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

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CHAPTER SIX

OUTSIDE THE LAW CODE: THE NOCTURNAL COUNCIL AND THE ATHENIAN STRANGER

In this chapter, we will return to the question of the authority of the law code in *Laws*. So far, it has been argued that the source for the laws in Plato's *Laws* is dynamic and pragmatic rather than static and absolute. *Laws* portrays an exercise in legislation inspired by a particular, Cretan, case. On the basis of an analysis of the composition of *Laws* in terms of its own conceptual framework, I have argued that this exercise presupposes a pragmatic notion of morality that excludes the absolute, objectifying perspective of the moral expert. Yet before the absence of the expert can be securely accounted for, two entities need to be examined more closely: the so-called "nocturnal council" and the figure of the Athenian Stranger. Is one of these in some way comparable to, or even some sort of return to, the philosopher-king?

At first sight, either may seem a plausible candidate, since both the nocturnal council and the Athenian stranger are "outside" the law code: the nocturnal council because it is introduced *after* the exposition of law code has been rounded off; the Athenian because he *formulates* the law code. This chapter

will examine the nocturnal council and the Athenian as possible candidates for expert authority. The first part will address the identity and function of the nocturnal council, regarding its role both within the envisaged *polis* and within the overall composition of *Laws*. The second half will examine the figure of the Athenian stranger. Is there any hint that he is a philosopher-king after all—and if not, what *is* his qualification to lay down laws?

6.1 The identity and function of the nocturnal council

6.1.1 The σκοπός of the nocturnal council

In Book XII, the διέξοδος τῶν νόμων¹ is finished off (960b5). Thus, the law code in the strict sense ends with regulations concerning *post mortem* rituals such as the πρὸθεσις.² The Athenian concludes that the laws about the burial of the dead and other ways of disposing of the body (in case of parricides and temple-robbers) have been stated before.³ Although the διέξοδος τῶν νόμων is now completed, the act of νομοθεσία has only nearly reached its end and is not yet complete (ὥστε σχεδὸν ἢ νομοθεσία τέλος ἂν ἡμῖν ἔχοι, 960b4-5).⁴ What remains to be done is developing a mechanism for the “preservation” (σωτηρία) of the law code, 960b5-c1:

τῶν πάντων δ' ἐκάστοτε τέλος οὐ τὸ δρᾶσαι τι σχεδὸν οὐδὲ τὸ κτήσασθαι κατοικίσαι τ' ἐστίν, ἀλλὰ τῷ γεννηθέντι σωτηρίαν ἐξευρόντα τελέως αἰεὶ, τότε ἤδη νομίζειν πᾶν ὅσον δεῖ πραχθῆναι πεπραχθαι, πρότερον δ' ἀτελὲς εἶναι τὸ ὅλον.

¹ τῶν νόμων αὐτῶν ἢ διέξοδος: *Leg.* 718b2, 718c2, 806d2; διέξοδος περὶ νόμων: 812a4-9, 837; cf. 857e4-5. See also chapter four, p. 138.

² *Leg.* 958c7-960b1. The law code therefore ends with the rites accompanying the death of an individual. On the law code as following (roughly) the course of the human life, see also chapter one, p. 39; chapter four, p. 159.

³ *Leg.* 717d, 719d, 854dff., 873b-d, 909c, 947b3ff.

⁴ An act of νομοθεσία thus entails more than simply making the laws—as we saw in chapter four, a discussion of necessary preliminaries (in Books IV-VI) is also part of νομοθεσία, yet not of the διέξοδος τῶν νόμων.

But in every case, the full end does not consist in the doing, establishing or founding something: rather our view should be that it is only when one has discovered a means of perfect preservation for the creation in every case at issue, that we are at length justified in believing that we have done all that ought to be done: until then, we must believe, the whole of our creation is incomplete. (Transl. BURY, adapted)

The Athenian goes on to explain that this mechanism of preservation (σωτηρία) is “the capacity for irreversibility” (ἡ ἀμετάστροφος δύναμις),⁵ which he connects with the function traditionally ascribed to the third of the three Moirai: Atropos, whose name is synonymous with ἀμετάστροφος, is the Moira who makes one’s fate irreversible.⁶ Atropos is the “saviour” of what has been stated (σώτειραν τῶν λεχθέντων⁷), since she makes the spinnings of the Fates irreversible in the fire and thereby effectuates this ἀμετάστροφος δύναμις. In order to complete their project, the interlocutors must now do the same for their law code.

Cleinias enquires with the Athenian what kind of σωτηρία may be secured for their constitution and laws.⁸ The σωτηρία the Athenian has in mind is the σύλλογος that has come up in the interlocutors’ discussion several times

⁵ Leg. 960c9-d1; 960d5-6.

