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## **Plato and Liberalism**

## Abstract

Plato is generally regarded as notoriously anti-liberal, a reputation which is based mainly upon his most famous political work, the *Republic*. However, a more comprehensive view of his political thought reveals a much more nuanced picture. In this essay, I offer a comparison between modern liberalism and Plato's political thought, as presented in his three major political dialogues, the *Republic*, the *Statesman*, and the *Laws*, on the topic of freedom, as well as four secondary topics: (1) rule of law (2) legal reform (3) consent of the ruled (4) democracy. I begin with a brief account of modern liberalism and then proceed to evaluate each of the three dialogues on the above five topics.

Although Plato's most famous political work, it is here argued that the *Republic* says surprisingly little on all these topics other than freedom because several of its most prominent proposals, including its famous philosopher-rulers, are not presented for implementation in actual politics. The *Statesman*, the briefest of the three, is argued to exhort rule of law and legal reform, but say little on the other topics. The most space will be dedicated to the *Laws*, which will be shown to offer detailed comment on each topic. The city the *Laws* depicts will be argued to be not one in which a docile citizenry is ruled over by an Inquisitorial Nocturnal Council, but a city ruled by law which cultivates the rational capacities of its citizens, who are thoroughly involved in government. However, this city will also prove to be one in which strong restrictions are placed on the sorts of freedoms that liberalism values. On the four secondary topics, Plato's thought will be argued to be largely in agreement with modern liberalism. However, on freedom it will be argued there is large disagreement, with Plato shown to attach little value to the liberal notion of freedom, though taking freedom very seriously in his own right.

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## Chapter 1: Liberalism

Liberalism is a nebulous concept which offers great resistance to any attempt to identify its essence. The purpose of this chapter is not to argue for one definitive account of the essence of liberalism over another; rather, our aim here is to offer one plausible account of modern liberalism with an eye to features that bear comparison with Plato's political thought. Liberalism has undergone many changes over the past few centuries but for the sake of currency, and also to avoid the inevitable complications a historical study would yield, it is modern liberalism that will be the focus of our inquiry.

Ronald Dworkin identifies the central feature of modern liberalism as state neutrality between different conceptions of the good life.<sup>1</sup> Intimately connected with this notion of neutrality is freedom, as neutrality implies that the state should not attempt to impose a particular way of life on its citizens, that is, citizens should be free to choose their own way of life. It is freedom that will be the main theme of this essay. Specifically, the freedom exhorted by liberalism and how it compares with the freedom Plato espouses in his political dialogues. In addition to freedom, the following four topics will serve as the basis for comparison: (1) rule of law, (2) legal reform, (3) consent of the ruled, and (4) democracy. The purpose of the remainder of this chapter will be to articulate the place freedom and these four features have in modern liberalism. Modern liberalism is the culmination of centuries of liberal thought and so it does not engage directly with Plato or classical political thought. In order to see more clearly the differences between modern liberalism and Plato, it is helpful to consider those thinkers who, if not liberal themselves, were responsible for the break with classical political thought that eventually lead to liberalism. Michael Oakeshott identifies Thomas Hobbes as the thinker most responsible for this break with classical political thought, which in Hobbes' time was embodied by the Christian-Aristotelian tradition, and so

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<sup>1</sup> Dworkin [1978], especially p. 127. Dworkin identifies this neutrality as 'equality' because it treats different conceptions of the good life as equally valuable

we turn to him.<sup>2</sup>

### I. Hobbes and the Break with Classical Political Thought

The full title of Hobbes' most famous work is *Leviathan or The Matter, Forme, and Power of A Common Wealth Ecclesiastical and Civil*. The phrase 'matter, forme, and power' suggests three of Aristotle's four causes: the material, the formal, and the efficient.<sup>3</sup> The fourth cause, the final cause, is conspicuously absent. This is no accident, but a consequence of Hobbes' adoption of the mechanistic conception of the universe propounded by Descartes and his followers, with whose work Hobbes is known have been familiar; in such a universe, an object's final cause, or *telos*, was not something to be discovered in nature, as for Aristotle, but something given to the object by human beings.<sup>4</sup> Hobbes eventually makes his rejection of *telos* explicit, stating: "...there is no such *Finis ultimus*, (utmost ayme,) nor *Summum Bonum*, (greatest good,) as is spoken of in the Books of the old Morall Philosophers."<sup>5</sup> Hobbes offers a different conception of what is good, one that is based upon the passions: "whatsoever is the object of any mans Appetite or Desire; that is it, which he for his part calleth Good: And the object of his Hate, and Aversion, Evill."<sup>6</sup> He claims that fear of death is by nature the strongest among these passions. Much as with the good, Hobbes denies that what is just can be found in nature, reducing the just to the legal ie. what people can declare and enforce is just: "where there is no Common-wealth, there nothing is Unjust."<sup>7</sup>

For Hobbes, civil society is not natural, and so he must provide for it a different origin. He does this through his account of humanity without civil society, which he calls the

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2 Oakeshott [1975: 147]

3 Tuck [1991: xiv]

4 Tuck [1991: xiv]

5 *Leviathan (Lev.)*, Ch. 11, p. 70. cf. *De Cive*, Ch. 1: "That Man is a Creature born fit for Society: The Greeks call him Zoon politikon, ...though received by most, is yet certainly False."

6 *Lev.*, Ch. 6, p. 39. cf. Ch. 15, p. 110. As Strauss [1953: 189] points out, this doctrine of Hobbes is markedly similar to Epicureanism.

7 *Lev.* Ch. 15, p. 101. cf. Ch. 13, p. 89

state of nature. Hobbes assigns to individuals, based on their desire for self-preservation, which is impossible to deny, the right to self-preservation. Furthermore, as each individual has the right to self-preservation, each also has the right to the means to obtain this.<sup>8</sup> There is no impartial judge of what is a legitimate means to self-preservation in the state of nature, and so each individual is left to judge for himself what is necessary. Thus, in the state of nature, no behaviour can be condemned. However, Hobbes points out that reason can develop stratagems which best allow one to achieve self-preservation. He labels these stratagems, or hypotheses, "laws of nature."<sup>9</sup>

Hobbes famously describes life in the state of nature as "nasty, brutish, and short."<sup>10</sup> Because of the dangers of this state, peoples' desire for self-preservation drives them to gather together and form a pact, each individual with each other individual, in which each surrenders a portion of the unlimited liberty he or she possesses in the state of nature on the condition that all the other do the same; the aim of this pact is to ensure peace.<sup>11</sup> This is the social contract. Thus Hobbes attaches much importance to the consent of the ruled, although this is mitigated by his very broad definition of consent: he considers even coerced consent to be consent, since all consent is coerced anyway; people agree to the social contract because they are afraid of the violent alternative of the state of nature.<sup>12</sup> The contract is meaningless unless enforced by a power greater than any of the individuals involved and so the contracting individuals also agree to select a representative, whom all must obey, to punish infractions of the contract. This is the 'Leviathan' of the work's title, constituted of all the members of the society. Once the contract is agreed to, none of the individuals may break it and all must subject themselves to the absolute authority of the chosen representative.<sup>13</sup>

As described thus far, in Hobbes' account of civil society the sovereign possess

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8 *Lev.*, Ch. 14, p. 91

9 *Lev.*, Ch. 14, p. 91

10 *Lev.*, Ch. 13, p. 89

11 *Lev.*, Ch. 17, p. 120

12 *Lev.*, Ch. 21, p. 148

13 *Lev.*, Ch. 17, p. 120

absolute authority and so, in principle, can interfere with citizens' lives as he wills. This would make Hobbes' society remarkably anti-liberal, however, it must be qualified. Hobbes describes the social contract as an exchange of protection for obedience.<sup>14</sup> If the sovereign proves to be no longer capable of protecting the subjects and ensuring the peace, then the subjects are no longer obligated to subject themselves to his absolute authority. This apparently minor modification proves to be quite significant as Hobbes subsequently specifies that by protection and peace he does not mean only "bare Preservation" but "also all other Contentments of life, which every man by lawfull Industry, without danger, or hurt to the Common-wealth, shall acquire to himselfe"<sup>15</sup> Thus, if the state is unable to provide subjects with the opportunity of providing themselves not only with the necessities of life, but its comforts, they are warranted in rebelling. This is a significant limit on the power of the sovereign, though it must be emphasized that Hobbes still leaves the sovereign unlimited authority for restricting what citizens might do with their material comforts, and himself exhorts strict regulations on books and public discourse. Hobbes also rejects the rule of law as a restriction on the sovereign's power.<sup>16</sup> Thus, despite the above qualification, Hobbes is still quite anti-liberal.

Hobbes bases his account of politics on the claim that man's greatest passion is, by nature, fear of violent death, that is, fear of men. However, as Strauss points out, Hobbes knew this did not always hold.<sup>17</sup> Hobbes recognizes that the fear of men must contest with the fear of God:

the Passion to be reckoned upon, is Fear; whereof there be two very general Objects: one, The Power of Spirits Invisible; the other, The Power of those men they shall therein offend [by breaking the contract]. Of these two, though the former be the greater Power, yet the feare of the latter is commonly the greater Feare.<sup>18</sup>

In this passage, it appears that fear of men is paramount, but the reference to fear of Spirits

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<sup>14</sup> *Lev.*, Conclusion, p. 491

<sup>15</sup> *Lev.*, Ch. 30, p. 231

<sup>16</sup> Restrictions on books: *Lev.*, Ch. 18, p. 124; Lack of rule of law: Ch. 46, p. 471

<sup>17</sup> Strauss [1953: 198]

<sup>18</sup> *Lev.*, Ch. 14, p. 99

having 'greater Power' leaves some ambiguity. However, in a later passage Hobbes states "the fear of Darknesse, and Ghosts, is greater than other fears" and can sometimes "Destroy a Common-Wealth" confirming that, in some cases, fear of the supernatural can be greater than fear of death.<sup>19</sup> Hobbes is not here contradicting his claim that fear of men is the greatest passion by nature, as it is his opinion that one can not have knowledge of God beyond his existence and those who claim more than this are fabricating lies to help them attain their own ends.<sup>20</sup> Thus the fear that people derive from such beliefs is not in accordance with nature, but the result of false opinions. Hobbes takes pains to undermine religious opinion so as to ensure that citizens did not fear god more than men. He places ecclesiastical power in the hands of the sovereign, including the authority to interpret scripture, which can only serve to undermine independent religious belief.<sup>21</sup> At the end of *Leviathan*, he states, in response to the objection that people are contrary and won't agree to civil discipline "these are indeed great difficulties, but not Impossibilities: For by Education, and Discipline, they may bee, and are sometimes reconciled."<sup>22</sup> This suggests that Hobbes would be willing to educate religious opinion out of citizens. Thus Hobbes' theory is not meant for human beings as they are, but for what they might be made into. He is fundamentally an Enlightenment thinker, maintaining that if reason can be spread among the masses, and superstition eliminated, peace can be obtained. Thus it is not the case that all ways of life are equally welcome in Hobbes' state; he consciously aims to eliminate religious ways of life that would threaten his state.

As previously mentioned, Oakeshott maintains that Hobbes' contribution to the liberal tradition was the break he established with the then-dominant Christian-Aristotelian tradition. This tradition based political philosophy upon natural law, which Hobbes has been

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<sup>19</sup> *Lev.*, Ch. 29, p. 227. cf. Ch. 28, beginning. See also *De Cive* VI.11; XII.2, 5; XVII.25, 27

<sup>20</sup> *Lev.*, Ch. 12, p. 7

<sup>21</sup> *Lev.* Ch. 42, p. 375-378; cf. *De Cive* VI.11

<sup>22</sup> *Lev.*, Conclusion, p. 483

shown to have rejected. In its stead, he based political philosophy upon the passions, that is, what people wanted; Oakeshott phrases this as "substituting will for law."<sup>23</sup> This new focus on the will is accompanied by a new focus on the individual, who possesses will. In a similar vein is Hobbes' novel conception of freedom, which he defines by stating that a free man is someone who "in those things, which by his strength and wit he is able to do, is not hindered to do what he has a will to."<sup>24</sup> The example Hobbes provides to illustrate the lack of this freedom is not a slave, but a man chained to a wall.<sup>25</sup> All three of these features will persist through the liberal tradition, though only Hobbes' notion of freedom will return to play a role in our discussion here. Some qualifications must be placed on Hobbes' originality, however, as he was prefigured by other political thinkers, such as Machiavelli, and in his turn from the law to the will, he is rejecting the Christian-Aristotelian tradition but also returning to another tradition, that of Epicurus.<sup>26</sup> Furthermore, the natural law tradition did not die out after Hobbes. Indeed, it was adopted by some thinkers in the liberal tradition. For example, in an influential study of Locke's *Two Treatises on Government*, John Dunn argues that Locke's civil society presupposes Christian doctrine, though Locke still insists that the aim of the state is peace rather than the imposition of this doctrine.<sup>27</sup> Much like Hobbes, Locke is a social contract thinker and so emphasizes the importance of the consent of the ruled but denies that this entails democratic government, instead allowing for the possibility that the people will choose other forms of government, such as monarchy or oligarchy.<sup>28</sup> Locke does offer the major innovation, to be maintained henceforth in the liberal tradition, of arguing that the authority of the sovereign power can not be absolute, but must be limited by law.

This is to avoid the abuse of power on the part of the sovereign.<sup>29</sup> Between Hobbes and

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23 Oakeshott [1975: 147]

24 *Lev.*, ch. 21, p. 146. For the novelty of Hobbes conception of freedom, see p. 23, below, and Skinner [2001]

25 *Lev.*, ch. 21, p. 146

26 Oakeshott [1975: 146-148]

27 Dunn [1969]; More precisely, Locke specifies that the aim of government is the preservation of property, which he broadly construes as "life, liberty, and estate." *Second Treatise*, §124-126

28 *Second Treatise*, §132, p. 337

29 *Second Treatise*, §94, p. 296

Locke and modern liberalism lie many thinkers who have had an important influence on the liberal tradition, most notably Rousseau, Kant, and Mill, however these thinkers are of less import for our comparison of modern liberalism and Plato's political thought, and so we now cease our historical investigation and turn to modern liberalism itself.

## II. Modern Liberalism

The work of John Rawls has dominated liberal political thought for the past several decades and so any account of modern liberalism must deal predominantly with him. Rawls' two most important works that pertain to liberalism are *A Theory of Justice* and *Political Liberalism*. Rawls presents *A Theory of Justice* as a work in the Kantian contractarian tradition, though raised to a higher level of abstraction, with the purpose of providing an alternative theory of justice to the utilitarian tradition that was dominant at the time the work was written.<sup>30</sup> Rawls notes that people disagree on which conception of justice is correct, though all agree that it is necessary to possess a conception of justice. To mediate this disagreement, he aims to develop a conception of justice that would build upon shared, weak assumptions about justice to yield a common conception of justice. Rawls' account differs from earlier contractarian accounts in that it is not based upon on an account of a state of nature. Instead, he contrives a hypothetical situation, which he labels the 'original position,' that he argues to embody the principles of fair decision making. The individuals that populate the original position are to lie behind what Rawls' calls 'a veil of ignorance': they are unaware of (1) their social position (2) their natural gifts (3) their particular conception of the good, though they know that they do possess a conception of the good.<sup>31</sup> They know general facts about how people interact socially and politically, possess a desire to preserve future generations, and have before them a number of conceptions of justice to choose between. It would be ideal if the available selection of conceptions of justice was exhaustive,

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<sup>30</sup> Rawls [1999: Preface, p. xii]

<sup>31</sup> Rawls [1999: §22, p. 111]

but this is not possible and so those in the original position are offered a choice between the conceptions of justice that have historically been offered: teleology, utilitarianism, and Rawls' conception, which he calls 'justice as fairness.' Although they are unaware of their own particular conception of the good, individuals in the original position do possess what Rawls' labels a 'thin' conception of the good with which to judge between the various conceptions of justice on offer. Although one may not know one's conception of the good, there are certain things which one needs for any conception of the good, such as health, wealth, and self-respect, which Rawls' labels 'primary goods.' The thin conception of the good is that one should aim to maximize these primary goods.<sup>32</sup> Rawls argues that, in this position that embodies fair decision-making, it would be rational for individuals to choose his conception of justice, justice as fairness, which is constituted by the following two principles:

- (1) each person has an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others.
- (2) social and economic inequalities are to be arranged so that they are both (a) to the greatest benefit of the least advantaged and (b) attached to offices and positions open to all under conditions of fair equality of opportunity.<sup>33</sup>

The first of these principles exemplifies the common liberal sentiment that freedom should be distributed equally among members of the state, thus condemning as unjust slavery and inequality of women. One of the means Rawls proposes to enforce these principles is rule of law. Rawls never entertains the possibility of an absolute ruler, and so the argument he offers for rule of law is not that human beings are corruptible, as does Locke, though he would most likely agree with this sentiment. Rather, he argues that rule of law, which he contrasts with "a collection of particular orders designed to advance the interests of a dictator," is necessary because it gives the citizens stable expectations without which their freedom would be constrained by fear of punishment.<sup>34</sup> For the same reason of

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32 Rawls [1999: §25, p. 123]

33 Rawls [1999: §46, p. 266]

34 Rawls [1999: §38, p. 208]

ensuring stable expectations, Rawls states that laws must be expressly promulgated, that there must be a system for changing the law with established procedure, and that the judicial system must be organized so that trials are orderly and fair.<sup>35</sup>

Rawls acknowledges that there are a variety of alternative hypothetical situations to the original position, possessing different sets of conditions, and each of these would yield a different conception of justice. However, he maintains that the original position is superior to these alternatives because it does justice to our considered judgments about justice in reflective equilibrium.<sup>36</sup> Explicating this notion of considered judgments in reflective equilibrium requires turning to Rawls' account of method in ethics. Rawls' claims that the two most common methods utilized in ethics are: (1) deriving ethical claims from self-evident beginnings (2) beginning with definitions and deriving ethical claims from these.<sup>37</sup> Rawls uses neither method, rather, he maintains that people have a capacity for making moral decisions, much as they possess a capacity for producing grammatical sentences in their native language, and he looks to the judgments this capacity produces as a starting point of ethical reasoning.<sup>38</sup> Not all of these judgments are pertinent, however, as some are made in haste or under duress and so should be discarded as not accurate expressions of our moral capacity; Rawls is interested in those judgments made under conditions favorable to the execution of justice and he calls these considered judgments. These should not be too difficult to identify as they are similar to the conditions required for the proper operation of any capacity. When presented with an intuitively appealing account of his sense of justice, an individual will compare it to his considered judgments and if they do not fit he may revise the judgments to fit the account. The best account of a person's sense of justice is that which fits his considered judgments after they have been weighed against a number of conceptions

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35 Rawls [1999: §38, p. 210, 209, 213]

36 Rawls [1999: §21, p. 105]

37 Rawls [1999: §87, p. 506]

38 The preceding account of Rawls' method is a summary of Rawls [1999: §9]

of justice. This state, in which one has revised one's considered judgments in the light of a number of conceptions of justice is reflective equilibrium. Clearly, the result one reaches in reflective equilibrium will depend upon the number and variety of conceptions of justice one has considered. It may seem that this method serves only to ensure that one's conception of justice conforms to one's original considered judgments, but Rawls insists that it can lead to radical shifts in one's conceptions of justice. Thus, in *A Theory of Justice*, Rawls presents a theory of justice, justice as fairness, which rather than aiming at what is good, tries to be neutral between different conceptions of the good and determine what would be required for an individual to live whatever conception of good they might choose. The result of this investigation is Rawls' two principles of justice.

