Plato's pragmatic project : a reading of Plato's Laws

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CHAPTER FOUR

OUTLINE AND AMENDMENT: THE PROCESS OF LAWGIVING

The previous chapter argued that the opening discussion of *Laws* (Books I-II) introduces a universal and naturalistic concept of virtue as αἰδώς and φιλία. Inspite of local differences, across all societies virtue is in a sense also identical: it is the quality that enables human beings to live in peaceful coexistence (φιλία). The general goal of society being σωτηρία, the precise rules that define well-behaved, elegant conduct—ἀρετή on the level of the *polis*—are strictly speaking of secondary importance. Within the confines of φιλία and εἰρήνη, a lawgiver is free to lay down his laws as he sees fit. The making of laws is first and foremost viewed as a practical necessity so as to enable a *polis* to educate its citizens and cultivate social behaviour.

After the discussion of ἀρετή and the historical overview in Book III,[1] Cleinias reveals that he has, with nine other Cnossians, a commission to lay down a law code for a new Cretan colony. The three interlocutors then formulate, on their own authority, a law code, inspired by the case of the future Cretan colony. This law code is a law code λόγῳ, "in speech"—*i.e.*, the laws

[1] The historical overview in Book III basically serves to introduce the need and principle of moderation, which has been identified as the key to a livable society, also on the level of the ruling element in the constitution, producing the notion of the "mixed constitution".

that follow are *not* the laws for Magnesia, but it is a law code for a *polis* inspired by the case of Magnesia. The actual law code (the διέξοδος τῶν νόμων) starts at 771a5 (Book VI) and runs until 960b5 (Book XII).

This act of lawgiving has been prepared for conceptually by the discussion of the basis of the laws in Books I and II. Also, the fact that the interlocutors on their own authority frame laws is legitimated by what we have heard about lawgiving and its purpose so far. The structure of the text suggests that the interlocutors operate within the framework of Books I and II (and III): the interlocutors' law code follows, and is embedded in, the discussion that has served to establish φιλία (αἰδώς, etc.) as the universally human ἀρετή. The present chapter focuses on the legislation on the dramatic level of *Laws*. Here, we witness a concrete case of lawgiving. How do the legislating interlocutors conceptualize the act of lawgiving (about which we have heard little so far)? What sort of endeavour is lawgiving, if we keep in mind the conceptual system of τέχνη as a *comparandum*? What considerations inform the interlocutors' laws?

In investigating the interlocutors' own notion of the procedure of lawgiving, this chapter will take its cue from an analogy in Book VI. This analogy occurs at a highly significant place in the architecture of *Laws*, right before the interlocutors begin their own lawgiving, and at a point at which they have already announced its beginning. This suggests that the analogy offers a crucial contribution to the approach of the legislators: it *frames* lawgiving. The Athenian likens a lawgiver to (a particular kind of) painter. As we have seen in chapter one (1.3.1) and chapter two (2.4.1), τέχνη-analogies in Plato introduce into the discussion a particular conceptual framework and set of assumptions.

In addition, the painter-analogy is of great *structural* importance for the subsequent lawgiving in the *Laws*. The analogy precedes the dramatic act of lawgiving portrayed, and it articulates the subsequent lawgiving on the dramatic level: at different stages in the course of their legislation the interlocutors reflect on their own legislative activity in the terms and

distinctions originally introduced by the analogy. *Laws* thus features a combination of an analogy for a τέχνη (lawgiving), followed by *an actual example of that τέχνη* in the subsequent discourse. Whereas the opening discussion legitimates the fact *that* the interlocutors themselves legislate, the painter-analogy legitimates the details of their mode of procedure. After the analysis of the analogy, the subsequent sections will discuss those junctures in the law code at which the interlocutors reflect on the activity of lawgiving in terms of the painting-analogy.

4.1 Framing lawgiving: the painter-analogy in Book VI

Before we turn to the analogy in Book VI, however, something ought to be said about the interlocutors' decision to found a city in speech in Book III, and about the discussion in Books IV to VI (until the ἀρχή of the law code at 771a5). At the end of Book III, Cleinias has revealed that he is a member of a legislative committee of Cretans entrusted with the foundation of a new colony on Crete. The interlocutors take this as an incentive to found a *polis* "in speech" (τῷ λόγῳ, 702d1-2, *cf*. 702e1). Interestingly, the commission of the ten Cretan lawgivers is to select whatever laws the members of the committee find superior, whether local laws or laws from different countries.[2] The constitution of the Cretan new colony thus lays much more open than usual; for in most historical cases, colonies adopted the constitution of the metropolis.[3] This open

[2] *Leg*. 702c5-9: ἅμα δὲ καὶ νόμους τῶν τε αὐτόθι, εἴ τινες ἡμᾶς ἀρέσκουσιν, τίθεσθαι κελεύει, καὶ εἴ τινες ἑτέρωθεν, μηδὲν ὑπολογιζομένους τὸ ξενικὸν αὐτῶν, ἂν βελτίους φαίνωνται. "We are bidden also to frame laws, choosing such as we please either from our own local laws or from those of other countries, taking no exception to their alien character, provided only that they seem superior" (transl. BURY).

[3] "Bei der Einrichtung der Colonie folgte man vielfach den Einrichtungen der Mutterstadt, aus der man auch das heilige Feuer vom Prytaneion mitnahm", *RE s.v.* ἀποικία (where see also for an alphabetically ordered overview of the Greek colonies, 2828-2836), with reference to Hdt. I, 146 (with STEIN *ad loc*.: "Auswanderer pflegten aus dem Prytaneion, dem Herde und Mittelpunte

definition of Cleinias' commission creates room for the interlocutors to explore their own (or especially the Athenians') ideas about lawgiving and a functional—in terms of maintaining εἰρήνη—constitution.

Yet the interlocutors do not embark upon framing laws immediately. What follows their decision to found a city in speech at the end of Book III is an inventory of the location and natural resources of the new city, of the selection and background of the colonists, the local climate, and general stipulations about the size of the population, the distribution of land, and the possession of money (704a1-751a1, Book IV and part of V). This in turn is followed by an overview of the future Magnesian magistrates (751a1-768c2, Book V and part of VI).[4] The fact that, upon the interlocutors' agreement to found a colony, the Athenian proceeds to discuss these practicalities signals that such issues are necessary preliminaries that have to be taken into account in any act of lawgiving. This mode of procedure reflects a conception of lawgiving as always and necessarily tailored to a *specific*—geographical, cultural—context (we may also recall Cleinias' instant connection of Cretan laws to the nature of the Cretan χώρα, 625c10ff.).[5] Laws are not made *tabula rasa*. Books IV until halfway

(ἑστία) der Mutterstadt, vom heiligen Feuer in die neue Ansiedlung mitzunehmen, als Zeichen und Pfand fortdauernder Blutsverwandtschaft und gemeinsamen Kultes"). Motives for founding colonies are discussed in *Leg*. 707e1-708d7, see also MORROW (1960), 3-4; *Leg*. 752e4-754d4 for assistance of Cnossus in the establishing of the νομοφύλακες for the colony, with MORROW (1960), 204-205, 238-240 (Excursus D), who thinks that this passage reflects two versions of Plato's thought on the matter; the same textual problem is addressed in WILAMOWITZ (1910), *cf*. chapter one, p. 20, n. 52. GRAHAM (1964) for a study of the relation between historical colonies and their mother city. That the law code of the future colony will not be entirely identical to the Cnossian law code also becomes apparent from the fact that the colonists need some time to become *accustomed* to the laws of the colony, which are new to them 752b9-c8 (with MILLER [1997], 253-254), *cf*. οἱ γευσάμενοι παῖδες τῶν νόμων (752c3). See MILLER (1997), 253-257 on the metaphor of child/mother for colony/metropolis. The new colony's potential for survival increases if the lawgivers remain in the city until the citizens are ready to take part in the selection of magistrates: see *Leg*. 752-753. *Leg*. 752b9-c8: the character of citizens is determined by the customs of their city: the citizens are to become "of the same disposition" (συνήθεις) as the laws.

[4] For a succinct overview of the bodies of officials with relevant passages, see STALLEY (1983), 186-189.

[5] The geographical circumstances have direct implications for the quality of the citizenry: some localities are more likely to produce good or bad characters than others (πρὸς τὸ γεννᾶν ἀνθρώπους ἀμείνους καὶ χείρους, *Leg*. 747d1-e5); good laws must not fly in the face of local

through VI constitute a kind of intermediate phase in the discussion, preparing for the actual διέξοδος τῶν νόμων.

When the last magistrates have been introduced, the Athenian announces that there is no need to postpone their legislation any longer.[6] But instead of proposing the first law of their code, he introduces an analogy for lawgiving. Or, more accurately, he introduces an analogy for law*givers*. The lawgiver's *analogon* is the professional painter. We will look into the painter-analogy in more detail below, but before we do so, it should be noted that the analogy in fact exploits a contrast that features in a brief afterthought on the courts (δικαστήρια), whose magistrates were the last in line to be discussed in the overview of the magistrates.[7] The Athenian concludes the subject of the courts by commenting that they have, "like some kind of outline with a line drawn around it from the outside, said some things, yet more or less omitted others" (οἷον περιγραφή τις ἔξωθεν περιγεγραμμένη τὰ μὲν εἴρηκεν, τὰ δὲ ἀπολείπει σχεδόν[8], 768c5-6). The fact that at this point they make only a sketch,

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circumstances (οἷς οὐκ ἐναντία νομοθετητέον, 747d4-5, *cf*. e6-8) such as climate, quality of the water and soil. The preamble on hunting (*Leg*. 823d7-824a9) for example explicitly takes into consideration the possibilities offered by the country for training the right (θεία) kind of ἀνδρεία. *Cf*. Arist. *Pol*. 1265a18-20: λέγεται δ᾽ ὡς δεῖ τὸν νομοθέτην πρὸς δύο βλέποντα τιθέναι τοὺς νόμους, πρός τε τὴν χώραν καὶ τοὺς ἀνθρώπους, "It is said that the legislator ought to have his eye directed to two points—the people and the country". The χώρα for the new colony (*Leg*. 704a1-d6); the people (707e1-708d5 the future colonists; in Book V the magistrates). There is no reason to suppose, with LAKS (2000) (see especially 263-264, 266, 286-288), that discussion of the local conditions in Books IV and V, and of the preambles in IV, is designed to "postpone" or "suspend" the law because law is "a certain kind of violence" (287). The discussion in Books IV and V is clearly part of what νομοθεσία involves, and is thus not a strategy to postpone lawgiving. Furthermore, the actual διέξοδος τῶν νόμων contains both preambles *and* laws, and there is thus no question of "suspending" law.

[6] *Leg*. 768d7-e3: νῦν μὴν ἐν τῷ παρόντι μέχρι τῆς τῶν ἀρχόντων αἱρέσεως γενομένης τελευτὴ μὲν τῶν ἔμπροσθεν αὕτη γίγνοιτ᾽ ἂν ἱκανή, νόμων δὲ θέσεως ἀρχὴ καὶ ἀναβολῶν ἅμα καὶ ὄκνων οὐδὲν ἔτι δεομένη, "So now, at the point where we stand—when our exposition has reached so far so as to include the election of the officials—we may find a fit place to terminate our previous subject, and to commence the subject of legislation, which no longer needs any postponements or delays" (transl. BURY). The actual lawgiving starts at 771a5 (ἀρχὴ δὲ ἔστω τῶν μετὰ ταῦτα ἡμῖν νόμων ἥδε τις κτλ.).

[7] *Leg*. 768c3-d7.

[8] The adverb σχεδόν, "*ferme, propemodum*" or "*fere, quodammodo*" (AST [1835-1838], 348), "about, approximately, more or less, roughly speaking" (*LSJ*, IV), or σχεδόν τι, mitigates the exactness of

and omit other things from consideration altogether is motivated by the claim that the whole, and accuracy about all of the details, cannot become clear before they have completed the διέξοδος (πρὶν ἂν ἡ διέξοδος ἀπ᾽ ἀρχῆς τά τε δεύτερα καὶ τὰ μέσα καὶ πάντα μέρη τὰ ἑαυτῆς ἀπολαβοῦσα πρὸς τέλος ἀφίκηται, 768d5-7).[9]

In 769a7 the Athenian introduces the painter-analogy (καθάπερ ζωγράφων). The implication, made explicit somewhat further onwards (769d1), is that the painter is analogous to the lawgiver. Painting is of course a frequent *analogon* in the Platonic corpus; it is, together with different genres of poetry and μουσική, one of the so-called "imitative arts", μιμητικαὶ τέχναι. But from the very beginning it becomes clear that the approach of this particular painting-analogy is highly unusual. The perspective adopted here is that of a layman who observes professional painters at work, 769a7-b3:

> *Αθ*. Οἶσθ᾽ ὅτι καθάπερ ζωγράφων οὐδὲν πέρας ἔχειν ἡ πραγματεία δοκεῖ περὶ ἑκάστων τῶν ζῴων, ἀλλ᾽ ἢ τοῦ χραίνειν ἢ ἀποχραίνειν, ἤ ὁτιδήποτε καλοῦσι τὸ τοιοῦτον οἱ ζωγράφων παῖδες, οὐκ ἄν ποτε δοκεῖ παύσασθαι κοσμοῦσα, ὥστε ἐπίδοσιν μηκέτ᾽ ἔχειν εἰς τὸ καλλίω τε καὶ φανερώτερα γίγνεσθαι τὰ γεγραμμένα.
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> *ATH*. You know how painting a picture of anything seems to be a never-ending business. It always looks as if the process of touching up by adding colour or relief (or whatever it's called in the trade) will never finally get

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the statement by inserting a degree of vagueness or indeterminacy: *e.g.* STEIN III (1894), *ad* Hdt. V.19.10 with further parallels: "σχεδόν ermäßigt die Zuversichtlichkeit des Tons". σχεδόν is therefore, like ὡς ἔπος εἰπεῖν, a sign of a colloquial use of terms, instead of using precise language (ἀκριβολογεῖσθαι), which is characteristic of Socrates' use of his terminology (at least, it is an accusation that we hear Thrasymachus make against Socrates, see chapter one, p. 27, n. 80). σχεδόν, with 125 instances, occurs relatively often in *Laws*. See also 768d2.

