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PERSUADING THE CITIZENS: THE LEGISLATIVE PREAMBLES

So far, we have looked at how Plato sets the scene in the opening Books of *Laws*, bringing to the fore the role of lawgiving in facilitating peaceful coexistence in the form of societies (chapter three), and at how the interlocutors represent their own lawgiving (chapter four). We have argued that the opening scene introduces a pragmatic conceptual framework for morality, and that this pragmatic outlook prepares the way for the interlocutors' own lawgiving on the dramatic level, which in turn reveals a pragmatic approach and proceeds along pragmatic lines.

In this chapter, we will investigate another aspect of lawgiving (νομοθεσία). Besides the act of formulating laws—the aspect of νομοθεσία investigated in chapter four—this aspect of νομοθεσία views lawgiving as a mode of affecting the mind and behaviour of the citizens. The present chapter will investigate how *Laws* conceptualizes this aspect of lawgiving, and what criterion determines the proper discourse of the law. This aspect of lawgiving is particularly interesting from our point of view, since on the dramatic level the laws are embedded in, and hence part of, the dialogue. For the communicative aspect of νομοθεσία the Athenian also introduces an analogy: the analogy of

the doctor in Book IV (with a recapitulation in Book IX). Central to the argument of this chapter is the notion of *πείθειν*, persuasion.

5.1 The purpose of the lawgiver: *πειθώ* and *βία*

The Athenian asks what the lawgiver aims to achieve with his lawgiving. He puts forward his own suggestion: were he a lawgiver, his goal would be to make the citizens “as persuadable as he possibly can” (*ὡς εὐπειθεστάτους*).¹ The issue broached is that of the appropriate *form* of the laws relative to their purpose.² The form of the laws should be such that it furthers the lawgiver’s intention, or that it at least does not thwart it. The goal of making citizens *ὡς εὐπειθεστάτους* is subsequently glossed by *ἡμερώτερον τε ἂν ἀκούειν καὶ εὐμενέστερον*, “more docile and benevolent in listening”. The lawgiver purposes to make the listener *εὐμενέστερος* “more benevolent”, and

¹ *Leg.* 718c8-10: Βουλοίμην ἂν αὐτοὺς ὡς εὐπειθεστάτους πρὸς ἀρετὴν εἶναι, καὶ δῆλον ὅτι πεiráσεται τοῦτο ὁ νομοθέτης ἐν ἀπάσῃ ποιεῖν τῇ νομοθεσίᾳ, “I want the citizens to be as persuadable as possible to [behave in accordance with] virtue, and evidently this is what the legislator will attempt to do in his entire legislation” (transl. BURY). The pronoun αὐτοὺς can either refer to the laws, in which case *εὐπειθεστάτους* is active/transitive (“persuasive”), or to the citizens, in which case *εὐπειθεστάτους* is passive (“persuadable”, “obedient”). On the ground that the adjective has just (715c2) been used in the passive sense, ENGLAND *ad loc.* opts for the passive sense. This is corroborated by the train of thought in this passage. The issue lies open: how can the lawgiver make the citizens as pliable as possible? Moreover, the ultimate end the lawgiver has in view is to make the citizens persuadable; to make laws persuasive is the means to that end.

² *εὐπειθέστατοι πρὸς ἀρετήν*—in fact, instead of *πρὸς ἀρετήν*, the Athenian might also have said *πρὸς τοὺς νόμους*, since that effectively means the same. *πρὸς ἀρετήν* is, however, stronger rhetorically: these are no *arbitrary* laws. Virtue as obedience to the laws: *Leg.* 922a3-5; cf. ADKINS (1960), 294. But obedience is only the first step in *Laws*’ construction of virtue. It is essential that obedience is secured by friendly means, involving what may be labelled “cognitive endorsement” of the rules. See BOBONICH (1991) for the argument that besides obedience, rational persuasion aims at “inculcating *true* ethical beliefs and the proper desires and emotions in the citizens” and that “having the *right* beliefs and the *right* desires is, in Plato’s view, part of what it is to be virtuous” (383, my italics).

εὐμαθέστερος, “more prone to learning”.³ The citizen has to be made susceptible to new input. What form of the law would maximize this effect?

Now that it has been agreed that the lawgiver’s intention is to make the citizens “as persuadable as possible”, it may not come as a surprise that the solution the Athenian puts forward is to add an element of persuasion to the law itself. The Athenian proposes to preface the law (νόμος) with a “preamble” (προοίμιον), an idea he derives from contemporary musical practices. A musical νόμος is customarily preceded by a προοίμιον.⁴ The same ought to be done with regard to the political νόμος. In fact, the Athenian claims that starting with a preamble is the usual practice in all compositions that are uttered by the voice, that is, not only in musical ones.⁵ From the very beginning, it should be noted, laws are treated as *speech*, a mode of address, rather than as texts that are written down.

The preamble adds an element of persuasion to the law.⁶ The law thus consists of two parts: the προοίμιον, and the νόμος in the strict sense. The

³ Leg. 718d4-6; cf. 723a2-7. On εὐμαθής, see BOBONICH (1991), 371, n. 23, referring to BRANDWOOD (1976): εὐμαθής “always means “good at learning” or “quick at learning (...) and is a trait that Plato thinks is especially distinctive of philosophers” (with references), rather than (pejoratively) “docile”. Εὐμενής and εὐμαθής are standard terminology in rhetorical handbooks, see GÖRGEMANN (1960): “Die Schulrhetorik gibt als Aufgabe des Proömiums an, es solle den Hörer wohlwollend, aufmerksam und leicht belehrbar machen (εὐνους, προσεκτικός, εὐμαθής; bei den Lateinern: benevolus, attentus, docilis). Diese Regeln scheinen im allgemeinen von Isokrates ausgegangen zu sein, doch läßt sich das in den Einzelheiten nicht mehr nachweisen” (40, with nn. 2 and 3; see also 41).

⁴ Leg. 722d6-e7. It is traditional practice that κιθαρωδική ᾠδή (also called κιθαρωδικός νόμος) and “every musical composition” (πάση μούσῃ) starts with a preamble. On the musical νόμοι, see WEST (1992), 215-217, with references on 217, n. 69; also 242, 360-363. “At Athens it was the citharodes who were the great display musicians, and *nomos* came to be used especially of their compositions” (*ibid.*, 217). On κιθαρωδία, see POWER (2006), for the προοίμιον his chapter 2. He notes that “for Plato, writing in the fourth century BCE, *proimion* belong first and foremost to *kitharōidia*” (See the website of the Center for Hellenic Studies: <http://chs.harvard.edu/wb/1/wo/v8qdlHtbCCaWftTg0yuSHg/10.0.0.0.19.1.7.15.5.1.1.1.5.7.1.1>).

⁵ Leg. 722d3-5: λόγων πάντων και ὄσων φωνῆ κεκοινώνηκεν προοίμιά τέ ἐστιν και σχεδὸν οἶόν τινες ἀνακινήσεις. For a προοίμιον he gives a rather abstract definition, “a kind of preparation possessing some artistic stimulation expedient for the upcoming recitation”, τινες ἀνακινήσεις, ἔχουσαί τινα ἐντεχνον ἐπιχείρησιν χρήσιμον πρὸς τὸ μέλλον περαίνεσθαι (722d5-6).

⁶ Leg. 722d2-723b6. Cf. 718d4-7, 890d1-8.

Athenian presents the persuasive preface to the law as an innovation in the field of lawgiving.⁷ Current legislative practice, which omits the preamble, is less preferable, because, as we now understand, it does nothing to further the lawgiver's purpose.⁸ Indeed, lawgiving by "unmixed laws" is claimed to be equivalent to "violence", βία. Violence effectuates the very opposite of what the lawgiver aims to achieve, for it makes a person "fiercer", "more resistant" (ἀγριώτερον, 720e4).⁹ Πειθῶ thus makes its entrance as the more effective means the lawgiver has at his disposal. Every sensible lawgiver ought to prefer the "double method" of attaching a προοίμιον to the νόμος *simplex* (ἄπλουδς, 721e2; also νόμος ἄκρατος, 723a1-2).¹⁰ If convincing, the preamble will preempt the need for the "tyrannical command" of the law to speak out.¹¹

⁷ Preambles indeed do not seem to be a custom in ancient Greek legislation. MORROW (1960): "There is indeed a tradition that both Zaleucus and Charondas attached preambles of this sort to certain of their laws, and some alleged fragments of these preambles have been preserved. [Reff. *ibid.* n. 25] But it is more likely that the writings from which Diodorus and Stobaeus drew their excerpts are a later composition fictitiously ascribed to these early legislators, (...). It is more probable that Plato influenced the later tradition about Zaleucus and Charondas than that they influenced him. The Attic laws that have been preserved are without preambles, and are addressed to the magistrates who are to enforce them, not to the general public. (...) In the absence of better evidence than we have for the genuineness of the fragments of Zaleucus and Charondas, we must conclude that this doctrine is original with Plato" (555-556).

⁸ Αθ. Πότερον οὖν ἡμῖν ὁ τεταγμένος ἐπὶ τοῖς νόμοις μηδὲν τοιοῦτον προαγορεύῃ ἐν ἀρχῇ τῶν νόμων, ἀλλ' εὐθὺς ὁ δεῖ ποιεῖν καὶ μὴ φράζειν τε, καὶ ἐπαπειλήσας τὴν ζημίαν, ἐπ' ἄλλον τρέπεται νόμον, παραμυθίας δὲ καὶ πειθοῦς τοῖς νομοθετούμενοις μηδὲ ἐν προσδιδῶ; ΑΘΗ. Should, then, the commander of the laws begin his laws with no such prefatory statement, but declare at once what must be done and what not, and state the penalty which threatens disobedience, and so turn off to another law, without adding to his statutes a single word of encouragement and persuasion? (transl. BURY, adapted).

⁹ Leg. 718b3: βία καὶ δίκη κολάζουσα; 719e9: ἐπαπειλήσας τὴν ζημίαν; 721e2: τῶ ἀπειλεῖν μόνον χρωμένους; 722b6-c1: of the two methods πειθῶ and βία contemporary lawgivers use only the latter; 722c2: ἄκρατος βία; 723a1-2: the νόμος ἄκρατος is τυραννικὸν ἐπίταγμα ἀπεικασθέν, 722e7-8. The Athenian starts by observing that a run-through of the law code (τῶν νόμων αὐτῶν ἢ διέξοδος), which involves both πειθῶ ("persuasion") and βία ("violence"), will make their own city blessed and happy: Leg. 718b2-5: τῶν νόμων αὐτῶν ἢ διέξοδος, τὰ μὲν πείθουσα, τὰ δὲ μὴ ὑπέκοντα πειθοῖ τῶν ἡθῶν βία καὶ δίκη κολάζουσα, τὴν πόλιν ἡμῖν συμβουλευθέντων θεῶν μακαρίαν τε καὶ εὐδαίμονα ἀποτελεῖ.

¹⁰ Leg. 722b4-c2 (text of Loeb): πρὸς τοῦτο δὲ οὐδεὶς ἔοικε διανοηθῆναι πώποτε τῶν νομοθετῶν, ὡς ἐξὸν δυοῖν χρῆσθαι πρὸς τὰς νομοθεσίας, πειθοῖ καὶ βία, καθ' ὅσον οἶόν τε ἐπὶ τὸν ἄπειρον παιδείας ὄχλον, τῶ ἑτέρῳ χρῶνται μόνον· οὐ γὰρ πειθοῖ κεραννύντες τὴν ἀνάγκην νομοθετοῦσιν, ἀλλ' ἀκράτῳ μόνον τῇ βία. "But as regards this, it appears that no legislator has ever yet observed that, while it is in their power to make use in their law-making of two methods,—

It is within the terms of the antithesis between violence and friendliness that persuasion as a method of lawgiving acquires the status of “the more friendly method” (τὸν πρᾶότερον ... τρόπον, 720a5-6; cf. 859a1-6).¹² *Laws*’ positive assessment of πείθειν thus to a large extent derives from its opposition to βία, “violence”, or “force”.¹³ The power of speech is not, as it is in *Gorgias*, contrasted with ἐπιστήμη, “expert knowledge”.¹⁴ *Laws* uses πείθειν as the term

namely, persuasion and force,—in so far as that is feasible in dealing with the uncultured populace, they actually employ one method only: in their legislation they do not temper compulsion with persuasion, but use untempered force alone” (transl. BURY). AST (coni.) and ANNAS (2010), 74 n. 20, have τὴν ἀνάγκην instead of MSS τὴν μάχην (so ZELLER [1839], 90).