Two objections that critics have leveled against justice as fairness as portrayed in *A Theory of Justice* are: (1) although it attempts to be neutral among conceptions of the good, justice as fairness actually excludes many such conceptions (2) Rawls' method, based upon moral intuitions, is not universal i.e. it would not convince anyone who is not already a liberal.<sup>39</sup> Rawls responds to both of these objections in *Political Liberalism*. There he distinguishes between two types of conceptions of the good: (1) comprehensive (2) political.<sup>40</sup> A comprehensive doctrine of the good, which may be religious, moral, or philosophical, is one which prescribes what is valuable in human life to such an extent that it informs all conduct in life. The example Rawls provides is utilitarianism. A political conception of the good applies only to the 'basic structures' of society, that is, its main political, social, and economic institutions, rather than private life. It should also be 'freestanding,' that is, independent of any particular comprehensive conception and so capable of justification within many comprehensive different conceptions. A political conception of the good is not completely morally neutral, but articulates some values, though

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<sup>39</sup> For example, by Hare [1973], Sandel [1998], and Bloom [1990].

<sup>40</sup> Rawls [2005: xvi]

only within the above prescribed limits.<sup>41</sup> Rawls claims that liberalism, embodied as justice as fairness, is a political rather than comprehensive doctrine. This 'political' liberalism is acceptable in modern societies because of what Rawls labels an 'overlapping consensus.' Each citizen possesses a comprehensive political doctrine, and within each of the reasonable comprehensive political doctrines present in modern societies, it is possible to justify political liberalism. How did this overlapping consensus come about? Rawls claims that it is the result of the particular history of modern societies: the consequence of people exercising their reason under free institutions.<sup>42</sup> Thus Rawls is not attempting to provide a universal argument for liberalism, but arguing that it is a stable theory that suits the current situation of modern societies, which is a pluralism of reasonable comprehensive doctrines. He does not think it would be plausible in other historical situations.<sup>43</sup> Rawls also acknowledges that his political liberalism excludes some comprehensive conceptions of the good, specifically those that attempt impose their comprehensive conceptions on others. However, he argues that it does this not on the grounds that the offending conception is untrue, as a competing comprehensive conception would argue, but because public disagreements, disagreements that are in the public sphere and so between individuals with different comprehensive conceptions of the good, are to be resolved by appeal to political values alone, that is, those warranted by the overlapping consensus.<sup>44</sup> Thus Rawls pleads guilty to both of the charges listed above, but does not think them damning failures of liberalism.

We have yet to touch on the main topic of interest in our discussion of modern liberalism: freedom. Isaiah Berlin famously argued that there are two conceptions of freedom, a negative one and a positive one.<sup>45</sup> Negative freedom is freedom from external hindrance in carrying out actions of which one is otherwise capable. Berlin explicitly

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41 Rawls [2005: 11-13]

42 Rawls [2005: 140]

43 Rawls [2005: 148]

44 Rawls [2005: 138]

45 In Berlin [1969]

acknowledges that this is the sense of freedom espoused by Thomas Hobbes, which was described above. Positive freedom, in contrast, is not freedom from something, but freedom to live a particular way of life. There are as many variations of positive freedom as there are ways of life, but a common one is overcoming one's passions in order to live in accordance with reason, one's 'true' self. Berlin notes that positive conceptions of freedom can be, and have been, used as a warrant for coercion; if someone is not acting rationally, it warrants forcing them do so, claiming it is for their own good and even in accordance with their freedom.<sup>46</sup> Thinkers that espouse this view tend to think that, if human beings are only rational enough, then all desires can be realized; There need be no conflict between human goods.<sup>47</sup> In contrast, Berlin, quoting Kant's famous phrase "out of the crooked timber of humanity nothing straight is ever made," maintains that the human good is plural; not all goods can be reconciled and so we must choose.<sup>48</sup> For this reason, Berlin conceives of negative freedom as the freedom of liberalism, the main task of which he sees as ensuring that there is a sphere of activities in which the government is not allowed to obstruct the actions of citizens. However, Berlin does not dictate the size of this sphere. Rather, he states that this will vary depending on the values with which freedom must compete within a society. As for systems of government, Berlin denies that liberalism entails democracy but acknowledges that democracy has, historically, proven to be the most effective system of government for ensuring personal freedom.<sup>49</sup>

### **Conclusion**

As previously stated, our comparison of Plato and liberalism will focus on freedom and, four secondary topics: (1) rule of law (2) legal reform (3) the consent of the ruled and (4) democracy. The preceding discussion has revealed that the conception of freedom that

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<sup>46</sup> Berlin [1969: 133]

<sup>47</sup> Berlin [1969: 148]

<sup>48</sup> Berlin [1969: 169-170]

<sup>49</sup> Berlin [1969: 130]

modern liberalism exhorts is negative freedom, the freedom from obstructions that prevent one from living life as one pleases. It further dictates that such freedom be distributed as equally as possible, thus precluding slavery and inequality of women. On our four ancillary topics, modern liberalism has been shown to exhort rule of law and legal reform.

Furthermore, although it insists on the consent of the ruled, the connection between liberalism and democracy is one of pragmatics rather than logical necessity. To further elucidate our goals, it is helpful to identify two topics that the preceding summary hints are important, but that will receive only a passing treatment in the forthcoming discussion.

These are, first, the proper aims of the state, which modern liberalism dictates to be peace or provision of resources while emphatically rejecting the notion that the state should impose a particular way of life on its citizens, and, second, the emphasis on contracts as a basis for justice in liberalism. This second topic revives the old debate between Plato and the Sophists on whether the basis of justice is nature, φύσις, or convention, νόμος. Having isolated our topics of comparison and the position that liberalism takes on them, we can now turn to the comparison with Plato's political thought, beginning with the *Republic*.

## Chapter 2: The *Republic*

The purpose of this chapter is largely a negative one. It is to show that the *Republic* does not articulate a position on several of the five topics of our comparison. This will be done in two steps, the first of which is to argue against the radically illiberal interpretation of the *Republic*, most commonly associated with Karl Popper, in which its ideal city, Kallipolis, subordinates the good of its citizens to the good of the city as a whole. On this interpretation, not only does Kallipolis fail to allow citizens to pursue their own way of life, it treats them as instruments to be used for the good of the city rather than individuals. The second step is to show that Kallipolis is not meant as a blueprint for political action, though it is a model for politics. Determining which aspects of the ideal city are intended for modeling, that is, as a guide for political action, as well as which are not, will be an important aspect of this step. Our goal will not be entirely negative, however, as it will be argued that, in the *Republic*, Plato does present views on the nature of politics, and freedom, that bear comparison with liberalism.

### I. Kallipolis: Its Basis and Aims

The ideal city of the *Republic* is to be founded according to nature.<sup>50</sup> One of the first principles of its construction is that its citizens are to perform only one function in the city, that function which is appropriate to their nature.<sup>51</sup> This principle is eventually revealed to be what justice is for a city.<sup>52</sup> Socrates specifies the aim of the city in the following well-known passage: "in founding the city we are not looking to the exceptional happiness (εὐδαιμονία) of any one group among us but, as far as possible, that of the city as a whole."<sup>53</sup> Karl Popper, for one, takes this passage to imply an "organic" theory of the state, which dictates that the

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<sup>50</sup> *Republic (Rep.)*, IV.428e

<sup>51</sup> *Rep.*, II.369e-370b, IV.433a; cf. IV.443c-444a

<sup>52</sup> *Rep.*, IV.432c-433a

<sup>53</sup> *Rep.*, IV.420b. Unless otherwise noted, all *Republic* translations are from Bloom [1991]

state is "concerned solely with the collective whole as such" with justice being "nothing but the health, unity, and stability of the collective body."<sup>54</sup> On this interpretation, the state is a super-individual with a good independent of that of its citizens, who have no value apart from their contribution to the state. Popper further supports this interpretation through appeal to Plato's use of the analogy between the city and the individual soul;<sup>55</sup> Brown offers a useful paraphrase of Popper's argument:

It is not the parts of an individual person/soul which are happy, but only that which these parts constitute, viz., the whole individual; likewise it is not the parts of the city (the guardians, the soldiers etc.) which can be said to be happy, but only the city as a whole. To ascribe happiness or the lack of it to a part of the city, to a class or its members, would be as absurd as ascribing it to one part of the soul.<sup>56</sup>

However, this argument is flawed because it rests upon an equivocation in the term 'part.' It is true that the parts of the soul can not be happy, however, the parts of the city to which these correspond are not the individual citizens but the three classes of the city. This reveals a fundamental disanalogy between the city and the soul: the parts of the city possess constituents, namely individuals who themselves possess tripartite souls, while this does not apply to the parts of the soul. There is a more fundamental objection to the organic theory of the state, however, and this is, as Taylor notes, that the central theme of *Republic* II-X is how justice in itself contributes to an individual's good ie. the good of the individual is one of the main subjects of the *Republic*.<sup>57</sup> Justice is eventually shown to depend on how one orders one's soul and not on the city. Thus the individual, for Plato, undeniably does have a good apart from the city. Indeed, at one point Plato has Socrates say that philosophers must be compelled to abandon their contemplation and turn to ruling, even though ruling is for them an inferior activity, which suggests that an individual's good can even be in conflict with the good of the city.<sup>58</sup> Thus, to claim that the ideal city of the *Republic* represents an organic

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54 Popper [2002: Ch.5, p. 85 with p. 86n35]; Popper [2002: Ch. 6, p. 116]

55 Popper [2002: Ch. 5, p. 85]

56 Brown [1998: 17]

57 Taylor [1999: 286]. That this is the purpose of the conversation is shown at II.367a-e.

58 *Rep.*, VII.520a-b. Though this passage does suggest a conflict between the philosophers' good and that of the city, whether descending back into the cave to rule is ultimately contrary to the philosophers' good is a

theory of state is to ignore the extensive discussion of the good of individuals that occurs throughout the dialogue.

Gregory Vlastos offers an alternative interpretation of Socrates' claim that the aim of the lawgiver is the happiness of the city as a whole rather than the happiness of one of its parts. He notes that the passage contrasts the good of the whole of the city with a good of a part of the city, rather than the good of the individual citizens. Consequently, it does not exclude the possibility that the happiness of the city is just the happiness of its citizens considered together ie. the sum, so to speak, of the individual happiness of all its citizens.<sup>59</sup>

In support of this interpretation, Vlastos cites the following passage:

...you have again forgotten that it's not the concern of law that any one class in the city fare exceptionally well, but it contrives to bring this about in the city as a whole, harmonizing the citizens by persuasion and compulsion, making them share with one another the benefit that each is able to bring to the commonwealth. And it produces such men [*sc.* philosophers] in the city not in order to let them turn whichever way each wants, but in order that it may use them in binding the city together.<sup>60</sup>

When Vlastos quotes the above passage, in English, he fails to include the final sentence on "binding the city together." Consequently, he takes the clause "making them share with one another the benefit that each is able to bring to the commonwealth" to be a redescription of "contriving this [faring exceptionally well ie. happiness] in the whole city" and concludes that the happiness of the city is just the citizens sharing benefits with each other; the happiness of the city *is* the happiness of its citizens. However, Vlastos's omission seems particularly unwarranted since, as Brown notes, the passage is a single sentence in the Greek and, indeed, when the final sentence is reintroduced into the English, it is clear that the meaning of the passage crucially changes: "contriving this [*sc.* faring exceptionally well] in the whole city" is revealed to be a redescription of "binding the city together" rather than the

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point of much debate. Bloom [1991: 407] maintains that ruling is contrary to the philosophers' good. Reeve [1988: 201-203] holds that ruling is consistent with the philosophers' good, but only instrumentally (Kallipolis allows them to do the most philosophizing possible for a human being). Kraut [1999], Irwin [1995: 299-301], and Ferrari [2003: 101-102] all argue, though taking different paths, that ruling is consistent with the philosophers' good and not just instrumentally.

<sup>59</sup> Vlastos [1995: 82-83]

<sup>60</sup> *Rep.*, VII.519e-520a

clause Vlastos posits.<sup>61</sup> Furthermore, this does not imply that the happiness of the city *is* binding it together, as it would if Vlastos' treatment was paralleled, but rather that binding the city together is to contrive its happiness i.e. a means to its happiness. Thus, the passage is stating that the concern of the law is unity, as opposed to letting citizens do what they want. Vlastos' interpretation of this passage is thus implausible and without it his account of the city's happiness as just the sum of citizens' happiness cannot stand. Another possible interpretation of Socrates' claim that the aim of the lawgiver is the happiness of the city as a whole rather than the happiness of one of its parts, one that recognizes that individuals possess their own good and that the good of the city can not be reduced to these individual goods, is that the good of the citizens must be subordinated to the good of the city. Before this interpretation can be evaluated, it is necessary to discuss what the good of the city is.

There is an obvious answer to the question of what is the good of the city: happiness. However, for Plato, happiness (εὐδαιμονία) is just well-functioning and if it is a good, it does not seem to be one in a sense that allows comparison to other goods, as it is not mentioned in the categorization of goods that occurs at the beginning of *Republic II*.<sup>62</sup> It is thus necessary to turn elsewhere in our search for the good of the city. Unity has already been broached as a concern of the law, and Socrates elaborates elsewhere on the topic, explicitly calling it the greatest of the goods of the city and "that good aiming at which the legislator must set down the laws."<sup>63</sup> Socrates contrasts unity, or oneness, with faction (στάσις) which suggests that by unity and oneness he mainly means agreement to the established political system on the part of all citizens.<sup>64</sup> Unity does not mean homogeneity, however, as Socrates states that each individual must fulfill the distinct function assigned to them by nature in order for the city to

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61 Brown [1998: 22]

62 That happiness is well-functioning is implied by the function argument at I.352d-354a. Categorization of goods: II.357b-d. Of course, happiness may still be a comprehensive good.

63 *Rep.*, V.462a. This is in contrast to the *Laws*, where it is virtue to which the lawgiver must look See *Laws*, III.688a-d and p. 54, below.

64 *Rep.*, VIII.545c-d

become one.<sup>65</sup> Socrates argues for the importance of unity to the city by noting that a city that is not one city is not a city at all.<sup>66</sup> In addition to unity, the city's virtues of wisdom, courage, moderation, and justice must be considered goods because, as virtues, they contribute to the city's functioning well and Socrates has already recognized virtues as goods in general.<sup>67</sup> Returning to the question of the relationship between the good of the city and the good of individuals in Kallipolis, since the greatest good of the city has been revealed to be unity and this is agreement to the city's organization, we must examine this agreed upon organization in order to determine what this relationship is. Kallipolis is to assign each individual the task that is appropriate to their nature. Thus, the city is built around the natures of the individuals that constitute it. These natures must also fit the needs of the city but it is clear that, in Kallipolis, it is the individual natures that have priority because Socrates strictly forbids the assigning of individuals to anything other than their natural function.<sup>68</sup> Thus the city depends upon a remarkable coincidence between the natures of those that constitute it and the needs of the city. If too few citizens are born with the silver nature of auxiliaries, for example, the city will be without adequate defense, as there can be no substitutes, and the ideal city could not exist. Thus Kallipolis is fundamentally unlike a despot who imposes the needs of the state upon its citizens, forcing them to fulfill the roles the state requires regardless of their individual needs, as it assigns to each citizen only what is appropriate to their nature.

Socrates claims the city's structure will "let nature assign to each of the groups its share of happiness."<sup>69</sup> What is this share of happiness? Of the guardians it is said that they are happier than the Olympic victors.<sup>70</sup> The philosopher-rulers in particular are said in the

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<sup>65</sup> *Rep.*, IV.423d

<sup>66</sup> *Rep.*, IV.422e-423a

<sup>67</sup> *At Rep.*, II.357d-358a

<sup>68</sup> *Rep.*, IV.433a; VIII.546a-d describes the disaster that results when the classes are mixed.

<sup>69</sup> *Rep.*, IV.421c

<sup>70</sup> *Rep.*, V.466a

best regime to "grow more and save the common things along with the private."<sup>71</sup> Members of the producing class are not ruled by the rational part of their soul, and so they too are better off in the city as there they are guided by the philosopher-ruler's reason.<sup>72</sup> This distribution of happiness is summarized in Socrates' image of the statue:

...if we were painting statues and someone came up and began to blame us, saying that we weren't putting the fairest colors on the fairest parts of the animal - for the eyes, which are fairest, had not been painted purple but black - we would seem to make a sensible apology to him by saying 'You surprising man, don't suppose we ought to paint eyes so fair that they don't even look like eyes, and the same for the other parts; but observe whether, assigning what's suitable to each of them, we make the whole fair (ἀλλ' ἄθρει εἰ τὰ προσήκοντα ἐκάστοις ἀποδιδόντες τὸ ὅλον καλὸν ποιοῦμεν).' So now too, don't compel us to attach to the guardians a happiness that will turn them into everything except guardians.<sup>73</sup>

The pivotal segment is "observe whether, assigning what's suitable to each of them, we make the whole fair." This implies that, rather than painting each part so as to make the whole most beautiful, each part must be painted in the way that is suitable to it ie. the way that is assigned to it by nature.<sup>74</sup> After this process is completed, it can be considered whether this makes the whole beautiful but there is no suggestion that, if this is not the case, the parts should be painted any differently. This interpretation is confirmed by Socrates' example of the eyes: the eyes must be painted to look like eyes, the appearance they have by nature; there is no suggestion that the eyes should be painted as anything unlike what is appropriate to their nature for the sake of the beauty of the whole. The final sentence in the passage, which Brown interprets as claiming that the guardians' good must be subordinate to the city's good, in fact merely reiterates the principle established in the eyes example: those who are guardians by nature must be treated as guardians, with no implication that they should be treated in a different manner for the sake of the city as a whole. As the ideal city is eventually named Kallipolis, it is evident that in assigning to each individual the task which

<sup>71</sup> *Rep.*, VI.497a. This implies that, of the various view on the happiness of the philosophers in Kallipolis surveyed in Footnote 58, it is that shared by Kraut, Irwin and Ferrari that is correct.

<sup>72</sup> *Rep.*, IX.590c-d. This passage is discussed further on p. 29, below.

<sup>73</sup> *Rep.*, IV.420c-d

<sup>74</sup> Against Brown [1998: 21].

is appropriate to their nature the city as a whole is also made most beautiful.<sup>75</sup> Thus the ideal city is revealed to be unified in a more profound sense than just agreement: the good of the citizens and the good of the city are perfectly consistent. Presented in such a manner, this may seem accidental, but it is not. Rather, it is a consequence of two principles that Socrates espouses in the *Republic*, first, that there are individuals who are by nature rulers and those who are by nature ruled and, second, that happiness is fulfilling one's naturally assigned function. Together these imply that such individuals' happiest condition is ruling and being ruled, respectively, which is also what is best for the city. Nature, then, is surprisingly beneficent. This arrangement may seem entirely improbable, and we will soon turn to the question of the city's practicability, but first let us look to the role that freedom plays in Kallipolis.

## **II. Freedom and the *Republic***

We have already noted Berlin's distinction between two conceptions of freedom, negative and positive. Quentin Skinner argues that to these must be added a third conception, freedom from external dominion, which is typically referred to as republican freedom and that will soon be seen to play a significant role in Plato's political thought.<sup>76</sup> In the context of states, republican freedom means not being subject to the will of a foreign nation; in the context of individuals, it means not being under the authority of an external power. This differs from negative freedom as one's republican freedom is infringed by the mere fact of being under the authority of another, whether or not this authority is exercised to produce actual obstructions. Berlin notes that one can possess freedom in the negative sense even under an autocracy; this is not the case with republican freedom.<sup>77</sup> Republican freedom is typically expressed through playing an active role in the political regime to which one is

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<sup>75</sup> *Rep.*, VII.527c

<sup>76</sup> Skinner [2001, 1998]

<sup>77</sup> Berlin [1969: 129-130]

subject; in this case, one is no longer subject to an *external* authority because one is a part of the ruling authority. The epitome of unfreedom on the negative conception is the example chosen by Hobbes', the man imprisoned, while on the republican conception it is the slave, who even if he has a permissive master, and thus much negative freedom, is under the complete dominion of another. Republican freedom is also distinct from positive freedom as one can possess self-mastery, that is, be ruled by one's own reason, without engaging in one's political community. It will now be argued that it is this republican conception of freedom, which will henceforth be referred to as political freedom, that was predominant in the Greek world.

