

Subjectivity and the Good in Plato's *Laws*

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Introduction

In Plato's most well-known political dialogue, the *Republic*, both the sun and the cave act as important symbols. The sun represents the pure, unalloyed goodness upon which all truths rest (Plato, 507b-509c), while the cave is a den of illusion and ignorance, out of which Plato's philosopher is obligated to lead people (514a-520a). In Plato's *Laws* (625b), an Athenian stranger, a Cretan named Clinias, and a Spartan named Megillus have a discussion regarding how to properly legislate for a Cretan colony. Their discussion takes place while they are walking to the cave and chapel of Zeus, and on the way to their destination they attempt to find shady areas to hide from the sun. Given the importance Plato attributes to these symbols in the *Republic*, it would, in my view, be unwise to dismiss their appearance in the *Laws* as a mere coincidence, especially given its placement at the very beginning of the dialogue. It seems to me that the relatively straightforward meaning of this symbolism is that the Athenian and his interlocutors are fleeing from the form of the good and are heading to the illusion and ignorance of the cave. Due to the nature of the political system promulgated by the Athenian throughout the dialogue, this basic attitude should not come as a surprise. However, to understand what Plato is advocating in the *Laws*, we must determine why the legislators are fleeing from the form of the good and are seeking the cave of illusion, and what this turn represents in political terms. With this idea in mind, this paper will attempt to discover the source of legitimacy in Plato's *Laws*, the fundamental purpose of the regime, and what this turning away from the forms represents in philosophical and political terms.

To understand the purpose and meaning of Plato's apparent shift away from the forms in the *Laws*, we must examine the context in which the action of the *Laws* takes place. At the end of Book Three, Clinias reveals to Megillus and the Athenian that he had been tasked with legislating for a new Cretan colony, and Clinias requests the Athenian's help with the project (702c). The purpose of the *Laws* is not a disinterested search for the truth. The Athenian, Clinias, and Megillus are not, for example, conceiving of a society to find the nature and value of justice, as the characters of the *Republic* do. Rather, the purpose of the *Laws* is to legislate for a state that will, in the context of the dialogue, come into actual

being. This purpose has important implications for the dialogue: since their purpose is not theoretical but practical, their state cannot hope to live up to the theoretical perfection of the *Republic*. In Book Five of the *Laws* (739b-d), the Athenian states that the best society is the one where there is no private ownership—and all citizens act in perfect concert and gods dwell among the people. If we merely substitute philosopher-kings for gods, this regime bears significant resemblance to that of the *Republic*. The regime of the *Laws*, on the contrary, is second-best; the Athenian states, “That we have now in hand, were it once brought to the birth, would be in its fashion the nearest to immortality and the only one which takes the second place” (Plato 1961a, 739e). One of the consequences of the second-best regime is that the regime of the *Laws* allows for the possession of private property (740a-b). Understanding the regime of the *Laws* as being a fundamentally practical regime as opposed to theoretical, the second-best as opposed to the ideal, brings us closer to understanding the turning away from the sun and flight to the cave. This represents Plato’s beliefs that the form of the perfectly good state cannot be realized practically, and that the legislator must turn away from the pure form of the good in order to properly legislate. Hence the shift from the communal city of the *Republic* to the non-communal city of the *Laws*.

Having established that the *Laws* represents a second-best state held back from reaching the ideal form of the perfect state by practical necessity, we must examine the purpose of this second-best state, the way it is to be managed, and the source of its legitimacy. In the *Republic*, these questions yield relatively simple answers: the state’s purpose is to enact perfect justice, ruled over by enlightened philosopher-kings, and the source of its legitimacy is the perfect good. However, the situation in the *Laws* (624a) is more complex: the dialogue opens with the Athenian asking Clinias and Megillus whether the origin of the laws of their cities ascribed to a god or a man. Before we get into why the Athenian is the source of the law, we ask *why the law is sought after as a source of authority?* Both in the dialogue, and in other Platonic dialogues, we see that Plato does not believe that any law can have permanent validity. In the *Phaedrus*, Plato (277d) writes, “any work ... whether composed in a private capacity or in the role of a public man by proposing a law becomes the author of a political composition, is a matter of reproach to its author ... if he regards it as containing important truth of permanent validity.” In the *Statesman*, Plato (293c) writes:

The constitution par excellence ... must be the one in which the rulers are not men making a show of political cleverness but men really possessed of scientific understanding of the art of government. Then we must not take into consideration on any sound principle of judgement whether their rule be by laws or without them.