¹¹ *Leg.* 854c7-d1, 870e4-871a1, 880a7-b1, 932a5-7, 941c2-4. The coercive force of law as rule, and stipulation of punishment, remains necessary because there may always be cases in which persuasion fails—after all, the interlocutors are legislating for humans, not for the offspring of gods, 853b4-d4. Here again, preamble and law are treated as speech: if the preamble is effective, the law can remain silent.

¹² The term πρᾶος is relatively frequent in *Laws*. Its basic semantic value appears to be “friendly” as the result of a *suppression* of anger (friendliness as the result of one’s own interference in one’s emotions): one remains friendly *inspite of* feelings that would normally induce aggressive behaviour. We may recall the Athenian’s emphatic assertion in Book X (*Leg.* 888a4-d3) to address the atheists in a gentle way (λέγωμεν πρᾶως, 888a6, cf. a1 ἐν πρᾶεσι λόγοις; for insistence on friendliness also: ἴτω δὴ πρᾶορησις τοιάδε τις ἄθυμος (...) σβέσαντες τὸν θυμόν, 888a4-6), *inspite of* the—entirely justified—anger that the well-educated feels regarding such views. ἀγρίως, “wild”, is the normal term for offensive behaviour towards others, opposite πρᾶως (sometimes also χαλεπῶς). In *Phdr.* 268d7-e6, Socrates imagines how a musician will respond to the man who considers himself an expert in harmonics (ἄρμονικός) simply because he can produce the highest and lowest note on his string. The musician will not respond wildly (οὐκ ἀγρίως εἶποι ἄν· “ὦ μοχθηρὲ, μελαγχολᾶς”), but in a more gentle way, which is in line with his profession (ἀλλ’ ἄτε μουσικός ὦν πρᾶότερον ὅτι “ὦ ἄριστε, ...” κτλ.). Here, we again (cf. p. 122, n. 156 above) see evidence for the 4th century Greek association between musicality and social, (self-)controlled behaviour. We should therefore not read ἀγροίκως for ἀγρίως in (i) *Phdr.* 268e1, with OSANN (OCT, app. crit.) and HACKFORTH (1952), 141, n. 2; (ii) nor in *Soph.* 217e7, as does CORNFORD (1973), 167, n. 2, who considers ἄγριον “too strong a word”.

¹³ E.g. *Gorg.* 517b6. In *Republic*, persuasion (story-telling and myths) is a trick to subdue the lower classes: the “Noble Lie”. Likewise, the effect brought about by πειθῶ in *Phaedrus*, ψυχαγωγία τις διὰ τῶν λόγων (261a8) entails the absence of self-control and understanding: one is beguiled by the words and arguments and ready to be lulled into believing anything. In this context, it may be recalled that in his *Encomium of Helen*, Gorgias acquits Helen of committing injustice on the ground that she has been overpowered by a higher force. This may be either Ἀνάγκης ψηφίσματα, βία, λόγος, or ἔρος (§6). Speech is a “powerful master” (λόγος δυνάστης μέγας ἐστίν, §8). About the force of persuasion, Gorgias claims: λόγος γὰρ ψυχὴν ὁ πείσας, ἣν ἔπεισεν, ἠνάγκασε καὶ πιθέσθαι τοῖς λεγομένοις καὶ συναινέσαι τοῖς ποιουμένοις. ὁ μὲν οὖν πείσας ὡς ἀναγκάσας ἀδικεῖ, ἢ δὲ πεισθεῖσα ὡς ἀναγκασθεῖσα τῷ λόγῳ μάτην ἀκούει κακῶς (§12).

¹⁴ *Gorg.* 452e9ff., with conclusion in 455a2-6: the *rhetor* who makes speeches about justice and injustice to courts or other crowds only persuades (οὐδ’ ἄρα διδασκαλικὸς ὁ ῥήτωρ (...), ἀλλὰ

for the lawgiving that is more promising with regard to the lawgiver's purpose of enhancing the citizen's willingness to obey the law.¹⁵

It should be noted that issue under discussion here is an issue of *method*. The question is what approach to legislation is likely to be most effective, given that the goal stipulated by the interlocutors is to make the citizen adhere to the law. By engaging in a—pragmatic—deliberation about the effectiveness of different methods, *Laws* brings up considerations that are foreign to those of the conceptual framework of τέχνη as sketched in chapter one (section 1.3.1). In the scenario of *Laws*, the end is given (virtue, obedience to the laws). What remains is the question of the *means*. The question discussed is part and parcel of what I have called a “stochastic” conception of τέχνη (section 1.3.2): if X is the goal, what means would achieve the maximum result possible? In a stochastic conceptual framework, a method *aims* at a goal, can be more or less effective, and one may distinguish between methods in terms of how successful they are in attaining that goal.

This is a fundamentally different way of approaching τέχνη (here, νομοθεσία) than the usual approach to it reflected by other Platonic texts, and the consequences of this new approach cannot be overestimated. From other

πειστικὸς μόνον), since he cannot educate a crowd in a small amount of time about such important affairs (οὐ γὰρ δήπου ὄχλον γ' ἂν δύναίτο τοσοῦτον ἐν ὀλίγῳ χρόνῳ διδάξαι οὕτω μεγάλα πρᾶγματα), “craftsman of didactic persuasion concerning the just and the unjust” (πειθοῦς δημιουργός ... διδασκαλικῆς περὶ τὸ δίκαιον τε καὶ ἄδικον, 454e9-455a2). By contrast, ῥητορικὴ is “only persuasive” (πειστικὸς μόνον). For πειθῶ as the product of ῥητορικὴ: *Gorg.* 453a2-455a7. For the κολακεία-status of σοφιστικὴ: 463a6-b6. In general, what is said about ῥητορικὴ pertains equally to σοφιστικὴ; the main difference between the two is that ῥητορικὴ is corrective and used to acquit oneself of having committed an injustice, while σοφιστικὴ is regulative. Since the regulative τέχνη can prevent wrong from being done, the regulative member of the pair is “more noble” (κάλλιον) than its corrective counterpart, *Gorg.* 520a3-b3.

¹⁵ This opposition of πειθῶ *versus* βία—the verbal *versus* the physical—is a more common opposition than that of πειθῶ *versus* ἐπιστήμη. See for this opposition in Greek literature BUXTON (1982). For persuasion in other Platonic dialogues, see the Appendix of BOBONICH (1991), 387-388; LISI (2000), 66-69 for the view that the different forms of persuasion are all part of a continuum, and that in *Laws* we find different kinds of persuasion, adjusted to the educational background of the addressees; BRISSON (2000) for the idea that rational persuasion of *Gorgias* is jettisoned once the intelligible forms have been introduced; the preambles in *Laws* enchant the citizens by myth and rhetoric.

Platonic discussions, the notion of τέχνη that emerges is *essentialistic*; that is, it is assumed that to each object (ἔργον) applies one τέχνη. This is the principle of the one-to-one mapping of τέχνη to subject matter.¹⁶ The immediate concern in those cases is not the question of the right method (since that is assumed to be given with the goal), but the question of the true goal, or object, on the *a priori* assumption that there exists only one true method to achieve that purpose. For example, ἰατρική is the τέχνη that aims at what ὑγίεια *really* is. Methods that do not aim at the true goal are strictly speaking not a τέχνη (*cf.* the distinction in *Gorgias* between τέχνη and ἐμπειρία). The true ἰατρός is, in turn, the person who possesses the τέχνη.

As we saw in chapter one, the priority of the truth status of the object brings with it a certain indifference with regard to the question of the means deployed to achieve that end.¹⁷ The method of the expert is by definition correct, whether this method involves the use of violence or not. When it comes to the capacity to improve others morally, texts such as *Gorgias*, *Republic*, and *Statesman*¹⁸ show little hesitation in resorting to violent means in order to *impose* virtue. “Plato’s position (...) follows from his belief that these political matters, like technical subjects, are the province of the expert, whose automatic aim for the betterment of his subjects gives him not only the right but the duty to impose his will on them.”¹⁹ Since it is always better to be just, the ruler who

¹⁶ See KAHN (1996), 105-110 (in a discussion of *Ion*). The same idea underlies the principle of specialization in the just *polis* of *Republic*.

¹⁷ See chapter one, pp. 30-31.

¹⁸ For example (1) *Gorg.* 517b5-c2: the sole duty of the good citizen (ἀγαθός πολίτης) is to redirect his fellow citizens’ desires and not to allow them free play, so that they will be better people (ἀμείνους ἔσεσθαι), whether by persuasion or force (πειθόντες καὶ βιαζόμενοι); *cf.* DODDS’ note *ad loc.* (2) *Resp.* 488d-e: if a captain possesses the τέχνη (of steersmanship), it does not matter whether others consent or not (ἐάν τε τινες βούλωνται ἐάν τε μή). *Cf.* ADAM *ad loc.*: “Whether others wish [the pilot] to steer or not, is wholly irrelevant”. *Plt.* 293aff. declares this principle “of universal application”, and the same appears true of *Resp.* 488d-e. (3) *Plt.* 296a4-c2: a scientific ruler (or doctor!) who uses force to impose the best (παρὰ τὰ γεγραμμένα βέλτιον ἀναγκάζη δρᾶν), contrary to the established rules, should not be reproached for doing so; and the patients subject to such force would hardly call it “noxious and unartistic” (νοσώδη καὶ ἀτεχνα).

¹⁹ EMLYN-JONES in the accompanying comments to his translation of *Gorgias*, 121.

imposes a person's true good upon him is acting in that person's own interest. Whether that person accepts the ruler's injunctions or not is irrelevant from this perspective. In Callipolis, the preservation of the social order depends upon an armed class. Justice (δικαιοσύνη) is viewed as an imposition of the just on each of the three classes of the just *polis* (including the class of the philosopher-kings).²⁰ There is simply no other way: the imposition of virtue against one's will is claimed to be a bare necessity, for most people are not qualified to know what their true interest (εὐδαιμονία) is.²¹

By contrast, *Laws* distinguishes a successful or more promising way of lawgiving from a less successful one, culminating in the preference for the more friendly method. This reflects a shift of focus from the object of medicine (what is true health?) to the method of practicing it (what is the right way for a lawgiver to address a citizen, or (as we will see below) for a doctor to address his patient?).²² The criterion is a method's—presumed—*effectiveness*. Persuasion wins the day because only friendly means will further the lawgiver's intention. The impact of this shift for the conceptual framework of *Laws* is enormous: it implies that virtue is not assumed to be analogous to expert knowledge (τέχνη, ἐπιστήμη).²³ This may also be why the term νομοθετική is not mentioned; that term may carry with it too “absolutist” overtones (derived from *Gorgias*) to fit in this context.²⁴

The preference of friendly means over violent ones to secure obedience taps into *Laws*' conceptualization of ἀρετή as self-control.²⁵ *Laws* maintains that ἀρετή can only be attained by friendly means (force, after all, will make a

²⁰ See chapter two, especially section 2.3.3.

²¹ See also chapter two, p. 69, with n. 71 *ibid.*

²² Cf. LAKS (1991), “Or les choses se présentent différemment dans les *Lois*, où le fondement de l’analogie cesse d’être le simple résultat de l’art (à savoir, la santé corporelle ou psychique), pour inclure ce que l’on pourrait appeler la relation intersubjective du médecin et de son patient d’un côté, du législateur et de ses sujets de l’autre” (423). BOBONICH (2002): “Here Plato uses the old analogy for quite different purposes...” (98). KOEPLIN (2009), 19: persuasion is *part of the cure*.