Benjamin Constant famously argued, in his essay "The Liberty of the Ancients Compared with that of the Moderns," that the ancients, that is, the Ancient Greeks and Romans, although citizens of states that were remarkably invasive into private life considered themselves free and this was because they conceived of freedom as involvement in the political authority to which one is subject. In contrast, Constant claimed, the modern conception of freedom is individual independence.<sup>78</sup> Recast in our terminology, Constant's position is that the ancients valued political freedom while the moderns value negative freedom. We will now examine whether Constant's description of the ancients is accurate. In the *Politics*, Aristotle states that "A fundamental principle of the democratic constitution is freedom...One component of freedom is ruling and being ruled in turn...Another is to live as one wishes."<sup>79</sup> The passage clearly reveals awareness of two conceptions of freedom: a political conception of freedom, 'ruling and being ruled' and a negative conception, living 'as one wishes.' The description of democracy as involving 'living as one wishes' may seem to contradict Constant's claim that the ancients did not prioritize negative freedom, however, as Liddel notes this characterization was a common one among critics of Athenian democracy,

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<sup>78</sup> Constant [1988]

<sup>79</sup> *Politics*, 1317b1-17. Translation from Keyt [1999]

such as Aristotle, and does not fit the description that Athenian democrats offered of themselves. They recognized that connected with the freedoms of democracy were many obligations; absolute freedom of action was not allowed of anyone, nor was it expected.<sup>80</sup> This is borne out by the invasiveness of many Athenian laws. Laws regulated family life: in 450/1 BC Pericles had a law enacted forbidding citizens from marrying non-citizens.<sup>81</sup> Perhaps the most powerful expression of the Greek state's right to invade private life was the practice of ostracism, an annual vote which selected a citizen for temporarily exile based not on the commission of any crime but purely on their prominence.<sup>82</sup> Perhaps most notorious of such laws are the laws on impiety (ἀσέβεια), which Morrow summarizes as punishing "departure from the ritual of established cults, or profanation of a sacred area or object, or mimicry of a religious rite, or indignity offered a religious official during a public ceremony, or words casting discredit upon any of the gods and their worship." The laws on impiety were no idle threats, as there is evidence that they were invoked a number of times in the course of the fifth and fourth centuries.<sup>83</sup>

The above argument for the invasiveness of Greek laws must be reconciled with the fact there was in Ancient Greece, or at least in Athens, an extent of real intellectual freedom, which might be called negative freedom of the mind. This is shown by the wide range of works critical of the Athenian regime that have survived to this day, including Plato's dialogues. Furthermore, although many thinkers were persecuted under the laws of impiety there is strong evidence that others, such as Hippo of Rhegium and Socrates' friend Aristodemus, who was supposedly well known for impiety and refused to participate in

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80 Liddel [2007: 20-24]. Pericles' Funeral Oration (*Thucydides*, 2.37.2) also contains a passage praising private freedom, but Ober [1990: 298n12] points out that this must be considered in the implicit comparison between Athens and Sparta; Athenians are said to possess substantial negative freedom, but this is only in contrast to the Spartans whose private lives were notoriously regulated.

81 Finley [1982: 87]

82 Ober [1990: 73-75]

83 Morrow [1993: 471-472]. In addition to the famous case of Socrates, Morrow lists the following individuals as being tried in Athens under the laws of impiety: Aeschylus, Alcibiades, Anaxagoras, Protagoras, Diagoras of Melos, Stilpo of Megara, Theodorus of Cyrene, Aristotle, and Theophrastus. Although, Dover [1988] casts doubt on the reliability of many of the sources through which we are aware of these cases.

religious rituals, went unmolested.<sup>84</sup> In resolving this difficulty, it must first be noted that the laws on impiety did not apply only, or even mainly, to intellectual matters. On Morrow's list of what would be considered an offense under these laws, speech and writing contrary to the gods is only the last item; all the others apply to ritual. This intellectual freedom is also partially explained by the nature of Greek religion and religious practice. Greek religion was non-dogmatic in an important sense: although Homer and Hesiod were highly regarded amongst nearly all Greeks, their poems were not thought to contain unqualified truth. This attitude is captured well in the statement of the muses to Hesiod in the *Theogony*, a passage whose importance is attested by one classicist who calls it, perhaps with some exaggeration, "the key to Greek culture."<sup>85</sup> The muses are depicted as saying to Hesiod: "We know how to tell many lies that pass for truth, and we know too how to tell truth - when we wish to do so."<sup>86</sup> In addition to this lack of dogmatic texts, there was no priesthood in Ancient Greece that acquired the authority to establish orthodoxy and propagate dogma.<sup>87</sup> As for the thinkers themselves, comic poets, who were at times the most scathing critics of the Athenian regime, were protected under the special prerogative of merrymaking enjoyed by participants at festivals of Dionysus and so had religious sanction. Philosophers had no such sanction, but may have benefited from the structure of the Athenian judicial system, which left much room for discretion. Athens had no public prosecutor and so all lawsuits, even those on behalf of the public, had to be brought forward by private citizens. There was little to gain from victory in such lawsuits, other than prestige, and defeat could result in a fine, so individuals would typically only bring suits if they had a strong personal motive.<sup>88</sup> This discouraged such lawsuits, though it also meant that charges on impiety could be utilized for political reasons, as is suspected in the case of Socrates. Thus, although the Greek state

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84 Morrow [1993: 473]. For Aristodemus, see Xenophon, *Memorabilia*, I.iv.

85 Dover [1988: 154],

86 Hesiod, *Theogony*, 27. Translation from Athanassakis [2004], with slight modification.

87 Dover [1988: 153]

88 Morrow [1993: 473]

possessed institutions which could stifle intellectual debate, the exercise of these institutions was left at the discretion of citizens, who often declined to use them. This resulted in a significant degree of intellectual freedom, though it must be emphasized that this freedom rested only upon the whim of one's fellow citizens rather than any formal protection by the state and so could hardly be considered liberal. Furthermore, this reconciles our observation that Greek law was invasive with the known intellectual freedom by showing that this freedom was not the result of the contrivance of the law, which saw itself as entitled to interfere with intellectual matters, but the indulgence of citizens. As evidenced by the above noted instances of charges of impiety, this indulgence could not always be depended upon.

Although it is sometimes denied, there was indeed a distinction between the public and private sphere in Greek cities, however, there was no attempt to protect the individual from the state. Consequently, the state, in principle, had unlimited power over citizens' private lives, though this power was not always exercised.<sup>89</sup> Perhaps more important than the presence of the invasive laws sketched above is the fact that citizens accepted them with little objection, suggesting that they thought them within the rightful purview of the state.<sup>90</sup> Restrictions on individuals' negative freedom are even greater when one considers, in addition to the formal legal restrictions discussed above, informal social pressures, which would have been far more powerful than today due to the smaller size of Greek cities and the more engaged nature of their politics.<sup>91</sup> Thus even in Athens, one of the most democratic cities in Ancient Greece, invasion of the state into private life was profound and negative liberty restricted. This is captured well by a passage from Aristotle:

in a household, those who are free are least of all allowed to do as they happen to want (τοῖς ἐλευθέροις ἥκιστα ἔξεστιν ὅ τι ἔτυχε ποιεῖν), but all or most of what they do is prescribed, while the slaves and the beasts do little for the common good, and for the most part live at random<sup>92</sup>

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89 Raaflaub [2007: 156]

90 Finley [1981: 87]

91 Finley [1981: 93]

92 *Metaphysics*, 1075a18-23. Cited by Schofield [2006: 99n116]. Translation from Sachs [1999], with slight modification.

All of these restrictions on negative freedom can only be made consistent with the common characterisation of the Athenians as free if it is political freedom that these descriptions intend.<sup>93</sup> Thus Constant was largely correct in his description of the ancients. Josiah Ober confirms this in a more modern study, stating "the Athenians construed freedom more in terms of the positive right of the citizen to engage in political activity than in his 'negative freedoms' from governmental interference."<sup>94</sup> Now equipped with three distinct conceptions of freedom, negative, political, and positive, and the knowledge that it was the political conception of freedom that was dominant in contemporary Greece, we turn to the place of freedom in the *Republic*.

Plato attaches little importance to negative freedom, having Socrates, in the midst of an unflattering description of the democratic soul, say what democrats consider freedom, ie. doing what one wishes, is "anarchy."<sup>95</sup> Unsurprisingly, negative freedom does not play a great role in Kallipolis. Each citizens' profession is prescribed.<sup>96</sup> Art is strictly censored.<sup>97</sup> The upper classes are forbidden from owning property or having a family and also undergo extensive compulsory education.<sup>98</sup> Given that it has already been argued that Greeks in general did not attach great importance to negative freedom, a contemporary audience may not have found the lack of negative freedom in Kallipolis to be surprising. What would be more surprising to a contemporary Greek, particularly an Athenian (presumably Plato's main target) is the dearth of political freedom: Kallipolis is ruled by a small coterie of philosopher-rulers with the vast majority of its citizens completely excluded from power. That Plato recognizes engagement in politics as a form of freedom is clear from the following passage: "...speaking of a city, will you say that one under a tyranny is free or

93 Pericles' Funeral Oration (*Thucydides*, 2.37.1-2), for example, famously characterizes the Athenians as free.

94 Ober [1990: 295-296]

95 *Rep.*, VIII.560e

96 See p. 21, above.

97 *Rep.*, II.377a-III.403c, X.607a

98 *Rep.*, III.416d; V.457c-d; II.376e ff., VII.522a-541b. It is unclear whether these restrictions apply to the producing class (see Footnote 122).

slave? - Slave, in the highest possible degree."<sup>99</sup> Plato himself emphasizes the significance of the many being excluded from rule by having Socrates say that one who is ruled by his desires, alluding to those who practice "mechanical and manual art" ie. the producing class, should be the "*slave* of that best man who has the divine rule in himself."<sup>100</sup> Slavery is not here meant in the sense that the producing class must obey the philosopher-rulers' every whim, which would be inconsistent with the next sentence which states that such a slave "must not be ruled to his own detriment," but rather serves to emphasize the fact that the lower classes are completely excluded from power: they have no political freedom.<sup>101</sup> Kallipolis is not completely indifferent to freedom, however. On the contrary, positive freedom, which we henceforth be referred to as rational freedom as the particular form of positive freedom Plato exhorts is rule of reason over the desires, exists in it to the greatest possible extent: every individual with a nature capable of being ruled by their reason and forming their souls after the image of the Forms is to be cultivated until this potential is realized.<sup>102</sup> That Plato considers such self-mastery to be freedom is implied when it is said a soul is slavish when "those parts of it that are most decent [*sc.* the calculating part] be slaves while a small part, the most depraved and maddest part [*sc.* the desiring part] be master."<sup>103</sup> A slavish soul is one ruled by desires, which implies that a free soul is one ruled by reason. Thus, in Kallipolis, Plato recognizes rational freedom and cultivates it, but such freedom is restricted to a minuscule segment of the population and, regardless, it is not the sort of freedom that liberalism prizes. By the standards of modern liberalism, Kallipolis is extremely illiberal. There is almost no room for citizens to choose their own way of life as each persons' profession is chosen for them and what little negative freedom exists is possessed only by one class. Indeed, on any of our three conceptions, the distribution of

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<sup>99</sup> *Rep.*, IX.577c

<sup>100</sup> *Rep.*, IX.590c-d (emphasis added)

<sup>101</sup> Also see V.463a-b and IV.432a

<sup>102</sup> The term 'rational freedom' is borrowed from Schofield [2006: 87].

<sup>103</sup> *Rep.* IX.577d

freedom is radically unequal. If Kallipolis is intended as Plato's blueprint for how an actual state should be organized, Plato must be considered a radically illiberal thinker. Whether it is a blueprint or not is our next topic. The first step in this is determining if the *Republic* presents Kallipolis as practicable or just an unattainable ideal.

### III. The Practicability of Kallipolis

The most compelling case for the practicability of the *Republic's* ideal city is offered by Myles Burnyeat in his article "Utopia and Fantasy."<sup>104</sup> Burnyeat does not claim that the city can be realized in its every detail, as he acknowledges Socrates' statement that nothing can be realized in deed as it is in speech, but rather argues that it is Socrates' position that an approximation to the ideal city can be brought into being.<sup>105</sup> Burnyeat notes that Socrates comments on the practicability of the city for each of the three "waves (κύματα)" that he presents as obstacles to the city's realization.<sup>106</sup> The first wave, the equality of women, is explicitly denied to be "impossible or like prayers."<sup>107</sup> In discussing the second wave, the community of wives and children, Socrates begins to consider whether it is surmountable, but then requests that this question be set aside for later discussion.<sup>108</sup> His interlocutors grant this request. Burnyeat points out that, in the course of asking for this reprieve, Socrates mocks those who make proposals without considering their possibility:

Let me take a holiday like the idle men who are accustomed to feast their minds for themselves when they walk along. And such men, you know, before finding out in what way something they desire can exist, put that question aside so they won't grow weary deliberating about what's possible and not. They set down as given the existence of what they want and at once go on to arrange the rest and enjoy giving a full account of the sort of things they'll do when it has come into being, making yet idler a soul that is already idle.<sup>109</sup>

Burnyeat takes this as evidence of the great importance that Socrates attaches to ensuring

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104Burnyeat [1999]

105Burnyeat [1999: 299], referring to V.473a

106Burnyeat [1999: 301]

107*Rep.*, V.456c; cf. V.457b-c

108*Rep.*, V.457e-458b

109*Rep.*, V.458a

one's proposals are practicable.<sup>110</sup> However, as Schofield notes, Socrates never does himself return to the topic of the surmountability of the second wave, which suggests that he may not have meant his mockery of idle speculators as sincerely as Burnyeat infers.<sup>111</sup> Indeed, given Socrates' own reputation for engaging in idle speculation, his own condemnation of the activity should perhaps not be taken at face value.<sup>112</sup> This point will not be laboured, however, as more serious objections to Burnyeat's position will soon become apparent. The third wave is the necessity of coming into power of philosophers: philosopher-rulers.<sup>113</sup> It is in the discussion of this wave that Socrates makes the aforementioned claim that there is less truth in acting than in speaking, which leads him to state that we should be satisfied if even only an approximation to the ideal city could be realized.<sup>114</sup> Socrates subsequently claims that overcoming the third wave is necessary for even such an approximation to come into being, saying that only with philosopher-rulers could "the regime (πολιτεία) now described in speech ever come forth from nature, *insofar as possible* (εἰς τὸ δυνατόν), and see the light of the sun."<sup>115</sup> However, Socrates states that it is possible for this wave, too, to be overcome.<sup>116</sup> Finally, after completing discussion of the three waves, Socrates says that it is possible for the city as a whole to be realized, though emphasizing that it is difficult to do so.<sup>117</sup> Thus, as Burnyeat claims, Socrates explicitly and repeatedly states that the ideal city is possible, at least in approximation. However, he also places several qualifications on the overcoming of the third wave, which Burnyeat fails to discuss, and it is to these that we now turn.

It has already been mentioned that for the ideal city to be realized, even in

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110Burnyeat [1999: 301]

111Schofield [2006: 235]

112Socrates is mocked as star-gazer: *Apology* 24b-c; cf. *Rep.* VI.488a-489a and Aristophanes, *Clouds*, lines 133-179

113*Rep.*, V.473c-e.

114*Rep.*, V.473a

115*Rep.*, V.473d-e (emphasis added). It is Strauss [1978: 125] that notes this point.

116*Rep.*, V.473c

117*Rep.*, VI.502c

approximation, it is necessary for philosophers to become rulers. Socrates provides three methods by which this can occur:<sup>118</sup> (1) "some chance (τύχης)" compels philosophers to rule and constrains citizens to obey (2) by "divine inspiration (θείας ἐπιπνοίας)," true passion for philosophy flows into a son of someone in power (3) the same inspiration befalls someone currently in power. Socrates later elaborates on the first method, saying that a philosopher will accept power in an imperfect regime only if "some divine chance comes to pass (θεία τις συμβῆ ἢ τύχη)."<sup>119</sup> Thus, in all three cases the coincidence of philosophy and power rests upon chance. As it was previously shown that philosopher-rulers were a necessary condition for the realization of even an approximation of the ideal city, this too rests upon chance, which suggests that there is little that human agency can do to bring it about. Thus the ideal city is, strictly speaking, possible, as chance may happen to bring about the conditions for its realization, but it is not practicable in a politically useful sense as, even as an approximation as Burnyeat espouses, it can not be brought into existence by human agency. This is not politically useful as the ideal city can hardly be a blueprint for political action if political action, that is, human action, can not bring it about, even in approximation. One may then wonder why Socrates takes such pains to emphasize the city's possibility. Schofield offers a convincing explanation of this fact, noting that Socrates had to negotiate his way between a Scylla and a Charybdis: his interlocutors, Glaucon and Adeimantus, make no objection to Socrates' mockery of idle speculation which suggests that they are practical-minded men and so in order to maintain their attention Socrates had to represent his proposals as practicable, however, he also wanted to indicate that it was not the main point of the conversation of the *Republic* to show its proposals were practicable, since it has already been shown he thought this is a poor indicator of truth.<sup>120</sup> Having completed our argument for the claim that the ideal city is not practicable in a politically useful sense, we now turn to the question: if not a

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118*Rep.*, VI.499a-c

119*Rep.*, IX.592a-b

120Schofield [2006: 240]

blueprint for political action, what then does Kallipolis and the *Republic* say about actual politics?

#### IV. Implications for Actual Politics

In inquiring into the political implications of the *Republic*, it is necessary to be aware that practical politics is not the book's stated topic. In the dialogue, the discussion of the ideal city was not prompted by a request for a blueprint for political action, but by Glaucon's appeal to Socrates for a demonstration that justice is in itself superior to injustice.<sup>121</sup> That the ideal city is not intended to be a blueprint is borne out by its frustrating lack of detail at points. This is most notable with regards to the city's producing class. Do they share in the community of wives and children? Do they participate in the education of the upper classes? It is unclear.<sup>122</sup> Comparison to the *Laws*, which does not itself even aim at comprehensiveness, reveals some of what Kallipolis is lacking: religious law, family law, criminal law, courts and much else.<sup>123</sup> Thus, the content, or rather, the lack of content presented regarding Kallipolis further supports our previous contention that the city is impracticable and intended to be so. This may lead one to the anti-utopian view of the *Republic*, espoused most prominently by Leo Strauss. On this interpretation, the main political purpose of the *Republic* is to discourage attempts at utopianism, that is, attempts to remove all evils from political life.<sup>124</sup> There is much truth in this view, as there is much pessimism in the *Republic*. Socrates makes it clear that, even if Kallipolis could be actualized, it would be at a great cost. This would have been apparent to Glaucon and

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<sup>121</sup>*Rep.*, II.367e. This is in contrast to the *Laws*, where the purpose of the conversation is explicitly stated to be developing laws for a colony in Crete (III.702c-d). See p. 54, below.

<sup>122</sup>Community of wives and children: when the second wave is introduced at V.457c-d it is applied only to the two upper classes, and the fact that the producing class may possess property suggests that they should be permitted to have families to share this with, but VIII.543a implies that community of wives and children is maintained through all of the classes of the city. Education: Cornford [1951: 64] argues that the producing class participate at least in gymnastic and musical education. Hourani [1949] and Ferrari [2003: 46] argue to the contrary; both positions have unsatisfactory elements.

