</sup> Plato splendidly grasps the necessary structure of a republic as such. Firstly, he divides two of its essential elements: the institution of rule and, to speak in contemporary language, the civic society; he then differentiates within this rule the highest rule, the final instance which decides upon the most important issues of the republic, and the executive rule, which implements the instructions of the former — that is, the entire apparatus of civil servants.

<sup>48</sup> Cf. Plato, *The Republic*, 431e–432a. Here we refer to the virtue of σωφροσύνη, which is the subject of another, separate dialogue of Plato, *Charmides*, and which can be translated as the capacity of being governed by reason, self-possession, self-mastery, sobriety, temperance, and common sense.

198 self-mastery [*sophrosyne*], while those who demonstrate various abilities are brought to the highest level of knowledge, to prudence [*fronesis*] and wisdom [*sophia*]. Hence the problem of justice ultimately turns out to be a question of education. Political reflections lead us back to the proper state the human soul.

The most well-known illustration of how Plato perceives the human soul is to be found in *Phaedrus*, in the fine metaphor of the charioteer steered by two horses.<sup>49</sup> The black horse symbolizes our passions, the white horse, which is θυμός (*thymos*), signifies temperance, honor, and desire for true glory. The charioteer is reason, who by himself has no power or strength,<sup>50</sup> and without the white horse would be in no position to control the impulses of the black horse. We see a similar metaphor in Book IV of *The Republic*. Education aims, therefore, to integrate the three components of the human soul, so as to achieve internal harmony, which means that the two lower parts of the soul should be subject to reason. The just man is he who “sets in order his own inner life, and is his own master and his own law, and at peace with himself; and when he has bound together the three principles within him, which may be compared to the higher, lower, and middle notes of the scale, and the intermediate intervals — when he has bound all these together, and is no longer many, but has become one entirely temperate and perfectly adjusted nature (...).”<sup>51</sup> The injustice of a man, however, is when the lower parts of his soul rebel and assume mastery over the whole.

But even an individual who is disorderly inside, incapable of mastering himself, may find himself under the rule of reason, if only his life is within a republic governed by the wisest rulers. “And therefore, being desirous of placing him under a rule like that of the best, we say that he ought to be the servant of the best, in whom the Divine rules; not, as Thrasymachus supposed, to the injury of the servant, but because every one had better be ruled by divine wisdom dwelling within him; or, if this be impossible, then by an external authority, in order that we may be all, as far as possible, under the same government, friends and equals.”<sup>52</sup>

The final conclusion from Socrates’s reflections and his basic premises concerning the shape of the just political order is that reason is to rule everywhere. Simply put, this means that rational men should take the lead in a republic. In *The Republic*, the rationality of order becomes identified with the rationality those who exercise power, while the formal content of this order is of secondary importance. The significance of the principles to organize life within the ideal republic has little in common with the rational order of interpersonal relationships in their normal and everyday forms. It does essentially lead us to the regulation of

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<sup>49</sup> Cf. Plato, *Dialogues*, 246a–257b.

<sup>50</sup> In *Laws*, Plato talks *expressis verbis*: “the golden reasoning influence has nothing of the nature of force, and therefore requires ministers in order to vanquish other principles.” (Plato, *Laws*, 645a).

<sup>51</sup> Plato, *The Republic*, 443d–e.

<sup>52</sup> *Ibid.*, 590c–d.

the institutions for educating rational rulers. They are to be brought up so that, having resisted the temptation of passions (this is why they are forbidden from possessing their own property), they may themselves be ruled by reason, and by her help, direct those who are not yet rational enough. One could therefore say that Plato's Socrates does not ultimately unveil the measures of justice before us. He rather shows us who is to perform the duty of a wise ruler in a republic, serving the function of the one who draws this measure. It is a rational and just thing that those who should exercise power are those who have matured most in their quest for reason, and thus remain deeply rooted in the ultimate source of all measures: the rational order of eternal ideas. 199

### *THE STATESMAN* — FROM THE IDEA TO THE CONCRETE

That same theme of a justly governed state, that is, governed by rational rulers, but examined in terms of what the art of governing truly consists in, is further developed in Plato's *Statesman*. The fine art of governing involves possessing a certain body of knowledge which is at the disposal of very few men, for acquiring it, as with any body of knowledge, requires skill and untiring effort. If, however, a person acquires such knowledge, his rule becomes absolute, not tyranny, but a rulership as possessed by one who safeguards the good of another, knowing what the good consists in better than him. "Nor can wise rulers ever err while they, observing the one great rule of distributing justice to the citizens with intelligence and skill, are able to preserve them, and, as far as may be, to make them better from being worse."<sup>53</sup>

In order to clarify what exactly constitutes the essence of rule exercised in a state, Plato draws from one of his favorite metaphors, that of the physician: "whether he cures us against our will or with our will, and whatever be his mode of treatment — incision, burning, or the infliction of some other pain — whether he practises out of a book or not out of a book, [...], is a physician all the same, so long as he exercises authority over them according to rules of art, if he only does them good and heals and saves them."<sup>54</sup> In governing, as in physicians' curing of patients, the use of force over one's subjects is sometimes justifiable, with the necessary caution, however, that we speaking of truly rational governors. The only system that deserves to be acknowledged as right and just is where "the governors are really found to possess science, and are not mere pretenders, whether they rule according to law or without law, over willing or unwilling subjects [...] And whether with a view to the public good they purge the State by killing some, or exiling some; whether they reduce the size of the body corporate by sending out from the hive swarms of citizens, or, by introducing persons from without, increase it; while they act according

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<sup>53</sup> Plato, *The Statesman*, 297a–b.

<sup>54</sup> *Ibid.*, 293 a–b.

200 to the rules of wisdom and justice, and use their power with a view to the general security and improvement, the city over which they rule, and which has these characteristics, may be described as the only true State.”<sup>55</sup>

Omnipotent rule over individuals by those governing should not raise unjustified fears. Here Plato finds himself in the world of ideas, where the ruler has already lost human characteristics and simply becomes an omniscient god. This is evident from the above-quoted fragment, which suggests that laws established by a ruler do not have independent value. This, in fact, becomes a topic further discussed in *The Statesman*. In reply to whether a just lawless government could exist, the following answer is given: “There can be no doubt that legislation is in a manner the business of a king, and yet the best thing of all is not that the law should rule, but that a man should rule supposing him to have wisdom and royal power. Do you see why this is? [...] Because the law does not perfectly comprehend what is noblest and most just for all and therefore cannot enforce what is best. The differences of men and actions, and the endless irregular movements of human things, do not admit of any universal and simple rule. And no art whatsoever can lay down a rule which will last for all time.”<sup>56</sup> Should a ruler possess full and perfect knowledge, then he could and would best govern a polity, giving each and every subject clear and precise commands. In our world however, this would be impossible: “And now observe that the legislator who has to preside over the herd, and to enforce justice in their dealings with one another, will not be able, in enacting for the general good, to provide exactly what is suitable for each particular case. [...] He will lay down laws in a general form for the majority, roughly meeting the cases of individuals; and some of them he will deliver in writing, and others will be unwritten; and these last will be traditional customs of the country.”<sup>57</sup>

Where do written laws come from and what are they for? They are concessions to the demands of everyday life. It would be impossible to tell each and every one exactly what he is to do in a state. One has to limit oneself to a general list of the most important tasks. This list is the written law established by the ruler. But a law, understood as such, is always temporary; it has to be changed and replaced every now and then by someone able to better determine the current needs of the state. The statement that written law should be observed unconditionally is, according to Plato, absurd. Here he returns to the attitude of a physician, who applies the same medicine to a patient, regardless of the changes to his health. The written law is not of the utmost importance, it is instrumental. It is not the rationale in itself, it always remains an imperfect instrument. It is not the best, but simply a compromise. Arguing a viewpoint completely different from Glaucon’s in Book II of *The Republic*, we reach a similar view on the issue of the written law. This compromise is necessary when

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<sup>55</sup> Ibid., 293c–d.