[9] *Leg*. 768c6-d7. The subject of the courts is taken up again in 956b3ff., see SCHÖPSDAU (2003), 437. This means that the subject of the courts is addressed at the very beginning as well as at the very end of the law code. SCHÖPSDAU *ibid*. ponders on a possible connection between the courts and the end of the νομοθεσία: "Ein zwingender sachlicher Zusammenhang zwischen der Vollendung der Gesetze und der Regelung und Einteilung des Gerichtswesens läßt sich allerdings höchstens durch den Gedanken herstellen, daß zuerst die Gesetze zu geben und danach die Organe zur Überwachung der Einhaltung der Gesetze einzusetzen sind; (…)." As SCHÖPSDAU notes, not all issues involving the court are settled in 957a-b; rather, the settling of the details is left to the νομοφύλακες (957a1-b5).

> to the point where the clarity and beauty of the picture are beyond improvement. (Transl. SAUNDERS)

This seems to be an outright paradoxical representation of painting: is not the painter a producer of paintings, *i.e.*, of finished products? Not so here: painting is an activity *without* "limit" (πέρας). Or at least, that is the viewer's impression: it seems that painters never cease to continue their work on a painting (χραίνειν, ἀποχραίνειν, κοσμεῖν[10]). The natural conclusion is that painting is an activity which always allows room for "improvement" (ἐπίδοσις)[11]—or, alternatively, that a painting is never finished, and that perfection is impossible. This analogy clearly does not assume an idealized version of an expert. Whereas Socrates often adduces the expert in very a schematic fashion (the doctor as a producer of health, or health as the result of the doctor's τέχνη), that image is now problematized. Part of this has to do with the perspective adopted: that of the layman observer. His focalization builds into the analogy from the start a dimension of uncertainty about whether or not a painting is ever finished.

Yet, curious as this depiction of a painter may sound in general, it seems even more puzzling to a reader who is familiar with the numerous painter analogies in the rest of the Platonic corpus. The painter is typically a *mimetic* artist: indeed, the painter and his art often figure as the prototype of the class of the μιμητικαὶ τέχναι, as he does for example in *Republic* X.[12] In chapter one, we

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[10] χραίνειν is to "touch slightly" hence to "smear, paint" (*LSJ*); apparently this refers to the painter lightly touching his painting with his brush; ἀποχραίνειν, "colour, tint evenly" (*LSJ*), may, in contrast to χραίνειν, refer to colouring larger spaces. In *Resp*. 586b7-c5 we find that pleasures are inevitably mixed with pains, "taking their colour from juxtaposition", ADAM *ad loc*. He further notes that ἀποχραίνειν "had also a more technical sense (τὸ τὰ χρωσθέντα ἑνοποιεῖν Tim. *lex. Pl. s.v.* χραίνειν), to which Plato alludes is *Laws* 769a". AST (1835-1838) has "*colorem* vel *lumen umbra tempero*" and cites both *Resp*. 586b and *Leg.* 769a.

[11] ἐπίδοσιν ἔχειν, "to be capable of progress or improvement" (*LSJ*): *Tht*. 146b6; *Symp*. 175e5. For ἐπίδοσις in the positive sense of "progress": τὴν τῶν πόλεων ἐπίδοσιν εἰς ἀρετήν (*Leg*. 676a5); βλάστην καὶ ἐπίδοσιν (*Leg*. 679b2); negative, in the sense of development beyond the proper measure: τὴν τοῦ ἐλευθέρου λίαν ἐπίδοσιν βίου (*Leg*. 700a8).

[12] For the painter as an imitator, see, *e.g.*, *Crat*. 424d7-425a4, 430b3-4, 430d1-434b2; *Soph*. 235d6-236c7; *Phdr*. 275d5-6; *Prot*. 312c6-d3; *Gorg*. 503d5-504a2; *Resp*. 472d4-7, 596e6, 598bff.

saw that the "product" (ἔργον) of a τέχνη is one of the standards elements of the conceptual framework of τέχνη. The product of a mimetic τέχνη has the status of an *imitation* (μίμησις or μίμημα): it is a likeness of a "model" (παράδειγμα, ἰδέα).

This can work out in either of two ways. One possible implication is that the imitation exists on an ontologically inferior level than the object of which it is an imitation. The most notorious example of this negative evaluation of μίμησις is no doubt the discussion of poetry in Book X of the *Republic*. There, painting is the prototypical mimetic τέχνη to which poetry (imitation in words) is likened: although capable of accurate reproduction, both poet and painter lack knowledge (ἐπιστήμη) of the things they reproduce.[13] Yet the idea of an imitation of a model can also be used to emphasize the similarity between model and imitation. For an example of this understanding of μίμησις, we may also turn to *Republic*. The philosopher-ruler is likened to a painter who paints the just *polis* after the divine παράδειγμα.[14] In both its positive and negative form, the notion of a μιμητικὴ τέχνη presupposes ontological dualism.

With the mimetic interpretation of painting as our frame of reference, it becomes immediately noticeable that the implications attached to painting in *Laws* VI are completely different.[15] First and foremost, in this analogy the painter does not appear to be imitating anything. Second, painting seems to be a never-ending business (even if the perspective of the layman leaves it open whether painting really never stops). These two aspects are two sides of the same coin: the absence of a πέρας for the act of painting a picture is the direct consequence of the absence of a model. When the painter is a copyist, it is never

[13] *Resp*. 596b4-597e5. This does not mean that Plato's attitude to poetry is one of pure hostility. See HALLIWELL (2011), 155-207 for a recent and nuanced argument for "Platonic ambivalence" towards poetry. About *Resp*. X, see especially his observations *ibid*., 182-204.

[14] *Resp*. 500d11-501c9. The philosopher is a "painter of constitutions", πολιτειῶν ζωγράφος (501c6-7). See HALLIWELL (2011), 182.

[15] πραγματεία, "occupation", can be almost synonymous with τέχνη. See *Resp*. 528d4, 531d4, 532c. It is also the "treatment" of a subject, manner of dealing with, philosophical argument (*LSJ*).

a question whether or not the painting can be finished: the τέχνη itself consists in 'producing a copy'.[16]

The next stage of the analogy assumes a more hypothetical standpoint than that of the layman observer of painters, 769b6-c8:

> *ΑΘ*. (…). χρησώμεθά γε μὴν τῷ νῦν παρατυχόντι περὶ αὐτῆς ἡμῖν λόγῳ τὸ τοιόνδε, ὡς εἴ ποτέ τις ἐπινοήσειε γράψαι τε ὡς κάλλιστον ζῷον[17] καὶ τοῦτ' αὖ μηδέποτε ἐπὶ φαυλότερον ἀλλ' ἐπὶ τὸ βέλτιον ἴσχειν τοῦ ἐπιόντος ἀεὶ χρόνου, συννοεῖς ὅτι θνητὸς ὤν, εἰ μή τινα καταλείψει διάδοχον τοῦ ἐπανορθοῦν τε, ἐάν τι σφάλληται τὸ ζῷον ὑπὸ χρόνων, καὶ τὸ παραλειφθὲν ὑπὸ τῆς ἀσθενείας τῆς ἑαυτοῦ πρὸς τὴν τέχνην οἷός τε εἰς τὸ πρόσθεν ἔσται φαιδρύνων ποιεῖν ἐπιδιδόναι, σμικρόν τινα χρόνον αὐτῷ πόνος παραμενεῖ πάμπολυς;
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> *ATH*. (…). We may still use this fact, which it has occurred to us to mention, to illustrate the following point. Suppose that a man should purpose to paint a figure as beautiful as he can, and [to purpose] that this should never grow worse, but always better, as time went on, do you not see that, since the painter is mortal, unless he leaves a successor who is able to repair the picture if it suffers through time, and also in the future to improve it by touching up any deficiency left by his own imperfect craftsmanship, his great effort will last only a brief period of time? (Transl. BURY, adapted)

In the text cited above the painter himself is the focalizer. What in the first excerpt of the analogy (769a7-b3) was the impression of the layman observing painters at work, has now become the painter's own recognition: the painter

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[16] *Cf*. CAMPBELL (1981), 440: "The discussion of the *nomoi* is throughout grounded in practical experience rather than in metaphysics. (…) The Lawgiver is no longer the metaphysical artist, described in the *Republic*, who, viewing the pattern of absolute truth, would wipe clean his mortal canvas and establish in 'this world also the laws of the beautiful, the just, and the good…'. Now he resembles the less exalted bricklayer engaged in mere piecemeal construction."

[17] ζῷον is the technical term for the object of the painter (ζω-γράφος). In the context of the arts, the term ζῷον refers to an "image", or "picture" (see also the references in AST [1835-1838], "*imago*"). Hence ζῷον in 769c1 may seem to import after all the idea that the painting is an imitation. However, τοῦτ᾽ in 769c1 (ὡς κάλλιστον ζῷον καὶ τοῦτ᾽ αὖ μηδέποτε ἐπὶ φαυλότερον ἀλλ᾽ ἐπὶ τὸ βέλτιον, 769c1-2) and ζῷον in 769c5 clearly refer to the material picture (ἐάν τι σφάλληται τὸ ζῷον ὑπὸ χρόνων, 769c4-5). Therefore, especially because of τοῦτο, we have to conclude that ζῷον in 769c1 also refers to the (resultant, material) painting. The superlative ὡς κάλλιστον is not to be understood as "the (objectively) most beautiful imitation (of all)", but "the most beautiful painting (of which the painter is capable)". This interpretation is endorsed by ἐπινοέω, "to have in one's mind", "intend", which suggests a personal idea rather than *a priori* knowlegde.

knows that he is unable to finish his painting himself. He knows that he is mortal and that he will leave bits and parts open, which will have to be supplemented by a successor. The underlying assumption here is that making a painting is a lengthy endeavour, which takes years of time. The second passage remains inconclusive about the question of whether a painting can ever be finished.

The initial painter (τις in 769c1) purposes (ἐπινοήσειε) to paint a picture as beautiful as he can (ὡς κάλλιστον ζῷον). It should be noted that the analogy does not apply to painting in general, but to the individual act of 'fabricating a painting' (*cf.* εἴ ποτέ τις ἐπινοήσειε, 769b7-c1). The painter who fabricates a painting is analogized to the lawgiver who, on his own authority, fabricates a law code as he sees fit (*cf.* chapter three). Also, ὡς κάλλιστον ζῷον is the object of ἐπινοεῖν: it is 'the most beautiful painting' according to the individual painter's insight.

Speaking of lawgiving, this passage suggests to us that something is being designed that needs filling in.[18] The incomplete parts of the painting are left open "by [the painter's] weakness in relation to the art" (ὑπὸ τῆς ἀσθενείας τῆς ἑαυτοῦ πρὸς τὴν τέχνην). That a professional has a "weakness" (ἀσθένειά) "in respect to his art" (πρὸς τὴν τέχνην) is unthinkable from the point of view of *Gorgias* or *Republic*: the expert is qualified to realize the aim of his τέχνη—otherwise, he would not be an expert in the first place.

The function of the successor (διάδοχος, 769c4) is twofold: (i) he must correct any part of the painting that may have deteriorated by the lapse of time (ἐπανορθοῦν ἐάν τι σφάλληται τὸ ζῷον ὑπὸ χρόνων, 769c4-5); and (ii) he has to fill in "what is left open" by the original painter (τὸ παραλειφθέν, 769c5). To create a painting that will not deteriorate, but acquire a better condition is part of the very intention of the original painter: ἐπινοήσειε (…) τοῦτ᾽ [ζῷον] αὖ μηδέποτε ἐπὶ φαυλότερον ἀλλ᾽ ἐπὶ τὸ βέλτιον ἴσχειν τοῦ ἐπιόντος ἀεὶ

[18] Later onwards, the term we encounter for this original design is περιγραφή, "outline".

χρόνου (769c2). The description of the successor's task is ambiguous: it does not give a decisive answer to the question whether painting is a never-ending process. The task under (i) does not necessarily entail an endpoint; in fact, τοῦ ἐπιόντος ἀεὶ[19] χρόνου (769c2-3) and the pronoun ἐπί ("towards") seem to suggest that the process of correction will last indefinitely. If the painting is inevitably affected by the lapse of time, there will be a commensurate process of restoration needed to counteract these affects. By contrast, the task under (ii), filling in what is left open, may seem to entail that that process will at some point in the (distant) future be finished.

In this analogy, the τέχνη of painting is much more complicated than the static idea of 'copying a model'. Creating a painting is a *dynamic* activity: it is a continuous process with various stages that are not clearly demarcated from each other (apart from the fact that filling in what is left open is apparently limited to the successor), a painting takes a very long time (many years) to make, different people will work on the painting (at least two), the painting is susceptible to deterioration over the course of time, and continuous efforts are needed to restore its defects. Strictly speaking, all of these activities belong to the τέχνη of making a painting (sketching as well as restoring and filling in) insofar as they are all necessary to complete and preserve the whole. The analogy is highly rhetorical in assuming a clear distinction between an outline and filling in what is left open. In the process of painting what is left open is evident; yet in the case of lawgiving, these distinctions may not always be so clear.