<sup>123</sup>*Laws*, XII.957a states that laws that are "minor and easily discovered" can be left out.

<sup>124</sup>Strauss [1978: 127]

Adeimantus: they may have been able to accept the abolition of the family, perhaps not attaching much value to it themselves, and the disenfranchisement of almost the entire population would have been surprising to Athenians such as themselves, but, being aristocrats they may have accepted it, however, they could have had no illusions that when Socrates stated that the founding of the ideal city required the exile of everyone over the age of ten, they or others like them would be included in the purge.<sup>125</sup> Setting such a high price on utopia may well serve to discourage those who might seek it. Also, Glaucon and Adeimantus, being upper-class Athenian citizens, most likely saw politics as the highest activity in which they could engage but if they have followed Socrates' argument closely they should realize that the happiest life in an imperfect city, such as Athens, is in fact a private life consisting of the study of philosophy and avoidance of injustice.<sup>126</sup> Socrates has presented a superior alternative to the political life, thus revealing the limitations of politics. Tragically, at the same time as arguing for this best life, Socrates makes it clear that most people are not capable of it. The allegory of the cave applies even to the ideal city: the philosopher-rulers are not able to bring the entire city into the light of the sun, but can only return back into the cave to aid the benighted who are imprisoned there.<sup>127</sup> However, against this pessimistic interpretation Schofield cites the following passage, which suggests there is more to the *Republic* than just anti-utopianism:

Weren't we, as we assert...constructing a model (παράδειγμα) in speech of a good city? - Certainly. - Do you suppose that what we say is any less good on account of our not being able to prove that it is possible to found a city the same as the one in speech?<sup>128</sup>

Thus, the question of the possibility of the city is, in a way, idle, as this passage makes it clear that the city is presented as a model rather than a blueprint for action. But which aspects of the ideal city are to be imitated or worked towards? The most prominent feature of the ideal city is its philosopher-rulers. However, in the previous section it was argued that the

<sup>125</sup>*Rep.*, VII.540e-541a.

<sup>126</sup>*Rep.*, IX.591d-592b, VI.496c-e

<sup>127</sup>*Rep.*, VII.519d, VII.539e

<sup>128</sup>*Rep.*, V.472d-e; Schofield [2006: 239]

coming into power of philosophers was dependent upon chance rather than human agency. This implies that there is little point in working towards placing philosophers in power. Thus they are most likely not an aspect of the ideal city which is intended to be modeled.

Several other features of the ideal city are premised upon the presence of philosopher-rulers and so their absence suggests such features are not intended to be modeled as well. Two prominent features which fall into this category are the city's rigid class structure and the absolute authority of its rulers. Individuals are divided into classes based upon their nature.<sup>129</sup> It is the philosopher-rulers who are responsible for perceiving these natures and dividing the city into classes, and when they err in this task, even slightly, it causes the city to collapse.<sup>130</sup> Outside of Kallipolis, where there are no philosopher-rulers capable to distinguishing citizens in this manner, such a class system would not be practicable. The philosopher-rulers are given absolute power because they have knowledge of the Forms, which guides them in ruling and in forming their souls so that they are ruled by its calculating part and incorruptible.<sup>131</sup> Rulers who are not philosophers would not possess this knowledge and so would not be entitled to absolute power on these grounds. Thus, philosopher-rulers, and the class and power structure that goes with them, are most likely not intended to be a model for actual politics.

It may seem implausible to acknowledge that Kallipolis is presented as a model for politics and yet exclude some of its most prominent features for imitation in actual politics, but unease on this point should be diminished by the fact that, as will soon be seen, a similar move occurs in the *Statesman*, where citizens are told to imitate the expert ruler, who ignores the law as he sees fit, but not by ignoring the law as he does but by strictly obeying it.<sup>132</sup> Thus imitation need not consist of copying every feature of one's model. If the above

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<sup>129</sup>*Rep.*, IV.433a, III.415a-d

<sup>130</sup>*Rep.*, VIII.546d-547a

<sup>131</sup>*Rep.*, IX.590c-d

<sup>132</sup>*Statesman*, 300d-301a

features are not to be modeled, there remains the obvious question of which aspects of the ideal city *are* intended to be. This is more difficult to determine, but for the purposes of this essay, a full answer is not needed. On our main topic, freedom, an answer can be gleaned from Socrates' comments on what might be called the nature of politics.

Socrates elucidates the nature of the city through the allegory of the cave, in which he claims that one's opinions, at least until one receives a philosophic education, are unconsciously formed by one's political community.<sup>133</sup> He elsewhere makes it clear that this applies to one's desires as well, asking what effect the praise and blame of the many will have on "the state of a young man's heart" and answering that he will be "swept away by such blame and praise and go, borne by the flood, wherever it tends..."<sup>134</sup> That this has implications for Plato's estimate of the value of negative freedom will be illustrated through considering an objection that Gregory Vlastos raises against the *Republic*. Vlastos objects to the fact that Kallipolis completely excludes the producing and auxiliary classes from ruling on the grounds that this violates individuals' right to autonomy.<sup>135</sup> Plato would agree with Vlastos on the importance of autonomy, or self-rule, as he considers being ruled by one's own reason, which we above labeled rational freedom, to be one of the most prominent features of the philosophic life<sup>136</sup> However, the above comments on the nature of the city give Plato good reason for attaching less importance to negative freedom. One's actions are guided by one's opinions and desires, and, as shown above, he holds that in most cases these are formed not by the individual but by their community. Thus Plato observes that obstacles in one's mind can be as restrictive as the external obstacles which negative freedom emphasizes. This is evidenced by the comment that a tyrant, who has great power and can do

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<sup>133</sup>Comparing the cave with Plato's line (*Rep.*, VI.509c-511e) reveals that the shadows at which those imprisoned in the bottom of the cave look are opinion (as opposed to knowledge). That the cave represents the city is revealed at VII.539e.

<sup>134</sup>*Rep.*, VI.492b-c

<sup>135</sup>Vlastos [1995: 91]

<sup>136</sup>See *Rep.*, IX.590c-d above

what he will, is still a "slave" because he is ruled by the desiring part of his soul.<sup>137</sup> Plato attaches little importance to negative freedom because, for him, it is illusory. This suggests that the lack of importance attached to negative freedom in Kallipolis, if not the specific restrictions it imposes on such freedom, reflects Plato's opinion on the matter for actual politics rather than being another ideal feature rendered inapplicable by the absence of philosopher-rulers. The *Republic* also makes a few other observations on the nature of politics that bear mention.

Plato has Socrates state that there is a Form of justice. This implies that justice is something that can be found in nature, contrary to the contemporary Sophists who argued that justice was a matter of convention.<sup>138</sup> Furthermore, although it has already been argued that philosopher-rulers are not presented as an actual political proposal, Socrates' postulation of them does have an important consequence for politics: it suggests that political skill is an art possessed by few, an art based upon knowledge. This is opposed to political skill being something possessed by all individuals as a result of being human, as Plato has Protagoras claim in the *Protagoras*.<sup>139</sup> Although Socrates never explicitly calls politics an art (τέχνη), that he considers it one is implied by his comparing the skilled politician to skilled crafts such as piloting.<sup>140</sup> His commitment to the existence of a political art, based upon knowledge, is made eminently clear when he states that the philosopher-rulers are to be guided by their knowledge of the Forms in their political decisions.<sup>141</sup> As the possibility of philosopher-rulers has effectively been set aside, the *Republic* has little to say on the proper relation between the political art and political power, though our inquiry into the *Statesman* and the *Laws* will reveal that this relation need not be that, in actual politics, one should seek

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<sup>137</sup>*Rep.*, IX.577c-d.

<sup>138</sup>V.476a. Thrasymachus, as represented at *Rep.*, I.343b–344c, is one such Sophist. Miller [1995: 75n16] notes other examples: Antiphon, *On Truth*, DK 87 B 44, Hippias in Plato, *Protagoras* 337c–e, Callicles in *Gorgias* 482c–486d.

<sup>139</sup>*Protagoras*, 319a–323c

<sup>140</sup>*Rep.*, VI.488a–e

<sup>141</sup>*Rep.*, VII.540a–b

to place political power in the hands of those who possess the political art.

### **Conclusion**

To return to our five topics, (1) freedom (2) rule of law (3) legal reform (4) consent of the ruled and (5) democracy, the *Republic* has here been argued to have much to say on freedom, but little on the latter four topics. The *Republic* attaches much value to freedom, though not the negative freedom of liberalism, which it condemns, but the rational freedom of the philosopher. However, though the *Republic's* ideal city expresses the absolute rule of philosophers, it has been argued here that this is not presented as a proposal for actual politics. Consequently, the rejection of rule of law, legal reform, democracy, and the consent of the ruled which the rule of philosophers entailed can not be considered actual proposals either.<sup>142</sup> For Plato's opinion on these matters we must turn to Plato's other political dialogues, *Statesman* and the *Laws*. The *Statesman* will be the next to be discussed.

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<sup>142</sup>Although, for an alternative account on the consent of the ruled in Kallipolis, see Reeve [1988: 249-241]

### Chapter 3: The *Statesman*

Unlike the *Republic* or the *Laws*, the *Statesman* does not attempt to offer anything like a full description of a political community, and so it will not bear on many of our topics of interest. Our focus in this dialogue will be its argument for rule of law and legal reform, while also noting the departures from the *Republic* that it establishes that will eventually be fully exploited in the *Laws*. The *Statesman's* main topic is the identification of the statesman (πολιτικός), and his associated art (τέχνη), πολιτική, and this already reveals a departure from the *Republic*. Although, as argued in the previous chapter, it is implied that politics is an art in the *Republic*, nowhere in that dialogue is political knowledge explicitly called a τέχνη. Rather, it is even implied that politics is not an independent branch of inquiry, as the knowledge which guides Kallipolis' philosopher-rulers in their wise ruling is ultimately identified with knowledge of the idea of the good, thus assimilating political knowledge to knowledge of the Forms. Indeed, the phrases πολιτική τέχνη and πολιτική ἐπιστήμη never appear in the dialogue, and even πολιτική, the adjective often used in their places, appears only a handful of times and never in either of these senses.<sup>143</sup> Plato's care in avoiding these terms in the *Republic* can only be described as assiduous. In contrast, the *Statesman* almost immediately states that politics is a type of knowledge and labels it a τέχνη soon afterwards.<sup>144</sup> Concomitant with the notion of τέχνη is the notion of time, as one of the most important features of a τέχνη is the ability to seize the opportune moment for action, the καιρός.<sup>145</sup> As Lane convincingly argues, this emphasis on time was also absent in the *Republic*, where politics was to be based upon the unchanging Forms.<sup>146</sup> Thus the introduction of politics as an art and the importance of time, as well as the change and

<sup>143</sup>*Rep.*, I.345e, IV.430c, V.473d, VI.493d. Contrast this with the far greater number of instances of related terms such as πόλις and πολιτεία, as is evident from consulting the index of any edition of the *Republic*.

<sup>144</sup>*Statesman (Stat.)*, 258b, 258e. Pradeau [2002: 72] notes this shift in terminology and perspective.

<sup>145</sup>*Republic* II.374c

<sup>146</sup>Lane [1995]

conflict which accompany it, are two innovations of the *Statesman*. These innovations suggest a move away from the ideal and towards actual politics. This will be borne out as our inquiry into the dialogue unfolds.

### I. The *Statesman's* Argument for Rule of Law

On the interpretation to be offered here, the *Statesman* presents not only a conflict between rule of art and rule of law, but also a conflict between two different conceptions of rule of law. Both conceptions of rule of law insist that all citizens, including rulers, be obedient to the law, but the first conception denies the existence of the political art and forbids legal reform while the other acknowledges the importance of the political art, indeed deriving the value of law from it, and permits legal reform within the confines of the law. It will here be argued that the *Statesman's* main interlocutor, the Eleatic Stranger, argues for this second conception of rule of law.<sup>147</sup> The argument that the Eleatic offers for this position may seem meandering, actually beginning with high praise of the rule of art and proceeding to mockery of the rule of law before finally acknowledging its value. However, this circuitous route can be explained by the dialectical nature of the Eleatic's argument.<sup>148</sup> In order to show this is the case, it is necessary to provide a brief sketch of the character of the Eleatic's interlocutor, Young Socrates. Young Socrates is the exercise-partner of Theaetetus, a prominent interlocutor from the *Theaetetus* and *Sophist*, and, like him is a mathematician and, presumably, Athenian.<sup>149</sup> He quickly accepts the Eleatic's proposal that politics is a matter of knowledge and an art but also eventually reveals himself to be committed to rule of law, seemingly unaware that his original concession might not be consistent with this commitment, as the Eleatic ultimately shows.<sup>150</sup> Evidently, Young Socrates, though a

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<sup>147</sup>This is contrary to the interpretation offered by Lane [1997:158] and Kahn [2009:158]

<sup>148</sup>As pointed out by Gill [1995], though the argument offered here differs greatly from his.

<sup>149</sup>Theaetetus' background is described at *Theaetetus*, 143d-144e. Young Socrates is implied to be a student of mathematics at *Theaetetus*, 147c-d.

<sup>150</sup>*Stat.*, 257c, 293c-e

mathematician and so presumably of significant intelligence and leisure, has not dedicated much time to evaluating his political opinions. The Eleatic's circuitous approach is explained by the fact that his aim is not just to offer arguments for his conception of rule of law that are sound in the abstract, but also to persuade Young Socrates, whose confused state-of-mind is probably not uncommon among intelligent, though politically unreflective, citizens of Athens, to adopt this conception. In order to achieve this, the Eleatic first elicits Young Socrates' opinions on the political art and rule of law, then shows him how these opinions are flawed, and only then does he present the argument for his own conception of rule of law, based upon Socrates' concessions. The Eleatic begins his argument for rule of law by obtaining Young Socrates' agreement that politics is an art and then proceeds to elaborate upon what this art and its practitioners are. After using the methods of diairesis and example (παράδειγμα), supplemented with a story (μῦθος), the Eleatic arrives at the following definition of the political art, or statesmanship:

...the one [kind of art] that controls all of these [*sc.* the kinds of art that belong respectively to the orator, the general, and the judge], and the laws, and cares for every aspect of things in the city, and weaves everything together in the most correct way - this, embracing its capacity with the appellation belonging to the whole, we would, it seems most appropriately call statesmanship.<sup>151</sup>

The true statesman is the one who possesses this art, regardless of whether or not he actually has power.<sup>152</sup> Indeed, the Eleatic states that all current rulers are not statesmen, but impostors.<sup>153</sup> The regime (πολιτεία) in which the true statesman does have power is the one correct regime.<sup>154</sup> The only necessary feature of this regime is that the statesman rules in accordance with his art, regardless of the opinion of the ruled or the laws, even using force on the citizens if this is what art dictates.<sup>155</sup> Thus far it seems the Eleatic is exhorting the absolute rule of art, but he soon mitigates this by suggesting that such a regime is

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<sup>151</sup>*Stat.*, 305e. Unless otherwise noted, all *Statesman* translations are from Rowe [1995].

<sup>152</sup>*Stat.*, 292e-293a

<sup>153</sup>*Stat.*, 302c-303b

<sup>154</sup>*Stat.*, 301d

<sup>155</sup>*Stat.*, 293c

impracticable. This is because not only are no current rulers true statesmen but "...it is not the case that a king [ie. statesman] comes to be in cities as a king-bee is born in a hive, one immediately (εὐθὺς) superior in body and mind....<sup>156</sup>" This passage is obscure, but at the least implies two things: first, that the true statesman is not easily recognizable as is a king-bee in a hive and, second, that he does not come about by nature in every city.<sup>157</sup> Thus, even if a true statesman did come into being in a city, which will not happen by nature, it would be difficult to identify him to give him power. Indeed, the problem of distinguishing the true statesman from his imitators is one of the central themes of the *Statesman*; it proves to be a thorny problem, as the statesman's only distinguishing feature is his knowledge, a feature which is difficult to recognize for those who do not share it ie. the vast majority of citizens. Thus, the Eleatic maintains that the rule of the true statesman, the absolute rule of art, is the one correct regime but does not exhort the pursuit of this regime because of the difficulty of finding the true statesman, who is rare and has many impostors. This interpretation is confirmed when the Eleatic describes the alternative regime he offers, rule of law, as a δεύτερος πλοῦς, a 'second sailing': a solution that is second-best in general but best in the given situation. This description would only be appropriate if the rule of the statesman was not possible.<sup>158</sup> We now turn to the Eleatic's argument for his δεύτερος πλοῦς.<sup>159</sup>

The Eleatic aims to persuade Young Socrates of a particular conception of rule of law, one which acknowledges the political art and permits legal reform. However, their conversation soon reveals that there is an alternative conception of rule of law, one which denies the existence of the political art and which also has some prominence in Athens. It is unclear whether Young Socrates himself believes in this second conception, indeed he may

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<sup>156</sup>*Stat.*, 300d-e

<sup>157</sup>As Rowe [1995: 233] notes.

<sup>158</sup>*Stat.*, 300c. δεύτερος πλοῦς is often translated 'second-best', which is largely correct, but can carry pejorative connotations which the Greek term does not have.

<sup>159</sup>The myth of the reversing cosmos, though important, will not be here discussed for want of space. Kahn [2009] offers an account of the myth that is consistent with the interpretation of the *Statesman* argued for here.

not have a developed position on the matter, but for the Eleatic to convince Socrates of his own conception, the unwanted conception's prominence requires that it be explicated and refuted first. The Eleatic's first step in the argument is to elicit Young Socrates' own commitment to rule of law and point out how this is inconsistent with the previously agreed claim that politics is an art; that is, the Eleatic begins by giving Young Socrates' knowledge of his own ignorance. The Eleatic elicits Young Socrates' opinion of rule of law by emphasizing that the correct constitution is the one in which true statesmen rule in accordance with their art, regardless of whether

they rule according to laws or without laws, and over willing or unwilling subjects, and whether the rulers are poor or wealthy...and whether they purge the city for its benefit by putting some people to death or else by exiling them, or whether again they make it smaller by sending out colonies somewhere like swarms of bees, or build it up by introducing people from somewhere outside and making them citizens.<sup>160</sup>

Young Socrates responds with one of his few objections in the dialogue: "The rest of it, stranger, seems to have been said with due measure; but that ideal rule may exist even without laws was a statement harder for a hearer to accept." That Young Socrates accepts all of the Eleatic's shocking proposals except the rejection of rule of law suggests he is significantly attached to this doctrine, which is to be expected from an Athenian citizen. The Eleatic then proceeds to criticize law, arguing that though it is a useful guide when a statesman is not present, it should not rule over art because it is unable to account for the variety of political situations as art can.<sup>161</sup> The Eleatic goes on to complain that, despite this failing,

we see law bending itself more or less towards this very thing [*sc.* imposing on art], like some self-willed and ignorant person, who allows no one to do anything contrary to what he orders, nor to ask any questions, not even if after all something new occurs to someone which is better, contrary to the prescription which he himself has laid down.<sup>162</sup>

That is, the law tends not only to forbid art from acting contrary to it, but also prohibits inquiry that might cast doubt on itself, thus revealing its hostility to the political art's claim

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<sup>160</sup>*Stat.*, 293c-e

<sup>161</sup>*Stat.*, 294a-b

<sup>162</sup>*Stat.*, 294b-c

of superiority. Young Socrates agrees that this is an accurate description, suggesting that this notion of law had some currency in Athens. Socrates then finally acknowledges that law should not rule over art, saying "it is certainly not possible to contradict" the Eleatic's argument.<sup>163</sup> After showing Socrates that his claim that law should rule was inconsistent with the previously agreed claim that politics is an art, the Eleatic proceeds to argue for his own conception of rule of law.