<sup>56</sup> Ibid., 294a–b.

<sup>57</sup> Ibid., 294e–295a.

we abandon the world of ideas, the ideal state, and the land of ideal rulers, and we must put all our best efforts into organizing the lives of ordinary mortals. “But then, as the State is not like a beehive, and has no natural head who is at once recognized to be the superior both in body and in mind, mankind are obliged to meet and make laws, and endeavour to approach as nearly as they can to the true form of government.”<sup>58</sup> The conclusion Plato reaches after all these considerations in *The Statesman* is as follows: in a well-governed and just state, right reason must rule; and since we cannot rely on the coming of a perfectly rational ruler, rational legislation must rule. 201

## LAWS — REASON INCARNATED IN LEGISLATION

Plato performs a closer analysis of what is meant by a rule of rational legislation in his last and most important work, *Laws* (Νόμοι). Here we find an elaboration of the conclusion which closed the reflections in *The Statesman*, “Mankind must have laws, and conform to them, or their life would be as bad as that of the most savage beast. And the reason of this is that no man’s nature is able to know what is best for human society; or knowing, always able and willing to do what is best. [...] For if a man were born so divinely gifted that he could naturally apprehend the truth, he would have no need of laws to rule over him; for there is no law or order which is above knowledge, nor can mind, without impiety, be deemed the subject or slave of any man, but rather the lord of all. I speak of mind, true and free, and in harmony with nature. But then there is no such mind anywhere, or at least not much; and therefore we must choose law and order, which are second best. These look at things as they exist for the most part only, and are unable to survey the whole of them.”<sup>59</sup>

One could assume that the main idea of this fragment does not in principle vary from that which crowns the reflections in *The Statesman*. In reality, though, it is different. In *Laws* a radical change in Plato’s viewpoints takes place, which we can clearly perceive in the fragment quoted above. Right reason of the governments, which is referred to here, is by its nature free, and not subordinate to anything else. If, however, things are as they are depicted here, in building a rational order one can never forget that all men, as creatures gifted with reason, hold elements of freedom and independence, not excluding those who rarely make good use of their reason. In this last dialogue, Plato feels obliged to revise his earlier standpoint. Namely, the principle that reason must govern and consequently that rule should be entrusted exclusively to those who have reached the heights of rationality, excluding ordinary men from all political life.

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<sup>58</sup> Ibid., 301c.

<sup>59</sup> Plato, *Laws*, 874c–875d.

The basic controversy on who should govern in a state — whether it should be all citizens, or only wise men — appeared earlier, in the dialogue of *Protagoras*, in which the nominal protagonist not only contradicts the viewpoints of Plato’s Socrates, but supports his own opinion with an entirely reasonable argument. In response to whether political skills can be taught to men, the great sophist calls on the myth of when men were created by Zeus, who in seeing the weakness and helplessness of men in comparison to animals, granted all men without exception a sense of shame and justice, which allowed them to join each other and defend themselves together. “Zeus feared that the entire race would be exterminated, and so he sent Hermes to them, bearing reverence and justice to be the ordering principles of cities and the bonds of friendship and conciliation. Hermes asked Zeus how he should impart justice and reverence among men: Should he distribute them as the arts are distributed; that is to say, to a favoured few only, one skilled individual having enough of medicine or of any other art for many unskilled ones? ‘Shall this be the manner in which I am to distribute justice and reverence among men, or shall I give them to all?’ ‘To all,’ said Zeus; ‘I should like them all to have a share; for cities cannot exist, if a few only share in the virtues, as in the arts. And further, make a law by my order, that he who has no part in reverence and justice shall be put to death, for he is a plague of the state.’”<sup>60</sup> The skills that allow for participation in the political life of a community must be held by all citizens in a state without exception. If, therefore, it is sensible to listen to competent people above all, and to mock those who are ignorant when we are talking about skills such as craftsmanship, artistry, or scholarship, in questions of political affairs, things are different. For here, no one can be completely ignorant. Protagoras’s standpoint is clear. Not only those who are more rational have access to the knowledge which is essential in a political structure, this is something possessed by every man, even the most stupid, for he is capable of stating what is right and just. In the above fragment on myth, we find the seed of the justification of an egalitarian form of government, based on the concept of man as capable of independently deciding on the basic issues of his life, and simultaneously, deeply connected to his community. In its elaborated modern form, this concept refers to the axiom of the moral autonomy of man, constituting the strongest argument for the acceptance of the universal right to participate in the execution of power. It is significant that in the further discussion with the great sophist, Plato’s Socrates does not question the foundations presented in the myth of the political nature of man, although the conclusions reached in terms of the rational construction of stately order cannot easily be made compatible with his earlier ideas of the rule of philosophers. In *Laws*, Plato seems to partly acknowl-

<sup>60</sup> Plato, *Protagoras*, 322 c–d.

edge what Protagoras says to be correct, and his conviction of who can determine what, what is unjust, and in consequence, who can exercise power in a state, yield to significant modifications. 203

## THE FOUNDATIONS OF THE STATE OF LAW

In this last work, Plato no longer occupies himself with the construction of the ideal political system. In acknowledging that, “[...] our city is ordered in a manner which, if not the best, is the second best,”<sup>61</sup> he is reflecting on a concrete issue, the conditions of which need to be fulfilled in order to lay down the most reasonable foundations of the new colony of the Cretans. The question of designing an appropriate system, examined from various levels and various dimensions, fructifies in a fundamental work in which, for the first time in human history, the project of a state constitution, intended to bring justice to rationality, is presented systematically and meticulously. The speech which the founder of the colony delivers after having arrived at this new place best illustrates the spirit which was to enlighten the entire enterprise, “Friends, [...], God, as the old tradition declares, holding in His hand the beginning, middle, and end of all that is, travels according to His nature in a straight line towards the accomplishment of His end. [...] Then what life is agreeable to God, and becoming in His followers? One only, expressed once for all in the old saying that ‘like agrees with like, with measure,’ but things which have no measure agree neither with themselves nor with the things which have. Now God ought to be to us the measure of all things, and not man, as men commonly say: the words are far more true of Him. And he who would be dear to God must, as far as is possible, be like Him and such as He is. Wherefore the temperate man is the friend of God, for he is like Him; and the intemperate man is unlike Him, and different from Him, and unjust.”<sup>62</sup>

At first glance, nothing seems to have changed here. Plato still argues that the rule in a rational state should still remain in the hands of those closest to god, for they best make use of reason. Just as the soul is made of lower parts and higher parts, which are more rational, so a state has men who are by nature predestined for different tasks and aims. Nature itself determines a place for each one; people of higher intellectual and ethical talents are given higher roles, while the rest are given what rightfully belongs to them, assigning each one his rightful place in the structure of a state. At the same time, Plato now knows that the state existing in this world can no longer be simply a state of rationality, which would be proper to the gods, but it is a state which ought to be “free, wise

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<sup>61</sup> Plato, *Laws*, 739a.

<sup>62</sup> Plato, *Laws*, 715e–716d.

204 and harmonious.”<sup>63</sup> The community of friends signifies a relationship in which people mutually respect each other despite their intellectual differences, and do not treat their fellow citizens as slaves. The harmonization of such a differentiated community entails temperance and avoidance of far-fetched and over-idealistic aspirations. Thus, in the structure of the state system, it must be acknowledged that each of the citizens, regardless of their education, has the right to demand that his sense of justice and his freedom should be taken into account.

#### THE DEMAND FOR FREEDOM AND THE PROBLEM OF RULE

What are the practical demands of a good system in terms of civic freedoms that Plato tries to satisfy here? Let us again call to mind an illustration which the philosopher often uses in sketching out the figure of a true man of state, who truly cares for the good of the state and who possesses the necessary skills for achieving that — the metaphor of the physician. In *The Statesman* we read that the physician is one who knows better than the patient what is good for him, and has the right to force him to take the right medication.<sup>64</sup> Here, in *Laws*, Plato clearly differentiates between the physician/tyrant, who heals the patients/slaves through force, and the free physician, who heals free men.<sup>65</sup> The latter leads to a treatment by telling the patient of his art and sharing his knowledge with him, where no medicine is prescribed unless the patient is convinced of its effectiveness, and the physician acquires his approval for the prescribed method of medical treatment.