The idea of painting as a τέχνη of which the final product cannot be realized by its original creator is imposed upon it by the *analogon* of lawgiving, which of course is Plato's reason for introducing the simile. The *analogon* and

[19] In the apparatus criticus of the OCT edition, we find c3 δή in marg. γρ. O. The more detailed apparatus criticus of the Budé-edition gives αἰεὶ AO : δὴ ἀ. s.v. O^4 (δὴ supra αἰεὶ). O is the *Laws* manuscript in the Vatican (Vaticanus graecus I, 9th century). O^4 is a recensio from the 11th or 12th century ex libro Patriarchae.

definiendum mutually frame one another. That lawgiving is the *analogon* becomes explicit in 769d1-e2, when the Athenian states that the lawgiver's intention is similar to the painter's:

> *Αθ*. Τί οὖν; ἆρ' οὐ τοιοῦτον δοκεῖ σοι τὸ τοῦ νομοθέτου βούλημ' εἶναι; πρῶτον μὲν γράψαι τοὺς νόμους πρὸς τὴν ἀκρίβειαν κατὰ δύναμιν ἱκανῶς· ἔπειτα προϊόντος τοῦ χρόνου καὶ τῶν δοξάντων ἔργῳ πειρώμενον, ἆρ' οἴει τινὰ οὕτως ἄφρονα γεγονέναι νομοθέτην, ὥστ' ἀγνοεῖν ὅτι πάμπολλα ἀνάγκη παραλείπεσθαι τοιαῦτα, ἃ δεῖ τινα συνεπόμενον ἐπανορθοῦν, ἵνα μηδαμῇ χείρων, βελτίων δὲ ἡ πολιτεία καὶ ὁ κόσμος ἀεὶ[20] γίγνηται περὶ τὴν ᾠκισμένην αὐτῷ πόλιν;
>
> *ATH*.: Well then, do you not think that the purpose of the lawgiver is similar? He purposes, first, to write down the laws, so far as he can, with complete precision; next, when in the course of time he puts his ideas to the test of practice, you cannot suppose that any lawgiver will be so foolish as not to perceive that very many things must necessarily be left over, which it will be the duty of some successor to make right, in order that the constitution and the order of the polis he has founded may always grow better, and never in any way worse. (Transl. BURY, adapted)

Since the idea that the original creator of a painting is unable to finish his painting himself has already been introduced in the context of the *analogon*, the idea of an original lawgiver who is unable to finish his law code himself is not new (πάμπολλα ἀνάγκη παραλείπεσθαι τοιαῦτα, 769d5-6).

What is new, however, is that here we acquire some idea about why he is unable to do so. We hear that the original lawgiver will attempt to write down laws "as accurate as his power permits him" (πρὸς τὴν ἀκριβείαν κατὰ δύναμιν). For the first time in the context of the analogy the notion of "accuracy" (ἀκριβεία) is introduced. But what does that mean, if there is no

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[20] Like the painter, the lawgiver desires that his picture is preserved, and will improve in the course of time. This analogy makes the preservation (σωτηρία) of the law code and of the *polis* for which the laws are made are an integral part of lawgiving. In terms of the analogy, therefore, the nocturnal council, whose function it is to preserve the law code, also has in that sense a legislative function and legislative authority as second lawgivers. Yet there is a fundamental caesura between making new laws by the original lawgiver, and preserving existing ones, which is also reflected in the caesura in the text of the *Laws* itself, which introduces the nocturnal council only at the very end, when the νομοθεσία has been completed. On the role and function of the nocturnal council, see chapter six, section 6.1.

model to be copied? In the case of lawgiving, it is easier to imagine that it is necessary to omit some things than it is in the case of painting (where it seems to raise more questions than answers). The lawgiver's ideas (δόξαντα) must be tested "in practice" (ἔργῳ) "in the course of time" (προϊόντος τοῦ χρόνου).

The necessity to omit so many elements lies in the "material" of the lawgiver: the topics to be regulated are so intricate that it is impossible, at least for a human lawgiver, to foresee in advance every law that may be needed. The lawgiver is not omnipotent: κατὰ δύναμιν and γράψαι (…) ἱκανῶς limit the degree to which a first design can be accurate.[21] We saw above that the representation of painting (and lawgiving) are highly dynamic. Part of this is that the analogy creates the effect of a *struggle*: making a painting confronts the painter and his successor with difficulties that can only be overcome in the course of time. In this context, ἀκριβεία therefore refers to the fittingness of the laws, their being tailored to the demands of practice (and not to—as one might have expected in the context of a painting-analogy—accuracy of replication).

The painting apparently *begins* on a clean canvas and shapes a *polis*' notion of ἀρετή; as we saw in chapter three, the idea is that a lawgiver is in principle, his aim being the σωτηρία of the *polis*, free to enact as he sees fit. Yet

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[21] The idiosyncratic nature of the painting-analogy in *Laws* may be assessed more clearly in comparison to the analogy between painter and philosopher in *Resp.* 500d11ff., which was discussed briefly in chapter two, see above, p. 79. Socrates likes the philosopher-ruler to a painter who paints a constitution on the basis of a divine model. Several differences seem significant: (1) the philosophers refuse to work on a *pinax* that is not pure (καθαράν, 501a3, a6) and erase the existing *polis* and characters of its citizens (ἤθη ἀνθρώπων) before they commence their own painting. (2) The philosophers work on the basis of a model (παράδειγμα). Their eyes quickly zigzag between model and imitation, so as to produce the best likeness (ἔπειτα (...) ἀπεργαζόμενοι πυκνὰ ἂν ἑκατέρωσ᾽ ἀποβλέποιεν, 501b1-2). They look alternatively "at natural justice, the good, the temperate, and all such things" (πρός τε τὸ φύσει δίκαιον καὶ καλὸν καὶ σῶφρον καὶ πάντα τὰ τοιαῦτα, 501b2-3), and at the painting, the δίκαιον in people (καὶ πρὸς ἐκεῖνο αὖ τὸ ἐν τοῖς ἀνθρώποις ἐμποιοῖεν, 501b3-4). *Cf.* ADAM *ad loc*. That the philosophers paint a *likeness* is also suggested by the fact that they sometimes erase things, when the likeness is not good enough, and then again paint things anew (τὸ μὲν ἄν (…) ἐξαλείφοιεν, τὸ δὲ πάλιν ἐγγράφοιεν, 501c1). (3) Finally, *Republic* speaks about painters in the plural. In *Republic* there are no differences between individual philosophers—they are identical *qua* philosophers and operate on the same basis, the divine *paradeigma*. By contrast, *Laws* speaks of an individual lawgiver, each of whom fabricates his own creation; the import of the painter-analogy is distributive rather than collective.

the lawgiver's original ideas must in the course of time be adapted and become attuned to real life. Therefore, ἀκριβεία requires that one must have completed the διέξοδος from beginning to end. Furthermore, we may surmise that ἀκριβεία in the case of laws carries overtones of practicality, detail, and perhaps also of equity and fairness; accuracy is necessary because, the more accurate laws are, the less possibility for conflicts is left.

That the efforts of the first painter are necessarily limited is due to the nature of the business. This is not to say that individual lawgivers do not differ from each other; there may be differences in δύναμις. But the general implication is that, whatever the quality of the lawgiver, the product of any human lawgiver will—necessarily—remain incomplete for at least some time. When painting is conceived of as copying a model, the painter's own *judgement* is excluded from consideration. Δόξα is completely irrelevant, since the nature of the product depends solely on replication, and is not influenced by personal ideas. Every painter of constitutions in the *Republic* will paint the same picture.

But the painter-analogy in *Laws* does allow for differences in judgements (ἐπινοήσειε in 769c1 implies a form of personalized inspiration). The correspondence between painters/lawgivers is formal, not substantial: every sensible act of lawgiving will start out by drawing a framework and fill in details later. Differences in δόξα and δύναμις suggest a dynamic τέχνη.[22] It is *logical* not to start with working out the details (for instance, the eyes or nose) if one aspires to paint a picture of, say, mythological figures, or a procession. The

[22] The appeal of this analogy should, however, not obscure the fact that the transition from painting to formulating laws requires a major conceptual leap. It is evident what filling in the blanks in the outline of a painting means. But how are we to imagine the same activity when applied to the analogon, i.e., lawgiving? The idea of "filling in blanks" suggests, from an optimistic point of view, that the number of domains for which laws are yet to be made is finite, as if they were clearly visible blanks in a picture. But who knows, and on what basis, what these "blanks" are in the first place? To conceive of absent of insufficient regulations as blanks in a whole, *i.e.*, as evident lacunae that still need to be covered is a clear case of framing: it presents as surveyable at one glance an issue that is in fact much more intricate, since it can only become clear what the blanks are in the course of time. Moreover, to formulate (explicit, verbal) rules to govern people's behaviour is much more complex than filling in blanks on a canvas within an outline.

painting-analogy presents provisionality and vagueness as inherent in lawgiving, since human foresight is necessarily limited. Painting is a process in which the first phases are characterized by a certain degree of fuzziness; leaving things *un*determined thus becomes a structuring principle of lawgiving as it is represented here. This corresponds to the interlocutors' own legislation in the context of dialectic, λόγῳ. In a law code that is not for real, leaving things open and provisional is not problematic. The painter-analogy is thus an analogy for the dramatic act of lawgiving of the interlocutors in *Laws*, rather than for any act of legislation.

4.2 From the painting-analogy to the law code in *Laws*

The painter-analogy presents lawgiving as a long process which the original lawgiver is unable to complete (if finishing is possible at all). At some point, successors have to be appointed. This is preferably to be done before the death of the lawgiver, since in that case, the lawgiver has the opportunity to instruct his successors.

Appointing successors is in fact what *the interlocutors themselves* proceed to do immediately after the painter-analogy, with reference to their advanced age (ἡμεῖς δ' ἐν δυσμαῖς τοῦ βίου, 770a6).[23] The advanced age of the first lawgiver constitutes a practical reason why a successor is necessary.[24]

[23] On the high age of the interlocutors, see *Leg*. 799c4-d4 (πρεσβῦται by implication), 821a7 (πρεσβῦται), 846c3 (the interlocutors identify themselves implicitly with the first lawgiver, the γέρων νομοθέτης). *Cf*. 625b4-5, 634d1-2. The successors are not of the age of νέοι absolutely (which is between 18 and 30: *Leg*. 664c6-d1, and Book II, where the group of νέοι is in between παῖδες and πρεσβύτεροι); they are young (νέοι) in relation to the aged interlocutors (πρὸς ἡμᾶς). *Leg*. 892d7 (νεώτατος δ᾽ ἐγὼ τυγχάνων ἡμῶν) is part of an *irrealis* (εἰ … ἔδει … διαβαίνειν, d6), and does not imply that the Athenian is indeed younger than the other two.

[24] This assumption is also compatible with the consistent connection between ἀληθεῖς δόξαι or φρόνησις and seniority in the *Laws*, see chapter three, especially p. 116; also p. 117, n. 137. The distinction between the lawgiver and his successor(s) is cast in terms of either age or chronology: ὁ πρῶτος νομοθέτης and οἱ δεύτεροι (835b1-2); the γέρων νομοθέτης is distinguished from οἱ νέοι

Therefore, the reference to a successor may imply that a first lawgiver will (in most cases, necessarily) be of advanced age, which is consistent with the association of authority with seniors in *Laws*.[25] It is, however, only in light of the analogy that the interlocutors' strategy is fully understandable, for it is the analogy that has framed lawgiving as a lengthy process.

But the parallelism between the lawgivers in *Laws* and the lawgiver in the analogy also manifests itself in the interlocutors' own lawgiving. The Athenian clearly approaches lawgiving as a lengthy process, similar to the principles stipulated in the analogy, and reflects on their own lawgiving in the terms of the painting-analogy. Both the place of the analogy, immediately preceding the lawgiving in the *Laws*, and the correspondence in procedure, suggest that we can read the analogy as the pattern after which the lawgiving on the dramatic level is modelled.

By appointing successors, the interlocutors put themselves on a par with the first painter-lawgiver of the analogy.[26] It is their role in the dialogue to legislate. The interlocutors appoint the magistrates designated as "lawguards" (νομοφύλακες), who were introduced in the discussion of the Magnesian officials in Book V, as their successors.[27] The Athenian, imagining that these lawguards are present, addresses them in a fictional speech. In this speech he describes their upcoming legislation in the terms of in the analogy, 770b4-b8:

> *Αθ.* Λέγωμεν δὴ πρὸς αὐτούς· Ὦ φίλοι σωτῆρες νόμων, ἡμεῖς περὶ ἑκάστων ὧν τίθεμεν τοὺς νόμους πάμπολλα παραλείψομεν—ἀνάγκη γάρ—οὐ μὴν ἀλλ' ὅσα γε μὴ σμικρὰ καὶ τὸ ὅλον εἰς δύναμιν οὐκ

(846c3-4); *cf.* οἱ νεωτέροι νομοθέται (855d2); the things left out by the πρεσβύτης νομοθέτης have to be "filled in" (ἀναπληροῦν) by ὁ νέος νομοθέτης (957a2-3).

[25] See chapter three, p. 118, n. 138; also p. 109; also BARTELS (2012).

[26] For the interlocutors as the structural equivalent of the lawgiver: *Leg*. 855c6-d4. The εἰσαγωγαί and the προσκλήσεις etc. (ὅσα τοιαῦτα καὶ ὡς δεῖ γίγνεσθαι) in cases involving the death penalty have to be left to the younger lawgivers (τοῖς νεωτέροις νομοθέταις χρὴ μέλειν, 855d2-3). It is "our job" (ἡμέτερον ἔργον), the interlocutors say, to legislate about the procedure for the voting (τὴν διαψήφισιν). The procedure follows in 855d4-856a8.

[27] *Leg*. 752d2-755b6. On the lawguards, see MORROW (1960), 198-204; STALLEY (1983), 113-114, 116.