The Eleatic begins his argument for his own conception of rule of law by stating that the second-best regime is one in which "none of those in the city should dare to do anything contrary to the laws, and that the person who dares to do so should be punished by death and all the worse punishments."<sup>164</sup> Thus the second-best regime requires strict obedience to the law; no mention is made of a prohibition on legal reform. His argument for this conception commences with a thought-experiment, which we will see depicts the conception of rule of law that the Eleatic ultimately rejects, paraphrased as follows: suppose pilots and doctors were thought to be untrustworthy and indifferent to the good of their charges, even taking bribes to harm them, and so the people, either all of them or just the rich, subjected these arts to laws. These laws would be developed based upon the advice of both laymen and experts in the arts in question and they would apply "for all future time" ie. reform would be prohibited.<sup>165</sup> Furthermore, the offices which the law establishes would be distributed annually by lot, from either the populace as a whole or only the wealthy, with each officer subject to an audit at the end of their term by courts, again selected by lot from all or from just the wealthy, in order to ensure that the officer had adhered to the written laws and ancestral customs. In addition to this, "it will be necessary to establish a law" prohibiting inquiry into the arts beyond what is dictated in the laws.<sup>166</sup> Young Socrates observes that this

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<sup>163</sup>*Stat.*, 297b

<sup>164</sup>*Stat.*, 297d-e

<sup>165</sup>*Stat.*, 298e

<sup>166</sup>*Stat.*, 299b

will destroy all the arts. The Eleatic ultimately characterizes this regime as one in which "it will be laid down that there must be nothing wiser than the laws; for no one is ignorant about what belongs to the art of the pilot, or seafaring, since it is possible for anyone who wishes to understand things that are written down and things established as ancestral customs."<sup>167</sup> That is, the political art is possessed by everyone, which means that the political art as the Eleatic conceives it does not exist: "there must be nothing wiser than the laws." Thus the regime depicted here denies the existence of the political art and forbids legal reform. The Eleatic's thought-experiment is a clear allusion to contemporary Athens, most notably through the mention of audits and the use of lots, but it is not intended to be a representation of that city. For one, as a representation, it is incorrect: as Lane notes, the Athens of Plato's day was not so hostile to legal reform, nor did it explicitly forbid inquiry into the political arts.<sup>168</sup> Furthermore, there are aspects which are so blatantly non-Athenian that they can only be intended to distinguish the thought-experiment from the actual Athens. One such aspect is the allowance for membership in the Assembly, selection for office, and selection for courts to be restricted to the wealthy; democratic Athens vigorously rejected such an oligarchic policy.<sup>169</sup> The Eleatic's choice of words further suggests that he is not here discussing the Athens of his day, as he uses some vaguely archaic terms, referring to μάκρα πλοῖα ("long ships"), an outdated type of warship long replaced by τριήρεις ("triremes"), and κύρβεις, the tablets upon which the old Solonian laws were written.<sup>170</sup> Rather than a representation of contemporary Athens, the thought-experiment is a caricature of it. It is caricature presented for the sake of illustrating a particular conception of rule of law, one defined by its rejection of the political art. As in any caricature, it presents a truth, though exaggerated, about its subject: the *Protagoras* suggests that the opinion that the political art was possessed by

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<sup>167</sup>*Stat.*, 299c-d

<sup>168</sup>Lane [1997: 150-151]

<sup>169</sup>The Solonian laws established that all citizens, regardless of wealth, could attend the Assembly and the Athenian laws became progressively less oligarchic from there. See Ober [1990: Ch. II].

<sup>170</sup>Both terms appear at 298d. Benardete [1984: II.51n39] notes the archaic terminology. See Thucydides I.14 for the distinction between μάκρα πλοῖα and τριήρεις.

everyone did indeed have some currency in Athens and Young Socrates' previously mentioned assent to the Eleatic's description of the law as restricting the political art is further evidence of Athenian law's hostility to that art.<sup>171</sup> It is within the context of this caricature that the laws are described as rigid and unchanging. There is little reason to believe that the Eleatic himself is here exhorting such rigidity, given that he must reject the regime presented in the caricature because of its denial of the existence of the political art.<sup>172</sup> Nor can the Eleatic be taken as exhorting the rigid rule of law in the previously quoted passage from 294b-c, in which the laws are compared to a stubborn and ignorant man. This is for two reasons: (1) the passage is descriptive, "we *see* law bending itself...", rather than normative (2) as described there, the laws do forbid legal reform but are also hostile to the political art, which is analogous to the regime rejected in the caricature and so should be considered rejected as well. There are no other passages in the *Statesman* that explicitly describe rule of law as involving a prohibition on legal reform. After the thought-experiment, the Eleatic makes no mention of a prohibition on legal reform, only repeating his original description of the second-best regime as requiring strict obedience to the established laws.

Having undermined one conception of the rule of law, a conception that was hostile to the political art and that had some prominence in contemporary Athens, the Eleatic proceeds to build his alternate conception. He begins by saying:

If we were to compel each of the things we have mentioned to be done according to written rules, and the person who has been elected or has been appointed to office by lot, on the basis of chance, to oversee these written rules of ours, but this person were to take no notice of what is written down...and were to undertake to do different things, contrary to these, when he possesses no knowledge, would this not be an evil still greater than the previous one [*sc.* subordinating rulers to the law]?<sup>173</sup>

Thus, given a ruler ignorant of the political art, it would be more harmful for him to rule

<sup>171</sup>See *Protagoras*, 323a-c. Young Socrates' assent occurs at 294c, which is partially quoted above.

<sup>172</sup>Lane [1997: 161] separates the restriction on the arts and the prohibition on legal reform presented here, and argues that the former is later rescinded and the latter maintained. However, even though the Stranger's thought experiment is divided into two sections by a comment from Young Socrates at 299b, and this division separates the restriction on the arts and the prohibition on legal reform, the Stranger clearly says that the second section is "necessary" given the first. The two sections present a single, unified regime and not disparate proposals intended for separate judgment.

<sup>173</sup>*Stat.*, 300a

without being subject to law than with. That this regime is distinct from that of the thought-experiment is not made obvious, but it is implied by the novel allowance for election to office rather than just selection by chance-based lot, as before. What the Eleatic says next confirms the break:

...for if, I imagine, contrary to the laws that have been established on the basis of much experiment, with some advisers or other having given advice on each subject in an attractive way, and having persuaded the majority to pass them - if someone dared to act contrary to these, he would be committing a mistake many times greater than the other, and would overturn all activity ( $\pi\rho\tilde{\alpha}\xi\iota\nu$ ) to a still greater degree than the written rules.<sup>174</sup>

As Rowe notes,  $\pi\rho\tilde{\alpha}\xi\iota\varsigma$  is best interpreted here as 'artful activity' rather than just 'activity' given the first division of the dialogue, especially since the Stranger has referred back to this division twice since.<sup>175</sup> Thus, the reason the laws must be obeyed is, if the laws are established based on (1) experiment and (2) persuasion of the many by advisers, then disobeying them overturns art to a greater degree than imposing them on rulers that are ignorant of the political art. The standard the Eleatic applies is that of the political art, in contrast to the regime of the caricature which was premised upon the claim that "there is nothing wiser than the law"<sup>176</sup> ie. there is no political art. The Eleatic is not exhorting obedience to all laws, but only those established by experiment and persuasion and his claim that ignoring these laws overturns art implies that such laws have value as judged by the political art. The Eleatic concludes his argument by reiterating the statement with which he began: "...for those who establish laws and written rules about anything whatsoever, the prohibition against any one or any multitude ever doing anything contrary to these, anything whatsoever, is a second sailing ( $\delta\epsilon\acute{\upsilon}\tau\epsilon\rho\omicron\varsigma \pi\lambda\omicron\upsilon\delta\varsigma$ )"<sup>177</sup> No mention is made of prohibiting legal reform in this second conception of rule of law, which is the Eleatic's second-best regime. However, a powerful argument still remains for the claim that the second-best regime prohibits legal reform: this regime is contrasted with the rule of the statesman, who disobeys

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<sup>174</sup>*Stat.*, 300b

<sup>175</sup>Rowe [1995: 230], citing *Stat.*, 292b-c, 258e

<sup>176</sup>*Stat.*, 299c

<sup>177</sup>*Stat.*, 300c

laws as he sees fit and so, presumably, also changes them as he wishes. The contrast seems to suggest that the second-best regime does not change its laws. However, the implication is unclear: the statesman both disobeys and reforms the laws: which of these two aspects does the contrast revoke? The Eleatic states that regimes without the true statesman should never "do anything contrary to what is written and ancestral customs" but this is consistent with both forbidding reform and allowing legal reform within the confines of the law.<sup>178</sup> It has already been argued that the Eleatic nowhere explicitly exhorts a prohibition on legal reform. However, an argument from silence is not very conclusive in this case. There is a further argument: a prohibition on legal reform would be inconsistent with the importance which the Eleatic attaches to experiment in establishing the laws of the second-best regime. The other method for establishing these laws, persuasion of the many, also does not sit well with the hypothesis that the laws are rigid, however, one might counter that persuasion is used to found the laws and then subsequently forbidden as a means of reform, even though no mention of a distinction between founding the laws and reforming them occurs in the discussion of the methods of establishing the law. However, it is implausible that the such a distinction is applied to experiment as this would be to place a value on experience and then to subsequently deny it input into the laws. Thus the second-best regime is one which requires strict obedience to the law, but recognizes the authority of the political art and permits legal reform within the confines of the law. We have further claimed that the laws of the second-best regime have inherent value judged by the standard of the political art. This is supported by the common interpretation of the *Statesman* in which the laws of this regime seek to imitate those that are established by the true statesman in the best regime and so are valuable insofar as they approach them.<sup>179</sup> However, Christopher Rowe has offered serious objections to this interpretation and so these must be answered in order to maintain the

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<sup>178</sup>*Stat.*, 301a

<sup>179</sup>Held, for example, by Gill [1995]

coherence of our position.

## II. The Laws of the Second-Best Regime

Rowe argues that the laws of the second-best regime can bear no relation to the laws of the best regime.<sup>180</sup> On his interpretation, the only benefit of the second-best laws is they stave off tyranny; the Eleatic is arguing for obedience "even to bad laws."<sup>181</sup> Rowe's interpretation thus implies that the laws of the second-best regime have no value from the standpoint of the political art, threatening the position argued for in the previous section. Rowe begins his argument by noting that the passage which is typically cited in support of the claim that the second-best laws are imitations of those of the best regime in fact offers no such support when properly understood; Rowe claims this has only been obscured because of incorrect translations. The disputed passage, in Rowe's translation and in Greek, is as follows:

Well, imitations of the truth of each and every thing would be these, wouldn't they - the things issuing from those who know which have been written down so far as they can be?

οὐκοῦν μιμήματα μὲν ἂν ἐκάστων ταῦτα εἴη τῆς ἀληθείας, τὰ παρὰ τῶν εἰδόντων εἰς δύναμιν εἶναι γεγραμμένα;<sup>182</sup>

It is sometimes thought that the *γεγραμμένα* are the laws of the second-best regime and these are *μιμήματα* of the truth ie. the laws of the best regime, but Rowe correctly points out that it is instead *τὰ παρὰ τῶν εἰδόντων*, "the things issuing from those who know," ie. the laws of the true statesman, which are imitations of the truth; nothing is said regarding the laws of the second-best regime.<sup>183</sup> If this were the only pertinent passage, the matter would be settled. However, the following passage also bears on this question and it militates against Rowe's interpretation:

...given that this regime we have talked about [*sc.* that of the true statesman] is on our view the only correct one, do you recognize that the others ought to use the written

<sup>180</sup>Rowe [1995:15-18]

<sup>181</sup>Rowe [1995: 18]

<sup>182</sup>*Stat.*, 300c

<sup>183</sup>Gill [1995: 296n23], for example, takes the passage in the manner that Rowe argues is incorrect.

documents that belong to this one, and save themselves in this way, doing what is now praised, although it is not the most correct thing to do...<sup>184</sup>

This passage states, fairly unambiguously, that the second-best regime should attempt to use the laws of the best constitution, which suggests that this is possible. Rowe, seeking to avoid this interpretation of the passage, takes it to mean that the second-best regime should: "employ writings in the way it [*sc.* the best constitution] does."<sup>185</sup> However, Rowe himself acknowledges that this is a "difficult" interpretation of a rather straightforward sentence; indeed, it is simply not what the passage says. In defense of his interpretation, Rowe attempts to preclude the more obvious interpretation by claiming that the methods the second-best regime has of developing law can give it no access to the laws of the best regime. It is to this claim that we now turn.

As already mentioned, the second-best regime has two methods of establishing laws: (1) experiment (2) persuasion of the many by counsellors. The Eleatic is clear that only few can possess the political art, and so the many, upon whose acceptance the laws depend, can not have it. Their consent thus does not imply that laws are good and an imitation of those of the best regime. However, among their counsellors may be a true statesman; indeed, in the Eleatic's caricature of the Athenian regime, "doctors and pilots," who there represent true statesmen, are among those who advise on the law.<sup>186</sup> Rowe claims that such statesman would be irrelevant because they would be drowned out by the many, however, this ignores the fact, often bemoaned by Plato, that rhetors could have much influence over the people.<sup>187</sup> Furthermore, the art of rhetoric is said to be "precious and related to" the political art.<sup>188</sup> Thus, one means by which the second-best regime may obtain access to the laws of the best regime is through statesmen-counsellors. Rowe also criticizes the second-best regime's second means for developing laws, experience, as a means of access to the laws of the best

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<sup>184</sup>*Stat.*, 297d

<sup>185</sup>Rowe [1995: 227]

<sup>186</sup>*Stat.*, 298e

<sup>187</sup>Rowe [1995: 16]; *Republic*, VI.488a-489a is one example of Plato bemoaning the influence of rhetors.

<sup>188</sup>*Stat.*, 303e

regime, noting that it is often denigrated in comparison with art.<sup>189</sup> However, it was never doubted that art was superior to experience. Furthermore, experience does, in fact, receive some praise in Plato: "What is the [appropriate] education? Isn't it difficult to find a better one than that discovered over a great expanse of time?"<sup>190</sup> The philosopher-rulers of the *Republic*, despite their knowledge of the good, are still required to engage in public office for fifteen years "so that they won't be behind the others in experience."<sup>191</sup> Thus it is plausible that these means allow for the second-best regime to get some access to the laws of the best regime and so attain some inherent value by the standard of the political art. They may not yield knowledge, but in order for there to be a correspondence between the content of the two systems of law, true opinion should be sufficient. Thus Rowe's argument that the laws of the second-best regime have no correspondence to the laws of the best regime, and no inherent value, should be rejected.

### III. Prefiguring the *Laws*

In the final section of the *Statesman*, the Eleatic offers a brief description of the activity of the true statesman and this includes a sketch of a political regime which contains a number of innovations compared to the Kallipolis of the *Republic*. The Eleatic begins his sketch with an account of virtue which differs significantly from that offered in the *Republic*. In the *Republic*, the individual virtues of wisdom, defined as the calculating part of the soul possessing knowledge of the good of the whole; courage, the spirited part preserving the commands of the calculating part through pleasures and pains; moderation, agreement of all three parts of the soul that the calculating part should rule; and justice, each part of the soul doing its proper task, are not unified in the sense that an individual who possesses one of the virtues must possess them all, but they are interconnected: one must possess wisdom to have

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<sup>189</sup>Rowe [1995: 230], referring to *Gorgias*, 463b and *Laws* IV.720b

<sup>190</sup>*Rep.*, II.376e

<sup>191</sup>*Rep.*, VII.539e

any of them.<sup>192</sup> Thus, individual virtue in the *Republic* is largely restricted to the philosopher-rulers. In contrast, the *Statesman*, mentions only two virtues, courage and moderation. Courage is defined in the following passage: "whenever we admire speed and vigour and quickness, of mind and of body, and again of voice, we speak in praise of it by using a single appellation, that of 'courage.'"<sup>193</sup> And moderation in: "we say on each occasion that they are 'quiet and moderate'" those things that are, "down in the sphere of the mind and again in that of action themselves that are slow and soft, and then too things in the sphere of the voice that turn out smooth and deep."<sup>194</sup> Plato here frequently refers to what "we" say and what is "praised" suggesting that he is discussing a distinct, more popular and conventional, conception of virtue, rather than replacing the account of the *Republic*.<sup>195</sup> These virtues of courage and moderation are described as capable of being possessed singly by individuals, who then tend to be at odds with those who possess the other virtue, unlike in the *Republic* where the virtues are harmonious.<sup>196</sup> Although, the Eleatic does imply that there are rare individuals who possess both.<sup>197</sup> The Eleatic notes that both virtues are required for the city to run well and so he establishes the following regulation regarding the offices of the city: for those posts which require a single officer, the individual appointed must have both virtues and for those posts where a group is needed, some must be of the courageous type and others of the moderate.<sup>198</sup> The above comments suggest that the virtues of moderation and courage are more widespread in the city of the *Statesman* than in the *Republic*. This summary also reveals that the *Statesman's* city assigns the same offices to individuals who possess different natures and so rejects Kallipolis's foundational principle that different

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<sup>192</sup>*Rep.* IV.442c-e. Taylor [2008: 170-171] offers a more detailed account of this point.

<sup>193</sup>*Stat.*, 306e

<sup>194</sup>*Stat.*, 307a-b

<sup>195</sup>As Miller [2004: 107] notes. The *Republic* itself alludes to an alternative, "demotic (δημοτικός)" conception of virtue at VI.500d.

<sup>196</sup>*Stat.*, 307c

<sup>197</sup>*Stat.*, 311a

<sup>198</sup>*Stat.*, 311a

natures must perform different functions.<sup>199</sup> This principle will also not appear in the *Laws*.

### **Conclusion**

As interpreted above, the *Statesman* argues for rule of law and legal reform, both of which bring Plato into closer agreement with modern liberalism. It also breaks from the *Republic* in ways that prefigure the *Laws*, moving closer toward actual politics, offering a wider conception of virtue, and hinting at a city in which offices are not dictated by one's nature. Furthermore, the *Statesman* offers a powerful argument against the realization of the *Republic's* ideal city, moving us further away from that ideal: true statesmen are extremely difficult to identify. We now turn to the *Laws*, Plato's longest political work, which will occupy the remainder of this essay.

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<sup>199</sup>Noted by Lane [1995: 282].

## Chapter 4: The *Laws*

Unlike either the *Republic* or the *Statesman*, it is the explicit purpose of the *Laws* to describe a constitution and system of laws for an actual city, specifically a colony to be established in Crete.<sup>200</sup> Consequently, it offers the greatest amount of detail on our five chosen topics (freedom, rule of law, legal reform, consent of the ruled, democracy) and will receive the most extended treatment of the three dialogues discussed in this essay. Our four secondary topics will be discussed first, and we will finish with our central topic, freedom. To begin with, however, the *Laws* is an unfamiliar dialogue and so bears some introduction.