The proper medicine for a state is a rational law. A good physician/legislator cannot behave like a despot and treat his patients as slaves, but must acquire their consent. Even the most rational legal regulation requires the citizens’ acceptance. In other words, the rationality of law only rests in the content of concrete norms. What is necessary is to supplement them with a prelude to the law, that is, to provide an explanation which sensibly convinces them of the integrity of the regulations. Plato clearly states that a law which includes a prelude far outweighs the value of the law in itself.<sup>66</sup> Hence, his summit of political rationality is not the law in itself, albeit the most perfect, but an internalized law, that is, a law that is acknowledged — i.e. that is accepted by the citizens!<sup>67</sup> If we add to this the fact that people who are the head of a state should both be acquainted with the law itself and know how to explain its significance

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<sup>63</sup> Ibid., 693b. Another slightly different and later version of this fragment translates as follows, “a State ought to be free and wise and in friendship with itself.” Cf. Plato. *Plato in Twelve Volumes*, vols. 10 & 11, trans. R.G. Bury, Harvard University Press, William Heinemann Ltd., London 1967 & 1968. (Translator’s note).

<sup>64</sup> Plato, *The Statesman*, 293a–297d.

<sup>65</sup> Plato, *Laws*, 720a–e.

<sup>66</sup> Ibid., 723b–c.

<sup>67</sup> Ibid., 773e, 790a–b.

in words,<sup>68</sup> it seems that Plato, though in an unclear and resistant manner, essentially acknowledges that a substantial element of a well-constructed state is the sphere of open debate on public affairs. Of course, there is the threat that rational arguments may be in conflict, and even lose against those which are apparently appropriate. However, he who believes that rationality rules over the world, as Plato does, has no cause to fear such a confrontation, and in the realization of his aims may refer to the appropriateness of force, for “reason is beautiful and gentle, and not violent.”<sup>69</sup>

The acknowledgment, however limited, of the “sovereignty” of citizens carries certain consequences. The declaration that in a well-constructed state all citizens should be convinced of the righteousness of the laws does not take us far in solving the real conflicts, which arise from different opinions and viewpoints. To solve this, we need political institutions, whose main task is to reduce conflicts.

In order to carry out this aim rationally, yet realistically, the existing state must have a mixed system,<sup>70</sup> which would include elements of democracy and monarchy, “there are two mother forms of states from which the rest may be truly said to be derived; and one of them may be called monarchy and the other democracy: [...]; almost all the rest, as I was saying, are variations of these. Now, if you are to have liberty and the combination of friendship with wisdom, you must have both these forms of government in a measure; the argument emphatically declares that no city can be well governed which is not made up of both.”<sup>71</sup> Of course, what still continues to be the most important and directorial role has to be given to rationality: the state must be organized and governed on the basis of rational laws. It must, however, likewise acknowledge the fact that a well-constructed political organization must be created by a community of friends, hence a community of free men.

In perceiving the necessity of respecting citizens’ “sovereignty” in *Laws*, Plato hardly alters his opinion that *equal* participation of all in the governing of a state would be unjust. The democratic postulate of complete political equality of all citizens (ισονομία) is supported by the argument in which ordinary numerical equality is contrasted to “true equality” — equality of the relation which distributes to each what belongs to him, appropriate to the capacities he possesses. Since, therefore, political activity depends on the application of the principle of justice into life, then the state must depend on the latter, more just equality, “[...] For it gives to

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<sup>68</sup> Ibid., 966b.

<sup>69</sup> Ibid., 645a.

<sup>70</sup> Plato appears here as the propagator of the mixed system, i.e. a system whose different elements create a harmonious whole. In this respect he praises the systems in Sparta and Crete, though he refuses to give this name to such forms of exercising power as democracy, oligarchy, aristocracy, or monarchy, for as he argues, “but the states of which we were just now speaking are merely aggregations of men dwelling in cities who are the subjects and servants of a part of their own state, and each of them is named after the dominant power; they are not polities at all.” 712e–713a.

<sup>71</sup> Ibid., 693d–e.

206 the greater more, and to the inferior less and in proportion to the nature of each; and, above all, greater honour always to the greater virtue, and to the less less; and to either in proportion to their respective measure of virtue and education. [...]"<sup>72</sup>

Despite his clear disdain for political institutions which make it possible for everyone to participate in the exercise of power, Plato eventually concedes to a compromise, acknowledging the gravity of the following argumentation, "But there are times at which every state is compelled to use the words, 'just,' 'equal,' in a secondary sense, in the hope of escaping in some degree from factions. For equity and indulgence are infractions of the perfect and strict rule of justice. And this is the reason why we are obliged to use the equality of the lot, in order to avoid the discontent of the people; [...] And therefore, although we are compelled to use both equalities, we should use that into which the element of chance enters as seldom as possible."<sup>73</sup> If a state were truly to be a community of citizens bonded by friendship, then it had to be concerned with the preservation of the social peace. The best instrument to achieve this was for the citizens to express their dissatisfaction within the order of the state, rather than rebelling against it, for this was their guarantee of the opportunity to co-govern.

In order to implement this postulate, Plato presents the electoral ordinance to the Council, the highest body representing the projected state. This ordinance was to ensure a compromise between the democratic and monarchic elements.<sup>74</sup> This complicated, multi-step procedure of choosing representatives took into account existing social differences, and used financial penalties to encourage people of higher social status to participate in elections. Among those chosen, the democratic principle of drawing lots was introduced as the final basis of selection — a procedure which undoubtedly differs from what we would acknowledge as a standard for electoral procedures today. It is essential that Plato takes a radical turn in his viewpoint. Whether he likes it or not, he certainly acknowledges that universal — though hardly equal! — participation in a shared government can be rationally legislated.

It is worth noting that the 360-person Council, constituted by representatives of all citizens (90 of each of the four land-owning groups), unlike what is associated with the representative organ today, hardly serves the legislative function, nor does it meet like a parliament. This is less a national body than a state security committee — an institution delegated by the society of guardians who have carefully determined tasks to moni-

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<sup>72</sup> Ibid., 757c.

<sup>73</sup> Ibid., 757e–758a. It is worth noting that in Ancient Greece, it was not elections but the drawing of lots that was recognized as the most democratic procedure, for it was in consonance with the idea of equality, as a procedure that drew out the organs of power. The institution of elections, on the contrary, meant the choice of someone recognized as better, and thus best suited the aristocratic principle of government (ἄριστος — the best).

<sup>74</sup> Ibid., 756a–e.

tor and facilitate current affairs,<sup>75</sup> and above all, vigilance over the external and internal security of a society, and raising the alarm in moments of danger. This function was actively carried out each and every month by one of the twelve Council members, while the rest were busy with their private affairs. According to Plato, the tasks performed by the Council members could be ultimately performed by anyone, even by someone less than well educated. However, the idea that the representative body, and hence in part each citizen, should have legislative competence, was an offense to reason itself. The Platonic assumption was that in a state, rational laws must govern; it would not only be wrong to entrust legislative power to a nation's representatives, but it would be highly inappropriate to acknowledge the need to found a separate special organ within a state to perform this function. This would reduce law to something instrumental, it would become a means for citizens to form the shape of their social and political life at will, changing one state for another as they pleased. It is not the law that should serve citizens, but the citizens, primarily those who perform an important function in a state, who are to serve the law; for rational law precedes the state, and is a prerequisite for its identity.