> ἀνήσομεν ἀπεριήγητον καθάπερ τινὶ περιγραφῇ· τοῦτο δὲ δεήσει συμπληροῦν ὑμᾶς τὸ περιηγηθέν.
>
> *ΑΤΗ.* "Let's address them thus:—'Beloved preservers of the laws, in many departments of our legislation we shall leave out a vast number of matters—for we cannot do otherwise; yet, nothwithstanding, all important matters, as well as the general description, we shall include, so far as we can, in our outline sketch. Your help will be required to fill in this outline; (…)" (Transl. BURY, adapted)

Like the lawgiver-painter in the analogy, the interlocutors will by necessity (ἀνάγκη) leave many issues open (πάμπολλα παραλείψομεν). But whatever is important (ὅσα γε μὴ σμικρά), and the whole (τὸ ὅλον), will not be left "without outline" (ἀπεριήγητον), "precisely as a kind of sketch" (καθάπερ τινὶ περιγραφῇ). Although the term περιγραφή is not used in the painter-analogy itself, the analogy has prepared us for conceiving of lawgiving as an "outline", and for conceiving of lawgiving as a lengthy process in the first place.[28] The task of the lawguards will be to "fill in the outline" (συμπληροῦν … τὸ περιηγηθέν).[29] This terminology creates the expectation (which is subsequently confirmed) that lawgiving in *Laws* will proceed along the same lines as lawgiving in the analogy. What the interlocutors will be doing in *Laws* is formulate the outline—the idea is that more detailed regulations have to be deferred until the whole διέξοδος τῶν νόμων is complete.

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[28] The Athenian twice refers to their law code as a περιγραφή (768c5, 770b8). The interlocutors will give some regulations concerning οἰκοδομική: ὅσον τινα τύπον αὐτῶν δι᾽ ὀλίγων ἐπεξέλθωμεν (778c1-2). Also, the first lawgiver must "set out" (ἐξηγεῖσθαι τύποις, 816c2) the two types of dances, whereas the lawguard has to trace them and fit them into the rest of the musical education. The lawgiver also has to make a distinction between songs suitable for males and for females (τύπῳ τινὶ 802e1). *Cf.* 803e5, 809b5. In that sense, sometimes it is almost identical to νόμος (801c6, 801d7). In 905c2 there is some suggestion about the basis for that τύπος: if one is not aware of the συντέλεια of the gods, one will never be capable of seeing a τύπος or composing a speech about life to both a person in a state of happiness and to one in a less fortunate state. In 876e1 περιγραφήν τε καὶ τοὺς τύπους specifically refers to the section of the law code that concerns punishments (τῶν τιμωριῶν).

[29] The age requirements for lawguards are such that they will be between 50 and 70. *Leg*. 755a4-b2: the lawguards ought not to be in function for longer than 20 years. They must on appointment be no less than 50 years of age, and not hold office for longer than twenty years. If someone is appointed lawguard at 60, he must not remain in office for more than ten years. The oldest lawguards will be members of the nocturnal council (see chapter six, p. 220).

We may compare *Laws*' appraisal of a περιγραφή to a passage in *Republic*, that casts the notion of an outline in a different light. In relation to the μαθήματα μέγιστα, the *apodeixeis* of the εἴδη of the four cardinal virtues presented earlier[30] in the discussion amounts only to a "sketch" (ὑπογραφή, 504d6).[31] The interlocutors' earlier statements were lacking in precision (τὰ τότε τῆς μὲν ἀκριβείας … ἐλλιπῆ, 504b5-6; *cf*. μέτρον τῶν τοιούτων ἀπολεῖπον, 504c1). The incomplete (ἀτελές) cannot be a measure of anything (οὐδενὸς μέτρον). Therefore a mere "sketch" of the virtues will not do (504d6-7). Their guards must walk "the longer road" (τὴν μακρότεραν … περιτέον, 504d1, *cf*. b6), aspire to the most complete product (τελεωτάτη ἀπεργασία), and aim at the highest precision (μεγίστας … τὰς ἀκριβείας) in the most important affairs (τῶν … μεγίστων, 504d6-e2). This high degree of precision is possible in virtue of the greatest object of knowledge (μέγιστον μάθημα), the Idea of the Good (ἡ τοῦ ἀγαθοῦ ἰδέα, 505a2).

Here, ἀκριβεία depends on (a discussion of) the Good. In the worldview of *Republic*, incompleteness amounts to a failure to persevere, to indifference (ῥᾳθυμία, 504c5), a trait explicitly said to be of no avail to *polis* and laws. By implication, a city and laws benefit from the zeal of a guard who takes the longer road (τὴν μακροτέραν [ὁδόν]) and who exerts himself both intellectually and physically (μανθάνοντι πονητέον ἢ γυμναζομένῳ, 504d1); otherwise he will never reach the great principle that is most befitting for a

[30] For the references, see ADAM *ad loc*.

[31] The difference between περιγραφή and ὑπογραφή seems to be twofold. (1) ὑπογράφειν is what teachers do: "trace letters for children to write over" (*LSJ*, II). In *Prot*. 326d2-5, we find an analogy between this school practice and the education of the citizen by law, both of which enforce (ἀναγκάζειν) a certain kind of writing and behaviour respectively. The ὑπογραφή of the virtues in *Resp*. 504d6 is only an *adumbratio* (ADAM, *ad loc*.), and points to the need for their realization, here called τελεωτάτη ἀπεργασία. By contrast, περιγραφή does not imply a difference between a more and less realised form, an indication and its tracing. (2) ὑπογραφή, as an indication of how one write (or behave), presupposes a conception of what the whole is to look like. By contrast, in the case of a περιγραφή it can only become clear what the whole looks like when the outline is complete, see *Leg*. 768c5-d7 (also above).

person in his position (as guard of *polis* and laws) to learn (τοῦ μεγίστου τε καὶ μάλιστα προσήκοντος μαθήματος ἐπὶ τέλος οὔποτε ἥξει, 504d2-3).[32]

In *Laws*, ἀκριβεία depends on the completion of the διέξοδος τῶν νόμων: a rough draft of the whole has to be outlined before further details can be filled in. Due to the nature of the subject matter and the limitations of human foresight, it is simply impossible to advance beyond drawing an outline. The initial incompleteness is part and parcel of the τέχνη of lawgiving as a process. The three interlocutors in *Laws* will do whatever lies in their power (εἰς δύναμιν, 770b7): they will not fall short in zeal. The fact that complete precision is simply not possible at this absolves the interlocutors from having to go into more detail.[33]

In their speech to the lawguards, the interlocutors assume a favourable initial situation: a situation in which the original legislators are still alive and can give explicit instructions to their successors (this may not always be the case, for instance, when the lawgiver should die unexpectedly). In such a case, there is a maximum degree of consistency between the two groups of lawgivers, since the second generation of lawgivers has explicitly been instructed by the first lawgiver about what he had in mind in framing his laws. This move seems to express faith in the instruction of (relatively) younger people by older, tying in with the *Laws*' high confidence in the success of

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[32] LISI (1998) argues that both *Republic* and *Laws* represent "ein theoretisches Modell"; and that the *Laws* is, like the *Republic*, "nur ein Umriß, der der nötigen Nuancierungen und Verbesserungen bedarf" (101-102). In LISI (1985), 246-250 he argues that the *Laws* coincide with the constitution the philosopher writes in the *Statesman*, when he exercises power himself; in LISI (1998) he adds that the rule of law anticipates the rule of philosophy: Magnesia is "ein Staat im Werden, d.h. die Herrschaft des Gesetzes soll solange bleiben, bis die Philosophen ausgebildet werden und schließlich die Macht übernehmen können" (104). He suggests that the fact that *Laws* mostly appeals to existing laws must be explained by the "Vorläufigkeit" of the rule of law (104, *cf.* 99).

[33] *Cf. Leg.* 875d4-5: it is inherent in law that it can take into account the majority of cases, not all: τάξιν καὶ νόμον, ἃ δὴ τὸ μὲν ὡς ἐπὶ τὸ πολὺ ὁρᾷ καὶ βλέπει, τὸ δ᾽ ἐπὶ πᾶν ἀδυνατεῖ. *Cf.* 925e8-926a3. Some domains, however, cannot be legislated for, or are too trivial to be regarded as real laws: 788a1-c4, 822d2-823a6.

paideia—at least with those people who have already gone through some kind of selection, just as the lawguard.[34]

The lawguards have to "complete" the interlocutors' "outline": τοῦτο δὲ δεήσει συμπληροῦν ὑμᾶς τὸ περιηγηθέν (770b8). The Athenian instructs the lawguards where they should look (ὅποι … βλέποντες, 770c1). This is familiar terminology: βλέπειν εἰς or πρός is part and parcel of the idiom of the τέχναι.[35] But whereas in other Platonic texts the aim of the τέχνη (for example ὑγίεια, or δικαιοσύνη) was established by an objective norm (φύσις), the lawguards in the *Laws* have to "look at that which we have agreed among each other that a lawguard and lawgiver ought to look at" (βλέποντας πρὸς ταῦτα εἰς ἅπερ ἡμεῖς συνεχωρήσαμεν ἀλλήλοις τὸν νομοφύλακά τε καὶ νομοθέτην δεῖν βλέπειν, 770c5-7; *cf.* 779e6-7: τό γε μὴν δοκοῦν ὀρθὸν καὶ ἀληθὲς εἶναι πάντως ῥητέον). This goal is, of course, social stability (φιλία, εἰρήνη), the goal of lawgiving as determined in Books I-II,[36] and III.[37] The object of the lawguards' contemplation is what *these* interlocutors in *this* conversation have agreed that πᾶσα ἀρετή amounts to. The younger lawgivers are to become "of the same conviction" (συγγνώμονας) as, and "pupils" (μαθητάς) of, the interlocutors.[38] The law code takes as its goal "complete virtue", and hence the

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[34] The instruction of the younger members of the nocturnal council by the council's older members seems to be a similar mechanism. See chapter six, p. 220, p. 221.

[35] See chapter one, p. 29.

[36] See chapter three, especially p. 91, p. 111.

[37] See *Leg.* 693b1-d1; when the interlocutors said that the lawgiver ought to look at (βλέπειν πρός) τὸ σωφρονεῖν, φρόνησις or φιλία, it should be realized that these goals are not different, but the same (ὡς ἔσθ᾽ οὗτος ὁ σκόπος οὐχ ἕτερος ἀλλ᾽ ὁ αὐτός, 693c3-4). *Cf.* 701d7-9: Ἐλέξαμεν ὡς τὸν νομοθέτην δεῖ τριῶν στοχαζόμενον νομοθετεῖν, ὅπως ἡ νομοθετουμένη πόλις ἐλευθέρα τε ἔσται καὶ φίλη ἑαυτῇ καὶ νοῦν ἕξει. The ἔλεγχος (702b2) the interlocutors want to submit to is a practical test (εἰ … τι πεποιήκαμεν προὔργου) of the viability of this conclusion. The lawgiver ought to look at "virtue as a whole", πᾶσα ἀρετή, 630e1-4. *Cf.* 705e1-706a4.

[38] The principle (ἀρχή, 742d1) being that a man will become ἀγαθός and acquire the virtue appropriate to man. The first lawgiver also gives the second lawgivers "bestimmte 'Muster' oder 'Umrisse' an die Hand oder verweist auf eigene Gesetze, die sie als Muster nehmen sollen", or even in 840a6ff., "detaillierte Anweisungen zur Formulierung einer zweitbesten Gesetzfassung": see (with references) SCHÖPSDAU (2003), 439. These concrete cases ought to be settled "mit Hilfe ihrer eigenen Erfahrungen": 772b-c, 779c-d, 846c (*ibid.*).

conception(s) of excellence in the opening conversation (see chapter three). The most important point of the interlocutors' agreement (ἡ συγχώρησις) was that a citizen ought at some point in time (ποτέ) to become a "good man" (ἀνὴρ ἀγαθός), and acquire the "excellence of soul suitable to a human being" (τὴν ἀνθρώπῳ προσήκουσαν ἀρετὴν τῆς ψυχῆς, 770d1-2).[39] The goal of the laws is ἡ πᾶσα ἀρετή, the virtue befitting a human being because of his social nature.[40]

So far, it has been argued that the law code of *Laws* is on a par with the outline in the analogy, and that the interlocutors are on a par with the initial lawgiver. This does, however, require some further elaboration. The law code in *Laws* is a law code "in speech" (λόγῳ); the interlocutors' law code is a "test" (ἔλεγχος) to see whether their statements about the best life for the individual and the best organization for a *polis* were suitable in any way.[41] Their law code is not the law code for Magnesia (legislation ἔργῳ), which is to follow later (outside the plot of *Laws*).[42] In addition, the interlocutors sometimes emphasize

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[39] "… through some occupation, or character trait, some acquisition or desire, opinion, or some kinds of studies", ἔκ τινος ἐπιτηδεύματος ἢ τινος ἤθους ἢ ποιᾶς κτήσεως ἢ ἐπιθυμίας ἢ δόξης ἢ μαθημάτων ποτέ τινων (770d2-4). In other words, how they will acquire virtue is of secondary importance. What counts is the right *behaviour*. An example of encouraging virtue through κτῆσις may be the "additional payment" (δίκη … συνεπομένη) that is owed by the person who commits theft or violence: see below, p. 168, n. 82. This is also connected with the relatively egalitarian conception of virtue (see chapter three, p. 114): virtue is not πράττειν τὰ ἑαυτοῦ, an occupation or curriculum appropriate to members of a specific class (ἐμπειρία, not the assumed condition of the ψυχή). Rather, every citizen will acquire virtue in the way(s) that is or are open to him or her (770d4-5).

[40] See chapter three, p. 91.

[41] *Leg*. 702b1-3 (the Athenian): εἰ δὲ δή τι πεποιήκαμεν προὔργου, τίς ποτ᾽ ἂν ἔλεγχος γίγνοιτο ἡμῖν πρὸς ἡμᾶς αὐτοὺς λεχθείς, ὦ Μέγιλλέ τε καὶ Κλεινία; "But as to the value of our conclusions [in Books I-III], what test can we apply in conversing among ourselves, Megillus and Cleinias?" (transl. BURY, adapted).