The *Laws* presents a conversation between an unnamed Athenian Stranger, Kleinias, a Cretan, and Megillus, a Spartan, that takes place on Crete in the course of a walk towards a sacred cave of Zeus.<sup>201</sup> Kleinias has been asked to develop laws for the aforementioned colony, to be named Magnesia, and the Athenian, with some comments from Megillus, advises him on this during their walk.<sup>202</sup> The constitution that the three develop is remarkably similar to that of Athens, with an Assembly, Council and popular courts, though there are a number of Dorian elements, as well as a few Platonic innovations. The city thus contains a number of democratic elements, and so is a drastic departure from the *Republic's* Kallipolis. Another drastic departure from the *Republic*, though one prefigured in the *Statesman*, is the emphasis placed on rule of law rather than rule of art.<sup>203</sup> The aim of Magnesia's laws is alternately stated to be (1) the whole of virtue, and (2) freedom, prudence (φρόνησις), and friendship.<sup>204</sup> The virtues in the *Laws* are different than those of the *Republic*, however. There are said to be four virtues: prudence (φρόνησις), leader of them all; moderation;

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<sup>200</sup>*Laws* III.702b-702e

<sup>201</sup>*Laws*, I.625a

<sup>202</sup>*Laws*, III.702b

<sup>203</sup>*Laws*, IV.715d

<sup>204</sup>*Laws*, III.688a-d; III.693a-c. Laks [2007: 136-137] offers a detailed account of the various ways the aim of the laws is described.

justice; and courage.<sup>205</sup> In defining the virtues, the Athenian does not utilize the tripartite conception of the soul of the *Republic*. Rather: prudence is described as intelligence (νοῦς).<sup>206</sup> Moderation is said to be self-restraint with regard to pleasures, and can "bloom naturally" even in "children and beasts."<sup>207</sup> Justice is when the opinion about what is best rules in the soul, even if it is incorrect.<sup>208</sup> Courage is the overcoming of fears and does not require reason; it too can occur by nature, and be present even in children and animals.<sup>209</sup> As some of these virtues can be present even in animals, it is evident that virtue is not in the *Laws* restricted to philosophers. Returning to the aims of the law, because prudence is a part of virtue it is apparent that these can be reduced to: (1) virtue (2) freedom (3) friendship. Only the first two of these will henceforth see discussion.

On one interpretation of the *Laws*, to offer a slight caricature, it is taken to depict a society in which an Inquisition-like Nocturnal Council rules with absolute power over an indoctrinated and docile populace. As might be inferred from the comments above, this is not the interpretation that will be offered here. Rather, the Magnesia to be depicted here is one in which its citizens possess an extent of real political and rational freedom. This was hinted at above because, as prudence, or intelligence, is a virtue, in aiming to make citizens virtuous the law is aiming at giving them intelligence.<sup>210</sup> This is exemplified by the education which the law prescribes, which the Athenian says is "education....in virtue, that makes one desire and love to become a perfect citizen who knows how to rule and be ruled" and adds that as for education that aims at "money, or some sort of strength, or some other sort of wisdom without intelligence and justice, the argument proclaims it be vulgar and unfree."<sup>211</sup> This passage connects citizenship, intelligence, and freedom and thus introduces what will prove

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<sup>205</sup>*Laws*, I.631b-d

<sup>206</sup>*Laws*, I.631c

<sup>207</sup>*Laws*, IV.710a

<sup>208</sup>*Laws*, IX.864a

<sup>209</sup>*Laws*, XII.963e

<sup>210</sup>Cornford [1950: 66-67] sketches such an interpretation.

<sup>211</sup>*Laws*, I.643e-644a. Unless otherwise noted, all *Laws* translations are from Pangle [1988].

to be an important characteristic of the city of the *Laws*: political freedom, that is, political engagement, is to be raised towards rational freedom, in so far as possible.

There is some truth in what might be called the authoritarian interpretation of the *Laws* that was mentioned above, however, and in criticizing it we must avoid suggesting the other extreme, namely that Magnesia is a liberal paradise. The city is constituted of a citizen population, which possesses significant leisure time for participation in religious rites and politics, supported by a substantial non-citizen population of slaves and foreigners, who engage in the necessary agricultural work and technical crafts.<sup>212</sup> Unsurprisingly, given our comments from Ch. 2 on Greek states, the city's laws invade deeply into private life. Although private property is allowed, unlike in the *Republic*, severe restrictions are placed on personal wealth, education is mandatory, and meals are to be in common. Religion plays an integral role in civic life.<sup>213</sup> Every citizen is to possess the necessities of life, but this life is strongly regulated by law and ancestral custom.<sup>214</sup> Clearly, the city is radically different from a modern liberal state. We begin our detailed comparison by establishing that Magnesia possesses rule of law.

### I. Rule of Law

The Athenian is emphatic that, in Magnesia, it is the law that must rule rather than an individual. He even calls those who are to be rulers the "servants of the laws."<sup>215</sup> Laws, however, are not to be the manifestation of the interest of the ruling classes, the advantage of the stronger, but "the distribution ordained by intelligence (τὴν τοῦ νοῦ διανομήν)."<sup>216</sup> As previously mentioned, the aims of the laws are virtue, freedom, and friendship. Although the *Laws* argues for rule of law, it has not abandoned the ideal of the *Republic*, the absolute rule

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<sup>212</sup>*Laws*, VII.806e-807e, cf. XI.919d-e

<sup>213</sup>These restrictions are further discussed on p. 74, below.

<sup>214</sup>*Laws*, VI.774c. As Laks [2000: 265] notes, many of the most invasive of Magnesia's laws, such as those on education and family, are not laws at all, but 'unwritten' customs.

<sup>215</sup>*Laws*, IV.715d

<sup>216</sup>*Laws*, IV.714a; cf. X.890d, XII.957c

of art, as the Athenian states that if an individual could be found who could possess absolute power without corruption, then he should not be subject to law but given absolute authority.<sup>217</sup> The Athenian goes on to say that this is because it is not right for "intelligence to be subordinate, or a slave" to anything. Elsewhere, he also comments that law would be inferior because its generalizations fail to account for the variety of political situations.<sup>218</sup> The move from this ideal to rule of law is made because, in another drastic shift from the *Republic*, the Athenian maintains that no such incorruptible ruler exists:

...it's necessary for human beings to establish laws for themselves and live according to laws, or they differ in no way from the beasts that are the most savage in every way. The cause of these things is this, that there is no one among human beings whose nature grows so as to become adequate both to know what is in the interest of human beings as regards a political regime and, knowing this, to be able and willing always to do what is best.<sup>219</sup>

Thus, as in the *Statesman*, rule of law is exhorted due to the unavailability of an ideal ruler, though the reason offered for this is not the difficulty of identifying such a ruler, but that even an individual with the knowledge to rule would become corrupted by power and so fail to rule in the common interest.

Judging from Books I-XI of the *Laws*, there is no reason to doubt that the dialogue exhorts rule of law. However, in Book XII the Athenian adds a magistracy to the city whose powers are ambiguous and taken by some to undermine the rule of law.<sup>220</sup> This magistracy is the Nocturnal Council. Although this Council, as we will soon see, possesses few explicit powers, the Athenian attaches great importance to it, saying "if, indeed, this divine council should come into being for us, dear comrades, the city ought to be handed over to it."<sup>221</sup> This description seems inconsistent with the limited power the Council is explicitly given and so some commentators have taken this passage, combined with the soon to be established fact that the areas of study that the Nocturnal Council engages in are remarkably similar to those

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<sup>217</sup>*Laws*, IX.875c-d; cf. IV.713d-e

<sup>218</sup>*Laws*, IX.875c-d

<sup>219</sup>*Laws*, IX.875a-d; cf. III.691c-d, IV.713c

<sup>220</sup>Barker [1960: 406-410], and Cornford [1951], are two such interpreters.

<sup>221</sup>*Laws*, XII.969b

of the *Republic's* philosopher-rulers, to imply that the Council has powers similar to those of the philosopher-rulers ie. absolute authority over the city.<sup>222</sup> Our claim is that Plato, much as in the liberal tradition, emphasizes the importance of rule of law. In order to defend this position, it is necessary to show that the Nocturnal Council does not possess the extensive power, ruling over the law, of the *Republic's* philosopher-rulers. This will be done by outlining the explicit responsibilities which the Athenian Stranger assigns to the Nocturnal Council, as well as the informal role it plays, and arguing that together these largely explain the great importance the Athenian attaches to the Council. If this is the case, there is no need to assign the Council further powers. We begin by describing the structure and responsibilities of the Council. The purpose of the Nocturnal Council is to be a "safeguard of the laws."<sup>223</sup> It is to achieve this through developing understanding of the aim of politics and how this aim is to be attained.<sup>224</sup> The Council is composed of: (1) the ten eldest Guardians of the Laws (νομοφύλακες) (2) priests who have been given awards for virtue, which presumably includes the Auditors (εὔθυνοι) (3) the current Supervisor of Education (ὁ περὶ τῆς παιδείας ἐπιμελητῆς) as well as all his predecessors (4) citizens who have traveled abroad and are judged worthy of membership (5) perhaps other citizens who have received awards for virtue. Furthermore, each member selects a young citizen between thirty and forty to join him on the Council.<sup>225</sup> The Council is to engage in studies of law, virtue, dialectic, the nature of the soul, astronomy, and theology, as well as some preliminary sciences, presumably mathematics and harmonics.<sup>226</sup> As previously mentioned this array of subjects bears much similarity to the system of education that Socrates prescribes for the philosopher-rulers of the *Republic*. The Athenian declines to prescribe the duration of time to

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222Barker [1960: 406-410] makes precisely this move. The education of the philosopher-rulers is described at *Rep.*, VII.522a-541b

223*Laws*, XII.960d

224*Laws*, XII.960c-d, 963a-b, 962b

225The composition of the Nocturnal Council is described twice, once at *Laws*, XII.951d-e and again at XII.961a-b. The two descriptions vary slightly, though agree on all important points. The integrated list offered here is from Morrow [1993: 503-504].

226*Laws*, XII.962b-963e, XII.966b-967e

be devoted to each subject, however, stating that this will be decided by the Council itself when it is formed.<sup>227</sup> The Nocturnal Council is given only two explicit duties: (1) conversing with those who have violated the laws on impiety and (2) interviewing individuals that the city sends abroad to learn of other regimes.<sup>228</sup> If this is the full extent of the Council's power, then it offers no threat to rule of law. However, Barker is correct in observing that the description of the Council as having the city "handed over to it" seems excessive given only these powers.<sup>229</sup> It may be possible to answer this objection, however, by showing that the Council plays a suitably important informal role to warrant such a description.<sup>230</sup> Much earlier in the *Laws*, the Athenian stated that the lawgiver's work was never complete, like that of a painter whose work seemed "never to reach a point where there can be no further improvement," and so the lawgiver would need successors.<sup>231</sup> Elsewhere, the Athenian states that the lawgiver will set up guards for the law "some grounded in prudence, others in true opinion."<sup>232</sup> Thus it is recognized that the city must possess individuals in it who have knowledge of the laws so that they may preserve them. The following description of the Nocturnal Council suggests it is meant to fulfill this need:

The intercourse and speeches of these men are always to be about laws and their own city, and anything they may have learned elsewhere that is different and pertains to such matters, as well as whatever branches of learning might seem to contribute to this inquiry by making things clearer for the learners, while, for those who don't learn these, things pertaining to laws appear darker and unclear.<sup>233</sup>

Thus the main purpose of the Council seems to be educational: ensuring that there are always individuals in the city who have knowledge of the laws. As Bobonich notes, because the young members of the Council are restricted to a maximum tenure of ten years many more individuals will pass through the Council than its limited numbers suggest and so,

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<sup>227</sup>*Laws*, XII.968e

<sup>228</sup>*Laws*, X.909a, XII.952b-c

<sup>229</sup>Barker [1960: 409-410]

<sup>230</sup>In this I am following Morrow [1993: Ch. IX]. Bobonich [2002: 391-395] offers a similar interpretation.

<sup>231</sup>*Laws*, VI.769d-e

<sup>232</sup>*Laws*, I.632c

<sup>233</sup>*Laws*, XII.951e-952b

rather than a tiny, closed group of educated elite, like the philosopher-rulers of the *Republic*, the Council is more like an institute of higher education which spreads learning through a significant portion of the populace.<sup>234</sup> Furthermore, the Council's members are some of the highest-ranking officials in Magnesia, most notably ten of the Guardians of the Law and the Supervisor of Education, and so the knowledge the Council develops will exercise extensive influence through them. Thus the Nocturnal Council fulfills a function far more important than its explicit duties suggest. Is this sufficient to warrant the Council's description as having the city "turned over" to it? One can only answer yes if one accepts that the Athenian is here engaging in some hyperbole, however, the alternative is even more unpalatable: it is to claim that, on the very last page of the *Laws* where this passage appears, Plato reverses not only the support for rule of law that was a fundamental principle in the first eleven books of the *Laws* but undermines the elaborate system of checks and balance that he built into Magnesia's legal system in order to ensure law that ruled. Thus, the most plausible interpretation of the powers of the Nocturnal Council is one of limited explicit power, with an important informal role, rather than surreptitious philosopher-rulers. In the *Laws*, Plato is committed to rule of law and thus, on this topic, agrees with contemporary liberalism.

## II. Legal Reform

Intimately connected with an emphasis on rule of law in the liberal tradition is an emphasis on the importance of legal reform. The Athenian condemns change on a number of occasions, making such statements as "change, we shall find, is much the most dangerous thing in everything except what is bad," and it is "divine good fortune" if the laws remain "unchanged for a great length of time."<sup>235</sup> Such comments suggest that legal reform is not welcome in Magnesia. This hostility to reform is borne out in some of the discussions of particular laws. For example, the Athenian prohibits changes in children's games, claiming

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<sup>234</sup>Bobonich [2002: 393-394].

<sup>235</sup>*Laws*, VII.797d-e

this causes the children to become adults who love innovation, though adding that changes "affecting outward appearance," rather than dispositions, as games do, need not be subject to such constraints.<sup>236</sup> More notable are his comments on the laws pertaining to choruses. These laws are said to undergo a ten-year period of modification by the supervisors of the choruses in cooperation with the Guardians of the Laws. The Athenian describes this process as follows: "each of the magistrates should bring to the attention of the Guardians of the Laws whatever omissions need correcting within their own jurisdictional spheres." After this period the laws are to be "unchangeable," though the Athenian quickly specifies these "unchangeable" laws can still be modified if "the magistrates and the whole populace and all the oracles of the gods" are in "consonant agreement" on the changes.<sup>237</sup>

It is ambiguous whether the requirement for unchangeability and the closing provision for change apply only to laws on choruses or to all the laws. As Bobonich notes, given the comment occurs in the midst of a passage explicitly about choruses, the narrower interpretation is the more plausible one.<sup>238</sup> That oracles must be consulted to change the laws in question further supports this interpretation. It is also unclear what the 'consonant agreement' required for altering the 'unchangeable' laws entails. One possible interpretation is unanimity of the entire populace, the magistrates, and the oracles but, as Morrow notes, such unanimity would be, in practice, impossible to obtain and so make this discussion of a means of legal reform an idle one.<sup>239</sup> As an alternative, he suggests that what is required is the assent of the magistrates as a body, the Assembly, and the oracles. Much as the choral laws, the laws regulating the public and common courts are elsewhere said, after a period of experimentation, to be "simply unchangeable."<sup>240</sup> In the case of these laws, a method is not offered for modifying these 'unchangeable' laws, but the similar terminology suggests a

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<sup>236</sup>*Laws*, VII.798a-b

<sup>237</sup>*Laws*, VI.772a-d; cf. VII.816c-d

<sup>238</sup>Bobonich [2003: 396]. Morrow [1993: 571n54] and Klosko [1986: 233] agree.

<sup>239</sup>Morrow [1993: 571n54]. Though Klosko [1986: 233], ignoring Morrow's argument, takes the passage as requiring unanimity.

<sup>240</sup>*Laws*, XII.957b cf. VIII.846c

analogous method of 'consonant agreement' may apply here as well. These passages, on choral laws and laws regulating courts, are the only ones that explicitly state that the laws are unchangeable, and as here argued, they apply to only narrow sections of the law. Given the Athenian's stated hostility to change, however, it may seem that extension to the rest of the laws is implied. It will now be argued that this is not the case.

It has already been noted that the Athenian compares the lawgiver to a painter, whose work seems "never to reach a point where there can be no further improvement." Such a painter is said to need successors to "make it right if the painting suffers some decay at the hands of time, as well as to make future touch-ups that improve on deficiencies." The lawgiver must not be "ignorant of the fact that he must necessarily have left very many such things that require being set right by some follower."<sup>241</sup> Thus the lawgiver's work is never complete, and continuously requires successors to not only repair decay but to make improvements. This suggests Magnesia is more amenable to legal reform than at first appeared. The Athenian later states that the lawgiver's successors are the Guardians of the Law, who are said to be not only enforcers of the law but "lawgivers as well."<sup>242</sup> The Athenian takes pains to ensure that the city will possess the knowledge that is required for maintaining and improving the laws through the Nocturnal Council, which has already been revealed to include the ten oldest Guardians of the Laws. He says of the Council:

Is this not our argument concerning all the serious things, that those who are really guards of the laws (φύλακας τῶν νόμων rather than νομοφύλακας) must really know what pertains to the truth about them, and must be capable of interpreting it in speech and following it in deed, judging by the standard of nature what things come into being in a noble fashion and what things do not?<sup>243</sup>

The Nocturnal Council, and through it the Guardians of the Laws and the rest of the city, is to seek the truth about laws. This is necessary for improving the laws, but would be useless if the laws were only to be enforced and left unchanged.

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<sup>241</sup>*Laws*, VI.769a-e

<sup>242</sup>*Laws*, VI.770a; cf. VIII.828b

<sup>243</sup>*Laws*, XII.966b

To summarize, the above passages show that the laws of Magnesia are not to be changed idly. In some areas, namely choral laws and laws regulating courts, after a period of time the laws are to be made extremely resistant to change. However, this rigidity should not be taken to extend to all the laws as this would fail to account for the Athenian's claims on the necessity of reform and the emphasis he places on inquiry into the truth of the laws. It may be objected that this conclusion fits poorly with the Athenian's emphatic portrayal of the disadvantages of change, but it must be remembered that this emphasis occurs not in the context of a modern Western society, in which the law is so stable that citizens can live their entire lives with only a passing familiarity with it, but in the context of a much more volatile Greek world in which constitutional changes, either peaceful or through violence in the form of revolution or defeat by a foreign power, were much more common. Athens underwent major constitutional changes in the course of the fifth century, a fact which the Athenian Stranger bemoans in the history of Athens he offers in *Laws* III. It is in response to this tendency of that the Athenian's condemn changes in the law.

### III. Preludes and the Consent of the Ruled

It was previously claimed that one of the central features of liberalism is that the ruled must consent to the state. The Athenian insists that the laws of Magnesia too be voluntarily accepted by its citizens, stating that it is "natural rule exercised by the law over willing subjects, without violence" that is "according to nature."<sup>244</sup> He offers what he considers a novel technique, one which "none of the lawgivers has ever reflected on," in order to obtain this consent: unlike laws in other cities, which the Athenian likens to "tyrannical commands" as they obtain obedience only with threats, laws in Magnesia are to be mixed, consisting of the typical command combined with a "prelude (προοίμιον)," which is meant to persuade.<sup>245</sup> However, there is significant scholarly disagreement over the sort of

<sup>244</sup>*Laws*, III.690c; cf. VII.832c, III.698b, 700a, 701b  
<sup>245</sup>*Laws*, IV.722b, 723a

consent the Athenian hopes to obtain from the Magnesians.<sup>246</sup> Specifically, the disagreement centers over whether this consent is to be obtained through rational argument or non-rational methods. Bobonich divides non-rational methods into (1) appeals to emotion and (2) inculcating false but useful beliefs.<sup>247</sup> With the second, he undoubtedly has in mind the "noble lie" of the *Republic*.<sup>248</sup> Bobonich specifies rational methods are those offering "good epistemic reasons" for a belief which, for our purposes, can be approximately described as reasons which the arguer himself would accept.<sup>249</sup> To the above typology must be added another method, one that is accepted as rational within modern liberalism: rational argument based upon premises that the arguer does not accept, but his audience does. This is the type of argument used by Rawls in obtaining his 'overlapping consensus.' Political liberalism seeks to justify itself by appealing to the various comprehensive doctrines of the citizens on their own grounds and emphasizes that the truth of these doctrines is irrelevant.<sup>250</sup> It is also noteworthy that Rawls, following Kant, is not interested in the actual consent of citizens but the consent of hypothetical rational representatives of citizens' comprehensive doctrines. Consequently, he accepts the use of coercion on actual citizens and so, presumably, also some extent of appeals to emotion, as long as such policies would be deemed acceptable by a rational citizen.<sup>251</sup> Indeed, it is hard to imagine a state which did not use some degree of appeals to emotion to encourage obedience to the laws. However, it is clear that modern liberalism would reject the sort of widespread deception exemplified by the noble lie because, among other reasons, it contradicts the liberal belief that laws should be publicly available.<sup>252</sup>

The interpretation of the *Laws'* doctrine of consent to be argued for here is as follows:

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246Morrow [1953] and Stalley [1983] argue that Plato's methods in the *Laws* are largely non-rational, while Bobonich [1999] argues they are rational.