All organs of state power without exception are, according to Plato, service-oriented. Rule or government is “divine service,”<sup>76</sup> which boils down to obedience to the foundations of law, to the existing legal and institutional order. “And when I call the rulers servants or ministers of the law, I give them this name not for the sake of novelty, but because I certainly believe that upon such service or ministry depends the well- or ill-being of the state. For that state in which the law is subject and has no authority, I perceive to be on the highway to ruin; but I see that the state in which the law is above the rulers, and the rulers are the inferiors of the law, has salvation, and every blessing which the Gods can confer.”<sup>77</sup>

It is exactly this law which reflects an element of monarchy in Plato's projected and best — though no longer ideal — system. Rational law is the monarch, the one ruler of a state. For such a monarch to be able to perform his function, the state must first exist as his domain. In building a state, as with every human activity, what is needed is a synthesis of will gifted with executive power and a forward-thinking mind, “When the supreme power in man coincides with the greatest wisdom and temperance, then the best laws and the best constitution come into being; but in no other way.”<sup>78</sup> To the very end, Plato remains faithful to his conviction that state affairs will be effectively guarded only if and when they

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<sup>75</sup> The Council seems to be modeled on the Council of the Five Hundred Elders, whose members, the Prytanes, were subsequently responsible for supervising the state's current affairs.

<sup>76</sup> “Every man should remember the universal rule, that he who is not a good servant will not be a good master; a man should pride himself more upon serving well than upon commanding well: first upon serving the laws, which is also the service of the Gods' Laws [...],” *ibid.*, 762e.

<sup>77</sup> *Ibid.*, 715c–d.

<sup>78</sup> *Ibid.*, 711e–712a.

208 are governed by philosophers, or when governed by those who essentially love wisdom.<sup>79</sup> While in *The Republic*, Plato saw the role of philosophers as twofold — in their duty to create a rational system and then to perform the role of guardians — in *Laws*, their main task is reduced to defining rational institutions, which are to be created by a constitutive act of the new state organism. Even if a place were found among institutions so designed, providing space for even those who had traveled farthest down the road of wisdom, their governing competencies would turn out to be severely limited. The reason for this is obvious: the ongoing presence and rule of reason incarnated in rational laws and institutions requires no direct interference from the wisest citizens; they turn out to be no longer necessary.

## THE STATE OF LAW AND ITS INSTITUTIONS

It is not difficult to observe that the first and most important institution of the rational state is the legislative institution that designs the rational structure of the state. By this we mean what today is called the constitutional power, which in Ancient Greece, especially in founding colonies, was usually entrusted to an exceptionally intelligent and revered person, as is precisely illustrated in the last dialogue of Plato. However, the constitutional power is special, in that it is a supra-state or meta-state institution. It is not among the organs created in the state — it rather precedes, designs, and establishes it. Its pre-state and supra-state character is a necessary condition and guarantee that the prevailing laws will endure and the organs and offices will function. These institutions — even as created by a constituting act — are given externally, hence from within the state they are immutable, and remain a sign of the identity of the state community; their alteration would mean the constitution of a new state.

### *Guardians of the Law*

It should not surprise us that in a state where the immutable laws are established by the legislator, the fundamental organ of power, or rather state service, should be an institution which stands guard over these laws. Such an institution, as sketched out by Plato, binds features of today's constitutional tribunal, state tribunal, treasury, and lustration court. Firstly, the guardians of the law should partly undertake and continue legislative work, less by altering the laws, than by defending and developing previously established institutions. For however perfect earlier acts which constituted the states may be, over time certain shortcomings may surface, which need revisions and corrections.<sup>80</sup> The guardians of the law judge

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<sup>79</sup> Plato, *The Republic*, 487e and *Letter VII* 326b.

<sup>80</sup> Cf. Plato, *Laws*, 769d–770e.

the legal transgressions of the highest ministers of the state, especially judges accused of injustice;<sup>81</sup> they are in charge of safeguarding the property yearly presented to rulers by citizens.<sup>82</sup> Among these guardians' duties is the lustration of all those applying for public office. The lustration process is, to Plato, a prerequisite for the able functioning of the state: "[...] every one can see, that although the work of legislation is a most important matter, yet if a well ordered city superadd to good laws unsuitable offices, not only will there be no use in having the good laws — not only will they be ridiculous and useless, but the greatest political injury and evil will accrue from them."<sup>83</sup> That is why "those who are duly appointed to magisterial power, and their families, should severally have given satisfactory proof of what they are, from youth upward until the time of election."<sup>84</sup> It is precisely to this task that the guardians are called, so that they "should have been trained in habits of law, and be well educated, that they may have a right judgment, and may be able to select or reject men whom they approve or disapprove, as they are worthy of either."<sup>85</sup>

For this responsible duty to be fulfilled, the people who are to perform as guardians are chosen through a complex procedure, which selects those candidates who are not necessarily the wisest, but rather those who truly enjoy esteem and respect in the society. Only those aged between 50–70 can become guardians of the law. They are chosen by all those who have completed or are completing service in the army. Each one is to write the name of his candidate on the board and leave it in the temple. One may also opt for a negative election — one of Plato's original inventions — i.e. bring out a board with the name of someone who, for one reason or another, may seem to be inappropriate. The three hundred people who receive the greatest number of votes pass on to the second round, and from those, a hundred candidates are chosen in accordance to the same principles. In the third and final round, thirty-seven men are chosen. Having undergone the lustration procedure of examining the candidates' lives, and having acknowledged the candidates as trustworthy and highly valued citizens, these men are entrusted with guarding the law.<sup>86</sup>

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<sup>81</sup> Cf. 767e.

<sup>82</sup> Cf. 754d.

<sup>83</sup> Cf. 751b. In his concern for the moral purity of the community, Plato goes even further. The most desirable state for every legislator would be, in his opinion, the "zero option," that is, the situation in which the moral level of the people who are to create the new state causes no alarm. If the polity organized does not fulfill this requirement by the legislator, then Plato proposes that even before the establishment of the competencies and the nominations to the various public offices, the state is to be purged of all that is ill: the worst of the criminals should be punished and exiled, and others sent to the colonies. Cf. 735a–736c.

<sup>84</sup> Cf. 751c.

<sup>85</sup> Cf. 751c–d.

<sup>86</sup> Cf. 753e.

One can indicate another office to which Plato attaches particular importance, even arguing that “of all the great offices of state this is the greatest.”<sup>87</sup> The reference here is to the educational director of the young people (παιδείας ἐπιμελητής),<sup>88</sup> who today would surely be called the minister of education. It is upon his work that the fate of his subordinates’ progress greatly depends, and along with it, the entire community’s progress. “Man [...] is a tame or civilized animal; nevertheless, he requires proper instruction and a fortunate nature, and then of all animals he becomes the most divine and most civilized; but if he be insufficiently or ill educated he is the most savage of earthly creatures. Wherefore the legislator ought not to allow the education of children to become a secondary or accidental matter.”<sup>89</sup> And here once again, no exceptionally gifted philosopher is required to fill this role, it suffices for him to be a man rich in life experience and wisdom, at least fifty years of age, a father of legitimate children, ideally of both sons and daughters, who has experience in public office, in serving as guardian of the law, and who is capable of instilling young people with reverence for the law. He is chosen for a five-year term by all the ministers of the state, with the exception of the Council members.

### *The Highest Assembly of Guardians*

The director of the education of young people, his predecessors, and ten of the eldest guardians of the law, along with the most virtuous priests, form a group of “experts” whose significance is comparable to the role of the mind in the human body. During the daily meetings at daybreak, taking advantage of information from younger guardians (which fulfill the role of the “senses” in the state), and from the messengers of other states who have traveled from abroad, this assembly is to debate. “These shall be always holding conversation and discourse about the laws of their own city or about any specially good ones which they may hear to be existing elsewhere; also about kinds of knowledge which may appear to be of use and will throw light upon the examination, or of which the want will make the subject of laws dark and uncertain to them.”<sup>90</sup> The rational state sketched out in *Laws* is hardly a closed body, contemplating its own perfection. It is rather an open and dynamic state. Plato openly writes that one should wisely and bravely make use of others’ experience, “For a city which has no experience of good and bad men or intercourse with them, can never be thoroughly and perfectly civilized, nor, again, can the citizens of a city properly observe the laws by habit only, and without an intelligent understanding of them”<sup>91</sup> Another sign of openness is the idea that

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<sup>87</sup> Cf. 765e.