²³ Compare chapter three, p. 113.

²⁴ Neither is ἰατρική in the context of the doctor-analogy.

²⁵ Cf. chapter three, pp. 93, 130.

person less submissive, fierce and resistant (ἀγριώτερος)). It is *constitutive of* virtue that a person obeys out of his own free will.²⁶ The citizens have to subject themselves to the laws. Maintaining the social order is as much as possible achieved through the non-violent, positive mechanisms of *paideia*. Punishment only comes into play if *paideia* and the preambles have failed to achieve their goal.²⁷ Ideally, the idea seems to be, a person is his own lawgiver and does not need the laws.

5.2 Two kinds of doctors

5.2.1 The doctor-analogy of Book IV

The Athenian has highlighted a new aspect of νομοθεσία, its mode of address, and introduced the persuasive preamble as the proper way for the lawgiver to tackle the goal of securing obedience. To elucidate the difference between the lawgiver who uses an element of persuasion in his laws and the lawgiver who does not, the Athenian introduces an analogy with two kinds of doctors.²⁸ This τέχνη-analogy is an analogy within the stochastic framework: it compares two

²⁶ A number of interpreters have emphasized the importance of consent in *Laws* as a deviation from *Republic*: e.g. KLOSKO (2006), 204-205. Cf. *ibid.*, 244: "The need for consent sets the *Laws* apart from Plato's other political works." In the final analysis, however, KLOSKO considers the role of consent in *Laws* "similar to, though more explicit than, the role of temperance in the state in the *Republic*" (245). In any case, there is no such thing as "an inherent right of consent" (*ibid.*, 246) in *Laws*. According to LAKS (1991), since *Laws* does not relinquish the demand that knowledge is sovereign, the challenge is "de savoir comment le savoir et la raison peuvent gouverner avec la consentement des citoyens" (422, italics in original). Further: BOBONICH (1994); MEYER (2006), 387. For another view, see PRADEAU (2004), 121, n. 34. Therefore, it seems that "consent" is too weak a term in this context. It may, for instance, imply that a person consents to do B while he in fact wishes to do A. In *Laws*, to act virtuously is to *want* to act virtuously. Instead of "consent", it would be better to speak of "voluntariness".

²⁷ Cf. Zeus' remark in the Protagoras-myth in Plato's *Protagoras*, that he will institute a law stipulating that the person who is unable to acquire a sense of justice will be killed as a disease of the *polis* (καὶ νόμον γε θεὸς παρ' ἐμοῦ τὸν μὴ δυνάμενον αἰδοῦς καὶ δίκης μετέχειν κτείνειν ὡς νόσον πόλεως, 322d4-5).

²⁸ *Leg.* 719e7-720a2. See also n. 8 on p. 178 above.

types of doctors, instead of, as is most often the function of a τέχνη-analogy, distinguishing the expert, who possesses the τέχνη, from a non-expert. The question is not who possesses the τέχνη, but which doctor is more effective. The doctor-analogy fleshes out the distinction between the mode of lawgiving by which current lawgivers proceed (to lay down laws without preambles) and the lawgiver who proceeds according to the interlocutors' method (to preface laws with persuasive preambles), and illustrates what the Athenian has in mind when he labels the latter's method *πραότερος*.

There are two kinds of doctors: free doctors and slave doctors. The free-born doctors mostly treat free patients (*ιατροί*, 720a7; *ἐλεύθεροι*, 720b2). It is this kind of doctor to whom the lawgiver who deploys persuasion is analogized. The servants of the free doctors are slaves, and their patients are slaves like themselves (*ὑπηρέται τῶν ἰατρῶν, ἰατροὺς δὲ καλοῦμεν δήπου καὶ τούτους*, 720a7-8; *δούλοι*, 720b2). These slave doctors resemble the current lawgivers, who fail to use persuasion. The slave doctors are either itinerant, paying flying visits to the sick, or remain in the hospitals, 720c1-d1:

(...) τοὺς μὲν δούλους σχεδὸν τι οἱ δούλοι τὰ πολλὰ ἰατρεύουσιν περιτρέχοντες καὶ ἐν τοῖς ἰατροείοις περιμένοντες, καὶ οὔτε τινὰ λόγον ἐκάστου περὶ νοσήματος ἐκάστου τῶν οἰκετῶν οὐδεὶς τῶν τοιούτων ἰατρῶν δίδωσιν οὐδ' ἀποδέχεται, προστάξας δ' αὐτῷ τὰ δόξαντα ἐξ ἐμπειρίας, ὡς ἀκριβῶς εἰδῶς, καθάπερ τύραννος ἀνθαδῶς, οἴχεται ἀποπηδήσας πρὸς ἄλλον κάμνοντα οἰκέτην, καὶ ῥαστώνην οὕτω τῷ δεσπότη παρασκευάζει τῶν καμνόντων τῆς ἐπιμελείας.

(...) the slaves are usually doctored by slaves, who either run round the town or wait in their surgeries; and not one of these doctors either gives or receives any account of the several ailments of the various domestics, but prescribes for each what he deems right from experience, just as though he had exact knowledge, and with the assurance of an autocrat; then he jumps and off he rushes to another sick domestic, and thus he relieves his master in his attendance on the sick. (Transl. BURY)

The slave doctor does not give an account of the illness to the individual patient (*οὔτε τινὰ λόγον ... οὐδεὶς τῶν τοιούτων ἰατρῶν δίδωσιν*), nor does he ever receive an account (*οὐδ' ἀποδέχεται [sc. λόγον]*, 720c4-5). Perhaps the slave

doctor would not know what to do with such an account, and in any case, he does not have the time to listen to one. His diagnosis is therefore necessarily based on routine (τὰ δόξαντα ἐξ ἐμπειρίας), rather than on careful scrutiny, and his prescription on a first quick impression (he gives his prescription “immediately”, εὐθύς, 719e8). The slave doctor’s permanent shortage of time makes him a tyrant to his patients (καθάπερ τύραννος, 720c6), who departs immediately after having issued his command.²⁹ The tyrannical aspect of his mode of procedure lies in the fact that he states a prescription without granting any opportunity for discussion.

The free doctor’s treatment of free patients is of an entirely different nature than that of the slave doctor, 720d1-e1:

[Ἄρ' οὖν καὶ συννοεῖς ὅτι ...] ὁ δὲ ἐλευθέρος ὡς ἐπὶ τὸ πλεῖστον τὰ τῶν ἐλευθέρων νοσήματα θεραπεύει τε καὶ ἐπισκοπεῖ, καὶ ταῦτα ἐξετάζων ἀπ' ἀρχῆς καὶ κατὰ φύσιν, τῷ κάμνοντι κοινούμενος αὐτῷ τε καὶ τοῖς φίλοις, ἅμα μὲν αὐτὸς μανθάνει τι παρὰ τῶν νοσοῦντων, ἅμα δὲ καὶ καθ' ὅσον οἴός τ' ἐστίν, διδάσκει τὸν ἀσθενοῦντα αὐτόν,³⁰ καὶ οὐ πρότερον ἐπέταξεν πρὶν ἂν πῆ συμπίση, τότε δὲ μετὰ πειθοῦς ἡμερούμενον αἰεὶ παρασκευάζων τὸν κάμνοντα, εἰς τὴν ὑγίειαν ἄγων, ἀποτελεῖν πειρᾶται;

[And do you know that³¹ ...] the free-born doctor is mainly engaged in visiting and treating the ailments of free men, and [that] he does so by investigating them from the beginning and in accordance with nature; [that] he talks with the patient himself and with his friends, and thus both learns himself from the sufferers and imparts instruction to the patient

²⁹ Apparently, “tyrannical” equals the absence of opportunity for exchange. Discussion, of course, takes time. We may compare the Athenian’s claim that the easiest and quickest way to change the ἦθη in a city (adduced in *Leg.* IV, 711a1-c8) occurs in a *tyrannical* city (τυραννουμένη πόλις). If a tyrant wishes to change the ἦθη in his city, he simply makes statutes that praise one thing and denunciate the other, and dishonours the disobedient. Yet this allows the ἦθη to change for the better or the worse: the tyrant can change the ἦθη in any way which he pleases (ὅπηπερ ἂν ἐθελήσῃ, 711b6): towards virtue, or towards the opposite (ἐάντε πρὸς ἀρετῆς ἐπιτηδεύματα, προτρέπεσθαι τοὺς πολίτας, ἐάντε ἐπὶ τοῦναντίον, 711b6-8). Hence, to change ἦθη in a tyrannical way entails the risk of arbitrariness: a tyrannical way of changing ἦθη does not offer room for discussion, and the change can either be for better or for worse. By implication, the thought seems to be that to change ἦθη *via* discussion will at least enhance the chances that they will change towards the better.

³⁰ The implication seems to be: and if that is impossible, to his φίλοι.

³¹ This sentence is part of a question, that starts at 720b8 (Ἄρ' οὖν καὶ συννοεῖς ὅτι κτλ.).

himself, so far as possible; and that he gives no prescription until he has gained the patient's consent, and only then, while securing the patient's continued docility by means of persuasion, does he attempt to complete the task of restoring him to health? (Transl. BURY, adapted)

The free doctor's method largely consists of an extensive examination of the patient and his illness "from the beginning" (ἀπ' ἀρχῆς) and "according to nature" (κατὰ φύσιν).³² This examination involves both the patient himself, and his relatives. The free doctor, to the extent that he is able, *educates* his patient: διδάσκει τὸν ἀσθενοῦντα αὐτόν (720d6);³³ as opposed to the slave doctor, he gives every individual patient an account of his illness (λόγον ἐκάστου πέρι νοσήματος (...) δίδωσιν, 720c3-4).³⁴ The free doctor's treatment involves mutual instruction: according to the analogy, the free doctor, in communicating with his patient, himself *learns* from his patient as well. Here, again, it becomes apparent that, from the start, lawgiving is envisaged as speech. The free doctor tries as best as he can to instruct his patient, and, in marked contrast to the slave doctor, refrains from issuing prescriptions until he has secured the patient's consent. Also, while curing his patient, the free doctor continuously keeps him calm by means of persuasion (τότε δὲ μετὰ πειθοῦς ἡμερούμενον ἀεὶ παρὰσκευάζων τὸν κάμνοντα).

³² SCHÖPSDAU (2003) connects κατὰ φύσιν in 720b4 (and d3) to 857d3-4, and thinks that the free doctor "die Natur (φύσις) des menschlichen Körpers berücksichtigt" (238). Yet in 720b4 at least, slave doctors are said to acquire medicine "by practice, not by nature" (κατ' ἐμπειρίαν τὴν τέχνην κτῶνται, κατὰ φύσιν δὲ μή), φύσιν thus defining the method of acquisition rather than the subject of study. Likewise, 720d3 κατὰ φύσιν is, like ἀπ' ἀρχῆς, a qualification of ταῦτα [*sc.* τὰ τῶν ἐλευθέρων νοσήματα] ἐξετάζων, thus referring to the method of investigation. The implication seems to be that any τέχνη ought to be acquired not by trial and error, but in the natural way: through αὐτὸς μανθάνειν, 720b4-5. That this is the correct interpretation of αὐτὸς μανθάνειν is corroborated by the argument that virtue is self-control: one has to learn to master oneself.

³³ διδάσκειν; *cf.* παιδεύειν in Book IX, 857d7, e4. *Cf.* *Leg.* 885d2. *Laws* encourages us to resist such impressions as that of YUNIS' (2007), who claims that in *Laws*, "law becomes a tool of mass education" (81).

³⁴ In *Phdr.* 271b1-5, the rhetoric modelled upon philosophy is distinguished from contemporary rhetorical practice by a similar argument: philosophy selects the type of speech appropriate to the kind of soul. Education (διδάσκειν) can only take place through fitting (προσαρμόττειν) the right kind of speech to the right kind of soul.