In the *Laws* (643d-e), the Athenian states that the laws of the city may be questioned by the older members of the community. Thus it is clear that legislation, for Plato, cannot

consist of eternal moral laws, but only contingent commands. In this practical utopia, it is not only the infallibility of the philosopher-kings that is excluded—the laws themselves are not representative of the form of the good. We must now determine why Plato's second-best city is ruled by laws and what is the source of their legitimacy. To determine this, we must first establish the purpose of the state itself.

The Athenian identifies two purposes for legislation: the virtue and happiness (1961a, 630d, 631b) of those whom the law governs. In his conversation with Clinias, the Athenian initially arrives at the purpose of legislation through an appeal to societal cohesion. Clinias is convinced that legislation should aim to preserve harmony between a society's various classes because this will render the society better able to defend itself from external enemies (628c-d). If this were the sole purpose of legislation, we would arrive at an organic view of legislation. Laws would be simply to preserve the health of the state so that it could preserve and expand itself. However, this cannot be the purpose—or at least not the sole purpose—of legislation since the Athenian states must leave victory or defeat in battle out of the picture when determining whether legislation is good (638a-b). This indicates that Plato has not altogether abandoned some notion of a transcendent good; therefore, the purpose of legislation, although it might be in part arrived at through appeals to societal health and cohesion, is not the simple self-interest of a people or state.

We can gain a better idea of what Plato considers the source of social virtue and the legitimacy of legislation by examining what form of society he idealizes: the pre-political society. In "Before and After Politics in Plato's *Laws*," George Harvey (308) argues that Plato's idealization of the age of Cronos in Book Three is not merely a poetic exaggeration, but reflective of Plato's genuine desire to return to a pre-political humanity. Harvey (313) argues that pre-political humanity, because it is unencumbered by the technological and social innovations which cause discord and ambition, is for Plato purer and more virtuous than political humanity. Because people living in pre-political societies do not have any poets, scientists, or complex religious structures, their lives are simpler, and they are less likely to commit great crimes (Harvey 314). Since pre-political humanity accepts what is said about the gods and nature without question, and adopts religion on a pre-rational basis, they are unlikely to question their society's religion. I would argue that Plato's description of the age of Cronos and of human history in general—typified by floods, cyclicity, disaster, and nostalgia for a golden age—helps to explain why the mere survival of a state or society cannot serve as the moral standard for legislation. If everything, including states and societies, is impermanent and liable to be washed away at any time, long-term physical existence cannot serve as an overriding moral goal.

Harvey argues that the laws set down by the Athenian are intended to recreate this pre-political humanity. According to Harvey (317), the near-absolute authority of legislation, elevation of ancestors and the elderly, and value placed on stability are all examples of this

tendency. The economic system of the colony, which is intended to limit as much as possible the corrupting influence of money and foreign influence, is for Harvey (318) designed with pre-political humanity in mind. The strict implementation of religious orthodoxy is intended to produce the naïve, pre-rational, religious system of pre-political humanity. I would add that we see this tendency at play with respect to the Athenian's constant appeals to the founders of Crete and Lacedaemon as sources of political legitimacy. When criticizing the laws of these cities, the Athenian always goes to great lengths to emphasize that the city's original legislators' laws were right and good, and that any error found in them comes as a result of our misunderstanding of their original intent (Plato 1961a, 632). While this does not constitute an explicit reference to pre-political humanity, it follows the theme of referring to the past as a source of goodness and legitimacy. With respect to practical politics, the good—and thus the source of the state's legal legitimacy—is found in the past.

We may now turn to how this good, which we have found to be embodied by Plato's pre-political humanity and age of Cronos, is to be administered by the state of the *Laws*. In "The Authority of Writing in Plato's *Laws*," Shawn Fraistat notes the contradiction or puzzle found in Plato's legislation. Fraistat (664) writes:

Like all writing, law is unable to tailor itself to individuals, but is compelled to speak to many people at once ... Therefore, its rhetorical character and its prescriptions must address the general case. This renders it unable to deal adequately with anything idiosyncratic, exceptional, or unexpected. In addition, the law is ineffective as a vehicle for instruction. Laws and writings cannot answer questions or explain themselves further.