<sup>88</sup> Ibid., 765d.

<sup>89</sup> Ibid., 766a–b.

<sup>90</sup> Ibid., 952a.

<sup>91</sup> Ibid., 951a–b.

each member of the assembly could invite a younger, more talented person (thirty or forty years old) to the meetings. In this way, a new state elite could be created to replace the present guardians when the time comes. 211

What tasks await those gathered at the dawn assemblies, which should be like “[an] anchor of the state, our city, having everything which is suitable to her, will preserve all that we wish to preserve?”<sup>92</sup> It is interesting that Plato does not enumerate any direct power attributes, aside from the strength of the members’ authority. The role to be fulfilled by this assembly is reminiscent of an academic seminar; it is a kind of think tank, whose aim is to continually verify the intellectual and institutional foundations of the state in the face of ever-new challenges. This verification should be based on the particular skill possessed by members of the assembly, a skill which distinguishes all true philosophers.

For they must possess the knowledge of “[...] the aim of the state, and will inform us how we are to attain this, and what law or what man will advise us to that end. Any state which has no such institution is likely to be devoid of mind and sense, and in all her actions will proceed by mere chance.”<sup>93</sup> What is crucial here is the awareness of the aim. The assembly of guardians must “possess all virtue; and the beginning of virtue is not to make mistakes by guessing many things, but to look steadily at one thing, and on this to fix all our aims.”<sup>94</sup> Plato also mercilessly criticizes the states whose founders and legislators are incapable of recognizing this most essential aim: “the reason is that their legislators have such different aims; nor is there anything wonderful in some laying down as their rule of justice, that certain individuals should bear rule in the state, whether they be good or bad, and others that the citizens should be rich, not caring whether they are the slaves of other men or not. The tendency of others, again, is towards freedom; and some legislate with a view to two things at once — they want to be at the same time free and the lords of other states; but the wisest men, as they deem themselves to be, look to all these and similar aims, and there is no one of them which they exclusively honour, and to which they would have all things look.”<sup>95</sup>

What is the main aim to which the rational legislator should aspire? Plato has no doubts here (as before, in writing *The Republic*): “that aim is virtue,”<sup>96</sup> that is, the ethical perfection of men. The state and its laws should be an element of a still larger educational enterprise. The formation of the four virtues: wisdom (φρόνησις), the temperance that is a sense of good measure (σωφροσύνη), right judgment or prudence (δικαιοσύνη) and fortitude (ἀνδρεία),<sup>97</sup> form the qualities of subjects which each leg-

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<sup>92</sup> Ibid., 961c.

<sup>93</sup> Ibid., 962b–c.

<sup>94</sup> Ibid., 962d.

<sup>95</sup> Ibid., 963d–e.

<sup>96</sup> Ibid., 963a. Cf. also 630e–631a, 705d–718c.

<sup>97</sup> See also 964b and 965b, see Plato’s reflections in Book IV of the *The Republic*. On the hierarchy of goods according to which a man’s rational life should be ordered, and upon which these virtues are to take place, see Book I of Plato’s *Laws*, “Now happiness or good

212 islator is to try to implement to make their citizens better individuals. The highest guardians should however also possess something else, and not only the skill of distinguishing between these virtues and other, less essential ones, but also between those which are mutually related. They should know how to break through the many differing opinions and to lead toward a unity in thought, and persevere in pursuing it, “[...] the workman or guardian, if he be perfect in every respect, ought not only to be able to see the many aims, but he should press onward to the one he should know, and knowing, order all things with a view to it.”<sup>98</sup>

The same occurs with the plurality and unity of virtue, as with the good and beautiful. These guardians must see their unity, but also, when necessary, demonstrate and expound on it, “And may not the same be said of all good things — that the true guardians of the laws ought to know the truth about them, and to be able to interpret them in words, and carry them out in action, judging of what is and of what is not well, according to nature?”<sup>99</sup> How to perceive and explain the unity of virtues and of the highest ideals of good, truth and beauty?<sup>100</sup> What is indispensable here is a fundamental outlook on the unity of all things and of their origin; put simply, the knowledge of Gods: “to know that they are, and know how great is their power, as far as in man lies.”<sup>101</sup> And only men gifted with this kind of outlook can perform the highest service in the state. “[...] but we refuse to admit as guardians any who do not labour to obtain every possible evidence that there is respecting the Gods; our city is forbidden and not allowed to choose as a guardian of the law, or to place in the select order of virtue, him who is not an inspired man, and has not laboured at these things.”<sup>102</sup>

A testimony to the divine origin of all things is, firstly, “[...] an argument from the order of the motion of the stars, and of all things under the dominion of the mind which ordered the universe.”<sup>103</sup> Secondly, there is testimony in the reasoning by which one claims that it was not a lifeless matter that ruled at the beginning of all things, but a Soul, the abso-

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is of two kinds — there are divine and there are human goods. He who has the divine has the human added to him; but he who has lost the greater is deprived of both. The lesser goods are health, beauty, strength, and, lastly, wealth; not the blind God, Pluto, but one who has eyes to see and follow wisdom. For mind or wisdom is the most divine of all goods; and next comes temperance, and justice springs from the union of wisdom and temperance with courage, which is the fourth or last. These four precede other goods, and the legislator will arrange all his ordinances accordingly, the human going back to the divine, and the divine to their leader mind” (631b–d).

<sup>98</sup> Ibid., 965b.

<sup>99</sup> Ibid., 966b.

<sup>100</sup> Though in stating the thesis of the unity of good, truth, and beauty, Plato does not name truth, we can include it without hesitation, following his own words in Book V of *Laws*: “Truth is the beginning of every good thing, both to Gods and men” 730c.

<sup>101</sup> Ibid., 966c.

<sup>102</sup> Ibid., 966c.

<sup>103</sup> Ibid., 966e. Cf. also 897c and 898c. In these words and those that follow, Plato reveals remnants of a similar sensitivity to what was to be echoed in Kant’s beliefs on the starry heaven and moral law centuries later.

lute source of all life and all motion, which “is the eldest<sup>104</sup> [...] and most 213  
divine of all things, to which motion attaining generation gives perpetual  
existence.<sup>105</sup>” This means that all things in this world occur not as  
the result of some mechanical necessity but as the effect of “an intelligent  
will accomplishing good.”<sup>106</sup> It is precisely this most fundamental  
truth of reality that should be known and emulated by the guardians of  
the laws. Not only the lives of individuals, but also the life of the entire  
state should be subject to the conscious action of the “the intelligent will  
accomplishing good,” for only then shall it be most subject to reason and  
more like the gods. Summarizing his politically significant theological  
reflections, Plato writes: “No man can be a true worshipper of the Gods  
who does not know [...] — that the soul is the eldest of all things which  
are born, and is immortal and rules over all bodies; moreover, as I have  
now said several times, he who has not contemplated the mind of nature  
which is said to exist in the stars, and gone through the previous training,  
and seen the connexion of music with these things, and harmonized  
them all with laws and institutions, is not able to give a reason of such  
things as have a reason. And he who is unable to acquire this in addition  
to the ordinary virtues of a citizen, can hardly be a good ruler of a whole  
state; but he should be the subordinate of other rulers.”<sup>107</sup> Philosophers  
must stand at the head of a rational state, which should become a place  
for implementing the good. Plato remains faithful to his conviction to  
the very end, though in his final days he agrees that the authority of philosophers  
should only concern the most essential of things; this manifests itself less in  
immediate and ongoing governing, than as a form of stewardship and overall  
supervision.