The method of the free doctor effectuates what the Athenian declared to be the purpose of lawgiving earlier in the text: to make the addressee “more docile and benevolent in listening” (ἡμερώτερόν τε ἂν ἀκούειν καὶ εὐμενέστερον, 718d4) as well as a better *learner* (εὐμαθέστερον, 718d5-6). In the doctor-analogy, *πείθειν* becomes more or less identical to *διδάσκειν*, and effectuates μάθησις. The difference, to the extent that there is one, entails merely that *πείθειν* includes the practical consequences of instruction: the patient’s willingness to adhere to the doctor’s prescription(s).³⁵ The underlying assumption is that a citizen who is furnished with sufficient background information about what to do, can, as a rule, be expected to obey.

The difference between the two modes of doctoring may be summed up as follows. The method of the slave doctor is characterized by (1) treatment on the basis of routine; by (2) hurry and the absence of a longer-lasting interaction; and by (3) the complete lack of opportunity for explanation and clarification. The patient’s individual situation is entirely lost in the case of the slave doctor. This type of doctor remains in the hospital (720c3), wherefore he cannot observe the patient in his own environment, or converse with the sick and his φίλοι. The slave doctor pays his patients only flying visits, during which he does not have time to make inquiries into his patient’s individual situation. The description of the slave doctor repeatedly draws attention to his permanent *shortage* of time. He is in too much of a hurry to be able to perform his task properly.³⁶

³⁵ In the Platonic corpus, *πείθειν* and *διδάσκειν* are usually opposites. For example, in *Gorg.* 455a1 *πιστευτική* is opposed to *διδασκαλική*. In *Thet.* 201a4-c2, the sophists persuade without educating (*πείθουσιν οὐ διδάσκοντες ἀλλὰ δοξάζειν ποιοῦντες*). In *Plt.* 303e7-304d2, *ῥητορεία*, besides warfare and judging, is one of the supportive arts of the true statecraft, persuades the mass by myths (*μυθολογία*), and does not convey teaching (*διδασχί*). It has to implant in the soul of the citizens true opinions about the just, the good and the beautiful (305c5-d8). *Tim.* 51e1-6 draws a contrast between *νοῦς*, effectuated by teaching (*διὰ διδασχίης*), and true opinion, effectuated through persuasion (*ὑπὸ πείθοῦς ἡμῖν ἐγγίνεται*).

³⁶ He states immediately (*εὐθύς*) what must be done and what not (719e8-720a1). Other references to continuous haste: *περιτρέχοντες* (720c2), *προστάξας ... τὰ δόξαντα ... οἴχεται ἀποπήδησας* (720c5-7). The aorist participles (*προστάξας, ἀποπήδησας*) suggest a lack of time: the chain of

By contrast, the free doctor's method is essentially a form of instruction. It is a *one-to-one* conversation.³⁷ The free doctor's instruction is tailored to the personal needs and specific condition of the patient. The description of the free doctor's method seems in fact to recall a very familiar process: the dialectical method.³⁸ Therefore, instead of drawing on theories of persuasion in other dialogues,³⁹ it seems more fruitful to evaluate *Laws'* notion of persuasion in terms of Plato's own notion of dialectic. The depiction of the free doctor's method is replete with the familiar dialectical motives: (1) just like dialectic, it is a shared enterprise between doctor and patient (about τὰ νοσήματα, in which the doctor communicates and also learns himself);⁴⁰ (2) it is a one-to-one

completed events produces a kind of staccato effect. The lawgiver/doctor seems already on his way to a next patient when he has stated the threat. In *Tht.* 172d4-173b3, Socrates likens those who are regulars of law courts to slaves in comparison to those who have spent their lives pursuing philosophy, on the ground that the latter always have leisure (σχολή), and develop their arguments in peace at their leisure (τοὺς λόγους ἐν εἰρήνῃ ἐπὶ σχολῆς ποιοῦνται), just like Socrates and Theodorus are doing. The others always have to speak in a hurry (οἱ δὲ ἐν ἀσχολίᾳ τε αἰεὶ λέγουσι), because they have to stick to the time-limit (the water-clock) and to the pre-fixed statement in the ἀνωμοσία. The effect is moral corruption (173a1-b3).

³⁷ Cf. *Leg.* 888a6-7: λέγωμεν πρῶτος, σβέσαντες τὸν θυμόν, ὡς ἐνὶ διαλεγόμενοι τῶν τοιούτων [*sc.* people who deny the existence of the gods]. A face to face conversation seems to be part and parcel of the attempt to remain friendly to dissidents who refuse to believe in the city's religion.

³⁸ Cf. LAKS (2000), 289: "The *Laws* even goes so far as to picture the doctor 'going back to the general nature of bodies' the hyperbole is evident, but so is the reason for it: the Socratic model of a dialectical conversation constitutes the horizon within which the theory of legislative preamble must be situated."

³⁹ As interpreters have usually done; a parallel with *Gorgias*: JAEGER (1945), 217; MESCH (2003), 60. Parallel with *Phaedrus*: MORROW (1953): "Plato's legislation is (...) one vast system of total persuasion, the climactic fulfilment of the art of psychagogy that he had outlined in the *Phaedrus*" (242). Cf. YUNIS (1996): "within the legal preambles of the *Laws* Plato attempts to implement on a massive scale the kind of instructive rhetoric proposed in the *Phaedrus*" (*ibid.*, 212); YUNIS stresses the difference between the rejection of rhetoric in *Gorgias* and "the creation of a new rhetorical genre of legal-political discourse" in *Laws* (235-236). According to YUNIS (2011), 10, *Phaedrus* discusses the didactic rhetoric hinted at in *Gorgias*.

⁴⁰ Cf. ENGLAND *ad* 720d3. The term ἐξετάζειν is used by Socrates in *Apology* to describe his philosophical activity, *Apol.* 23c4, c5, c8, 28e6, 33c3, 38a5, 41b5, 41c3; cf. *Tht.* 155a1; *Phdr.* 270c7; *Charm.* 172b7; *Tim.* 62c4. It is typically concerned with being (τὰ ὄντα, *Gorg.* 495a8), and with true moral improvement (*Gorg.* 515b1). Hence in that context it refers to conversations that irritate those subject to his scrutiny. By contrast, in *Laws* the scrutiny of the patient about his illness (and in fact, if we recall that the doctor is the *analogon* of the lawgiver, the νόσημα is in fact the inclination to commit an illegal act, a *moral* weakness), is welcomed (this is the gentler treatment the interlocutors are after), and can emerge as the positive counterpart to the slave doctor who hurries from one

conversation (*cf.* ὡς ἐνὶ διαλεγόμενοι, 888a6⁴¹); (3) it instructs the patient on the basis of an account of his individual situation (τινὰ λόγον ἐκάστου πέρι νοσήματος ἐκάστου τῶν οἰκέτων ... δίδωσιν 720c3-5; *cf.* διδάσκει in 720d6 and ἔλεγχον δίδοναι in 891a2);⁴² (4) similarly to the dialectical method, which requires that the interlocutor explicitly declares himself in “agreement” (ὁμολογία), the treatment of the free doctor does not proceed without the patient’s assent (*cf.* οὐ πρότερον ἐπέταξεν πρὶν ἄν πη συμπίσει, 720d6-7); (5) again, like dialectic, the free doctor’s method is not constrained by time (quite unlike the visits of the slave doctor).⁴³ Regarding the representation of the preambles as a distinctly προῶς mode of address, we may recall that the willingness to clarify one’s statements, σαφέστερον λέγειν, is a token of one’s εὐνοία (“benevolence”) to a serious interlocutor.⁴⁴ The free doctor’s method

patient to the next. In the doctor-analogy, ἐξετάζειν is therefore part of a process of friendly, mutually instructive conversation between doctor and patient (and his φίλοι). The interlocutors in *Laws* refer to their own conversation as ἐξετάζειν in 685a7, 891c9, 900d5.

⁴¹ *Leg.* 888a6 seems to assume a link between speaking one-to-one and the ability to curb one’s anger and remain well-mannered.

⁴² Giving a *logos* (‘account’) as part what it means to possess a τέχνη: *Gorg.* 464b-465a5; *cf.* 500b-501a and 501a1-3. On giving an account in the context of τέχνη: IRWIN (1977), 71-77; WOODRUFF (1992); ROOCHNIK (1996); BALANSARD (2003), 47-51, 141-2, 146-7.

⁴³ For this aspect of dialectic, see, *e.g.*, *Tht.* 154e7-155a2, 172c2-173b3. When the case of the δυσμαθής is discussed (891a1-4), for whom, on first hearing, what such προστάγματα say may be difficult (εἰ χαλεπὰ κατ’ ἀρχὰς ἀκούειν), it is important to realize that the preambles remain “in all respects fixed” (πάντως ἡρεμεῖ) and offer him the opportunity to visit them many times (πολλάκις ἐπανιόντι). This suggests that the preambles will be saying the same thing over and over. This is not inconsistent with the idea that the preambles will address every person in the appropriate way: for the δυσμαθής the appropriate is repetition of the same.

⁴⁴ *Plt.* 262c2-4. When the young Socrates asks Πῶς, ὦ ξένε, λέγεις τοῦτο; the Stranger responds: Πειρατέον ἐτι σαφέστερον φράζειν εὐνοία τῆς σῆς φύσεως, ὦ Σώκρατες “I must try to tell you still more clearly, Socrates, out of good will towards your natural endowments” (transl. ROWE). In *Gorgias*, εὐνοία was stipulated as one of the three conditions for successful dialectic. *Gorg.* 486e6-487a3 (Socrates is speaking): ἐννοῶ γὰρ ὅτι τὸν μέλλοντα βασανιεῖν ἰκανῶς ψυχῆς πέρι ὀρθῶς τε ζώσης καὶ μὴ τρία ἄρα δεῖ ἔχειν ἃ σὺ [*sc.* Callicles] πάντα ἔχεις, ἐπιστήμην τε καὶ εὐνοίαν καὶ παρρησίαν, “I realize that a person who is going to put a soul to an adequate test to see whether it lives rightly or not must have three qualities, all of which you have: knowledge, good will, and frankness” (transl. ZEYL). *Cf.* BOBONICH (1991), 376, n. 45: “Plato often suggests a connection between ‘gentleness’ and the ability to learn and teach”, with references *ibid.*

also seems to be properly attuned to the needs of each patient.⁴⁵ Finally, the social status of the free doctor (ἐλεύθερος) may also imply that there is no reason not to speak candidly, but that the conversation is solely informed by the considerations and concerns that come up.

It should be noted however, that dialectic in the context of the doctor-analogy is not entirely the same as dialectic as a search for truth. The dialectical discussion as a search for truth creates, or at least pretends do so, an equilibrium, in which pressure to state, or agree to, something one does not really hold true is minimized.⁴⁶ In *Laws*, dialectic—if we can still call it dialectic—functions *in the service of convention*. The discussion between the doctor and patient ultimately has the purpose of getting the patient, or citizen, to submit to the prescription willingly. In the case the citizen resists voluntary submission, the law itself will raise its voice and punishment will follow.

5.2.2 The preambles: a brief overview

What sort of texts are these persuasive preambles? The Athenian himself illustrates his innovation by an example. He first formulates a law without a preamble (ὁ μὲν ἀπλοῦς [νόμος]), which runs as follows, 721b1-3:

⁴⁵ In this respect, the speech of the doctor in the analogy may resemble *Phaedrus'* philosophical rhetoric, *Phdr.* 271c10-272a8. In virtue of the preambles' representation as philosophical rhetoric, it seems reasonable to suppose that controlling their reception works similarly to the effect of philosophical rhetoric in *Phaedrus*: to select an argument appropriate to the person who needs to be instructed. *Phdr.* 270b1-272b2. In *Phaedrus*, rhetoric is also compared to medicine. Furthermore, it may be noted that the only time the Athenian alludes to the laws/preambles as written texts, this is as an advantage (μεγίστη βοήθεια) for νομοθεσία: laws' written nature allows the δισμαθής to be educated as well, since he can come back often and reread them: 890e6-891a4. Of course, this insistence on the preambles as written texts is inconsistent with their presentation as speeches elsewhere. These claims cannot be true at the same time. This inconsistency is, however, not problematic in the realm of fiction or thought experiment.