Moreover, we have already shown that in Plato's best regime in the *Republic* and in his age of Cronos, the state is administered not by law but by philosopher-kings and gods, respectively. Why is the second-best regime, then, ruled by law? According to Fraistat, Plato turns to legislation because he recognizes that it is difficult to find perfectly good leaders, and even when lucky enough to find such a just leader, they will eventually die and be replaced by new and possibly lesser leaders. Legislation is Plato's method for ensuring that the writings of political experts, as opposed to leaders whose moral and intellectual virtue is uncertain, rule the state. As Fraistat (665) claims, the Cretan colony is a "grammatocracy, in which the laws of a wise man comprehensively regulate the conduct of each citizen from cradle to the grave." In short, the second-best state, constrained by the practical fact that good rulers are hard or nearly impossible to come by, implements the second-best form of rule: the rule of law. Plato recognizes, as we have seen, that legislation is necessarily imperfect and temporary, but it is the least bad option available. Fraistat (666) rightly notes that this does not represent a shift away from elitism toward democracy on Plato's part; for even if the regime of the *Laws* does contain some democratic elements,

the predominance of the law is still reflective of Plato's preference for the rule of wisdom. However, exactly how this rule of wisdom is realized is a complex issue.

The law, even when formulated by political experts, is still, for Plato, flawed and imperfect. As we have already seen, Plato does not believe in the permanent validity or infallibility of any laws or political writings. Given this, we should ask two deeply interrelated questions: *what* is the guiding principle of the political experts' legislation, and *who* is wise? The answer to the first question is difficult because of the numerous ways in which Plato defines the aim of the legislation in the *Laws*. On the broadest level, Plato (1961a) identifies the aim of legislation as being both virtue (630d-e) and happiness (631b). The Athenian defines virtue as being primarily loyalty in peril, then divides virtue into an eight-part hierarchy (630c). The former definition is arrived at through an appeal to the internal stability of the state, a principle reached by a mere agreement or common understanding between the Athenian and Clinias, while the eight-part hierarchy is snatched by the Athenian out of thin air. Happiness as the goal of legislation is a principle that is simply asserted by the Athenian and accepted; he states that the laws of Crete "serve the right end, that of effecting the happiness of those who enjoy them" (631b-d). Appeals to a pre-political past and the traditions of Lacedaemon and Crete are made ostensibly on the grounds that people in the past were more happy and virtuous than they are now. The exact character of this happiness and virtue, however, is similarly vague. Plato argues that they were happier and more virtuous because they did not question religion and were not corrupted by money and modern ideas, but this tells us more about how the conditions of the past *contributed* to virtue and happiness than it does about *what virtue and happiness actually are*.

Since the ultimate purpose of legislation is unclear, we must approach the question obliquely and examine *who* is capable in Plato's view of judging the good. Although Plato does make some appeals to wisdom, the main determination of political power in the *Laws* is not straightforward individual wisdom; rather, it is age. Plato identifies the old pre-political or mythic societies as the best, and appeals to tradition as a source of authority. Innovation and novelty are regarded by Plato (1961a, 634d-e) as sources of evil and moral confusion. It is not necessarily the wisest or the most educated who have the privilege of questioning the city's laws, but the *old*. It is only when these old men are out of view of the young that they are able to question the law. In Book Ten (888a-b), the Athenian states that one should say to a young person who questions the state religion, "My lad, you are still young, and as time advances it will lead you to a complete reversal of many of your present convictions. You should wait for the future, then, before you undertake to judge of the supreme issues." This indicates that, according to Plato, age brings wisdom. With respect to education, the Athenian states that "education is, in fact, the drawing and leading of children to the rule which has been pronounced right by the voice of the law, and approved as truly right by the concordant experience of the best and the oldest men" (659c-

d). With respect to the judgement of art within the context of a hypothetical theatrical competition, the Athenian states, “Clearly you and I cannot avoid saying that rightful winners are those who are preferred by men of their own age” (658e). Even though Plato does not specify the age of the political expert or legislator, in the case of the Cretan colony the legislators are the Athenian and Clinias—both old individuals—and given the fact that all the other privileges of legal, aesthetic, and moral judgement are granted to the old, it would be surprising if the legislators themselves were not elderly.

Therefore, the regime of the *Laws* is not *just* or *primarily* a grammatocracy, as Fraistat argues, but *gerontocracy by way of grammatocracy*. The laws of the state are, as Antony Hatzistavrou (209) argues in “Plato’s Legal Positivism in the *Laws*,” not primarily based on a notion of *natural* theory of law, but on a *legal positivism*. Despite the typically Platonic appeals to goodness and justice, the laws of the *Laws* are more fundamentally based on the opinions and preferences of the old. Hatzistavrou (212) sums up Plato’s legislative theory in the *Laws* in this way: “A legal system is a social construction based on customs that is defined by the presence of the main agents of law, namely legislators and rulers, whose task is to select laws from those pre-existing and rule in accordance with them.” This explains the dialogue’s ambitious attitude toward the purpose of legislation, which is not to manifest the absolute good, but the *opinion* of the old and the *continuation of or return to* ancient institutions and traditions.