Let us pause for a moment on the particular institutions presented by Plato. Though those which occupy a central place in the dialogue — especially the institution of the guardianship of the law, the office of the ministry of education, and the daybreak assemblies — appear rather peculiar from our perspective, we cannot simply dismiss them as mere figments of the author’s imagination. For all this hides a rational outlook at the essence of the state, revealing elements of public order which cannot be ignored even today, in times when often politically programmed ideas reject a concern for the ethical betterment of its citizens, trying in exchange to accentuate the need to guarantee the scope of liberty. Many of the themes touched upon by Plato are easily found in contemporary thought and political practices. We must, first of all, address the fundamental issues of the rational and untouchable (or at least more permanent than usual legislation) constitutional frameworks as the basis of

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<sup>104</sup> It seems that this fragment can also be interpreted as a spark of intuition of *creation ex nihilo*, a vision completely foreign to the Ancient Greek imagination, which was convinced of the eternal existence of matter.

<sup>105</sup> Ibid., 966e. Cf. also 896a and *Phaedrus* 245c–246a.

<sup>106</sup> Plato, *Laws*, 967a.

<sup>107</sup> Ibid., 967d–968e.

214 what we call the state of law,<sup>108</sup> and secondly, the necessity of the concern for the legislative order in a state remaining coherent and unified. Today, the guardianship over established law is the responsibility of institutions such as the constitutional tribunal and/or of the Supreme Court. We could point out procedures in every contemporary state which judge the abuses of those who perform the highest state offices (the tribunal state, impeachment, etc.). Though the concept of the “director of education” may not be really in keeping with the currently common idea of a “neutral state,” we can obviously observe that the educational activeness of the state has a profound influence on the lives of its citizens, far exceeding the activities of one educational department. And perhaps only Plato’s original idea of organizing a stable team of qualified experts to reflect on the fundamental questions of the political system, as a body which functions as an essential and constitutionally anchored state institution, has not found its followers to this day.

Aside from the institutions mentioned, Plato puts forward other concrete proposals by the administrative powers at various level of the state, nominated, like the Council, through electoral procedures, and with the drawing of lots. The exercise of public services by all civic servants must be controlled by a special tribunal, the equivalent of today’s highest administrative court,<sup>109</sup> while the performance of its members is in turn subject to the judgment of the guardians of the state.<sup>110</sup>

### *The Judicature*

Aside from this, Plato gives us a detailed and systematized description of concrete legal norms, in which we can easily perceive similarities to the regulations applied today. Here we are referring to the principles of organizing courts and court procedures, or even the regulation of property, crime and punishment issues. If we compare these to the solutions which oblige today, the institutions we have inherited from Roman Law, it makes us realize how impressive Plato’s early reflections were. Here are some examples.

The basis of a well-functioning state is an organized organ for administering justice: “A city which has no regular courts of law ceases to be a city.”<sup>111</sup> In every issue “The point in dispute between the parties should be made clear; and time, and deliberation, and repeated examination,

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<sup>108</sup> The term “state of law” is sometimes understood as a “legal state,” that is, a state in which each act of state power should be legal (i.e. it must have its foundation in the constitution or be consonant with the constitutional state act); it can also mean “a state legalized,” in which the activities of those in power must be not only legal, but like the constitution and other legal regulations, these actions must be based on rational and just premises. We need not add that the first meaning of *nomocracy* is completely foreign to Plato, because according to him only those laws which have been established for the good of the entire state, and not for the privileges of a small group of people, albeit dressed in the public form of proclaimed legislation, deserve to be called true laws (cf. also 715b).

<sup>109</sup> Plato, *Laws*, 945b–946e.

<sup>110</sup> *Ibid.*, 947e–948b.

<sup>111</sup> *Ibid.*, 766d.

greatly tend to clear up doubts. For this reason, he who goes to law with another should go first of all to his neighbors and friends who know best the questions at issue. And if he be unable to obtain from them a satisfactory decision, let him have recourse to another court; and if the two courts cannot settle the matter, let a third put an end to the suit.”<sup>112</sup> Plato emphasizes the fact that, in order to resolve conflicts among people, the court as an organ of state power is not entirely necessary. Conflicts can be and often are resolved on a private level by both parties calling upon acknowledged arbiters. In this respect, and in terms of the necessity of guaranteeing judges as an indispensable condition for the pronouncement of just verdicts of the highest possible autonomy<sup>113</sup> — as one might assume, from the influence of state organs — Plato considers whether courts should be considered state organs at all.<sup>114</sup>

Moreover, Plato argues that a separation of competencies between state and court must be observed: “There is one particular which they must determine in all cases — the question of fact.”<sup>115</sup> However, when it comes to determining the just punishment for a given act, two situations are possible. If the judicial function is performed by educated and virtuous men guided by rationality, they should be left to decide on the just punishment. If, however, these men are susceptible to influence, the legislator “should only allow them to ordain the penalties for the smallest offences; if the state for which he is legislating be of this character, he must take most matters into his own hands and speak distinctly.”<sup>116</sup>

### *The Right to Property*

The foundation of the legal statutes regulating mutual relations between citizens of a state is the sacred right to property and respect for boundaries, the principle of not “mov[ing] the immovable.”<sup>117</sup> For those who remember how Plato claimed the supremacy of common property over private in *The Republic*, this may seem an essential change of opinion. What we have here, however, is more a change in perspective. In his last work we read that, “The first and highest form of the state and of the government and of the law is that in which there prevails most widely the ancient saying, that ‘Friends have all things in common.’ Whether there is anywhere now, or will ever be, this communion of women and children and of property, in which the private and individual is altogether banished from life, and things which are by nature private, such as eyes and ears and hands, have become common, and in some way see and hear and act in common, and

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<sup>112</sup> Ibid., 766d–767a.

<sup>113</sup> Ibid., 768b.

<sup>114</sup> Ibid., 768c. A similar intuition was further developed by Hegel, who attributes the seat of justice to the sphere of civil society, and not to the state, thus questioning Montesquieu’s division of three powers.

<sup>115</sup> Ibid., 875e.

<sup>116</sup> Ibid., 876b–d. The two ways of understanding the function of the judge discussed by Plato can be found — though with a different distribution of emphasis — in two different judicial traditions: Anglo-Saxon and Continental.

<sup>117</sup> Ibid., 842e–843e also 913b.

216 all men express praise and blame and feel joy and sorrow on the same occasions, and whatever laws there are unite the city to the utmost — whether all this is possible or not, I say that no man, acting upon any other principle, will ever constitute a state which will be truer or better or more exalted in virtue. Whether such a state is governed by Gods or sons of Gods, one, or more than one, happy are the men who, living after this manner, dwell there; and therefore to this we are to look for the pattern of the state, and to cling to this, and to seek with all our might for one which is like this. The state which we have now in hand, when created, will be nearest to immortality and the only one which takes the second place.”<sup>118</sup>

The vision of a perfect, divine communion of people — for this is how we should understand the deepest essence of the ideal state — constantly accompanies Plato. A good and rational state must be a true community; it must be imbued with a spirit of friendship, but also with the conviction that here on earth we all, without exception, are already perfect friends, who have achieved a state of complete unity, and everything, even our thoughts, is shared by all. This is certainly less than rational, and even grossly naïve. For this reason, a law obliging respect for another man’s property is a necessary condition for the peaceful conviviality of every existing community. Plato reminds us of this repeatedly. The law’s most general rule concerning all acts of violence is “No one shall take or carry away any of his neighbour’s goods, neither shall he use anything which is his neighbour’s without the consent of the owner.”<sup>119</sup> In mutual relationships this simple principle should oblige: “Thou shalt not, if thou canst help, touch that which is mine, or remove the least thing which belongs to me without my consent; and may I be of a sound mind, and do to others as I would that they should do to me.”<sup>120</sup>

### *The Rational Principle of Punishment*

From the principle of respect for property comes the necessity to punish those who do not respect this right. Plato does not only propose a predetermined code of punishments to fit particular crimes, but in keeping with his approach that “enactments ought always to have a short prelude” he is the first in history to give us a complex theory on the essence of punishment itself, and the principle of punishing criminals.