⁴⁶ We may think, for instance, about Socrates' insistence on "speaking one's mind", παρρησία. We find the insistence on παρρησία in contexts when convention may prevent the interlocutor to speak his mind, as in the case of Callicles in *Gorgias*. The absence of time-constraints is part of this equilibrium. The availability of time enhances the chances to reach the truth, because one is not forced to give up when truth appears to be more difficult to attain than initially assumed. On παρρησία in Plato, see VAN RAALTE (2004).

Γαμείν δέ, ἐπειδὴν ἐτῶν ἢ τις τριάκοντα, μέχρι ἐτῶν πέντε καὶ τριάκοντα, εἰ δὲ μὴ, ζημιουῖσθαι χρήμασιν τε καὶ ἀτιμίᾳ, χρήμασι μὲν τόσοις καὶ τόσοις, τῇ καὶ τῇ δὲ ἀτιμίᾳ.

A man shall marry when he is thirty years old and under five and thirty; if he fails to do so, he shall be punished both by a fine in money and by degradation, the fine being of such and such an amount, and the degradation of such and such a kind. (Transl. BURY).

The double law is preceded by a preamble, which runs as follows, 721b6-c8:

Γαμείν δέ, ἐπειδὴν ἐτῶν ἢ τις τριάκοντα, μέχρι τῶν πέντε καὶ τριάκοντα, διανοηθέντα ὡς ἔστιν ἢ τὸ ἀνθρώπινον γένος φύσει τιμὴ μετείληφεν ἀθανασίας, οὐ καὶ πέφυκεν ἐπιθυμίαν ἴσχειν πᾶσιν πᾶσαν· τὸ γὰρ γενέσθαι κλεινὸν καὶ μὴ ἀνόνημον κείσθαι τετελευτηκότα τοῦ τοιοῦτου ἔστιν ἐπιθυμία. γένος οὖν ἀνθρώπων ἔστιν τι συμφυὲς τοῦ παντὸς χρόνου, ὃ διὰ τέλους αὐτῷ συνέπεται καὶ συνέπεται, τούτῳ τῷ τρόπῳ ἀθάνατον ὄν, τῷ παῖδας παίδων καταλειπόμενον, ταῦτόν καὶ ἐν ὄν ἀεί, γενέσει τῆς ἀθανασίας μετείληφέναι· τούτου δὲ ἀποστερεῖν ἐκόντα ἑαυτὸν οὐδέποτε ὄσιον, ἐκ προνοίας δὲ ἀποστερεῖ ὅς ἂν παίδων καὶ γυναικὸς ἀμελή.

A man shall marry when he is thirty years old and under thirty-five, bearing in mind that this is the way by which the human race, by nature's ordinance, shares in immortality, a thing for which nature has implanted in everyone a keen desire. The desire to win glory, instead of lying in a nameless grave, aims at a like object. Thus mankind is by nature coeval with the whole of time, in that it accompanies it continually both now and in the future; and the means by which it is immortal is this:—by leaving behind it children's children and continuing ever one and the same, it thus by reproduction shares in immortality. That a man should deprive himself thereof voluntarily is never an act of holiness; and he who denies himself wife and children is guilty of such intentional deprivation. (Transl. BURY)

The preamble places the act of the individual in a larger, cosmic, framework. The refusal to have children is not an act that concerns only oneself; it has a significance for the whole of humankind. The obligation to marry and beget children is motivated by an appeal to humankind (τὸ ἀνθρώπινον γένος) and his natural predisposition (φύσει, πέφυκεν). Humankind shares in immortality by reproduction, and is claimed to have a natural desire for immortality. By reproduction humankind is coeval with time (συμφυὲς τοῦ παντὸς χρόνου,

721c3). Not begetting children is, reasoned along these lines, against nature, and a failure to honour what needs to be honoured (man's share in immortality).

The preambles are, however, more diverse in kind than one might have expected on the basis of this example. A classification endorsed by several interpreters is to divide them into three kinds: rational argument, encouragement by praise and blame, and deterring⁴⁷ tales about divine wrath and punishment.⁴⁸ The preambles exhibit differences both in respect of the phase of *paideia* to which they contribute, and in respect of their style and type of arguments.⁴⁹ It seems that several factors are at play here.

⁴⁷ SCHÖPSDAU (2003), 223-224, rightly notes the deterring effect of "[d]as mit dem Hinweis auf göttliche Sanktionen argumentierende Proömium, das in der Regel warnende Funktion hat" (223). Threat of legal punishment in these cases makes way for threat of divine wrath and punishment for particular actions. For mythical motives in the preambles, see GÖRGEMANN (1960), n. 3, pp. 59-61; BRISSON (2000), 244-248.

⁴⁸ This is the classification of SCHÖPSDAU (2003), 223-224; similarly LAKS (1991), BOBONICH (1994), and BRISSON (2000).

⁴⁹ Most older analyses of the preambles have claimed that (with only a few exceptions) the preambles are instances of (irrational) "praise and blame" or enchantment (with the implication that such arguments are incomparable to philosophical argument): MORROW (1953) ("adoption of this art of enchantment"), and (1960), 552-560; GÖRGEMANN (1960), 30-49; VERSENYI (1961) ("non-rational persuasive material rather than reasoning", 70); HALL (1963), 203-208; STALLEY (1983) ("primarily intended to provide moral exhortation", 10, cf. 42-44) and (1994), 169; LAKS (1990), 209-229; YUNIS (1996) ("deliberative rhetoric", 217; "authoritatively pronounced admonition, sometimes with a strong emotional colouring", 229); BRISSON (2005) ("the preambles to the laws do not seek rationally to convince, but to enchant the citizens by means of the charms dispensed by mythology and rhetoric", 117). THESLEFF (1967) on the basis of stylistic analysis concludes that the preambles often use the "rhetorical style". Against these, BOBONICH (1991), (1994), (1996), has defended the view that the preambles employ "rational persuasion". Recently, it has been emphasized that the preambles deploy a spectrum of arguments: SAUNDERS (1992) "combined appeal to sensibility and reason" (472); LISI (2000); BRISSON (2000): preambles draw on means necessary for a particular group of citizens with a particular educational background (especially 69-71); PRADEAU (2005) denies that the preambles "set forth rationally the appropriateness of such-and-such a conduct" (135, cf. n. 20 *ibidem*: they "do not transmit a teaching"), but he does speak of a "totality of resources", including "religious authority as well as threats", "appeal to tradition", "recourse to edifying examples" (136); MEYER (2006): "[g]iven the Athenian's later comment that to legislate using precludes is in fact to engage in *paideia* (857e), we should not be surprised to find the precludes appealing to the citizens in rhetorical as well as intellectual means" (386); ZUCKERT (2009): "combination of reason with appeals to the passions" (113, cf. 122). KOEPLIN (2009): "the preambles use a variety of methods of persuasion" (15, cf. 18); BICKFORD (2009) (*contra* BOBONICH [2002]): "the soul-shaping of the *Laws* involves teaching-persuasion and reasoned inspiration, implying a rich conception of human capacity and change" (150).

The first is the kind of νόμος for which the preamble is the preface: some preambles are the prefaces of a law that attempts to guide a certain aspect of citizen life, for instance marriage; other preambles preface a criminal statute, or set of criminal statutes. The difference is that a preamble that guides the correct customs to be observed in, for instance, marriage or wills, does not operate in the same dangerous zone as the preamble to the penal law, that attempts to change the mind of an almost-criminal. The second relevant aspect that determines the nature of a preamble is the type of person or group of citizens to whom it is addressed. In most cases, a preamble (and law) is only directed at a specific group of people, or a specific individual.⁵⁰ These two aspects, the preamble's contribution to *paideia* and its intended audience, are of course closely related. Together, they determine the nature of the preamble. In addition, it may be noted that the stages of completion of the preambles vary.⁵¹ Some preambles seem to have received their more or less definitive form, whereas others have to be supplemented. Most of the preambles in the category of (almost) final preambles are those addressed to potential criminals, a fact which may suggest that a penal preamble constitutes the most original form, or that the preamble was originally designed as a preface for this kind of statutes (which seems to be corroborated by the fact that the *analogon* used to explain the function of the preambles is the doctor, implying that a preamble addresses someone who has fallen ill). A third category of preambles consists of excerpts from the discussion that the interlocutors say have to be turned into preambles, but are not preambles yet.

Examples of preambles that do not introduce penal laws and have a formative function include the preamble that precedes the law code as a whole

⁵⁰ See *Leg. 723c1-4*: Καλῶς μὲν τοίνυν, ὦ Κλεινία, δοκεῖς μοι τό γε τοσοῦτον λέγειν, ὅτι πᾶσιν γε νόμοις ἔστιν προοίμια καὶ ὅτι πάσης ἀρχόμενον νομοθεσίας χρῆ προτιθέναι παντός τοῦ λόγου τὸ πεφυκὸς προοίμιον ἑκάστοις.

⁵¹ See for this categorization of the preambles YUNIS (1996), 227, nn. 26, 27, 28.

(addressed to all mature citizens),⁵² the proposed preamble for marriage regulations (addressed to the young men),⁵³ and the preamble for hunting (addressed to the youths).⁵⁴ Most preambles, however, precede the penal laws formulated in Books IX and X.⁵⁵ These are the preambles against temple-robbing,⁵⁶ against all types of murders,⁵⁷ against impiety,⁵⁸ against adulteration (κιβδηλεία),⁵⁹ the one addressed to those who are dying and are about to make a will,⁶⁰ a preamble to the lawguards and guardians about the care of orphans,⁶¹ and one for the worship of gods, deemed equally fitting for honouring one's parents.⁶² The preambles in Book IX and X are often considered to be the most

⁵² *Leg.* 729a1-734e2. This preamble is in fact clearly demarcated: at 734e3-4, it ends with the closure *Καὶ τὸ μὲν προοίμιον τῶν νόμων ἐνταυθοῖ λεχθὲν τῶν λόγων τέλος ἔχεται*. This preamble is in fact an exception, in so far as it is the only preamble addressed to the citizenry as a whole. But see also *Leg.* 722d1-2, where the interlocutors state that their whole discussion till then is a *προοίμιον*.

⁵³ *Leg.* 721b6-d6; also announced in *Leg.* 772e3-4; the *προοίμιον* starts at 772e7 and addresses the sons of good fathers: *Ὡ παῖ, τοῖνυν φῶμεν ἀγαθῶν πατέρων φύντι*. See also chapter four, p. 159.

⁵⁴ *Leg.* 823b1-824a19. This *προοίμιον* is part of that part of the law code that belongs to *paideia* in a more strict sense (that is, the laws that address the *véoi*), for after the preamble for hunting has been concluded, the Athenian states *Νῦν οὖν ἤδη πάντα χρη φάναι τέλος ἔχειν τὰ γε παιδείας περὶ νόμιμα* (824a20-21).

⁵⁵ See *Leg.* 880a8 (not precisely clear to what preamble this refers).

⁵⁶ The preamble is announced in *Leg.* 854a3-5, concluded by 854c6-7; the preamble in 854b1-c5; the law begins in 854d1, and probably ends at d4, or perhaps after the *γάρ*-interlude of 854d4-e1, in 855a2 (cf. the lay out in SAUNDERS' translation). The preamble explicitly claims to instruct: *μαθέ* (854b6). If the person who intends to rob a temple notices that his "disease" does not diminish, he should look upon death as the better alternative.

⁵⁷ At *Leg.* 870d4-5 the Athenian says that for all the cases of murder they have enumerated, the preambles mentioned ought to be stated (*προοίμια μὲν εἰρημμένα ταῦτ' ἔστω*), probably referring to analysis of the various kinds of emotions that may provoke murder in 870a1-d4, but perhaps also the discussion about the distinctions between voluntary and involuntary crime in 860c4ff. The series of laws against premeditated murder on different types of people begins in 871a2 and is concluded in 872c6.