[42] See chapter five, section 5.3.2, p. 204. The current order may deviate from the order adopted in a case of real legislation, 778b4-c2: γάμων δ᾽ ἦν ἔμπροσθεν ταῦτα, ὦ Κλεινία, νῦν δ᾽ ἔπειπερ λόγῳ γίγνεται, καὶ μάλ᾽ ἐγχωρεῖ ταύτῃ γίγνεσθαι τὰ νῦν· ἔργῳ μὴν ὅταν γίγνηται, ταῦτ᾽ ἔμπροσθεν τῶν γάμων, ἐὰν θεὸς ἐθέλῃ, ποιήσαντες, ἐκεῖνα ἤδη τότε ἐπὶ πᾶσιν τοῖς τοιούτοις ἀποτελοῦμεν. νῦν δὲ μόνον ὅσον τινὰ τύπον αὐτῶν δι᾽ ὀλίγων ἐπεξέλθωμεν, "These things are really, Cleinias, prior to marriage; but since our construction is now a verbal one, this is a very suitable place to deal with them; when we come to the actual construction of the State, we shall, God willing, make the houses precede marriage, and crown all our architectural work with our marriage-laws. For the present we shall confine ourselves to a brief outline of our building regulations" (transl. BURY).

that they are not yet lawgivers.[43] This is also the note on which the dialogue ends: if we turn to the closing page of *Laws*, we see that the dialogue ends on the prospect of laying the actual law code. In sum, the lawgiving at the dramatic level of *Laws* is an (1) exercise for (2) an outline.

4.3 Blanks in the outline: to be continued…

In view of the presentation of the law code in the *Laws* as an outline, it should come as no surprise that many issues raised in the interlocutors' own legislation in Books VI-XII are explicitly left open[44] and are deferred to a fictive moment in the future.[45] Now that we have looked at the instruction of the successors, in this section we will investigate in more detail the omissions in the law code itself.

The interlocutors frame their laws on the fiction that many things will eventually be completed by others. The present section will examine the open ends in the law code, *i.e.*, those junctures in the διέξοδος τῶν νόμων at which the interlocutors defer further legislation ot their successors. To be sure,

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[43] Cleinias likens their own approach to lawgiving to "bricklayers", λιθολόγοι (857e10-858c4). He laughs away the idea that they would have to choose between looking at the best (τὸ βέλτιστον σκοπεῖν) and looking at that which is most necessary (τὸ ἀναγκαιότατον). Instead, they have the leisure to proceed in the way that bricklayers do: they can gather material at random (χύδην) and select at leisure the items for the future construction (τὰ πρόσφορα τῇ μελλούσῃ γενήσεσθαι συστάσει). At 778b1-c1, the interlocutors state that the order in which they have discussed marriage and building λόγῳ (marriage prior to building) should be reversed when they will legislate in deed, ἔργῳ.

[44] Made explicit at *Leg*. 768c3-e3, 769a7-771a4, 772c6-d4, 779c5-d2, 816c1-d2, 828b3-7, 835a2-b4, 840e2-7, 846b6-c8, 847d1-7, 849e1-6, 855d1-4, 871c3-d2, 875d4-5, 917e2-918a5, 920b3-c7, 923e8-926a3, 957a1-c1; *cf*. BOBONICH (2002), 573 n. 67. For a discussion of the law code as an outline, see also SCHÖPSDAU (2003), 438-441ff. On the incompleteness of the law code, see, *e.g*., MORROW (1960), 203-208, 224-228; BRUNT (1993), 249-250.

[45] This later stage may also be inside the law code, as is the case with the *syssitia*, 783b5-c4. Although the Athenian does come back to the *syssitia* in 842b, the participation of women is not settled, SCHÖPSDAU (2003), 478-479. According to SAUNDERS (1995), 597 the issues left open are settled in 779dff., 788ab, 839cd. In any case, the thought is that some things will become clear at a later stage.

statements of this kind are made on the level of the outline; the interlocutors themselves are in no way concerned with making amendments or filling in details.

The blanks in the outline offer a view of how the interlocutors suggest that their law code ought to be filled in. They offer but a glimpse of a process aiming at completion at some point in the future. The recognition that additional regulation is needed is often accompanied by explicit instructions to or about the second lawgivers about future legislative procedures.[46] If anything in *Laws*, these "vistas" into the future are also likely to offer us a view of what is involved in the dynamic process of making a law code. What topics are left open, and how will the future lawgivers proceed? In addition, these vistas may also offer a vision of whether *the interlocutors think* that a law code will be finished at some point in the future. The painter-analogy implied that the law code is in first instance *not* finished, but what about the activities of the successors? What determines that laws are finished? The next section will investigate in what sort of contexts the lawgivers leave certain issues undetermined, how they motivate their decision to do so, and what they reveal about the mode of proceeding to be adopted by their successors.

In the vast majority of cases, filling in the blanks is assigned to the lawguards (as may be expected in light of the Athenian's announcement in 770a8-9).[47] They have to legislate on matters which the law has left open δι᾽

[46] SCHÖPSDAU (2003), 438-439 distinguishes between three grounds for the inevitable "Lückenhaftigkeit" of the law code: the complete regulation of all the "Sachbereiche" (1) is impossible (for three reasons: the abstractness and generality of the law; because not all necessary "Voraussetzungen" can be known in advance; and because of the limited time that is left for the lawgiver of high age); (2) is unnecessary, since many smaller things can be settled by any lawgiver; (3) would be unbefitting, since a lawgiver of high age would make himself ridiculous.

[47] On the lawguards, see the index of MORROW (1960); further GUTHRIE V (1978), 333, 353, 369; STALLEY (1983), 113-114; BRUNT (1993), 250; BOBONICH 2002, 380-384, 397; KLOSKO (2006), 250-251, 256-257. For a list of passages about the lawguards' involvement in amending and revising laws, see BOBONICH (2002), 573-574, n. 67.

ἀπορίαν.[48] Yet the lawguards are not the only ones involved; in most cases of supplementary legislation, they have to cooperate closely with the officials holding the ἀρχή over the relevant sphere of life. In many instances, for example, the νομοφύλακες are to formulate laws in conjunction with the ἀγορανόμοι and/or the ἀστυνόμοι.[49] The impression one gets is indeed one of close collaboration between the lawguards and the *astynomoi*, as becomes evident from the regulations about selling in markets.[50] Legislation is also further deferred to the δικαστήρια.[51]

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[48] *Leg*. 779c7-d2: ταῦτα δὲ πάντα συνιδόντες ταῖς χρείαις οἱ νομοφύλακες ἐπινομοθετούντων καὶ τῶν ἄλλων ὁπόσα ἂν ὁ νόμος ἐκλείπῃ δι᾽ ἀπορίαν, "All such details—and all else that the lawgiver is unable to deal with and omits—the lawguards shall regulate by supplementary decrees, taking account of the practical requirements" (transl. BURY, adapted). The law cannot foresee the needs (χρείαι) that will arise. *Cf.* ENGLAND *ad loc*.

[49] Suitable and adequate regulations concerning import and export (νόμους δὲ περὶ τούτων … τοὺς πρέποντάς τε καὶ ἱκανούς) (847d1-7); the lawguards, ἀγορανόμοι and ἀστυνόμοι are to designate suitable places (ἕδρας πρεπούσας, 849e5) for the exchange of goods for money and money for goods (849e1-6); the ἀγορανόμοι and lawguards are to be informed about the adulterations and malpractices of the vendors by those experienced in them (πυθόμενοι τῶν ἐμπείρων περὶ ἕκαστα, 917e4), and to write down rules for what vendors must do and what not (917e2-918a5); legislation is explicitly deferred to the ἀστυνόμοι (918a1-5); the lawguards are to hold a meeting about retail trading together with all those experienced in every branch of retail trading (μετὰ τῶν ἐμπείρων ἑκάστης καπηλείας) (920b7-c1).

[50] *Leg*. 917e2-918a5: τὰ δὲ κιβδηλεύματά τε καὶ κακουργίας τῶν πωλούντων οἵ τε ἀγορανόμοι καὶ οἱ νομοφύλακες, πυθόμενοι τῶν ἐμπείρων περὶ ἕκαστα, ἀναγραψάντων ἅ τε χρὴ ποιεῖν τὸν πωλοῦντα καὶ ἃ μή, καὶ πρόσθε τοῦ ἀγορανομίου θέντων ἐν στήλῃ γράψαντες νόμους εἶναι τοῖς περὶ τὴν τῆς ἀγορᾶς χρείαν μηνυτὰς σαφεῖς. τὰ δὲ περὶ τῶν ἀστυνόμων ἐν τοῖς πρόσθεν ἱκανῶς εἴρηται· ἐὰν δέ τι προσδεῖν δοκῇ, νομοφύλαξιν ἐπανακοινώσαντες καὶ γράψαντες τὸ δοκοῦν ἐκλιπεῖν, εἰς ἀστυνόμιον θέντων ἐν στήλῃ τά τε πρῶτα καὶ τὰ δεύτερα τεθέντα αὐτοῖσιν τῆς ἀρχῆς νόμιμα. "Touching acts of fraud and wrongful acts done by sellers, the market-stewards and the lawguards, after making enquiry from experts in each trade, shall write out rules as to what the seller ought to do or avoid doing, and shall post them up on a pillar in front of the stewards' office, to serve as written laws and clear instructors for those engaged in business in the market. The duties of the city-stewards have been fully stated already; in case any addition seems to be required, they shall inform the lawguards, and write out what seems to be wanting; and they shall post up on the pillar at the city-stewards' office both the primary and the secondary regulations pertaining to their office" (transl. BURY, adapted).

[51] *Leg*. 855d1-4. *Cf.* 876a3-876d4: the discretion left to the judges depends on their quality. Some things may be left to the δικαστήρια (dependent on their quality), whereas some must be laid down in laws by the lawgiver himself (αὐτῷ). The lawgiver must τὸ περιγραφήν τε καὶ τοὺς τύπους τῶν τιμωριῶν εἰπόντας, δοῦναι τὰ παραδείγματα τοῖσι δικασταῖς τοῦ μήδεποτε βαίνειν ἔξω τῆς δίκης (876e1). See SAUNDERS (2001), 89; SCHÖPSDAU (2011) *ad loc*., MORROW (1960) 243: "law itself pretends to give only an illustrative sample from the multitude of circumstances in which the magistrates are expected to administer reproof, correction, and punishment". For the relation

In religious matters, the νομοφύλακες are to collaborate with the various religious officials. In order to draw up a sacrificial calendar for the new colony, for instance, the expounders (ἐξηγηταί), priests (ἱερεῖς), priestesses (ἱέρειαι), and diviners (μάντεις, *cf*. μετὰ τῶν ἐκ Δελφῶν μαντειῶν, 828a2) must, together with the lawguards (μετὰ νομοφυλάκων), regulate the things that have necessarily been left out by the lawgiver (ἃ παραλείπειν ἀνάγκη τῷ νομοθέτῃ, 828b5).[52] Moreover, it is at the discretion of those same religious officials to decide where the laws need supplementation (καὶ δὴ καὶ αὐτοῦ τούτου χρὴ γίγνεσθαι ἐπιγνώμονας τοῦ παραλειπομένου τούτους τοὺς αὐτούς, 828b5-7). Contrary to what has often been assumed, the supposed immutability of the laws in the future is not a sign of their divine origin.[53] The

between lawgiver and judge, see also 933c3, 934b7. Greek legislation in general is distinct from Roman and modern legal systems in being procedural rather than substantive: WILLETTS (1977), 165 ("Greek law, as compared with Roman law, is undefinitive and untidy"); CARTLEDGE, MILLETT & TODD (1990), 1-12. GAGARIN (2005): Greek legislation is unusual "not because gaps are present, but because the Greeks explicitly recognize gaps and are willing to tolerate them. Instead of striving to find rules to fill the gaps in this legislation, laws in several *poleis* specify that judges or jurors should judge cases not covered by the laws 'according to the view that is most just (γνώμη τῇ δικαιοτάτῃ)', or some variation of this Athenian expression", *ibid*., 35. *Cf*. the legislation from Eresus, Naupactus and Gortyn cited by SEALEY ([1994], 51-52) (but see GAGARIN's criticism about SEALEY's partial misinterpretation of the law from Gortyn). For gaps in the legislation at Gortyn, see GAGARIN *ibid*., 36 n. 16.

[52] In cases of homicide, the lawgiver himself may easily demonstrate (ῥᾴδιον ἀποφαίνεσθαι νομοθέτῃ) that the prosecution of a person who fails to exact retribution for the premeditated murder of a relative must take place through certain prayers and sacrifices to certain gods; however, who these gods are and which procedure of bringing such cases to court is most correct with respect to the divine (τίς ὁ τρόπος … ὀρθότατα πρὸς τὸ θεῖον ἂν γιγνόνεμος εἴη) ought to be legislated for by lawguards together with expounders, diviners, and the god (νομοφύλακες μετ᾽ ἐξηγητῶν καὶ μάντεων καὶ τοῦ θεοῦ, 871c8-d1). The priests have the authority to judge claims by or against music tourists (who come to the city for the performances at festivals) up to fifty drachmae; a greater claim is to be taken to the ἀγορανόμοι (953a3-b5). The ἐξηγηταί, διδάσκαλοι and νομοθέται also have a role in the re-education of criminals (964b8-c4).

[53] Whether the laws are really immutable, is disputed; see BOBONICH (2002), 400-408. The import of the unchangeability of the laws thus does not corroborate scholars' claim that the laws are founded on divine authority. See STALLEY (1983), 81-82; BRUNT (1993), 249; NIGHTINGALE (1999a), 121: "In Magnesia (…) the laws are the product of divine wisdom"; KLOSKO (2006), 250-251, 256-257, "Plato intends the laws in Magnesia to have the rigidity of a theocracy", (257). BRUNT and MORROW (1953), 244-245 connect the invariability of the laws with the alleged requirement in *Leg*. 713-714 that "positive law ought to be modelled on divine law (…) [that] will then ensure the true welfare of the citizens. (…) Everywhere Plato [*sic*!] tacitly assumes that he himself apprehends the divine law and can embody it in his code" (244).

provisions for future legislation, including the provisions for rendering the laws immutable, are informed by purely pragmatic considerations; the laws are to *become* immutable only after a due period of testing; they are not immutable laws from the beginning because they have been given to humans by a god. It is simply nonsensical to keep changing laws all the time.