247Bobonich [1999: 374]

248*Rep.* III.414b-417b

249Bobonich [1999: 378]

250Rawls [2005: 138]

251Rawls [2005: 138]

252See p. 11, above

the Athenian Stranger is interested in actual consent rather than hypothetical consent and in order to obtain this consent he is willing to utilize non-rational persuasion in the sense of appeals to emotion, but not in the sense of instilling false but useful beliefs. He also uses rational persuasion in the sense of appealing to beliefs he does not accept though he values such persuasion hardly more than non-rational persuasion because neither respect rational freedom, that is, being ruled by one's own reason. Henceforth this method of persuasion will also be referred to as non-rational, though it should be remembered that this is to hold Plato to a higher standard of rationality than liberalism requires. The goal of the preludes, it will be shown, is to obtain consent, largely through using the two non-rational methods sanctioned above. The Athenian values actual consent as this respects the political freedom of citizens; political freedom requires active involvement in government and hypothetical consent would not be sufficient for this. He uses non-rational methods to obtain this consent, even though he offers arguments for his proposals, because the majority of citizens are not interested in or not capable of understanding these arguments. That the Athenian aims at rational consent, even if he does not think it will ever become very widespread, is evidenced by the facts that some preludes do offer rational argument and that he prescribes a system of education for the Magnesians that cultivates reason. The argument for this interpretation will now be presented.

The Athenian offers his first argument for preludes in Book IV, using a comparison between free doctors, who learn "by following nature" and slave doctors, who acquire their art by "following their masters' command, by observing, and by experience, but not by following nature."<sup>253</sup> The slave doctor mostly treats slaves and neither gives nor receives from his patients "any account of each malady afflicting" them, instead, "claiming to know with precision," he gives "commands just like a a headstrong tyrant."<sup>254</sup> In contrast, the free

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<sup>253</sup>*Laws*, IV.720b

<sup>254</sup>*Laws*, IV.720c

doctor mostly treats free men and investigates "according to nature, communing (κοινούμενος) with the patient himself and his friends...and, as much as he can, teaches the one who is sick." The free doctor "doesn't give orders until he has in some sense persuaded" the patient.<sup>255</sup> Thus, not only does the slave doctor give tyrannical commands rather than commands mixed with persuasion, but he fails to listen to his patient, lacks an account according to nature, and yet also thinks he knows more than he does. The Athenian goes on to say that a similar situation obtains with laws: a law can use only threats or it can be mixed, offering persuasion along with compulsion.<sup>256</sup> He calls the part of the law that aims at persuasion, the law's "prelude" and insists that "the lawgiver must always provide that all the laws, and each of them, will not lack preludes."<sup>257</sup> The purpose of the prelude is to persuade, as already mentioned, but also to place the listener "in a frame of mind more favorably disposed and therefore more apt to learn something. That's why, according to my argument (κατά τὸν ἐμὸν λόγον) at least, this would correctly be called a 'prelude' rather than an 'argument' (λόγος) of the law."<sup>258</sup> Thus the purpose of the prelude is not to offer an argument for the law but to persuade the citizens as well as make them receptive and prepared to learn. Bobonich counters that the mention of "learning" here implies that the persuasion is to be rational, but given the large non-rational component that Plato places in all his accounts of education, including, it will be seen, the one in the *Laws*, this is hardly convincing.<sup>259</sup>

The claim that the preludes are not meant to offer rational argument is borne out by considering a couple of the example preludes the Athenian provides. The prelude to the law on hunting is as follows:

Friends, may you never be seized by a desire or lust for hunting on the sea, for angling, or in general for hunting of animals that dwell in water, or for those basket-traps that

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<sup>255</sup>*Laws*, IV.720d

<sup>256</sup>*Laws*, IV.722b-c

<sup>257</sup>*Laws*, IV.723b, though the Athenian quickly qualifies this by saying that the lawgiver has some discretion on whether to attach a prelude to a law or not.

<sup>258</sup>*Laws*, IV.723a-b

<sup>259</sup>Bobonich [1999: 383-384]

perform the toil of a lazy hunt, whether the hunters are awake or asleep.<sup>260</sup>

This prelude contains no argument, it merely exhorts one particular type of behaviour by giving it praise. The prelude to the law against murder operates slightly differently. To discourage murder, it appeals to what "many earnestly believe," namely that "vengeance is exacted for such things in Hades."<sup>261</sup> By referring to the "many," the Athenian suggests that he himself does not share the belief in punishment in the afterlife, which makes this prelude's method non-rational by Plato's standard, though modern liberalism would consider such an appeal legitimate. As Bobonich notes, none of the preludes utilize lying and though at one point lying is acknowledged as useful under some conditions, these conditions are claimed to never obtain.<sup>262</sup> Thus it is undeniable that there are preludes that do not attempt to offer rational argument and so offering such arguments can not be the function of preludes as preludes. What purpose do they serve, then? The Athenian does not explicitly state why preludes must be adopted, but his comparison of law to free and slave doctors suggests that it is freedom that entitles one to persuasion. Although citizens are not the only free persons in Magnesia, freedom, for the Athenian, is closely connected to citizenship; indeed, as Morrow notes, he occasionally uses ἐλεύθεροι to denote citizens.<sup>263</sup> This connection between freedom and citizenship suggests that it is because of political freedom that one is entitled to persuasion. As previously noted, political freedom involves being engaged in the political regime by which one is governed and so giving actual consent to the regime can exemplify such freedom. Thus, it is out of respect for the citizens' political freedom that they are offered persuasion. This interpretation is supported by the Athenian's referring to the slave doctor's prescriptions using political terminology, calling them "tyrannical commands." It has already been mentioned that, in Magnesia, the Athenian hopes to bring together political freedom and rational freedom. It will now be shown how this is implemented with respect to

<sup>260</sup>*Laws*, VII.823d-e. Cited by Laks [2001: 111]

<sup>261</sup>*Laws*, IX.870d-e

<sup>262</sup>Bobonich [1999: 395], citing II.663a-634a.

<sup>263</sup>Morrow [1993: 112n51], citing VIII.848a, VII.816e, 794a, 807d.

preludes.

The Athenian returns to the question of preludes in Book IX, stating that the comparison of legislation to medicine was "not...a bad image" and now elaborates on the method of the free doctor, saying he carries "on a dialogue (διαλεγόμενον) with a free man who was sick - using arguments that come close to philosophizing (φιλοσοφεῖν), grasping the disease from its source, and going back up to the whole nature of bodies."<sup>264</sup> This is a major shift from the previous description of the free doctor's method. Whereas before he communicated (κοινώω) with his patient, now he engages in dialogue (διαλέγω) with him, using the same term which Socrates uses for dialectic, and the method is further described as "close to philosophizing (φιλοσοφεῖν)."<sup>265</sup> The prelude offered shortly after this, the prelude to the laws on impiety, is far more accurately captured by this description than the one offered in Book IV. This prelude takes up approximately twelve Stephanus pages and in it the Athenian offers a number of sophisticated philosophical arguments to prove that: (1) gods exist (2) they care about human beings (3) they can not be bribed. The Athenian introduces the prelude by saying he will "investigate (σκεψώμεθα) whatever it is that those people over there [*sc.* atheists] happen to think" even though it requires engaging in "arguments (λόγοις)... of enormous length."<sup>266</sup> Part of this argument is even portrayed as a hypothetical dialogue with a young atheist. The prelude on impiety offers a serious rational argument and there is no suggestion that the Athenian is here presenting a position which he does not entertain himself. Thus the prelude on impiety does offer the sort of good epistemic reasons that Bobonich desires. How can this be reconciled with the previous, non-rational preludes? The Athenian has stated that the purpose of preludes is persuasion and has shown, through the use of preludes such as that of the laws on hunting, that he is willing to use non-rational means to obtain this. He values the consent that persuasion produces, even if through

<sup>264</sup>*Laws*, IX.857c-d. The rarity of cognates of φιλοσοφία in the *Laws* is discussed on p. 80, below.

<sup>265</sup>For Socrates' use of διαλέγω as 'dialectic,' see *Republic*, V.454a, VI.511c and *Theaetetus*, 167e.

<sup>266</sup>*Laws*, X.889a, 890e

non-rational means, because to simply threaten the citizens would be a "tyrannical command" and contrary to their political freedom. Non-rational consent is the best that the majority of citizens can achieve, since it is "difficult to follow arguments of this kind [*sc.* sophisticated arguments like those of the prelude to the law on impiety] spoken before crowds," but the Athenian also hopes to merge political freedom with rational freedom in those citizens that are capable and so he offers preludes like those of the law on impiety.<sup>267</sup> This interpretation is further supported by the sort of education offered in Magnesia.

That the Athenian's ideal, not always attained due to the citizens' failings, is to have the rational consent of the citizens is evidenced by the education which he specifies for them. This education is to be prescribed by the state and compulsory for every citizen.<sup>268</sup> It is to begin, following Greek convention, with music and gymnastic. It is then to proceed to education in letters, which at the time typically involved reading, writing and literature. The texts to be read are the *Laws* itself and other works like it.<sup>269</sup> After letters is to come study of the lyre. As in the *Republic*, all the texts and music the citizens are to be exposed to is carefully selected by the state. This may seem to militate against the argument that the Athenian aims at cultivating the independent rational powers of the citizens. However, as Bobonich notes, Plato subjects even the philosopher-rulers of the *Republic* to a rigidly constrained education in order to properly form their desires which suggests that he thinks such cultivation necessary for the proper operation of reason.<sup>270</sup> Thus, a rigid early education for forming character may either be for constraining intellect, or setting it free. Which Plato here intends is made clear by the final subject which he prescribes for the common education: mathematics. The education in mathematics, description of which takes up five Stephanus pages, is to consist of numbers, mensuration, and elementary astronomy.<sup>271</sup> The

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<sup>267</sup>*Laws*, X.890e

<sup>268</sup>*Laws*, VII.804d

<sup>269</sup>*Laws*, VII.811e

<sup>270</sup>Bobonich [1999: 390]

<sup>271</sup>*Laws*, VII.817e

first of these, the study of numbers, is to consist of simple problems in numbering and calculating.<sup>272</sup> Mensuration is the study of measuring lines, surfaces, volumes, and motions, including incommensurability.<sup>273</sup> Education in astronomy is to involve the controversy over whether the planets travel a fixed orbit or wander randomly.<sup>274</sup> This is the extent of the education to be given to all the citizens; there are also higher studies to be pursued by a "certain few," which are those subjects discussed above as the interests of the Nocturnal Council.<sup>275</sup> The focus on mathematics is important for our topic at hand, the rationality or docility of the citizens, as the Athenian elsewhere says of mathematics that "it awakens him who is by nature sleepy and unlearned, giving him ease of learning, memory, and sharpness, and thus making him surpass his own nature by a divine art."<sup>276</sup> Presumably, if it was the Athenian's goal to ensure the docility of the citizens, he would not give them such an education. The fact that the *Laws* itself is to be a set text is also an important fact, as it reveals that the citizens are to be exposed to philosophical argumentation. Also, if the Athenian did intend to exhort deception of the citizens in the *Laws*, it is unlikely he would require those he was deceiving to read his plans. Indeed, one cannot imagine Socrates suggesting that the citizens of Kallipolis read the *Republic*, with the noble lies and secret eugenics that it prescribes. Thus the Athenian aims to obtain the consent of the citizens of Magnesia to their regime. Consent is to be obtained out of respect for the citizens' political freedom, which is why such consent must be actual and non-rational persuasion permitted, though rational consent is the Athenian's ideal. Thus the Athenian tries to raise the citizens' political freedom into rational freedom. We now turn to a topic connected with the consent of the ruled: democracy.

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<sup>272</sup>*Laws*, VII.817e

<sup>273</sup>*Laws*, VII.819d, V.747a, VII.820c

<sup>274</sup>*Laws*, VII.820e-822d

<sup>275</sup>*Laws*, VII.818a

<sup>276</sup>*Laws*, V.747b, cf. VII.819c

#### IV. The Mixed Constitution: A Move Towards Democracy

In Chapter 1, it was noted that some prominent liberal thinkers maintained that liberalism does not entail democracy, though it is still a part of the liberal tradition because it has proven to be effective at preserving the freedoms liberalism values.<sup>277</sup> It will now be shown that the regime that Plato argues for in the *Laws* is far more friendly to modern democracy than the *Republic*. The Athenian states that there are two primary constitutions (μητέρες πολιτειῶν), monarchy, exemplified by Persia, and democracy, exemplified by Athens, out of which all other constitutions are made.<sup>278</sup> A city must partake of both of these if it is to possess "freedom and friendship, together with prudence."<sup>279</sup> The motivation for avoiding pure monarchy is the same as that for rule of law: no single individual can possess absolute power without being corrupted. However, why must pure democracy, which in contemporary Greece meant distributing offices by lot, be avoided as well? The Athenian offers one reason why this is the case through his description of the history of Athens in Book III: the excessive freedom this involves eventually leads to ignoring the laws and contracts thus destroying the city.<sup>280</sup> Another reason is that for friendship to exist among the citizens there must be equality, specifically, geometric equality: honors, including offices, must be distributed in proportion with virtue, which the lot ignores. For this reason, the Athenian institutes the use of elections for selecting magistrates, rather than the lot, though he states that it is not possible to completely eliminate the lot as doing so would produce "discontent of the many."<sup>281</sup> One obvious reason for selecting the mean between democracy and monarchy, involving more people in decision-making, is that it improves deliberation, ie. it more reliably selects magistrates of greater competence. Aristotle offers just such an argument, saying that the many, although not individually good men, can collectively be

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<sup>277</sup>Berlin, p. 15, and Locke, p. 9

<sup>278</sup>*Laws*, III.693d

<sup>279</sup>*Laws*, III.693e

<sup>280</sup>*Laws*, III.701b-c

<sup>281</sup>*Laws* VI.756e-758a

better at decision-making than the few best people because each of the many can "have some part of virtue and practical wisdom" and so "each of them judges one part, another another, and all of them the whole thing."<sup>282</sup> Plato does not have the Athenian offer this argument explicitly, but his equating distributing offices in accordance with virtues and elections suggests it, and he does acknowledge that the many are capable of recognizing virtue:

the many happen not to be as deficient in their judgment of who among the rest are wicked and good, as they are deficient in the essence of virtue (οὐσία ἀρετῆς)...very many even of those who are especially bad can distinguish well, in their speeches and opinions, the better human beings from the worse.<sup>283</sup>

Thus Plato's motivation for exhorting the involvement of the many in government is partially pragmatic: given that it is not possible to have an uncorruptible ruler, the populace organized into a democracy is the best alternative for decision-making. However, does Plato exhort a mixed regime involving democracy for other than pragmatic reasons? More specifically, does he, like Aristotle, maintain that political activity is a necessary part of the good life for a human being?<sup>284</sup> It seems that this is not the case. The Magnesian constitution is said to be only second-best, with the best constitution still being one where an intelligent ruler has absolute authority.<sup>285</sup> The reason the Athenian Stranger offered for rejecting monarchy was not that it excluded the many from a good life, but for the pragmatic reason that there is no such intelligent ruler available. Furthermore, the Athenian at one point describes the inhabitants of a city which possesses a divine, autocratic ruler as "without civil strife, and happy."<sup>286</sup> This shows that political engagement is not necessary for a happy life. To summarize, the city of the *Laws* is to be a mixture of democracy and monarchy, which is ultimately revealed to be a city largely ruled by magistrates elected by and from the body of citizens. Plato's motivations for doing this are largely pragmatic: an ideal, uncorruptible ruler does not exist and the people, when subjected to some constraints, embody the most skill at

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<sup>282</sup>*Politics*, 1281a40-1281b15. Translation from Robinson [1995]

<sup>283</sup>*Laws*, XII.950b-c

<sup>284</sup>See *Politics*, I.ii, especially 1253a1-5, the famous phrase: "man is by nature a political animal."

<sup>285</sup>*Laws*, IX.875d, cf. V.739e

<sup>286</sup>*Laws*, IV.713e; cf. V.739d

ruling. This is an even greater move towards liberalism than it seems, as the democracy that the Athenian rejects is that of the lot, and the system it adopts is similar more like modern elective democracies than was Athenian democracy.

## V. The Aims of the State

Perhaps the greatest divide between liberalism and the political doctrine that Plato expresses in the *Laws* is that which has been said to be the break between modern political philosophy and classical political philosophy: whereas classical political philosophy takes the proper goal of the state to be the happiness of its citizens, modern political philosophy has the state aim at a more neutral goal such as peace. In the *Laws*, the aims of the city include cultivating virtue in its citizens.<sup>287</sup> In contrast, Dworkin described the central feature of liberalism as neutrality towards the good, refusing to impose a particular way of life on citizens. This difference is outside our indicated focus of our essay, but its importance requires that some comment be made. The disagreement on the proper aims of the state is a chasm between liberalism and Plato's political philosophy that can not be bridged. However, it may be narrowed. Liberalism can be brought closer to Plato by noting that it is not as neutral between different conceptions of the good as is sometimes thought. This is most evident in Hobbes, who realized that a state that aims at ensuring peace based upon the fact that human beings' greatest fear is violent death must exclude Christians who fear God more than death. Rawls too recognizes this, explicitly acknowledging that not all ways of life can be welcomed in the liberal state, though claiming that their exclusion is not based on their truth or falsity.

Plato can also be brought closer to liberalism by noting that, although he aims at imposing a particular conception of what is good on the citizens of Magnesia, this conception of the good possesses freedom as an important component. This is radically

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<sup>287</sup>*Laws*, I.624a-632d; VIII.836d

different from the sort of regime which, for example, a radical Islamist might espouse where piety was the greatest virtue. However, as revealed in Chapter 2, the sort of freedom that Plato values is not the negative freedom of liberalism, which aims at allowing one to live one's life as one pleases. To complete our comparison of Plato and liberalism, we must see the implications Plato's value of freedom has for his state.

## VI. Freedom in the Laws

### *Political and Rational Freedom*

In our discussion of the *Republic*, we had distinguished three distinct conceptions of freedom: negative, political, and rational.<sup>288</sup> Much as in the Kallipolis of the *Republic*, negative freedom is allowed little place in Magnesia. To cite a few prominent examples, citizens are restricted in their choice of professions, being forbidden from participating in technical crafts.<sup>289</sup> Wealth is constrained to amounts between a minimum of one's property allotment and maximum of four times this.<sup>290</sup> Laws even regulate marriage, with men not married by age thirty-five subjected to a fine.<sup>291</sup> *Laws X* propounds laws on impiety which seem to offer a great threat to intellectual freedom.<sup>292</sup> Citizens are to be released from menial pursuits, these being performed by slaves and foreigners, but they still "wholly lack leisure" because they are to spend all their time cultivating virtue. The Athenian even states "there should be a schedule regulating how all the free men spend their time, beginning at dawn and extending to the next dawn and rising of the sun."<sup>293</sup> However, this dearth of negative freedom must be reconciled with the already noted fact that one of the explicit aims of Magnesia's laws is freedom.<sup>294</sup> In Ch. 2 it was argued that, in the contemporary Greek world,

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<sup>288</sup>Laks [2007: 133n15] notes there is another conception of freedom in the *Laws*, and that is freedom, and slavery, as a legal status. This conception appears in legislative contexts, such as IX.866d, 867c, and 868c.