⁵⁸ The preamble against impiety is referred to in *Leg.* 887a3, c1. It begins in 888a7 and is concluded in 907d1. After the preamble, the law itself follows in 907d7- (probably) 908a1.

⁵⁹ *Leg.* 916d6-917b7. The law follows in 917b7.

⁶⁰ *Leg.* 923a2-c2. The law follows in 923c4. Also a special general preamble is to be designed with the purpose of pardoning the lawgiver in case the situation compels the person to disobey the law, as the Athenian explains in 925d5-926a3.

⁶¹ This preamble is mentioned in 926e8. They have given fitting preludes (*ἐμμελῆ ... προοιμιασάμενοι*, 926e7-8) earlier, probably referring to 965eff. (ENGLAND *ad* 927a1).

⁶² *Leg.* 930e5. The discussion that follows (until 932a6) seems to contain fragments that might add up to a complete preamble. The law follows in 932a7-d8.

“rational” ones in their kind by modern interpreters, because they offer the most complex, philosophically sophisticated argumentation.⁶³ But rationality does not depend on the *kind of arguments* used. The preambles are rational because they are mechanisms that encourage a person to *restrain oneself*.⁶⁴

The preambles in most cases address potential criminals, and therefore become effective when *paideia* has failed. Their role in the series of mechanisms that are designed to maintain the legal order is thus strictly speaking after *paideia*: *paideia* is a regulative mechanism designed for all citizens, educating them and training them to internalise the norms. If *paideia* fails and transgression of the law becomes more likely, the preamble has the function to motivate the potential criminal to restrain himself. Persuasion is used to make him internalize the specific law.

If, however, the persuasion of the preamble fails, then there remains the violence (*βία*) of the law (*νόμος*), which, had the persuasion of the preamble been successful, would have remained silent.⁶⁵ In case of transgression of the law, punishment (*δίκη*) follows, although even punishment can assume the form of *paideia*, as in case with the criminals (the atheists) who are sent to the *σωφρονιστήριον* where they are to be instructed by the members of the nocturnal council.⁶⁶ In the final instance, if the crime is very serious and all other mechanisms have repeatedly failed to cure a person of his “illness”, the criminal is considered “incurable”.⁶⁷ The final remedy is death.⁶⁸

⁶³ See n. 81 on p. 201 below.

⁶⁴ Cf. the representation of the laws as assisting the *λογισμός* in the puppet *εικόν*, section 3.2.2.

⁶⁵ *Leg.* 854c7-8: τῶ μὲν πειθομένῳ τὸν νόμον ἔαν σιγῇ δεῖ; 938a6-7: πειθομένοις μὲν σιγῇ, ἀπειθοῦσιν δὲ φωνῇ νόμου ἦδε.

⁶⁶ The *σωφρονιστήριον* is one of three kinds of prisons in the envisaged *polis*, *Leg.* 908a1-7: (1) one is to be situated near the market-place; (2) the *σωφρονιστήριον* is to be near the meeting place of the nocturnal council, and (3) one is to be situated in the loneliest and wildest spot in the middle of the country.

⁶⁷ See e.g. *Leg.* 854c4-5, 941d4, 942a4; cf. 877a5.

⁶⁸ E.g. *Leg.* 942a4.

5.2.3 The doctor-analogy of Book IX

In Book IX, we encounter a recapitulation of the doctor-analogy of Book IV. Book IX for the most part contains penal laws. The doctor-analogy is thus recalled in the context of a special type of laws: those addressing possible criminals, who are about to transgress a particular law. The idea of a doctor of course implies that the person addressed, the patient, is someone who has fallen ill. In the realm of the doctor's *analogon*, the lawgiver, the preamble is addressed to the person who almost fails to control himself. The doctor-analogy in Book IX thus seems designed as the *analogon* for a specific type of preamble: the preamble that is prefaced to criminal legislation. It is apparently the criminal who needs more elaborate instruction, and arguments that draw on philosophical conversation. In fact, the doctor-analogy of book IX is followed by one of the most complex pieces of argument in *Laws*: the reflection on the distinction between voluntary and involuntary crimes. The doctor-analogy thus anticipates this intricate piece of argument. The same principle seems to underlie the extremely elaborate preamble addressed to the atheist: like the preamble that addresses the possible future criminal, it (or rather the three preambles that target three kinds of atheism) deploys advanced philosophical reasoning and gives philosophical arguments for why a person ought to obey the law.

Apparently, to make these citizens control themselves requires much more than ordinary *paideia*—philosophy (or the kinds of definitional and cosmological arguments that we associate with philosophy of a more advanced level) is a rough remedy, to be deployed in order to inspire the wicked to self-restraint. The re-education of atheists of course requires a firm *paideia* on the part of the educator. The citizens who have the task to re-educate the atheists in the $\sigma\omega\phi\rho\omicron\nu\iota\sigma\tau\acute{\eta}\rho\iota\omicron\nu$ are the members of the nocturnal council.⁶⁹

⁶⁹ *Leg.* 908a3-5. For the nocturnal council, see chapter six, section 6.1.

The link between the preambles (πείθειν) and education (διδάσκειν) that came to the fore in Book IV is also made explicit in Book IX, 857c4-d4:

οὐ κακῶς ἀπηκάσαμεν, ὅτε δούλοις ὡς ἰατρευομένοις ὑπὸ δούλων ἀπηκάζομεν πάντας τοὺς νῦν νομοθετούμενους. εὖ γὰρ ἐπίστασθαι δεῖ τὸ τοιόνδε, ὡς εἰ καταλάβοι ποτέ τις ἰατρὸς τῶν ταῖς ἐμπειρίαις ἄνευ λόγου τὴν ἰατρικὴν μεταχειριζομένων ἐλεύθερον ἐλευθέρῳ νοσοῦντι διαλεγόμενον ἰατρόν, καὶ τοῦ φιλοσοφεῖν ἐγγὺς χρώμενον μὲν τοῖς λόγοις, ἐξ ἀρχῆς τε ἀπτόμενον τοῦ νοσήματος, περὶ φύσεως πάσης ἐπανιόντα τῆς τῶν σωμάτων, ταχὺ καὶ σφόδρα γελάσειεν ἂν καὶ οὐκ ἂν ἄλλους εἴποι λόγους ἢ τοὺς περὶ τὰ τοιαῦτ' αἰεὶ προχείρους ὄντας τοῖς πλείστοις λεγομένοις ἰατροῖς· φαίη γὰρ ἂν “ὦ μῶρε, οὐκ ἰατρεύεις τὸν νοσοῦντα ἀλλὰ σχεδὸν παιδεύεις, ὡς ἰατρόν ἀλλ' οὐχ ὑγῆ δεόμενον γίγνεσθαι”.

It was no bad comparison we made when we compared all existing legislation to the doctoring of slaves by slaves. For one should carefully notice this, that if any of the doctors who practise medicine by purely empirical methods, devoid of theory, were to come upon a free-born doctor conversing with a free-born patient, and using arguments that come close to philosophy, dealing with the course of the ailment from its origin and surveying the natural constitution of the human body,—he would at once break out into a roar of laughter, and the language he would use would be none other than that which always comes ready to the tongue of the so-called ‘doctors’: “You fool”, he would say, “you are not doctoring your patient, but schooling him, so to say, as though what he wanted was to be made, not a sound man, but a doctor.” (Transl. BURY, adapted)

In a similar way to the doctor-analogy in Book IV, the one in Book IX presents treatment by the free doctor as a conversation. It likens the exchange between preamble and citizen to the exchange between two free persons (ἐλεύθερον ἐλευθέρῳ νοσοῦντι διαλεγόμενον ἰατρόν). The doctor’s words are even said to be “drawing on arguments resembling philosophy” (τοῦ φιλοσοφεῖν ἐγγὺς χρώμενον τοῖς λόγοις), since they deal with the illness from the beginning (ἐξ ἀρχῆς (...) ἀπτόμενον τοῦ νοσήματος), and take into consideration the entire physique of bodies (περὶ φύσεως πάσης ἐπανιόντα τῆς τῶν σωμάτων).⁷⁰ This is significant in the context of Book IX, for, as we have seen, the preambles in

⁷⁰ Cf. *Phdr.* 270b4-9.

Book IX and X are the most sophisticated preambles.⁷¹ The recapitulation of the doctor-analogy of Book IV in Book IX thus seems specifically designed to illustrate the envisaged effect of the preambles in the immediate context (Books IX and X).

To the slave doctor, the free doctor's procedure is incomprehensible. The slave doctor, we may recall, represents the lawgiver who *does* think that in lawgiving, the mode of address is irrelevant. Confronted with the method of the free doctor, he will say: "You fool,⁷² you are not curing the sick but educating him, as if he needed to become a doctor instead of healthy" ("ὦ μῶρε, οὐκ ἰατρεῦεις τὸν νοσοῦντα ἀλλὰ σχεδὸν παιδεύεις, ὡς ἰατρὸν ἀλλ' οὐχ ὑγιῆ δεόμενον γίγνεσθαι", 857d6-e1). The slave doctor thinks that the sole goal of medical treatment is to make the patient healthy.⁷³ But according to the analogy in *Laws*, violence makes people obstinate rather than compliant, an insight we owe to the Athenian. Imposing on someone what is good for him is thus not an option in the present scenario. The only option is to educate the patient so as to enable him to control himself.

The slave doctor ridicules his free colleague because the latter acts *as if* his aim is to turn his patient into a doctor, instead of making him healthy (ὡς ἰατρὸν ἀλλ' οὐχ' ὑγιῆ δεόμενον γίγνεσθαι, 857e1). Instruction by the free doctor apparently entails that the virtuous person, at least to some extent, himself acquires the necessary basis for persuading and (hence) educating others: he has to become master of himself, his own lawgiver as it were. This may, in some cases, entail the ability to persuade others.⁷⁴ An *active* endeavour to make one's fellow citizens virtuous is also praised in the preamble to the law

⁷¹ See below, n. 81 on p. 201.

⁷² Naturally, good manners are beyond the slave doctor. His behaviour is ἄγριον.

⁷³ Which is, of course, the idea in *Republic*.

⁷⁴ A different interpretation of the analogy is offered by NIGHTINGALE (1999). She argues that the law code in *Laws* is "accorded an almost scriptural status" (102). Correspondingly, when the citizens are said to become like a doctor in 857e1, they are asked to become like Egyptian doctors, who practice medicine by the book (119).

code as a whole.⁷⁵ In that preamble, the faculty to communicate and share one's own virtue with others makes a person twice as virtuous and commendable as the "grudging" person who keeps his virtue to himself.⁷⁶

5.3 Lawgiving λόγῳ

5.3.1 Embedded preambles

We have noted several times that the Athenian consistently represents lawgiving as speech. The doctor-analogy fits this pattern: it represents both the unmixed and the mixed legislation as modes of speech; in other words, laws without preambles are also imagined as a kind of speech, but a less effective mode. In *Laws*, the setting guarantees that the actual preambles and the laws are in fact spoken, since the interlocutors engage in lawgiving "in speech", λόγῳ.⁷⁷ Thus, on the dramatic level of the dialogue, preambles and laws are embedded in, and part of, the conversation between the interlocutors. At the same time, the Athenian postulates an analogy between lawgiving and doctoring that presents lawgiving as a kind of speech resembling dialectic. The doctor-analogy

⁷⁵ *Leg.* 726a2-746d2.

⁷⁶ *Leg.* 730d2-731b3.