Also involved in legislation are the prize winners in the competitions for virtue: these people have been supremely educated in the *polis*' own educational system.[54] In *Laws*, authority within the *polis* is related to, and depends on, *experience* (ἐμπειρία). Like the elderly citizens,[55] the prize winners are an *internal* authority. The elders are most experienced with the *polis*' notion of ἀρετή; the prize winners are superior performers. The requirement of having practical experience with the kind of issues of which one is in charge also emerges from the requirement that those who act as judges in cases of woundings inflicted by one's children, ought to be over 60 years of age and have children of their own (not adopted ones!).[56] The supervisor of education must also have children of his own.[57]

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[54] *Leg*. 919d3-e9. We may think back to the Athenian's description of *paideia* in virtue in Book I, see chapter three, p. 99. Also, the composers of poetry should have distinguished themselves by noble deeds (829c6-e4)): they have to be τίμιοι ἐν τῇ πόλει. This is more important than technical skills.

[55] *Leg*. 659c9-d4 (the Athenian): Δοκεῖ μοι τρίτον ἢ τέταρτον ὁ λόγος εἰς ταὐτὸν περιφερόμενος ἥκειν, ὡς ἄρα παιδεία μέν ἐσθ᾽ ἡ παίδων ὁλκή τε καὶ ἀγωγὴ πρὸς τὸν ὑπὸ τοῦ νόμου λόγον ὀρθὸν εἰρημένον, καὶ τοῖς ἐπιεικεστάτοις καὶ πρεσβυτάτοις δι᾽ ἐμπειρίαν συνδεδογμένον ὡς ὄντως ὀρθός ἐστιν, "This is, I imagine, the third or fourth time that our discourse has described a circle and come back to this same point—namely, that education is the process of drawing and guiding children towards that principle which is pronounced right by the law and which the most decent and eldest people all consider correct on the basis of their experience" (transl. Bury, adapted). For a discussion of the term ἐπιεικές from Homer to Aristotle, see SAUNDERS (2001).

[56] *Leg*. 878e5-7: ἐκγόνοις δὲ πρὸς γονέας εἶναι τῶν τοιούτων τραυμάτων δικαστὰς μὲν τοὺς ὑπὲρ ἑξήκοντα ἔτη γεγονότας ἐπάναγκες, οἷς ἂν παῖδες μὴ ποιητοί, ἀληθινοὶ δέ, ὦσιν, "When woundings of this kind shall be inflicted by children on parents, the judges shall be, of necessity, over sixty years of age who have genuine, and not merely adopted, children of their own" (transl. BURY).

[57] For the supervisor of education, see *Leg*. 811d5, 812e10, 829d4, 964c4.

Religious choruses of boys and girls

The first laws formulated are those governing a certain type of religious festivals (771a5ff.).[58] These festivals take place both on the level of the tribe and on the lower level of the twelve communities of which each tribe consists.[59] Such particular religious festivals are not an arbitrary starting point for the law code, since one of their functions is to provide young boys and girls with opportunities to find a suitable marriage partner (771e1ff.). And since marriage is necessary for procreation, and procreation forms the start of a new human life, the regulations about forming partnerships are logically aimed at begetting new citizens. As explained in chapter one, the law code follows to a large extent the human life cycle from cradle to grave.[60] Laws and life are, however, not entirely co-extensive: the law code begins with festivals that may lead to a suitable marriage, and after death continues with a discussion of burial rituals, bequests, testaments and some miscellaneous topics. A scope that extends beyond the life of a single human being leads to a broader perspective of the law code on humankind and its mode of life; it is exactly this larger perspective on humans as a *kind* that is characteristic of the *Laws* in general.[61]

In the context of these festivals, it is made explicit that some things have not been settled, and we hear explicit instructions about future lawgiving. First, the supervisors (ἐπιμελητάς), organizers (κοσμητάς) and the rulers of the choruses (τοὺς τῶν χορῶν ἄρχοντας) are appointed as lawgivers together with the lawguards (γίγνεσθαι καὶ νομοθέτας μετὰ τῶν νομοφυλάκων).[62] These

[58] The law mentioned in 666a3 (ἆρ᾽ οὐ νομοθετήσομεν πρῶτον μέν κτλ.) about the complete abstinence from wine of those under eighteen is not part of the διέξοδος τῶν νόμων.
[59] *Leg*. 771d3-e1.
[60] See above, p. 39, and n. 135 on p. 40.
[61] *Cf*. the description of human civilization at large as a cycle in *Laws* Book III.
[62] *Leg*. 772a4-6.

must settle all of the things that the interlocutors leave open (ὅσον ἂν ἡμεῖς ἐκλείπωμεν, 772a6).[63] The Athenian continues, 772a6-c4:

> ἀναγκαῖον δέ, ὅπερ εἴπομεν, περὶ τὰ τοιαῦτα πάντα ὅσα σμικρὰ καὶ πολλὰ νομοθέτην μὲν ἐκλείπειν, τοὺς δ' ἐμπείρους ἀεὶ κατ' ἐνιαυτὸν γιγνομένους αὐτῶν, ἀπὸ τῆς χρείας μανθάνοντας, τάττεσθαι καὶ ἐπανορθουμένους κινεῖν κατ' ἐνιαυτόν, ἕως ἂν ὅρος ἱκανὸς δόξῃ τῶν τοιούτων νομίμων καὶ ἐπιτηδευμάτων γεγονέναι. χρόνος μὲν οὖν μέτριος ἅμα καὶ ἱκανὸς γίγνοιτ' ἂν τῆς ἐμπειρίας δεκαετηρὶς θυσιῶν τε καὶ χορειῶν, ἐπὶ πάντα καὶ ἕκαστα ταχθείς, ζῶντος μὲν τοῦ τάξαντος νομοθέτου κοινῇ, τέλος δὲ σχόντος, αὐτὰς ἑκάστας τὰς ἀρχὰς εἰς τοὺς νομοφύλακας εἰσφερούσας τὸ παραλειπόμενον τῆς αὑτῶν ἀρχῆς ἐπανορθοῦσθαι, μέχριπερ ἂν τέλος ἔχειν ἕκαστον δόξῃ τοῦ καλῶς ἐξειργάσθαι, τότε δὲ ἀκίνητα θεμένους, ἤδη χρῆσθαι μετὰ τῶν ἄλλων νόμων οὓς ἔταξε κατ᾽ ἀρχὰς ὁ θεὶς αὐτοῖς νομοθέτης·
>
> It is, as we said, necessary that in regard to all matters involving a host of petty details the lawgiver should leave omissions, and that rules and amendments should be made from year to year by those who have constant experience of them from year to year and are taught by practice, until it be decided that a satisfactory code has been made out to regulate all such proceedings. A fair and sufficient period to assign for such experimental work would be ten years, both for sacrifices and for dances in all their several details; each body of officials, acting in conjunction with the original lawgiver, if he be still alive, or by themselves, if he be dead, shall report to the Law-wardens whatever is omitted in their own department, and shall make it good, until each detail seems to have reached its proper completion: this done, they shall decree them as fixed rules, and employ them as well as the rest of the laws originally decreed by the lawgiver. (Transl. BURY)

This is the first time that the painting terminology is applied to, and interpreted in, a concrete case of legislation: it is necessary (ἀναγκαῖον[64]) that other lawgivers will settle (τάττεσθαι) all those numerous small things that the first lawgiver leaves open (τὰ τοιαῦτα πάντα ὅσα σμικρὰ καὶ πολλὰ νομοθέτην μὲν ἐκλείπειν, 772a7-b1). The original lawgiver will draw an outline (implicit

[63] The Athenian again implicitly identifies themselves with the first lawgiver by switching from the first person plural (ἐκλείπωμεν τάττοντες in 772a6) to the neutral νομοθέτης in 772b1.
[64] *Cf.* ἀνάγκη, 769d6, 770b6.

in ἐκλείπειν); the officials in charge of the festivals (τούς δ᾽ in 772b1, αὐτὰς ἑκάστας τὰς ἀρχάς in 772c1) will then fill in what is left open.

In this context, we hear more specifically how the remaining lacunae are actually to be filled in. The ἐπιμεληταί, κοσμηταί, etc. in charge of the festivals are to be made lawgivers together with the lawguards. As specialized officials—in the sense of familiar with a certain area of social life—they acquire experience with every new year that passes (τοὺς δ᾽ ἐμπείρους ἀεὶ κατ᾽ ἐνιαυτὸν γιγνομένους αὐτῶν[65], 772b1-2). They learn from different situations and needs (ἀπὸ τῆς χρείας μανθάνοντας). The officials will formulate new rules and amend existing ones (τάττεσθαι καὶ ἐπανορθουμένους κινεῖν, 772b3) every year (κατ᾽ ἐνιαυτόν, 772b3). Later lawgivers are necessary because the supplementation of the law code requires *experience* with the practicalities (τοὺς δ᾽ ἐμπείρους 770b1; ἐμπειρία in 770b6; *cf*. ἀπὸ τῆς χρείας μανθάνοντας in b2).

This explains in retrospect why the painter-analogy underscores that a certain period of time is necessary before the painting can be finished. In this case, the interlocutors actually stipulate an appropriate period beforehand: ten years will be a period of appropriate measure (μέτριος, *i.e.*, "reasonable", neither excessively long, nor too short) and of sufficient length (ἱκανός) to gain experience with sacrifices and choruses (χρόνος … τῆς ἐμπειρίας θυσιῶν τε καὶ χορειῶν).[66]

As long as the original lawgiver is still alive, he will join the officials in making new laws (κοινῇ, 772c1). After his demise, the officials presiding over

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[65] αὐτῶν is very unspecific: *with what* have these officials become experienced? *Cf*. BOBONICH (2002), who notes that it is "idle" to search in the text for an exact answer to questions like "Exactly what officials should be involved in each kind of change and how does the procedure work? Where can the proposals for change originate? If the Assembly is involved, does it need to approve by a simple majority of those present and voting or is a super-majority required? If the latter, how high is it? In the offices that must approve, does Plato include, e.g., the select judges? The city wardens?" (399)

[66] For other suggestions of a trial phase: *e.g*. 846c5-7: καὶ τῆς ἀναγκαίας αὐτῶν χρείας ἐμπείρως ἴσχοντες, μέχριπερ ἂν πάντα ἱκανῶς δόξῃ κεῖσθαι (discussed below). Concerning the regulation of the thorny domain of sexual conduct: if the interlocutors' first law about sexual conduct does not work, an alternative law must be made instead (840e2-842a3).

the choruses must themselves (αὐτὰς ἕκαστας τὰς ἀρχάς) entrust the lawguards with that part left open within their own jurisdictional sphere (τὸ παραλειπόμενον τῆς αὑτῶν ἀρχῆς, 772c2-3). The filling in of these gaps is to continue until every aspect (ἕκαστον *sc*. τὸ παραλειπόμενον) is believed to have reached the "end of having been completed in a fine way" (μέχριπερ ἂν τέλος ἔχειν ἕκαστον δόξῃ τοῦ καλῶς ἐξειργάσθαι, 772c3-4; *cf*. ἕως ἂν ὅρος δόξῃ τῶν τοιούτων νομίμων καὶ ἐπιτηδευμάτων, 772b3-4). The τέλος τοῦ καλῶς ἐξειργάσθαι and ὅρος of the laws depends on *δόξα*. It is not made explicit whose δόξα it is, but it is presumably the δόξα of the officials involved in the lawgiving. The final result is a product of agreement on *pragmatic* grounds: it depends on the conviction of those involved rather than on some external criterion (such as likeness to a model).[67]

When the end (ὅρος, τέλος) has been reached, the regulations must be made unchangeable (τότε δὲ ἀκίνητα θεμένους).[68] However, change is—at least in this case—not completely excluded.[69] After this ten-year-period, changes can still be made. The impulse has to come from practice itself: when it is believed that a need for change arises, εἰ … τις ἀνάγκη *δόξειε* (772c7).[70]

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[67] Amendment is therefore not the imitation of some ideal or pattern world, *contra* MORROW (1960), 584-585; *cf*. 570-571. *Cf.* ZELLER (1839), 29: "nicht der Begriff des Staats ist es, aus welchem die einzelnen Bestimmungen hervorgehen, sondern ganz wie in einer positiven Gesetzgebung werden dieselben einzelnen auseinandergereiht, und eben so vereinzelt und empirisch begründet."

[68] For the proverbial phrase μὴ κινεῖν τὰ ἀκίνητα, see *Leg*. 684e1, 843a1 (of the boundary-marks of someone's land), 913b9 (of another person's possessions).

[69] For procedure of νομοθεσία and amending laws at Athens: TODD (1993) for the claim that after the restoration of the democracy (in 403/2), *nomoi* "were for the first time distinguished from and given a privileged status over *psêphismata* (decrees), such that no decree could in future overrule a law" (294-295). In the second half of the fifth century the previously unlimited legislative capacity of the assembly was substituted with the power only to pass *psêphismata*, while the creation of *nomoi* was reserved to a separate body of *nomothetai*, while the assembly could only initiate the procedure.

[70] Whether this procedure for making amendments pertains only to these religious festivals or to laws in general is contested. AST was the first to argue for a more general reading and proposed to delete θυσιῶν τε καὶ χορειῶν. This was countered by RITTER (1896), 171, who rightly argued that the involvement of the μαντεῖαι θεῶν in the procedure points to the narrow reading (the same argument is made by SCHÖPSDAU [2003], 449, and BOBONICH [2002], 396, with reference to RITTER and ENGLAND). The general reading is adopted by MORROW (1953), 245; GUTHRIE V (1978), 368; KLOSKO (2006), 250-251; COHEN (1993), 314; BRUNT (1993), 250; ZUCKERT (2009), 115. For the narrower reading have argued ENGLAND *ad* 772b6; MORROW (1960), 571 n. 54; STALLEY (1983), 82;

Again, it is not made explicit whose δόξα this is. This vagueness is inherent in the nature of lawgiving: it cannot be foreseen how need for changes will appear; and, in any case, it seems that anyone might signal the need for a change.