It is of little theoretical importance and so will not be discussed here any further.

<sup>289</sup>*Laws*, XI.919d-e

<sup>290</sup>*Laws*, V.744d

<sup>291</sup>*Laws*, IV.721d-e

<sup>292</sup>These laws receive extensive discussion on p. 76 ff., below.

<sup>293</sup>*Laws*, VII.807c-d

<sup>294</sup>p. 54, above.

this reconciliation was effected by it being political freedom, rather than negative freedom, that citizens saw themselves as possessing. The Athenian Stranger presents a similar solution, as revealed when he praises "education....in virtue, that makes one desire and love to become a perfect citizen who knows how to rule and be ruled."<sup>295</sup> This passage describes the perfect citizen as one who knows how to "rule and be ruled," ie. one with political freedom.<sup>296</sup> Thus it is the political freedom of citizens at which the laws are to aim. As revealed in the discussion of the mixed constitution in the previous chapter, the citizens of Magnesia play a major role in their government, so this goal is to a large extent achieved. Citizens both elect offices and fill them from their own number, as well as engaging in the popular courts. Rational freedom is the remaining conception of freedom to be discussed. It has already been noted that one of the aims of the law is virtue, and a part of virtue is prudence. The education that the Athenian prescribes for the Magnesians, which has just been noted to aim at producing good citizens, was also shown in Ch. 4 to cultivate their rational faculties. The Athenian even describes education that develops wisdom without intelligence as "unfree (*ἀνελεύθερον*)"<sup>297</sup> Thus being a good citizen also involves cultivating one's rational faculties; in Magnesia, political freedom and rational freedom are to be brought closely together, at least as far as possible. This is not surprising given the laws of Magnesia description as the "the distribution ordained by intelligence."<sup>298</sup> However, as already noted, modern liberalism not only exhorts freedom, but aims to make these freedoms equally distributed. The Magnesian regime radically differs from liberalism on this point, as it makes widespread use of slavery, almost completely removing this segment of the population's negative, as well as political, freedom. However, the Athenian does argue, against Greek convention, for substantial freedoms to be given to another segment of the

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<sup>295</sup>*Laws*, I.643e-644a

<sup>296</sup>Aristotle uses the same formula in the passage quoted on p. 24.

<sup>297</sup>*Laws*, I.644a

<sup>298</sup>*Laws*, IV.714a

population: women. He urges the lawgiver to pursue "whatever way a member of the community, whether his nature be male or female, young or old, might ever become a good man (ἀνὴρ ἀγαθός), possessing virtue of soul that befits a human being (ἀνθρώπων)," and states that women are to have the same education as men: "my law would say all the very same things about females that it says about males, including that females should be trained on an equal basis."<sup>299</sup> Most importantly for our purposes, it seems women can participate in the Assembly, as well as hold office, and so are largely equal with men in terms of political freedom.<sup>300</sup> Thus citizens, both men and women, possess little negative freedom but significant political freedom. Political freedom was argued to lead into rational freedom, however, there is a significant threat to such freedom in Magnesia: the laws on impiety. These might seem to prevent the free inquiry that is necessary for the epitome of rational freedom, philosophy, to exist. It will now be argued that this is not the case.

### *Freedom for Philosophy*

The main body of the laws on impiety is as follows:

If someone should be impious in words or deeds, the one who comes across such behaviour is to help defend the city by reporting the occurrence to the magistrates, and the first magistrates that learn of it are to bring the accused before the judicial court designated to judge these matters according to the laws. If some magistracy hears of such a thing and should fail to do this, it shall become liable to prosecution for impiety by anyone who wishes to seek retribution on behalf of the laws. If someone should be convicted, the court is to impose one penalty for each one of those who are impious. Imprisonment is to be imposed in every case.<sup>301</sup>

The Athenian goes on to remind us that there are three types of impiety, which he stated earlier were (1) disbelieving in the existence of gods (2) believing in the existence of gods, but maintaining that they are indifferent to human beings (3) believing in the existence of gods and that they care about the affairs of human beings, but maintaining that they can be

<sup>299</sup>*Laws*, VI.770c-d (however, VI.781a-b mitigates this slightly); *Laws*, VII.804d-805a, cf. IX.882c, VII.794c-d. However, women do suffer some minor legal disadvantages: XI.937a-b and VI.785b.

<sup>300</sup>Women participate in the Assembly: VI.785b with VI.753b. Also see Morrow [1993: 157]. VI.785b is ambiguous on whether women can hold office, but Bobonich [2002: 385-387] persuasively argues that it should be interpreted as allowing it. Bobonich [2002: 389] also notes that the political freedom of women will be somewhat limited due to the reintroduction of the family in the *Laws*.

<sup>301</sup>*Laws*, X.907d-908a

bribed with sacrifices and prayers.<sup>302</sup> This is the full description of what constitutes impiety. It is quite brief, and so it is evident that judges are to have much discretion on what is to be considered impiety, much as was the case in Athens.<sup>303</sup> The room for discretion is further enlarged by the fact that, also as at Athens, Magnesia lacks a public prosecutor and so private citizens must take it upon themselves to bring forward suits on impiety. This was not a light task in Athens, nor is it in Magnesia. In both cities, one must represent oneself, making the process time-consuming, and defeat might lead to a fine.<sup>304</sup> Thus only those who are confident of victory and with a strong personal motive would even bring such a suit. Due to this discretion, the attitude of the populace and the magistrates will play a significant role in the implementation of the laws on impiety. It will now be argued that the prelude to the law on impiety reveals that the Athenian hopes to ensure that this attitude is one tolerant of, if not friendly to, free inquiry.

In the preface to the laws on impiety the Athenian makes it clear that the opinions he finds most threatening to the city are those of "our new and wise men" who claim that the heavens are not evidence of the gods but just "earth and stones, incapable of thinking anything about human affairs." Here it seems the Athenian is alluding to, in the words of Morrow, "the whole of previous physical science, from Thales to Democritus."<sup>305</sup> If it is indeed the Athenian's goal to suppress such opinions in the city, one must wonder why he does not just remain silent about them since it is clear that he does not think that such things are known to Kleinias and Megillus, which, since Magnesia is to be located in Crete and constituted largely of Dorians, would presumably hold of its citizens as well. He reveals this when he says to Kleinias and Megillus that such things "you would hardly know of because you live entirely out of it, and which would escape your notice" because of "the virtue of the

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302*Laws*, X.885b

303Morrow [1993: 471]

304Morrow [1993: 292-296], citing, for Magnesia, *Laws*, XI.938b-c.

305Morrow [1993: 479]

regime" in Crete and Sparta.<sup>306</sup> Indeed, Kleinias proves so ignorant of rational inquiry that he thinks it "easy" to show the gods exist, unconvincingly providing as evidence the widespread agreement, among both Greeks and barbarians, on the matter and the order of the heavens.<sup>307</sup> Thus, in arguing against such opinions the Athenian is simultaneously introducing them to Kleinias and Megillus, as well as into the city.<sup>308</sup> As we will soon see, the explanation of this behaviour is that it is not the Athenian's goal to suppress free inquiry, but to encourage it, though within certain bounds. To achieve this goal, he must convince lawgivers like Kleinias of the value of such inquiry. It is evident that Kleinias does not begin the conversation on impiety valuing free inquiry, as the Athenian initially describes him as believing the only reason for denying a conventional truth, like the existence of the gods, is a "lack of self-restraint."<sup>309</sup> The implication of this opinion is that the proper response to disbelievers is punishment to correct their vicious characters; this is hardly an attitude friendly to free inquiry. By citing the arguments of the atheistic Pre-Socratic philosophers, the Athenian shows Kleinias that a person may also disagree with conventional opinion due to ignorance, or "lack of learning (*ἀμαθία*)."<sup>310</sup> In light of this, Kleinias changes his position, now saying that it is "difficult" to respond to the atheists' arguments and prove that the gods exist. The Athenian then obtains Kleinias's consent to attempt to respond to the arguments with persuasion, rather than just threatening them into silence.<sup>311</sup> Kleinias accepts that doing this will require going "outside the realm of legislation," thus revealing newfound respect for rational argument rather than just legislating punishment.<sup>312</sup> What response to the atheists does the Athenian prescribe? As Strauss notes, in the course of the hypothetical conversation with a young atheist that the Athenian provides to illustrate his argument, he does not tell the

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306*Laws*, X.886b-c

307*Laws*, X.886a

308Since the *Laws* is to be read by the citizens - *Laws*, VII.811e.

309*Laws*, X.885e, 886b

310*Laws*, X.886b

311*Laws*, X.890b-c

312*Laws*, X.891d

hypothetical young man to cease his inquiry, but to refrain from passing judgment on these matters "until you have a doctrine about these matters that has become as clear as it can be" and in the meantime "inquire from others, and especially from the lawgiver."<sup>313</sup> Thus rather than forbidding inquiry, the lawgiver encourages it and not only with the lawgiver himself but between the citizens, though at the same time discouraging passing judgment. The Athenian's position here is further elucidated by a passage from Book IX in which he states there are two types of ignorance: (1) simple, not knowing a thing and not thinking one does (2) double, thinking one knows a thing that one that does not know. The first type of ignorance is only a "light" fault while the second is a "grave" one that can threaten the city.<sup>314</sup> Thus the Athenian believes harmful opinion to be only a minor fault and it is a lack of self-knowledge which he thinks the greater threat. This explains why he would allow inquiry and yet discourage passing judgment.

The above argument might be countered by pointing out that the Athenian condemns the atheists, saying they suffer from a "harsh lack of learning" and are motivated by "gluttony for pleasure." However, the Athenian's condemnation must be tempered with the fact that he has much more in common with them than with Kleinias and Megillus.<sup>315</sup> The Athenian himself expresses the great distance that lies between himself and his two interlocutors when, drawing an analogy between an argument he is making and a rapid-flowing river, asks them to step aside from the argument as he is the only one capable of fording it.<sup>316</sup> Kleinias has been shown to have given little thought to the nature of the gods, largely trusting to convention, while the atheistic natural philosophers, like the Athenian, have given much time to the study of nature, though they disagree with him on what it is. Most tellingly, when in Book XII the Athenian refers back to the prelude to the law on

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<sup>313</sup>*Laws*, X.888c, cited in Strauss [1975: 143]

<sup>314</sup>*Laws*, IX.863c

<sup>315</sup>*Laws*, X.886c, X.888a

<sup>316</sup>*Laws*, X.892d-893a

impiety, he even describes the atheists as "those who philosophize (τοὺς φιλοσοφοῦντας)," one of only two instances of cognates of φιλοσοφία in the *Laws*.<sup>317</sup> Thus the Athenian can only be thought to be unreservedly condemning the atheists if he is considered to be doing the same to himself. That the laws on impiety are intended to be tolerant of philosophy, or at least more tolerant than contemporary states, is borne out in the punishments they prescribe for those convicted of impiety.

The Athenian specifies that each of the three previously mentioned types of impiety can occur in two ways: (1) in a naturally just disposition who hates bad men and is frank about his disbelief (2) in a disposition that lacks restraint and is full of guile, tricking others through maintaining false beliefs.<sup>318</sup> Thus there are six variations of impiety, though the Athenian specifies only two punishments, one for each of the two just-mentioned ways of being impious. The naturally just impious individual is to suffer imprisonment for five years in a prison called the σωφρονιστήριον ("Moderation-Tank").<sup>319</sup> In the course of this imprisonment, he is to converse only with the Nocturnal Council so that they may admonish him. Upon the completion of this term, if he is moderate he is to be released but if he is brought to trial and convicted a second time for the same offence the penalty is to be death.<sup>320</sup> It is noteworthy that it is moderation that the upright impious individuals are to develop, rather than correct opinion. This supports our above argument that the problem with the atheist is not his realm of inquiry, which the lawgiver has already been shown to accept, but that he is overzealous or "maddened."<sup>321</sup> The second punishment, for those impious individuals who lack self-restraint, is life imprisonment in one of the deserted areas of Magnesia with a prohibition on conversing with any free man. When such a person dies,

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<sup>317</sup>*Laws*, XII.967d; the other instance occurs at IX.857c-d

<sup>318</sup>*Laws*, X.908b-e

<sup>319</sup>Pangle [1988: 535n42] suggests that Plato coined this term in allusion to the term Aristophanes applies to the school of Socrates in the *Clouds*, φροντιστήριον (which Pangle translates "think-tank").

<sup>320</sup>*Laws*, X.909a

<sup>321</sup>*Laws*, X.888a

their body is to be to cast outside the borders of the country, unburied.<sup>322</sup> Cornford characterizes the Nocturnal Council and its use of the laws on impiety as a sort of Inquisition, and darkly hints at the fate Socrates would have met in Magnesia.<sup>323</sup> This picture should now be seen to be false, and as for Socrates: if convicted of impiety in Magnesia, he would almost certainly been considered one of the naturally just impious, indeed the description of such an individual as someone "full of frankness in his speech about gods" who "by his ridicule of the rest would perhaps make others like himself" seems tailored to fit him, and he would have consequently been imprisoned in the σωφρονιστήριον for up to five years, with regular conversations with the philosophically-trained Nocturnal Council.<sup>324</sup> This is still a harsh punishment, but warrants the following response to Cornford's question of the fate of Socrates in Magnesia: his treatment there would have been more gentle than what he received in Athens.

In the last few lines of the *Laws*, both Kleinias and Megillus insist that the Athenian Stranger join them in founding the city.<sup>325</sup> The Athenian is clearly the philosophical character in the *Laws* and so at its very close the dialogue offers a final piece of evidence of the city's acceptance of philosophy and free inquiry. To the eyes of a modern liberal, the undeniable constraints that Magnesia does place on philosophical inquiry may seem unjustified, but it must be remembered that, as Terence Irwin persuasively argues in his review of I.F. Stone's *The Trial of Socrates*, Socrates, even as Plato presents him, was to some extent guilty of the charges the Athenians accused him of. Rational inquiry does present a danger to the political community and Plato's Athenian Stranger attempts to mitigate this danger, while still allowing philosophy a place in the city.<sup>326</sup>

### Conclusion

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<sup>322</sup>*Laws*, X.909a-c

<sup>323</sup>Cornford [1950: 66-67]

<sup>324</sup>*Laws*, X.908c-d. This observation is from Pangle [1988: 502]

<sup>325</sup>*Laws*, XII.969c-d

<sup>326</sup>Irwin [1989]

The *Laws* has been argued to present, rather than a city of docile individuals under the absolute rule of philosophers in the guise of the Nocturnal Council, a relatively democratic city that aims at the political freedom of its citizens and develops their rational freedom in so far as possible, though placing serious restrictions on negative freedom. The dialogue was shown to offer comment on each of our five topics. It was argued to exhort rule of law, with the Nocturnal Council performing a largely advisory role rather than as surreptitious philosopher-rulers. Despite the Athenian's occasional condemnation of change, it was also argued that the *Laws* exhorted legal reform and sought to cultivate knowledge of the law to make this possible. Magnesia was argued to attempt to gain the consent of its citizens, ideally by rational means but non-rational means are also employed, out of respect for their political freedom. It was also shown in its mixed constitution to present a system not unlike modern democracy. Thus on our four secondary topics, the *Laws* largely agrees with modern liberalism. However, it was shown to place little value on the negative freedom that is fundamental to liberalism, instead attaching importance to political and, also, despite the apparent threat of the laws on impiety, rational freedom.

## Conclusion

We have sought to compare modern liberalism with Plato's political thought on freedom and four secondary topics: (1) rule of law (2) legal reform (3) consent of the ruled (4) democracy. Our results on the four secondary topics will be discussed first. Modern liberalism was argued to exhort all four, though with rule of law, legal reform, and democracy this was for the pragmatic reason that these had proved to be effective methods of preserving the freedoms that liberalism values, rather than a logically necessary connection to liberalism. Our readings of the *Republic*, *Statesman*, and *Laws* revealed a largely coherent Platonic doctrine on these topics. The Kallipolis of the *Republic* presents the absolute rule of philosophers, thus rejecting the liberal position on all four secondary topics. However, it was here argued that the philosopher-rulers of the *Republic* were not intended for implementation in actual politics which implied that Kallipolis' system of absolute rule of art, above the law, was not intended for actual politics either. This left the *Republic* largely silent on these four topics. The *Statesman* was argued to support rule of law, an uncontroversial interpretation, but also to support legal reform because only such support was consistent with the value the *Statesman* placed on the political art.. The *Laws* offered the most comprehensive account on each of these four topics. Like the *Statesman*, it exhorted rule of law, with the Nocturnal Council argued to fulfill a largely informal role, and legal reform, despite the Athenian Stranger's criticism of change. The *Laws* was also argued to value the consent of the ruled as a result of the value expressed in the dialogue for political freedom. Its rejection of the possibility of uncorruptible rulers lead it to support democracy. Thus, on all four of our secondary topics, there is much agreement between Plato and modern liberalism.

The results of our comparison between modern liberalism and Plato on freedom centered around a distinction between three different conceptions of freedom: (1) negative,

freedom from obstacles (2) political, engagement with the political authority to which one is subject (3) rational, reason ruling over the desires. For modern liberalism, the most important conception is negative freedom. This is because liberalism attempts to be neutral between different ways of life, refusing to impose a particular way of life on its citizens and instead allowing them to choose one for themselves. For this, negative freedom is essential. It was argued that, in the Greek world, the dominant conception of freedom was political rather than the negative freedom valued in liberalism. This is ultimately borne out in Plato's political thought. Although the *Republic's* Kallipolis was argued to not be a blueprint for actual politics, the description of the natures of politics and the city offered in the *Republic*, exemplified in the image of the cave, revealed that Plato placed little value on negative freedom. This suggested that Kallipolis' contempt for negative freedom, if not the specific restrictions it utilized, did reflect Plato's opinion on actual politics. Furthermore, the great importance attached to the philosophic life in the *Republic* revealed that the great value placed on rational freedom by Kallipolis was not merely an ideal either. This is borne out in the *Laws*, where negative freedom is once again greatly restricted by a system of laws and customs. The *Laws'* Athenian Stranger even states that "there should be a schedule regulating how all the free men spend their time, beginning at dawn and extending to the next dawn and rising of the sun."<sup>327</sup> However, the citizens of the city of the *Laws*, Magnesia, play an important political role in their city, both electing and filling offices. One of the aims of Magnesia's law is virtue, and a part of virtue is stated to be intelligence, which reveals the city's commitment to cultivating the rational freedom of its citizens. Although this freedom may appear to be threatened by the city's laws on impiety, it was argued that careful analysis of these laws revealed that they left much to the discretion of the citizens and the Athenian took pains to ensure that their attitude was one friendly to philosophy. Thus although Plato condemns the liberal notion of freedom, negative freedom, he takes very seriously political

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<sup>327</sup>*Laws*, VII.807c-d

freedom, and especially rational freedom.

To summarize our comparison of Plato and modern liberalism on our five chosen topics: Plato has proven to largely agree with liberalism on the four secondary topics, as both exhort rule of law, legal reform, the consent of the ruled, and democracy. However, on the most important topic, freedom, there was revealed to be great disagreement: Plato attaches little value to negative freedom, though he takes freedom very seriously in his own, different, way. Thus Plato is far from being a liberal in the modern sense of the word, though he does agree with many of its secondary features, but he is liberal in the great importance he attaches to freedom.

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