⁷⁷ This is the reason why, according to *Laws'* own theory of lawgiving, its laws are not susceptible to the criticism of the written word in *Phaedrus* (written texts are only valuable for mnemonic purposes, since they can only "remind" (ὕπομνησαι) one of something; they cannot teach), and the criticism of written law in *Statesman*. *Phdr.* 275d8-9: ἐὰν δέ τι ἔρη τῶν λεγομένων βουλόμενος μαθεῖν, ἐν τι σημαίνει μόνον ταῦτόν ἀεὶ. Cf. ENGLAND and RITTER *ad loc.* Cf. *Phdr.* 275d4-9, cf. 275c8-d2 and *Ep.* VII, 344b5-6; 344c1-d2. *Phdr.* 275d9-e5; cf. *Tht.* 164e2-4, where a tale whose author ("father", πατήρ) is not present to defend it, is called an "orphan" (ὀρφανόν). *Statesman* criticizes the fixation and unchangeability of written laws on the grounds that they cannot stay up to date of the condition of the patient—in *Statesman* we meet an analogy between *law* (not lawgiver) and doctor—changes, especially *Plt.* 294a6-c4, 296e4-297a2, 300c10-d2. *Statesman's* verdicts on laws can, however, not without qualification be applied to *Laws*, precisely because the introduction of the preambles is designed to foster laws with the capacity to educate. For this reason would be wrong to conclude, as BLUCK (1947), 133-134, does *ad* 344c ἐν νόμοις νομοθέτου "Plato, then, did not consider his own *Laws* σπουδαιότατον". TOMIN (1998), 204-207, argues, drawing also on *Epistula* VII, that *Laws* "revises" *Phaedrus'* views on writing.

therefore seems to be designed with the upcoming laws in speech in mind (just as the painter-analogy analyzed in chapter four). The doctor-analogy, in other words, specifically pertains to the lawgiving in *Laws*—λόγω, that is; the analogy does not offer a general picture of lawgiving.⁷⁸

Although the doctor-analogy is sustainable because the lawgiving that follows it is indeed in speech, the lawgiving embedded in dialectic on the dramatic level and the lawgiving represented as dialectic in the analogy are not entirely parallel. In the lawgiving λόγω, in the dialogue, the preambles and laws are *provisional* and *under discussion*. Cleinias and Megillus are not patients, but lawgivers—the patients are not yet within sight. The interlocutors do not need to be persuaded not to commit an illegal act. (Although in Books I and II the Athenian has persuaded them in dialogue of something contrary to their own cultural tradition.) Together with the Athenian the interlocutors engage in a process of formulating a law code for a hypothetical *polis*. They repeatedly ask the Athenian for clarification, and the Athenian never fails to clarify what he has in mind.⁷⁹ The interlocutors discuss the preambles with the objective to test whether they are a successful means to assist the law in its educational task. Within the dialogue, where the interlocutors often identify with the lawgiver,

⁷⁸ The analogy is therefore less misleading than some scholars have assumed, e.g., STALLEY (1994): “the analogy between the legislator and the doctor is (...) highly misleading”, since “the activity of the lawgiver is “necessarily one-sided” (170). He concludes that, therefore, “we cannot reach an accurate evaluation of the preambles simply by taking at face value everything the Athenian says about them” (170-171). Similar critique is expressed by NIGHTINGALE (1993), 283, 291; also *id.*, (1999a), 117-118; YUNIS (1996), 220; WAUGH (2003), 30; KLOSKO (2006), 245, with reference to *Phdr.* 275d and *Prot.* 329a-b; BICKFORD (2009), 151, n. 56 (*Laws* is second best because it relies on written laws). MAYHEW (2010) holds that written texts are praised “because Magnesia is second best, and, related to this, because the rule of law is second best, behind the rule of philosopher-kings (see *Laws* 5.739b8-e7 and *Statesman* 293a6-297e5)” (98), but such a reading misconstrues the *Laws*’ own representation of the preambles. See also below, section 5.3.

⁷⁹ Like spoken texts in the *Phaedrus*, the Athenian *can* respond, and give clarification. Often in the form of φράζε or λέγει (ἔτι) σαφέστερον. E.g. *Leg.* 639e4-640a2, 644d4-6, 664e1, 668d3 (here the Athenian offers clarification himself), 691b10, 700a1-2, 708d8-9, 712c2-5, 714c7, 801c7, 863a3-6, 888e3, 894b5, 960c2-3. Compare also the many instances (especially in Book X, it seems) of Cleinias’ Πῶς λέγεις; See e.g. 889a9-b1. The Athenian always complies with these requests for clarification. For willingness to do so as a token of εὐνοία, see above, n. 44 on p. 189.

the Athenian's tendency to refer to the preamble as if it were a text spoken by the lawgiver, makes perfect sense.

The effect of the presentation of the preambles and laws as under discussion and provisional is reinforced by the fuzzy way in which the preambles are embedded in the dialogue. It is often not quite clear where a preamble starts and where it ends.⁸⁰ This creates an impression of fluidity. Hence, there exists, for example, some scholarly dispute over the status of the two most philosophical and elaborate preambles of *Laws*, (1) the preamble preceding the penal laws in Book IX, and (2) the preamble, or rather series of preambles, addressed to the three kinds of atheists in Book X—are they indeed preambles or are they to be understood as some kind of extra-legal reflections?⁸¹ The function of this vagueness is, at least on the level of the lawgiving λόγῳ, to suggest that the laws and preambles are under discussion, and remain provisional. The fuzzy boundaries suggest that the preambles as they are

⁸⁰ Cf. STALLEY (1983): "In practice it is often difficult to distinguish the preamble from (a) the general discussion which introduces a particular section of legislation and (b) the law proper which lays down the penalty" (42). When they are explicitly introduced, two formulas can be distinguished: NIGHTINGALE (1993), 286-287: most common is that the lawgiver addresses the citizens or a subgroup in the second person ("Oh friends, we advise/warn you to behave as follows..."). The second group are "injunctions in the third person that are designated either prospectively or retrospectively as 'preludes' (...). The formula for this category of prelude is: "let everyone be advised/warned...".

⁸¹ These two preambles (857e-864c and 887a-907d) are also classified together by MORROW (1960), as preambles that "take[s] the form of a dialogue, eliciting through questions and answers the distinctions and values that underlie the law to follow" (554). But he thinks that Plato does not intend to prefix these lengthy discussions to the actual laws (in the case of the laws against impiety for instance, the "briefer statement in 885b is evidently the formal preamble"). Rather, they "show the kind of defense that he thinks a legislator should be able to give for his prescriptions and that he expects the officials in the new state to be able to give if required." (*ibid.*) In a similar fashion, LISI (2000) argues that IX, 857b4-8[7]64c8, "ne constitue pas un préambule au sens strict, puisqu'elle ne vise pas le possible criminel et n'est pas une admonestation destinée à obtenir une conduite plus adaptée aux lois" (62). Detailed interpretations of 857e-864c in SCHÖPSDAU (1984), SAUNDERS (1991), and SCHOFIELD (2012). YUNIS (1996) includes the address to the atheists in Book X in his list of "preambles complete" (227, n. 26). The preamble of Book X is often adduced as a "rational" preamble (according to some the only one in its kind): YUNIS (1996), 234-235; BRISSON (2000); KOEPLIN (2009); MAYHEW (2008) thinks that it does not appeal to reason alone. According to GÖRGEMANN (1960), the preambles of Book IX (see 82-85) and X (see 85-100) juxtapose rhetorical and philosophical elements: the philosophical framework and rhetorical preambles mutually influence each other.

formulated in *Laws* are not imagined to be fixed, immutable texts.⁸² The vagueness of their exact body of text gives the impression of fluidity. The preambles are simply part of the exchange between the interlocutors; meta-legislative or more general considerations evolve into direct injunctions and, conversely, injunctions implicitly pass over into ideas that seem to be stated on the level of the dialogue rather than with an imaginary ‘patient’ in mind.

5.3.2 The question of lawgiving ἔργω

Laws is a legislative project λόγῳ, in speech. The Athenian asks whether it is possible to submit the outcomes of their discussion to some kind of test.⁸³ This is the immediate cause for Cleinias to reveal his involvement in the foundation of a Cretan colony—as a test he therefore proposes to establish a *polis* in speech. The legislative project in *Laws* is inspired, or motivated, by Cleinias’ participation in a real foundation. The interlocutors do not set themselves the task of laying down laws for Magnesia. Magnesia is merely the reason why the idea of establishing a *polis* occurred to Cleinias as a test of the kind they are looking for. In fact, to establish a *polis* in speech is killing two birds with one stone: it provides the interlocutors with the test for which they were looking, and at the same time Cleinias thinks it likely that he can make use of such a

⁸² YUNIS (1996), 227, nn. 26-28 gives an overview of the preambles, with passages. Besides “complete” and “abbreviated” preambles, he also finds “explanations to turn into preambles”. Again, the limits cannot always so clearly be drawn. *Laws* does not offer a complete law code, but makes suggestions for the sort of preambles. LISI (2000) insists on the need to differentiate between the preamble *stricto sensu* and more general reflections that provide “un fondement d’ordre philosophique” (61). *Leg.* IX 857b4-864c8 is not a preamble, according to him; MORROW (1960) 554, n. 29 for the contrary view.

⁸³ *Leg.* 702a7-b3: ταῦτα γὰρ πάντα εἴρηται τοῦ κατιδεῖν ἔνεκα πῶς ποτ’ ἂν πόλις ἄριστα οἰκοίη, καὶ ἰδίᾳ πῶς ἂν τις βέλτιστα τὸν αὐτοῦ βίον διαγάγοι· εἰ δὲ δὴ τι πεποιήκαμεν προὔρου, τίς ποτ’ ἂν ἔλεγχος γίγνοιτο ἡμῖν πρὸς ἡμᾶς αὐτοὺς λεχθεῖς, ὦ Μέγιστε τε καὶ Κλεινία; “For all these things have been stated for the sake of observing how a *polis* may be best organized, and how the individual may live his life in the best way. What sort of test, spoken among ourselves, might there be to indicate whether what we have said has any practical value?” (transl. MLB).

project for the future colony.⁸⁴ The way in which the law code in *Laws* is embedded makes clear that it is emphatically *not* the law code for Magnesia.⁸⁵

Only at the very end of the dialogue does the conversation return to the foundation of the colony in which Cleinias is involved. The Athenian has observed that the education of the members of the nocturnal council⁸⁶ cannot be laid down in laws before those most fitted to the task of guarding (ὄσοι ἐπιτήδειοι πρὸς τὴν τῆς φυλακῆς φύσιν) have been selected.⁸⁷ When Cleinias asks what is to be done if that is how things stand,⁸⁸ the Athenian answers that they have to be prepared to take the risk.⁸⁹ He himself is prepared to share in that risk by expounding his views on the education and nurture of the nocturnal council.⁹⁰ With the right selection and education, he says, guards may be raised such as they have never seen in their lives.⁹¹

Megillus is so impressed by the past discussion (ἐκ τῶν νῦν ἡμῖν εἰρημένων ἀπάντων, 969c4) that according to him there can follow only one conclusion: turning to Cleinias, he claims that the foundation of the new colony

⁸⁴ *Leg.* 702d1-d5: ἐκ τῶν εἰρημένων ἐκλέξαντες, τῷ λόγῳ συστησώμεθα πόλιν, οἷον ἐξ ἀρχῆς κατοικίζοντες, καὶ ἅμα μὲν ἡμῖν οὐ ζητοῦμεν ἐπίσκεψις γενήσεται, ἅμα δὲ ἐγὼ τάχ' ἂν χρῆσάμην εἰς τὴν μέλλουσαν πόλιν ταύτη τῇ συστάσει, "drawing from the statements we have made, let us establish in speech a *polis*, imagining we are erecting it from the beginning, and this will at the same time provide us with the investigation for which we are looking [*sc.* the ἔλεγχος of 702b2], and I shall in all probability be able to make use of that establishment with regard to the future *polis*" (transl. MLB).

⁸⁵ See also chapter one, p. 38, and chapter four, p. 136.

⁸⁶ For the nocturnal council, see chapter six, section 6.1.

⁸⁷ *Leg.* 968c9-e5. The selection is to be made on the basis of age, capacity for learning, and character and habit: ἡλικίας τε καὶ μαθημάτων δυνάμεσιν καὶ τρόπων ἤθεσιν καὶ ἔθεσιν (968d2-3). Cf. 969b8-c3.