The Athenian is explicit about the procedure to be followed once the proposal for a change in the laws has been put forward: all officials, the whole *dêmos* and all the oracles of the gods must be consulted, and only if the vote is unanimous in favour of change, must the law be amended (ἐὰν συμφωνῶσι πάντες, 772d2).[71] The participation of the entire citizenry in changing these laws may be due to the fact that the law concerns festivals in which all citizens are involved, and that are crucial for channelling the social interaction between the citizens (this may be the reason why *all* the oracles are consulted as well).[72]

Details of the music festivals

Although most musical topics have been dealt with exhaustively, some matters, such as regulations concerning the rhapsodes and their retinue and the stock

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BOBONICH (2002), 396 (*cf*. 573, nn. 63 and 64, and for other references see *ibid*., 573 n. 62). In some other instances the *nomophylakes* are involved (…)In any case, SCHÖPSDAU's comment *ibid*. seems reasonable: "Da aber Platon auch in andern Fällen zunächst eine Zeit der Erprobung und dann eine endgültige Fixierung von Gesetzbestimmungen vorsieht (vgl. 846b-d, 957b), erscheint eine analoge Anwendung der hier gegebenen Vorschriften auf den gesamten Kodex zumindest Platons Intentionen zu entsprechen; der Passus wäre dann ein Nachtrag zu den allgemeinen Ausführungen über die Ergänzung des Gesetzeskodex in 770b-771a, auf die hier 772a6-7 ("es ist jedoch, wie gesagt, unvermeidlich…") zurückverwesen wird."

[71] MORROW (1960), 571 argues that none of these bodies may object, rather than, literally, "every member of the people"; *cf*. BOBONICH (2002), 396-397. SCHÖPSDAU (2003), 450, notes that "Gesetzestheoretiker[n]" saw the introduction of new laws as καινοτομία, a term with distinctly negative connotations, while the expression ἐπανορθοῦν τοὺς νόμους common in Athens suggests that "das Ziel der Neueinführung von Gesetzen [ist] die Verbesserung des bestehenden Gesetzeskodex".

[72] There is no hint in this passage that the protection of the laws against changes is connected with a desire to maintain a close relation between colony and metropolis, as it becomes apparent from many foundation decrees. For Cyrene, Naupactus and Brea, see GRAHAM (1964), 60-61, 67-68. In the case of Naupactus (a colony of Opus) and Brea (a colony of Athens) for instance, the foundation decrees show that a change in the laws would have to be agreed upon by both the colony and the mother city. In the case of Brea, the Athenians deny themselves the right to initiate changes (*ibid*., 60-61).

chorus-competitions at religious festivals, have to be postponed to some later moment (τότε),[73] namely when the respective days, months and years have been allocated to the gods and the frequency of the festivals and their intervals is clear.[74] The determination of the exact date and program for these choral contests befalls the "regulators of the games" (ἀθλοθεταί), "the educator of the young" (παιδευτὴς τῶν νέων) and the lawguards (835a3-4). These will meet in an assembly and become lawgivers themselves (εἰς κοινὸν … συνελθόντων καὶ γενομένων νομοθετῶν αὐτῶν, 835a4-5).

The first lawgiver has already stated what is to be the character of the choruses: their speech, theirs songs, the *harmoniai* that accompany certain rhythms and dance-movements.[75] The second lawgivers ought to follow in the footsteps of the first lawgiver (καθ᾽ ἃ … μεταδιώκοντας δεῖ νομοθετεῖν, 835b2). The latter instruction is not unique to this case; as the Athenian repeatedly makes explicit, the second lawgivers must take the τύποι or intention(s) (βουλήματα, νοῦς) of the first lawgiver as their guideline.[76] The matters about which the later lawgivers have to decide (and cannot fail) are: when the choral contests are to be held, who is to perform, and who is to

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[73] *Leg*. 834e2-835a1.

[74] *Leg*. 834e5-6: ταχθέντων τοῖς θεοῖς τε καὶ τοῖς μετὰ θεῶν μηνῶν καὶ ἡμερῶν καὶ ἐνιαυτῶν.

[75] *Leg*. 835e7-b2: οἷα δὲ ἕκαστα αὐτῶν εἶναι δεῖ κατὰ λόγον καὶ κατ᾽ ᾠδὰς καὶ καθ᾽ ἁρμονίας ῥυθμοῖς κραθείσας καὶ ὀρχήσεσι, πολλάκις εἴρηται τῷ πρώτῳ νομοθέτῃ. Πόλλακις refers to "e.g. at 798-802" (ENGLAND *ad loc*.). Contrary to ENGLAND *ibid*., δεύτεροι does not refer to "the committee" (*sc*. of Cretan legislators of which Cleinias is part). This committee is again in the position of the first legislator. The second lawgivers are the officials stipulated, who will become lawgivers themselves to finish the work of the first lawgiver.

[76] *Cf*. 802a5-c4: the δοκιμασταί are to select from the many old musical and poetical works 'that which is appropriate and fitting to the consitution under construction' (τῇ καθισταμένῃ πολιτείᾳ τὸ πρέπον καὶ ἁρμόττον, 802a8-b1). To arrive at their selection they ought not be guided by the poetic powers of the poets and musicians, but they should interpret the wishes of the lawgiver (ἐξηγουμένους δὲ τὰ τοῦ νομοθέτου βουλεύματα, 802c2) so as to select dance, song and χορεία 'in accordance with the intention of those [wishes]' (κατὰ τὸν αὐτῶν [*sc*. βουλευμάτων] νοῦν, 802c4). In 816c1-d2 it is said that the first lawgiver ought to 'expound in types' (ἐξηγεῖσθαι τύποις) two types of dance: war-dance (πυρρίχη) and peace-dance (ἐμμέλεια), which the second lawgiver has to "search for" (ζητεῖν), apparently in other *poleis*, and "track them down" (ἀνερευνησάμενον). In 846c4-5 the younger lawgivers are to "imitate" the laws of the old lawgiver (οἱ νέοι πρὸς τὰ τῶν πρόσθεν νομοθετήματα ἀπομιμούμενοι).

accompany the performers (τοῦ τε πότε καὶ τίνες καὶ μετά τίνων, 835a6). In any case, it is not difficult to know how things like these ought to acquire the form of law (ταῦτα … καὶ ἄλλα τοιαῦτα οὔτε χαλεπὸν γνῶναι τίνα τρόπον χρὴ τάξεως ἐννόμου λαγχάνειν, 835b5-6). There is little at stake here: whether something has to be altered again afterwards at some place or other, is of no great importance (οὐδ᾽ αὖ μετατιθέμενα ἔνθα ἢ ἔνθα μέγα τῇ πόλει κέρδος ἢ ζημίαν ἂν φέροι, 835b6-7).[77] The use of the verb λαγχάνειν ("obtain by lot") reinforces the underlying idea of minor importance.[78] Both connotations of the lot adduced elsewhere in *Laws*, that it does not matter whether *x* or *y* is selected, and no special qualification is needed to make the decision, are present here. The interlocutors merely state a general principle at this stage: it is to be expected that the future musical officials will offer the choruses the opportunity to compete in turn (χρὴ προσδοκᾶν κατὰ μέρος ἀγωνιεῖσθαι, 835a2-3).[79]

Yet in a domain where differences do matter, and where it is difficult to convince (πείθειν τε χαλεπόν, 835c1), there is need of an exceptionally bold person (νῦν δὲ ἀνθρώπου τολμηροῦ κινδυνεύει δεῖσθαί τινος, 835c3-4). This

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[77] *Cf.* 957a1-3: πάντα δ' οὖν ὁπόσα σμικρὰ καὶ ῥᾴδια νόμιμα εὑρίσκειν, πρεσβύτου νομοθέτου παραλιπόντος, τὸν νέον ἀναπληροῦν χρὴ νομοθέτην. "The old lawgiver, however, may pass over all such legal observances as are trivial and easy of discovery, and the young lawgiver shall fill up his omissions" (transl. BURY).

[78] The verb λαγχάνειν denotes a non-complex situation in which (i) there is no difference between the items or people from whom must be selected; and (ii) it does not require special insight to know what is to be done. These two connotations are apparent from the Athenian's theorizing about the equality imposed by lot, in the context of the discussion of the selection procedure of the βουλευταί, especially 757b3-5: τὴν μὲν ἑτέραν [*sc.* ἰσότητα] εἰς τὰς τιμὰς πᾶσα πόλις ἱκανὴ παραγαγεῖν καὶ πᾶς νομοθέτης, τὴν μέτρῳ ἴσην καὶ σταθμῷ καὶ ἀριθμῷ, κλήρῳ ἀπευθύνων εἰς τὰς διανομὰς αὐτήν· "The one of these [kinds of equality] any State or lawgiver is competent to apply in the assignment of honours,—namely, the equality determined by measure, weight and number,—by simply employing the lot to give even results in the distributions" (transl. BURY). The lot, which comes in at the final stage of the selection procedure (757d5-758a2), constitutes the application of the second, democratic kind of equality.

[79] χρή (835b6) expresses another kind imperative than δεῖ (835b1). χρή in general pertains to the *content* of the laws, it is a behavioural norm. δεῖ on the other hand is given with ἀνάγκη and pertains to things that cannot be changed. That the lawgiver is mortal, cannot be altered; it is therefore necessary that he appoints successors, and it is in the same range that the second lawgivers must "follow closely after" (μεταδιώκειν) the stipulations of the first lawgiver. *Cf.* BERNADETE (1965).

ominous introduction appears, upon Cleinias' enquiry, to refer to the rules for sexual conduct (835d4 ff.; *cf.* ταῖς μεγίσταισιν ἐπιθυμίαις, c7). The "man with guts" (ἄνθρωπος τολμηρός) will state without inhibition what he considers best for the city and citizens (τὰ δοκοῦντα ἄριστ᾽ εἶναι), ordering that which is appropriate and in keeping with the constitution as a whole (τὸ πρέπον καὶ ἑπόμενον πάσῃ τῇ πολιτείᾳ).[80] He does not orient himself towards a higher norm; he is guided by τὸ πρέπον: what is in keeping with the current laws, *i.e.*, by what has been laid down by the original lawgiver. In dealing with the extremely difficult subject of sexual passion, he has no other human as his helper, but must follow his own reason alone (λόγῳ ἑπόμενος μόνῳ μόνος, 835c8).[81] Again, we meet an authority figure who is qualified by, and within, the educational system of the *polis*. The supreme παιδευτής, who is in charge of *paideia* as a whole, is himself of course one of the most distinguished citizens.

Public courts

Another context in which the Athenian defers further laws to the interlocutors' successors concerns the topic of the public courts. While it does not receive a separate heading, this topic is addressed at several points in the lawgiving. The courts are adduced whenever a reference to them is necessary because of a possible transgression of the law(s) stipulated immediately before.

The law on bringing in the harvest is one of these cases. A person who brings in his crop may do so by any route that pleases him, provided that he does not cause damage to the property of others. This train of thought then receives a follow-up: the Athenian proceeds to stipulate what is to be done when damage is actually inflicted. What is to be done depends on the size of the damage; if the damage is below three minas, the victim must report to the

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[80] *Cf.* 783b3-c4: τοὺς προσήκοντας (…) καὶ πρέποντας νόμους.

[81] About the παρρησία of the παιδευτής in *Laws* (compared with Socratic παρρησία), see VAN RAALTE (2004), 308-309.

magistrates and obtain redress from them. If the damage exceeds three minas, the victim must obtain redress from the culprit by taking his case to the public court. If penalties are judged in a biased way, the official must be liable to the victim for double the damage. This, in turn, is reason to stipulate a general rule: injustices of magistrates may be brought to the public courts by anyone who wishes (τὰ δὲ αὖ τῶν ἀρχόντων ἀδικήματα εἰς τὰ κοινὰ δικαστήρια ἐπανάγειν τὸν βουλόμενον ἑκάστων τῶν ἐγκλημάτων, 846b4-6). The details of bringing a case to a public court are many, and they cannot be left unlegislated for, but they are not worthy of the attention of the old lawgiver, 846b2-c8:

> μυρία δὲ ταῦτα ὄντα καὶ σμικρὰ νόμιμα, καθ' ἃ δεῖ τὰς τιμωρίας γίγνεσθαι, λήξεών τε πέρι δικῶν καὶ προσκλήσεων καὶ κλητήρων, εἴτ' ἐπὶ δυοῖν εἴτ' ἐφ' ὁπόσων δεῖ καλεῖσθαι, καὶ πάντα ὁπόσα τοιαῦτά ἐστιν, οὔτ' ἀνομοθέτητα οἷόν τ' εἶναι γέροντός τε οὐκ ἄξια νομοθέτου, νομοθετούντων δ' αὐτὰ οἱ νέοι πρὸς τὰ τῶν πρόσθεν νομοθετήματα ἀπομιμούμενοι, σμικρὰ πρὸς μεγάλα, καὶ τῆς ἀναγκαίας αὐτῶν χρείας ἐμπείρως ἴσχοντες, μέχριπερ ἂν πάντα ἱκανῶς δόξῃ κεῖσθαι· τότε δὲ ἀκίνητα ποιησάμενοι, ζώντων τούτοις ἤδη χρώμενοι μέτρον ἔχουσι.
>
> And since there are countless petty cases for which penalties must be laid down, concerning written complaints and citations and evidence of citation,—whether the citation requires two or more witnesses,—and all matters of the like kind,—these cases cannot be left without legal regulation, but at the same time they do not deserve the attention of an aged lawgiver; so the young lawgivers shall make laws for these cases, modelling their small rules on the great ones of our earlier enactments, and learning by experience how far they are necessary in practice, until it be decided that they are all adequately laid down; and then, having permanently fixed them, they shall live in the practice of them, now that they are set out in due form. (Transl. BURY)