First of all, one has to differentiate between two elements which comprise punishment: first, the compensation for the damage caused, which must be a full equivalent, and secondly, an added element of punishment, which has a formative dimension. In executing the second element, one has to consider the intention<sup>121</sup> of the perpetrator, so that the criminal and the remaining members of the society — today this would be

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<sup>118</sup> Ibid., 739b–e.

<sup>119</sup> Ibid., 884a.

<sup>120</sup> Ibid., 913a.

<sup>121</sup> Of the necessity of considering and deciphering in the establishment of the laws of intentionally and unintentionally committed acts and troubles, which appear here, when Plato argues that “That all bad men are always involuntarily bad [...]” Cf. 860d–864.

termed as “general and particular prevention” — receive a clear message, 217 to discourage them from committing similar illegal acts in the future.<sup>122</sup> Plato is deeply convinced that a just law is proportional to the criminal act, and that this is a fundamental principle which regulates interpersonal relationships, so that through a just punishment, the chance for friendship and community is restored between the perpetrator and victim.<sup>123</sup> In the code sketched out by Plato, there is also the need to consider the formative aspect of punishment, not only on an individual level, but on a social one as well.<sup>124</sup>

In accepting the law of retribution as the basis of the code of punishment for the gravest of crimes (murder), Plato naturally accepts the necessity of capital punishment. “Let him who is convicted be punished with death, and let him not be buried in the country of the murdered man, for this would be shameless as well as impious. But if he flies and will not stand his trial, let him fly forever or, if he set foot anywhere on any part of the murdered man’s country, let any relation of the deceased, or any other citizen who may first happen to meet with him, kill him with impunity, or bind and deliver him to those among the judges of the case who are magistrates, that they may put him to death.”<sup>125</sup> Of course, not all who deprive another man of his life shall be punished, but only “whoever shall wrongfully and of design slay with his own hand any of his kinsmen.”<sup>126</sup> Plato differentiates between various cases of intentional and accidental homicide, and depending on the intentions, circumstances and the perpetrator and the victim of the act, Plato tries to distinguish proportional punishment.<sup>127</sup> It should be added that Plato also assigned the death penalty for other more serious crimes, such as blasphemy, an attempt to overthrow the government by force, and treason.<sup>128</sup> All crimes subject to capital punishment were to be examined by a special tribunal, composed of guardians of the law and the best ministers of the state, abiding by a particularly meticulous procedure.<sup>129</sup>

Another interesting and important thread of thought found in Plato is his codification of “civil law,” or “familial law.” Almost all his proposals are rich with commentary, and introduced with a “prelude to laws,” whose purpose is the rational justification of the significance of these legal solutions.

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<sup>122</sup> Ibid., 933e–934b.

<sup>123</sup> Ibid., 862b–c.

<sup>124</sup> Contemporary theories of punishment, from Cesare Beccaria onward, often reject *ius talionis* and refer only to a formative understanding of punishment. Plato, however, proposes a certain synthesis of both stands, in which the principle of just retribution remains untouchable. For example, taking into consideration elements of compensation and education, Plato proposes returning twice the value of the stolen article as a punishment for theft, or imprisonment until the loss has been recompensed. Ibid., 857a.

<sup>125</sup> Ibid., 871d.

<sup>126</sup> Ibid., 871a.

<sup>127</sup> Ibid., 865a–874d.

<sup>128</sup> Ibid., 856b–857a.

<sup>129</sup> Ibid., 855c–856a.

For our conclusion, let us pause to examine another particular question, one with special contemporary relevance, which also concerned Plato, upon which he reflected to find apt regulations, with recourse to the concept of nature and what is against nature. Moreover, we shall have another opportunity to rectify a widely acknowledged opinion, unjustly attributed to Plato, and which he decisively opposed. We are referring to the issue of homosexual relationships, and the arguments for their legalization or delegalization within the framework of the state order.

Even in times of antiquity, homosexuality was a widely popular phenomenon, though in areas of Ancient Greece it was tolerated to varying degrees. In Doric Sparta, where civil life was organized in a military fashion, it was accepted as an official state institution. The rule there was the formation of pairs, in which an the elder man's duty was to initiate a younger subordinate into the arcana of the military art. In Athens, the situation was different, but homosexuality, as proven at least by the speeches of the participants in Plato's *Symposium*, was likewise present and tolerated. Although Plato admired Spartan society and often presented it as a model to be emulated by the Athenians, he clearly criticized homosexuality.<sup>130</sup> This can be clearly seen in *The Symposium*, where he admiringly describes Socrates's polite but decisive refusals of Alcibiadius's sexual allusions. In *Laws*, the question of evaluating homosexual acts and legislative solutions, which could be resolved in a rational manner, is reflected upon meticulously and thoroughly. The gravity of this problem for Plato himself may best be demonstrated by the solution to which he is eventually inclined; and compared to the other legal proposals in his works, it is preceded by the longest explanatory introduction.<sup>131</sup>

Most importantly, Plato realizes that he is confronting something which is not only to a certain respect a theoretical problem, but also a situation where homosexual behavior has become so deeply imbedded that

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<sup>130</sup> Ibid., "In many ways Crete and Lacedaemon furnish a great help to those who make peculiar laws; but in the matter of love, as we are alone, I must confess that they are quite against us. For if any one following nature should lay down the law which existed before the days of Laius, and denounce these lusts as contrary to nature, adducing the animals as a proof that such unions were monstrous, he might prove his point, but he would be wholly at variance with the custom of your states. Further, they are repugnant to a principle which we say that a legislator should always observe; for we are always enquiring which of our enactments tends to virtue and which not. And suppose we grant that these loves are accounted by law to be honourable, or at least not disgraceful, in what degree will they contribute to virtue? Will such passions implant in the soul of him who is seduced the habit of courage, or in the soul of the seducer the principle of temperance? Who will ever believe this? Or rather, who will not blame the effeminacy of him who yields to pleasures and is unable to hold out against them? Will not all men censure as womanly him who imitates the woman? And who would ever think of establishing such a practice by law? Certainly no one who had in his mind the image of true law." *Laws*, 836b–c.

<sup>131</sup> Plato's comments on homosexuality can be found in Book I of the *Laws*, 637c–e and first and foremost in Book VIII, 835c–842a.

it has even become a custom, both evident and normal. Opposing what is commonly acknowledged and accepted therefore demands a great deal of courage: “there appears to be a need of some bold man who specially honours plainness of speech, and will say outright what he thinks best for the city and citizens — ordaining what is good and convenient for the whole state amid the corruptions of human souls, opposing the mightiest lusts, and having no man his helper but himself standing alone and following reason only.”<sup>132</sup> 219

Plato is by all means aware that his stand may encounter opposition, though this could be interpreted as simple differences in custom, quite normal for distinct societies: “To all such accusations, whether they are brought against the Tarentines, or us, or you, there is one answer which exonerates the practice in question from impropriety. When a stranger expresses wonder at the singularity of what he sees, any inhabitant will naturally answer him: Wonder not, O stranger; this is our custom, and you may very likely have some other custom about the same things.”<sup>133</sup> Plato, who is hardly satisfied with such a reply, argues outright, “these lusts as contrary to nature,”<sup>134</sup> for, “[...] I think that the pleasure is to be deemed natural which arises out of the intercourse between men and women; but that the intercourse of men with men, or of women with women, is contrary to nature, and that the bold attempt was originally due to unbridled lust.”<sup>135</sup>

The whole issue is reduced to a more basic level, concerning control over one’s own lusts, regardless of whether they are homosexual or heterosexual. Given that a man who cannot temper his passions is simply a lecher, as he allows himself to be enslaved by them, this contradicts the most important task man has to face: to grow in virtue. At this point, Plato recalls his reflections on love, made famous in *The Symposium*, by emphasizing that three very important, often confused questions are crucial here. One thing is friendship, i.e. the growth and cultivation of similarities and unities, while lust is quite separate, as it seeks to satisfy one’s thirst for passion, when, “dear also, though unlike, is he who has abundance to him who is in want.”<sup>136</sup> Yet another thing is the merging of the two previous, which we often call love. A good legislator should not only allow but support the first kind of love, while he should clearly set limitations to the remaining two, forbidding all that is against nature: both homosexual and extramarital relationships. The ideal situation is when the established law “make[s] men use natural love and abstain from unnatural, not intentionally destroying the seeds of human increase, or sowing them in stony places, in which they will take no root; and that I would command them to abstain too from any female field of increase in which

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<sup>132</sup> Ibid., 835c.