⁸⁸ *Leg.* 968e6.

⁸⁹ *Leg.* 968e7-969a1: Τὸ λεγόμενον, ὦ φίλοι, ἐν κοινῷ καὶ μέσῳ ἔοικεν ἡμῖν κεῖσθαι, καὶ εἴπερ κινδυνεύειν περὶ τῆς πολιτείας ἐθέλομεν συμπάσης, ἢ τρεῖς ἕξι, φασίν, ἢ τρεῖς κύβους βάλλοντες, ταῦτα ποιητέον, "Apparently, my friends, we must 'take our chance with the crowd' (as the saying is), and if we are willing to put the whole polity to the hazard and throw (as men say) three sixes or three aces, so it must be done" (transl. BURY).

⁹⁰ *Leg.* 969a1-3: ἐγὼ δ' ὑμῖν συγκινδυνεύσω τῷ φράζειν τε καὶ ἐξηγεῖσθαι τὰ γε δεδογμένα ἐμοὶ περὶ τῆς παιδείας τε καὶ τροφῆς τῆς νῦν αὖ κεκινημένης τοῖς λόγοις, "and I will go shares with you in the hazard by declaring and explaining my views concerning education and nurture, the subject now started anew in our discourse" (transl. BURY).

⁹¹ *Leg.* 969b8-c3.

ought either to be abandoned altogether, or that they should use all means at their disposal to persuade the Athenian to join.⁹² Megillus himself is prepared to participate, and the dialogue ends with the transition from lawgiving λόγῳ to lawgiving ἔργῳ.

Since the project of lawgiving λόγῳ was triggered by the given of the plans for a new Cretan foundation, Magnesia, and the dialogue ends by turning back to the Magnesian case, we may reasonably ask how a law code faithful to *Laws'* own principles, but ἔργῳ, “in deed”, would look like. How does the lawgiving λόγῳ (in *Laws*) differ from the lawgiving ἔργῳ (for the future *polis* Magnesia)? What does *Laws* itself suggest about legislation outside the world of the dialogue?

It may be asked, for instance, whether there is any suggestion that the laws in Magnesia will be written down. There seems to be some sort of hint that they will be. In the context of the preambles against impiety in Book X, it is noted that the education of the atheists will be facilitated by the fixation of laws in writing: the written nature of law is an enormous advantage in the education of these stubborn atheists. Yet Plato puts these remarks (perhaps not insignificantly) in the mouth of Cleinias, not in the mouth of the Athenian.⁹³

The Athenian himself, it should be noted, is never made to refer to written laws, and emphatically introduces a conception of lawgiving as a

⁹² Leg. 969c4-7. ὦ φίλε Κλεινία, ἐκ τῶν νῦν ἡμῖν εἰρημένων ἀπάντων ἢ τὴν πόλιν ἑατέον τῆς κατοικίσεως ἢ τὸν ξένον τόνδε οὐκ ἀφετέον, ἀλλὰ δεήσεσιν καὶ μηχαναῖς πάσαις κοινωνὸν ποιήτεον ἐπὶ τὴν τῆς πόλεως κατοίκισιν. For the enormous impression the Athenian in the discussion and in his role of lawgiver makes on his interlocutors, see also chapter six, p. 229.

⁹³ Leg. 890e6-891a7 (Cleinias!): καὶ μὴν καὶ νομοθεσία γέ ἐστίν που τῇ μετὰ φρονήσεως μεγίστη βοήθεια, διότι τὰ περὶ νόμους προστάγματα ἐν γραμμασι τεθέντα, ὡς δώσοντα εἰς πάντα χρόνον ἔλεγχον, πάντως ἤρεμει, ὥστε οὔτ' εἰ χαλεπὰ κατ' ἀρχὰς ἀκούειν ἐστὶν φοβητέον, ἃ γ' ἔσται καὶ τῷ δυσμαθεῖ πολλάκις ἐπανιόντι σκοπεῖν, οὔτε εἰ μακρὰ, ὠφέλιμα δέ, διὰ ταῦτα λόγον οὐδαμῆ ἔχει οὐδὲ ὅσον ἔμοιγε εἶναι φαίνεται τὸ μὴ οὐ βοηθεῖν τούτοις τοῖς λόγοις πάντα ἄνδρα κατὰ δύναμιν. “Moreover, such a discourse is of the greatest help for intelligent legislation, since legal ordinances when put in writing remain wholly unchanged, as though ready to submit to examination for all time, so that one need have no fear even if they are hard to listen to at first, seeing that even the veriest dullard can come back frequently to examine them, nor yet if they are lengthy, provided that they are beneficial” (transl. BURY).

conversation between lawgiver and citizen. As we have argued, this conception can be sustained within the world of *Laws*, due to the fact that the interlocutors legislate λόγῳ and that their laws are embedded in a conversation. But it seems almost as if the Athenian carefully avoids to draw from his proposals consequences about lawgiving outside the dialogue. The analogues he offers (of the painter (see chapter four) and doctor (chapter five)), as we have seen, are closely modelled upon the lawgiving λόγῳ of the interlocutors themselves, that is, the lawgiving *within* the dialogue. This is why, as we saw, the doctor-analogy's tacit equation of the preamble with the lawgiver is not disturbing.⁹⁴

The Athenian does imagine a written transcript of the conversation he and his interlocutors have been carrying on.⁹⁵ This transcript, that is, the dialogue *Laws*, he considers the best reading matter for νέοι he can think of. Of all the discourses that he has come across, both in poetry and prose, *Laws* appears to him to be absolutely the most suitable and fitting for the young to hear (πάντων μοι μετρώτατοί γε εἶναι κατεφάνησαν καὶ προσήκοντες τὰ μάλιστα ἀκούειν νέοις, 811d3-5). He cannot think of a better example (παράδειγμα) for a lawguard and head of education to order the educators to teach the children (διδάσκειν ... τοὺς παιῖδας).⁹⁶ The Athenian also insists that *Laws* will have to be read by the διδάσκαλοι themselves first, who are then to educate their pupils on the basis of that reading.⁹⁷

⁹⁴ See p. 200 and n. 78 *ibid.* above.

⁹⁵ *Leg.* 811b8-812a1. See on this passage JAEGER (1945), 255; MORROW (1960), 339-340; STALLEY (1983), 10 interprets the fact that *Laws*, or parts of it, can "have a morally improving effect on a relatively unsophisticated audience" as a sign that *Laws* is concerned with "popular" virtues "of the man in the street" rather than with the true virtue of *Republic* that is only attainable by the philosophers; BOBONICH (1991) argues that making *Laws* itself the reading matter for the citizens ensures that the citizens will receive a public statement and rational justification of the laws, for which there is nothing comparable in *Republic*; BOBONICH (1996); (2002), 106-107; ZUCKERT (2009), 106; KRAUT (2010), 68.

⁹⁶ *Leg.* 811d5-e1. That the Athenian thinks *Laws* as a text is suitable reading matter for the young and even children seems highly remarkable.

⁹⁷ *Leg.* 811e5-812a1.

On closer analysis, it appears that *Laws* remains silent about lawgiving ἔργω. The dialogue seems deliberately to forbear making definitive statements about what laws faithful to its principles would be like. This is fully in line with its pragmatic and open perspective on the good society. The practical (yet perhaps not initially intended) outcome of the conversation on the dramatic level is that the Athenian has, in the eyes of his interlocutors, proven to be qualified as a lawgiver. This qualification simply manifests itself on the dramatic level. That qualification is a matter of practical demonstration is congruous with the scantiness of *Laws*' explicit statements about the qualified lawgiver:⁹⁸ without explicating much about a lawgiver's qualifications, the lawgiver is—pragmatically—the person in whom those involved store their trust to perform the task well.⁹⁹ The idea speaking from this reticence seems to be that real laws ultimately depend on the insight of the lawgiver in case.

5.5 Conclusion

In this chapter, we have investigated νομοθεσία as the influencing of the citizens within a *polis*, that is, lawgiving conceived of as a mode of addressing the citizen(s) in order to make them adhere to the law. Not all modes of address are deemed as successful as others. We have seen that the Athenian regards the discourse of the law by itself as a form of violence (βία). To mitigate that violence, he introduced the mechanism of the persuasive preamble. The preamble is to preface, and ideally to render superfluous, the imperative of the law in the narrow sense. The preambles do not impose, but attempt to persuade (πείθειν). Persuasion is thus accorded a central and crucial role in the *polis* of virtuous citizens.

⁹⁸ Cf. n. 53 on p. 224.

⁹⁹ See also chapter six, section 6.2, p. 229.

We have proceeded to investigate the conceptualization of *πείθειν* and the preambles in *Laws*. The role of *πείθειν* may seem bewildering in the light of its assessment in other Platonic texts. Important for our analysis are the two doctor-analogies in *Laws* (Book IV and IX). The preambles are emphatically presented as a “friendly” means to make the citizen adhere to the law, as opposed to the “violent” mechanism of the law itself. The doctor-analogies thus *frame* lawgiving as the interaction between a good doctor and his patient. This interaction between doctor and patient in several respects closely resembles dialectic. Thereby, *πείθειν* becomes virtually indistinguishable from *διδάσκειν*. In addition, the presentation of the preambles as resembling dialectic interaction—the doctor will not give an order until he has secured the patient’s assent—suggests that voluntary submission to the law is constitutive of virtue. Thus, virtue is conceived of, formally, as self-control (which is consistent with the findings of chapter three). Ideally, a person is one’s own lawgiver and does not need laws.

Via the introduction of the preamble and its *analogon*, the good doctor, the Athenian is able to construe a notion of lawgiving as resembling dialectic. The analogy creates the effect of a *mise en abyme*-effect: it constructs an image of νομοθεσία that resembles the dialectical conversation of the interlocutors, on the level of which the analogy is introduced. Subsequently, of course, the interlocutors will formulate laws and preambles in the context of their dialectical discussion. It therefore seems that the analogy itself is designed with the upcoming legislation on the dramatic level in mind: for on the dramatic level, the preambles *are* in fact in speech and form part of the dialectical conversation.

At the same time, the analogy acquires its own persuasiveness from the fact that it is followed by lawgiving in speech. It is *because* the interlocutors frame the preambles and laws in speech that the analogy of lawgiving as such can be upheld. It is also *because* the Athenian is formulating the preambles live

that the comparison of the preamble to a living doctor is convincing. Although Cleinias and Megillus are not the addressees of the preambles in the sense that they are on the verge of committing an illegal act and have to be persuaded to do otherwise, they have been persuaded when the Athenian refuted their cultural conception of ἀρετή as ἀνδρεία. In that sense, as people whom the lawgiver persuades to change their mind, the relation between the Athenian and his interlocutors, and between the lawgiver/doctor and his patient, are parallel.

The analogy becomes plausible because, when the interlocutors start their own legislation, it seems that we witness something very much like what the analogy had earlier described. The analogy also works because in the conversation between the interlocutors, lawgiving is not subject to constraints of time, and because of the way in which the preambles are embedded in the dialectical conversation. The transitions between preamble, law, and conversation of the interlocutors are not always clearly demarcated. This compositorial strategy creates indeed the impression that lawgiving is more like a dialectical conversation than like a fixed and unchangeable text. The analogy is modelled on the lawgiving of the interlocutors in speech, and the claims of the analogy can be sustained because the example of lawgiving that we do get in *Laws* is a dialectical conversation. The composition of *Laws* seems to have the very purpose of corroborating its own claim that the preambles are a live conversation with, and instruction by, a lawgiver.

In *Laws*, the interlocutors lay down laws λόγῳ, “in speech”, and test the outcomes of their discussion by applying their insights to the framing of a law code. One may therefore wonder how this will work in the lawgiving ἔργῳ, for Magnesia. Yet, characteristically, the Athenian refrains from formulating rules for formulating laws outside the dialogue itself, the lawgiving λόγῳ.