We see the clearest example of this idea at work in the dialogue’s judgement of art. The Athenian states:

The standard by which music should be judged is the pleasure it gives—but not the pleasure given to any and every auditor. We may take it that the finest music is that which delights the best man, the properly educated, that, above all, which pleases the one man who is supreme in goodness and education. (Plato, 658e-659a)

We should not be thrown off by these references to goodness and education, since we have seen already that these concepts are somewhat ambiguous in the dialogue and refer primarily to the likes and dislikes of the elderly. What I would draw attention to is the notion that music should be judged on the basis of *pleasure*. If music were judged by an absolute standard of goodness, Plato could use the standard of the music’s goodness alone, divorced from pleasure. However, Plato advocates for judging music based on the *pleasure* of one individual. For the rest of society, the music is to be thought of on the basis purely of its goodness. The Athenian states, “As they aim at the noblest kind of song, they will have to aim not at a music which is pleasing, but at one which is right” (668b). This dichotomy is similar to the one we have already examined with respect to legislation: for the majority the laws are to be thought of as “god-given and admirable,” while the old are permitted to regard them as contingent, impermanent, and imperfect (634d-e). The rulers

of the state are permitted to retain their subjectivity and rationality, while the minds of those who are ruled are to be brought back to a state of pre-political simplicity where the laws and customs of society are regarded as natural and unchangeable. While the rulers of the state retain a positivist view of legislation and customs, the ruled are to regard them as pure manifestations of the natural law.

Our understanding of Plato's *Laws* will be aided by viewing it within the context of Jean-Paul Sartre's "look." According to Sartre (1966), there are two fundamental aspects of human existence: Being-in-itself and Being-for-itself. Being-in-itself constitutes all that is given, unchangeable, and objective in us, while Being-for-itself represents our ability to transcend the given. In simple terms, Being-in-itself is the individual as object, while Being-for-itself is the individual as subject. When we are embraced by the look of the Other, our Being-for-itself is frozen in objectivity. Sartre (443) writes, "For the Other I am irremediably what I am, and my very freedom is a given characteristic of my being." We respond to this loss of subjectivity in two ways: we either deny the subjectivity of the Other to regain our freedom from the Other's look, or we seek to regain our subjectivity and freedom by identifying with our Being-for-itself as a piece of objective facticity which is embraced by the look of the Other (443). The Other and the one looked at by the Other are transformed into an Us-object, which is metaphysically unified by the common alienation of their Being-for-itself, when embraced by the look of a third observer (507). Unless this tendency is counteracted by an attempt on the part of the Us-object to transcend the look of the third, the Being-for-itself of the Us-object is transcended by the look of the third. The freedom and subjectivity of the third is lost in the look of the third, while the subjectivity and freedom of the third is maintained. We can clearly see this theory at work in Plato's *Laws*. The old rulers of their regime retain their Being-for-itself—their freedom and subjectivity—while the Being-for-itself of the rest of society is rendered static and factic. Hence the laws and customs of the regime are to be regarded as contingent and subjective by the old rulers but as natural, objective, and unalterable by the ruled. Plato's goal in the *Laws* is to maintain the Being-for-itself and subjectivity of the old rulers, and to ensure that the Being-for-itself of the ruled remains trapped in objectivity.

Conclusion

We now have a clearer idea of the meaning of the symbolism at the beginning of the *Laws*. Because the second-best city is constrained by practical necessity, it cannot be a pure manifestation of the supreme good. This necessitates a turn from objectivity to subjectivity. The ideal of the best, the perfect good, is replaced by the ideal of the second-best, the old. Since Plato believes that pre-political society is the closest we can get to the perfect society, he turns back to the past and tradition. Due to his belief that the closest we can get to the rule of the wise or gods is the rule of the old, he affirms that the old should rule. Because we cannot fully know the natural law, he turns to the subjective, imperfect laws of political experts. However, the subjective and contingent nature of the laws and customs of the

regime must be hidden from the masses. It is important for Plato that the society is *believed to be* a manifestation of the perfect good. The ruled are to be embraced by the look and made factic by a small, old elite, which retains their subjectivity and recognizes the regime's inherent perfection. The turn away from the form of the good, however, is not total; the fact that Plato wishes to convince the majority of people that the laws and customs of the state are perfect and objective indicates that the perfect good is still the original source of legal legitimacy. Plato cannot face the unvarnished radiance of the sun, but he cannot and does not want to blot it out entirely. The *Laws*, therefore, represents only a partial turn away from the form of the good.

References

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