<sup>133</sup> Ibid., 627c.

<sup>134</sup> Ibid., 836c.

<sup>135</sup> Ibid., 636c.

<sup>136</sup> Ibid., 837a.

220 that which is sown is not likely to grow?”<sup>137</sup> Such a law, “is the appointment of nature, and deters men from all frenzy and madness of love, and from all adulteries and immoderate use of meats and drinks, and makes them good friends to their own wives.”<sup>138</sup>

The problem, however, is in the fact that sexual concupiscence is one of the most powerful forces at work in man. In this matter, Plato has no delusions that regulating sexual relations would not face strong and loud opposition: “I can imagine some lusty youth who is standing by, and who, on hearing this enactment, declares in scurrilous terms that we are making foolish and impossible laws, and fills the world with his outcry.”<sup>139</sup> And yet such sexual temperance and control does not seem beyond man’s capacities. Plato gives the example of athletes who, to win the Olympic laurels, subject themselves to sexual asceticism, and rhetorically asks, “And had they the courage to abstain from what is ordinarily deemed a pleasure for the sake of a victory in wrestling, running, and the like; and shall our young men be incapable of a similar endurance for the sake of a much nobler victory, which is the noblest of all, as from their youth upwards we will tell them, charming them, as we hope, into the belief of this by tales and sayings and songs?”<sup>140</sup>

In fact, if the virtue of temperance is seen more desirable than the Olympic laurels, and not attaining it is often considered disgraceful, one might expect that no one would dare to openly demonstrate his unsettled sexual inclinations. Plato refers to an analogy which illustrates that, in principle, the issue cannot be settled in terms of man’s biological nature, but in terms of his “second nature,” of the culture and customs that exist within a society. For if the force of our sexual impulses as indeed indomitable, then we could not explain the fact that men (and here we hardly have in mind the most virtuous or righteous) “in spite of their lawless natures, are very strictly and precisely restrained from intercourse with the fair, and this is not at all against their will, but entirely with their will.”<sup>141</sup> Such things happen, “When any one has a brother or sister who is fair; and about a son or daughter the same unwritten law holds, and is a most perfect safeguard, so that no open or secret connexion ever takes place between them. Nor does the thought of such a thing ever enter at all into the minds of most of them.”<sup>142</sup>

If taboo exists in a society, if certain acts, such as incestuous crimes, are commonly seen as unworthy of man, then we have no fear of anyone who commits them. However, if it so happens that some do commit this

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<sup>137</sup> Ibid., 838e–839a.

<sup>138</sup> Ibid., 838a–b.

<sup>139</sup> Ibid., 839b.

<sup>140</sup> Ibid., 840b–c.

<sup>141</sup> Ibid., 838a.

<sup>142</sup> Ibid., 838a–b. Plato observes that incestuous desires generally do not even surface, and suggests that in certain critical circumstances, our “second nature” overpowers our “first nature.” Our relationship with the world and the perception of the objects in it are marked much more by culture than by biology.

crime, then those men are perfectly aware that they have excluded themselves from society, and deserve the harshest of punishments, “Does not a little word extinguish all pleasures of that sort? [...] The declaration that they are unholy, hated of God, and most infamous; and is not the reason of this that no one has ever said the opposite, but every one from his earliest childhood has heard men speaking in the same manner about them always and everywhere, whether in comedy or in the graver language of tragedy? When the poet introduces on the stage a Thyestes or an Oedipus, or a Macareus having secret intercourse with his sister, he represents him, when found out, ready to kill himself as the penalty of his sin.”<sup>143</sup>

If homosexual relationships and marital infidelity, like incest, were considered cultural taboos, their unconditional prohibition would become evident. If, however, this is not the case, if “free love” were widespread, and men not only ceased to be ashamed of it but were even be proud of it, if it became a norm in society and was perceived as a valued and respectable way of living, other means would be necessary. In such an event, Plato would recommend another less radical solution, “But if they are corrupted by the other Hellenes and the common practice of barbarians, and they see with their eyes and hear with their ears of the so-called free love everywhere prevailing among them, and they themselves are not able to get the better of the temptation, the guardians of the law, exercising the functions of lawgivers, shall devise a second law against them. [...] Our citizens should not allow pleasures to strengthen with indulgence, but should by toil divert the aliment and exuberance of them into other parts of the body; and this will happen if no immodesty be allowed in the practice of love. Then they will be ashamed of frequent intercourse, and they will find pleasure, if seldom enjoyed, to be a less imperious mistress. They should not be found out doing anything of the sort. Concealment shall be honourable, and sanctioned by custom and made law by unwritten prescription; on the other hand, to be detected shall be esteemed dishonourable, but not, to abstain wholly. In this way there will be a second legal standard of honourable and dishonourable, involving a second notion of right.”<sup>144</sup>

In a profoundly deformed society, one cannot introduce a radical sanitization of customs, so that unacknowledged sexual behavior should become seen by all as punishable; once a taboo has been abolished, it is difficult to restore it to being untouchable. Those responsible for the state are not helpless. Although their influence on citizens’ intimate lives is necessarily limited, what remains is the attempt to attend to it in public space, which has educational value, for such behavior cannot be perceived as exemplary and positive. On the contrary it should be perceived as something of which we should be ashamed. Ultimately, Plato proposes the following law: sexual promiscuity in itself shall not be punishable, but whoever, “offends publicly in the face of all mankind, we shall be right

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<sup>143</sup> Ibid., 838b–c.

<sup>144</sup> Ibid., 840e–841d.

222 in enacting that he be deprived of civic honours and privileges, and be deemed to be, as he truly is, a stranger.”<sup>145</sup>

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The above-described Platonic conception of the just political order developed gradually; however, in its later stages, from *The Republic* to *Laws*, it hardly underwent any revolutionary changes. What we have here instead is the gradual concretization of general assumptions with the explication and detailed description of the primary project, which, although sensible in its overall framework, was somewhat too idealized and detached from life, and had to be subject to correction and clarification. The chief principle — that by the nature of reality as a whole, wherever it may be, whether in the cosmos, in the state or within man himself, rationality has to prevail — pervades all of Plato’s works.

Rationality is first and foremost divine — the more man guides himself by reason, the more he resembles the gods. The first attempt at presenting a just order in *The Republic* is reminiscent of a perfect and ideal community; this is indeed an image of the communion of gods incarnate. They themselves tend to the guardianship of all of social life, while care for the implementation of the demands of the corporeal nature of man is delegated to lesser creatures, that is to other men, who are unable to use their rationality. Although Plato, in all of his works, looks at man from “above,” from the divine perspective of rationality, he does gradually acknowledge it as rational to render justice to all of human nature and to consider the view from “below,” according to which this nature is rooted and entwined in the finite.

As the final touch in Plato’s reflections in *Laws*, he modifies the model of the state, in which rationality rules in the form of rational laws and institutions. This is no longer detached from life or an ideal state of the gods, but rather a concrete model, which is feasible, though difficult for common mortals to implement. In searching for concise, synthetic terms, one could call it a republican state of law. It is republican, for all legal institutions of such a political body have one chief aim: the common good of the entire society. The rulers of such a state perceive power as a service to the community, and care for public goods. Such a state, according to Plato, would create the best domain, both amiable and friendly, in which every citizen would be able to better himself through the perfection of his own virtues.

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<sup>145</sup> Ibid., 841e.