A similar passage can be found in a passage in Book XI, where the Athenian reflects on the rationale behind, and the purpose of, paying monetary fines (ἔκτισις, δίκη). Every offender who harms another person, either by theft or violence, must, in addition to the indemnity paid to the victim, complete an additional payment (δίκην … συνεπομένην) "for the sake of correction"

(σωφρονιστύος ἕνεκα).[82] The idea is, apparently, that an additional monetary fine constitutes an extra motivation to refrain from committing theft or violence in the future.[83] The Athenian continues, 934b3-c3:

> ὧν δὴ πάντων ἕνεκα χρὴ καὶ πρὸς πάντα τὰ τοιαῦτα βλέποντας τοὺς νόμους τοξότου μὴ κακοῦ στοχάζεσθαι δίκην τοῦ τε μεγέθους τῆς κολάσεως ἑκάστων ἕνεκα καὶ παντελῶς τῆς ἀξίας· ταὐτὸν δ' ἔργον δρῶντα συνυπηρετεῖν δεῖ τῷ νομοθέτῃ τὸν δικαστήν, ὅταν αὐτῷ τις νόμος ἐπιτρέπῃ τιμᾶν ὅτι χρὴ πάσχειν τὸν κρινόμενον ἢ ἀποτίνειν, τὸν δέ, καθάπερ ζωγράφον, ὑπογράφειν ἔργα ἑπόμενα τῇ γραφῇ. ὃ δὴ καὶ νῦν, ὦ Μέγιλλε καὶ Κλεινία, ποιητέον ἡμῖν ὅτι κάλλιστα καὶ ἄριστα·
>
> All these reasons and considerations make it necessary for the law to aim, like a good archer, at a penalty that will both reflect the magnitude of the crime and fully indemnify the victim. The judge has the same aim, and when he is faced by his legal duty of assessing what penalty or fine the defendant must pay, he must follow closely in the legislator's footsteps; and the latter must turn himself into a sort of artist and sketch some specimen measures consistent with his written prescriptions. That,

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[82] *LSJ*. *Cf.* AST (1835-1838) *correctio*. *Leg.* 934e1 is the only attestation of the word ἡ σωφρονιστύς. *LSJ*: σωφρονιστύς = σωφρονισμός, "teaching of morality or moderation". The interpretation "correction" derives from the explanation a few lines later: the fine is not to be paid for the sake of paying justice for committing a crime—what is done cannot be made undone—but for the sake of making both the person who commits the crime and those who have seen him being called to justice either loathe injustice completely, or to recover from such an infliction to a large extent (οὐχ ἕνεκα τοῦ κακουργῆσαι διδοὺς τὴν δίκην—οὐ γὰρ τὸ γεγονὸς ἀγένητον ἔσται ποτέ—τοῦ δ᾽ εἰς τὸν αὖθις ἕνεκα χρόνον ἢ τὸ παράπαν μισῆσαι τὴν ἀδικίαν αὐτόν τε καὶ τοὺς ἰδόντας αὐτὸν δικαιούμενον, ἢ λωφῆσαι μέρη πολλὰ τῆς τοιαύτης συμφορᾶς, 934a6-b3).

[83] For the idea that punishments serve to encourage correct behaviour and to *teach*, *cf*. Pl. *Prot*. 324a5-c1. This forward-looking attitude is notably different from the *Gorgias*' justification of punishment as "curing of the soul" (*Gorg*. 476a7-479e9, 525b1-c8, also including a deterring function towards others). The idea that (increase of) σωφροσύνη is the product of a fine seems odd in the light of the *Republic*'s opposition between σωφροσύνη and φιλοχρηματία (485e3, 486b6), the association of φιλοχρηματία with ἀνευλευθερία (*Resp*. 391c5, 469d6) and with the uncurtailed ἐπιθυμητικόν (553c5). The logic of imposing fines assumes that people are generally attached to possessions (this may be why a city in which all property is common is a "city of gods" see *Leg*. 739b8-e4, discussed in chapter one, p. 11). We may compare the lawgiver's use of τιμή and ἀτιμία to motivate people to restrain themselves (631e2-632a2). Therefore, σωφροσύνη is not conceptualized in terms of a quality of soul (order of parts), but in terms of something like self-restraint, "foresight", attentiveness to others. This is a more colloquial use of σωφροσύνη, factoring in that something may go wrong: an occasional wrong act does not mean that one is not virtuous. *Cf.* for a similar argument about the δίκαιος in the penal laws of Book IX, SCHOFIELD (2012). In another case, σωφροσύνη is itself a kind of tax: metics do not have to pay even the smallest *metoikion*, "except self-restraint" (πλὴν τοῦ σωφρονεῖν, 850b3).

> Cleinias and Megillus, is the job to which we must now devote our best efforts; (…)" (Transl. SAUNDERS)

This passage shows once more that the aim of the laws is to provide the citizens with ample motivation to behave properly. The lawgiver "aims" (στοχάζεσθαι) at the desired result. Lawgiving is a *stochastic* endeavour. The lawgiver tries to come up with ways to motivate people to exhibit the desired kind of behaviour, using whatever he thinks (on the basis of his experience, of his insight in human behaviour, etc.) will be most effective—in this case the risk of being obliged to pay a fine.

4.4 External influences: adopting laws from other *poleis*

In the sections above, it has been argued that the process of lawgiving is depicted in terms of consistency and pragmatism. The second lawgivers operate on the basis of what was stipulated by the first lawgiver. The fact that lawgiving is to be executed by the lawguards in conjunction with the specialized officials in the relevant areas, suggests that a familiarity with the respective issues is a *conditio sine qua non* for adequate legislation. That is the reason why lawgiving is a long process: lawgiving is modelled upon a notion of τέχνη that is rooted in experience. But it is not only a matter of experience gained by the magistrates in their own city; experience may also be drawn from other *poleis*, 957a4-b3:

> τὰ μὲν ἴδια δικαστήρια ταύτη πῃ γιγνόμενα μέτρον ἂν ἔχοι· τὰ δὲ δημόσια καὶ κοινὰ καὶ ὅσοις ἀρχὰς δεῖ χρωμένας τὰ προσήκοντα ἑκάστῃ τῶν ἀρχῶν διοικεῖν, ἔστ' ἐν πολλαῖς πόλεσιν οὐκ ἀσχήμονα ἐπιεικῶν ἀνδρῶν οὐκ ὀλίγα νομοθετήματα, ὅθεν νομοφύλακας χρὴ τὰ πρέποντα τῇ νῦν γεννωμένῃ πολιτείᾳ κατασκευάζειν συλλογισαμένους καὶ ἐπανορθουμένους, ταῖς ἐμπειρίαις διαβασανίζοντας, ἕως ἂν ἱκανῶς αὐτῶν ἕκαστα δόξῃ κεῖσθαι, τότε δὲ τέλος ἐπιθέντας, ἀκίνητα οὕτως ἐπισφραγισαμένους, χρῆσθαι τὸν ἅπαντα βίον.

> In dealing with the private law courts that method would be reasonable, but in connection with the public courts of the State, and all those which the officials have to use in managing the affairs which belong to their several offices, there exist in many States quite a number of admirable ordinances of worthy men; and from these the Law-wardens must construct a code which is suitable to the polity we are now framing, partly by comparing and amending them, partly by submitting them to the test of experience, until each such ordinance be deemed satisfactory; and when they have been finally approved, and have been sealed as absolutely unchangeable, then the magistrates shall put them into practice all their life long. (Transl. BURY, adapted)

On the subject of public courts, the interlocutors instruct the lawguards to adopt laws in use in other *poleis*.[84] In fact, there is a special body instituted for the purpose of observing laws in other poleis: the observers (θεωροί).[85] The Athenian even seems quite optimistic on this point: in order to regulate their public courts, many *poleis* have no small number of respectable laws (οὐκ ἀσχήμονα … οὐκ ὀλίγα νομοθετήματα, 957a6-7).

Laws from other *poleis* may thus be adopted in the interlocutors' own city, provided that they are made to fit their own constitution. The lawguards must adopt the laws suitable to the *politeia* (ὅθεν νομοφύλακας χρὴ τὰ πρέποντα τῇ νῦν γεννωμένῃ πολιτείᾳ κατασκευάζειν, 957a7-b1). Τὰ

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[84] *Cf.* 843e3-844a7: καὶ ἐὰν φυτεύων μὴ ἀπολείπῃ τὸ μέτρον τῶν τοῦ γείτονος χωρίων, καθάπερ εἴρηται καὶ πολλοῖς νομοθέταις ἱκανῶς, ὧν τοῖς νόμοις χρὴ προσχρῆσθαι καὶ μὴ πάντα ἀξιοῦν, πολλὰ καὶ σμικρὰ καὶ τοῦ ἐπιτυχόντος νομοθέτου γιγνόμενα, τὸν μείζω πόλεως κοσμητὴν νομοθετεῖν· "So too if a man, when planting trees, fail to leave the due space between them and this neighbour's plot: this has been adequately stated by many lawgivers, whose laws we should make use of, instead of requiring the great organiser of the city to legislate about all the numerous small details which are within the competence of any chance lawgiver" (transl. BURY, adapted).

[85] See *Leg.* 951a4-952d4. The observers have to collect information from the rare "divine persons" in other cities, with whom it is worth to associate (ἄνθρωποι … θεῖοί τινες—οὐ πολλοί—παντὸς ἄξιοι συγγίγνεσθαι, 951b5). The observers have to report back to the nocturnal council. This suggests that practical experience has a clear surplus value for the preservation of the laws (for the observers, see also chapter six, pp. 220, 221, 222). *Cf.* BOBONICH (2002), 399, the "rationale underlying the appointment of the observers explicitly presumes that the laws of Magnesia may need supplementation or revision and allows for them". The observers have to report back to the nocturnal council, see chapter six, p. 222. The nocturnal council, that has the task to preserve the laws, is thus involved in the process of amending and correcting laws, *cf.* SCHÖPSDAU (2011), 580: "Die Bewahrung der Gesetze impliziert also keineswegs eine starre Unveränderlichkeit der Gesetze".

πρέποντα [*sc.* νομοθετήματα] have to be compared and corrected in that process (συλλογισαμένους καὶ ἐπανορθουμένους, 957b2[86]); subsequently, they have to be tested in practice (ταῖς ἐμπειρίαις διαβασανίζοντας, 957b2-3). In a way similar to the regulations concerning the chorus festivals of the young discussed under above, this process of testing is supposed to continue until every aspect of it is agreed to have been settled in an adequate way (ἕως ἂν ἱκανῶς αὐτῶν ἕκαστα δόξῃ κεῖσθαι, 957b3).[87] The δόξα is that of the νομοφύλακες. When they decide that the laws have been sufficiently finalized, the lawguards will conclude the process and give the laws a seal that will render them immutable (τότε δὲ τέλος ἐπιθέντας, ἀκίνητα οὕτως ἐπισφραγισαμένους, 957b4).[88]

4.5 Conclusion

This chapter has analysed how the interlocutors conceptualize their own act of legislation, that takes place on the dramatic level of *Laws*. The chapter took its cue from the painter-analogy in Book VI. The painter-analogy depicts lawgiving as a lengthy process. This process starts with the drawing of an outline by a first lawgiver, and subsequently this outline is filled in by the lawgiver's successors.

The painter-analogy appeared to have structural implications for the lawgiving in *Laws*. After the painter-analogy, the first thing the interlocutors do is appoint successors for their own legislation; furthermore, in addressing their successor (the lawguards) in a fictive speech, they use the terminology of the painter-analogy (the distinction between outline, and the filling in of what is

[86] *Cf. Leg*. 951c2-3.

[87] *Cf. Leg*. 772b4, c4, and p. 159 above.

[88] The fact that the laws are to be "deployed for the entire lifetime" (χρῆσθαι τὸν ἅπαντα βίον, 957b5) may modify the unchangeability, and suggest an amount of pragmatism: that these laws remain valid and unchangeable only for the period of one lifetime. See also the discussion in BOBONICH (2002), 400-408 on the alleged immutability of the laws.

left open). The suggestion is therefore that the interlocutors' own law code has the status of such an outline (or rather, of an exercise for a real case of legislation). This idea also continues to underlie the subsequent formulation of the law code itself: the interlocutors repeatedly state that they leave further legislation to other lawgivers, and more detailed stipulations are given as to the process of supplementing the existing laws. The painter-analogy thus seems to be particularly designed for the legislation of the interlocutors that follows it.

This chapter proceeded by examining the basis for the legislation of the interlocutors, and the sources for their laws. First, the interlocutors instruct their successors to legislate in accordance with what they themselves have agreed to be the goal of legislation, "complete virtue". The idea is hence clearly that the interlocutors consider their own legislation to be in line with the notion of virtue set out in Books I and II.

Second, an investigation of the "open ends" within the law code of the interlocutors themselves offers us vistas into their idea of the sources of future legislation. Whereas the painter-analogy does not make explicit *why* lawgiving is a process that lasts many years, these open ends reveal how the law code is to be supplemented, and by whom. The involvement of specialized officials, and the insistence on the fact that supplementation takes many years suggest that further lawgiving depends on, and is informed by, *experience*. Vagueness and incompleteness are therefore inherent in any first act of lawgiving, which is therefore necessarily an "outline".

Whether a law code is ever finished remains equivocal: on the one hand, for pragmatic reasons it is preferable not to keep changing the laws all the time; on the other hand, change is not completely ruled out. The institution of the observers suggests a constant and dynamic re-evaluation of the fittingness of the laws Furthermore, the fact that the observers have to report back to the

nocturnal council seems to entail that insights of the kind collected by the observers are crucial for the preservation of the laws.[89]

[89] SAUNDERS (1995) draws a similar conclusion from his investigation into the ambiguous indications about the participation of women in Magnesian society. He warns against a "documentary fallacy", which is "to suppose that Magnesia is an exact blueprint, fixed in all its details (…) That is not so: Magnesia is a shifting structure", and "incorporates all sorts of tensions within itself" (603). *Cf*. BOBONICH (2002), 406.