⁶ Leg. 960c7-d1. Cf. *Epin.* 982a4-c5, where the Moirai are associated with the movements of the type of ζῶα in possession of νοῦς. In contrast to the irrational ζῶα, like human beings (who are ἀφρονα, moving ἐν ἀταξία), rational ζῶα, the heavenly bodies, move ἐν τάξει, which is a clear sign of their possession of sense (μέγα τεκμήριον ... τοῦ φρόνιμον εἶναι, 982b2). Rational, consistent motion is a sign of νοῦς. τὸ δὲ ἀμετάστροφον, ὅταν ψυχὴ τὸ ἄριστον κατὰ τὸ ἄριστον βουλευέσθαι νοῦν, τὸ τέλος ἐκβαίνει τῷ ὄντι κατὰ νοῦν, καὶ οὐδὲ ἀδάμας ἂν αὐτοῦ κρείττον οὐδὲ ἀμεταστροφώτερον ἂν ποτε γένοιτο, ἀλλ’ ὄντως τρεῖς Μοῖραι κατέχουσαι φυλάττουσι τέλος εἶναι τὸ βελτίστη βουλή βεβουλευμένον ἐκάστοις θεῶν, “When a soul reaches the best decision in accordance with the best intelligence, the result, which is truly to its mind, is perfectly unalterable. Not even adamant could be mightier or more unalterable. Truly, three Fates hold fast whatever has been decided through the best counsel by each and all of the gods, and guarantee that it is brought to pass” (transl. MCKIRAHAN).

⁷ BEKKER conjectures ληχθέντων for MS. λεχθέντων; see app. crit. and ENGLAND *ad loc.*: “It is natural after the pointed mention of the names of the three Fates to expect *three* etymologies; (...). Otherwise there would be an etymology for Κλωθώ in the word κλωσθέντων, and for Ἄτροπος in ἀμετάστροφον, but none for Λάχεσις” (italics in original).

⁸ Leg. 960e9-11 (Cleinias): τίς οὖν δὴ, φήs, σωτηρία γίγνεται ἂν καὶ τίνα τρόπον πολιτεία τε καὶ τοῖς νόμοις ἡμῖν;

before.⁹ The “nocturnal council”, as it has become known in the scholarly literature (νυκτερινός¹⁰ or ὀρθριος¹¹ σύλλογος), is explicitly introduced as the device of σωτηρία for the *polis* and laws that have been founded λόγῳ. As designing a mechanism of σωτηρία for a creation necessarily *follows* the act of creation proper,¹² the introduction of the council at the very end of *Laws* can be fully accounted for in the light of its function.¹³ Yet its introduction *after* the διέξοδος τῶν νόμων raises the question whether the council is not in fact a means of reintroducing the philosopher-kings, on whose authority the laws of the interlocutors are to be accepted as objectively good, parallel to what happens in *Republic*.¹⁴ So, who are the members of the nocturnal council, and how is its function defined?

In a recapitulation of what the Athenian has indicated before, the council is said to consist of [1] the ten eldest lawguards, [2] the prize-winners in the competitions for virtue, [3] the observers,¹⁵ and [4] a number of younger members, who have been scrutinized in advance.¹⁶ In virtue of its preserving

⁹ Leg. 961a1-2: ΑΘ.: Αἰ· οὐκ εἵπομεν ὅτι δεῖ σύλλογον ἡμῖν ἐν τῇ πόλει γίνεσθαι τοιόνδε τινά; That the nocturnal council has been hinted at several times before Book XII is an important, but certainly not the only reason why it is an integral part of the argument of *Laws* and completely in harmony with what preceded its introduction. These earlier references to the council are: Leg. 818a1-3 (the τινες ὀλίγοι who will receive the ἀκριβέστερα παιδεία of the three μαθήματα for free people), 908a3-909a5 (οἱ τοῦ νυκτερινοῦ συλλόγου are the only ones who are to come in contact with the atheists sent to the *sophronistērion*), 951d3-952b9 (τὸν σύλλογον ... τὸν τῶν περὶ νόμους ἐποπτευόντων, 951d4-5, in the context of the scrutinizing of the observers). MORROW (1960), 502 also sees in 632c4-d1 a reference to the nocturnal council; cf. GUTHRIE V (1978), 371, n. 1 and SCHÖPSDAU (2011), 576 (with the φύλακες in 632c4 “unmißverständlich angekündigt”).

¹⁰ Leg. 909a3-4, 968a7.

¹¹ Leg. 961b6

¹² Leg. 960b5-c1, see above, p. 210.

¹³ Concerns about the incompatibility of the nocturnal council with the supremacy of law (e.g. BRUNT [1993], 250, “an afterthought”; see also the references in SCHÖPSDAU [2011], 576) are therefore misguided. Cf. SCHÖPSDAU (2011), 581. Some scholars have thought that the late introduction of the council raises questions, e.g. BARKER (1918), 339, 385, 398ff.; MORROW (1960), 500-503, 573-593. The view that the nocturnal council is an “afterthought” has been criticized by STALLEY (1983), 112.

¹⁴ See chapter two, section 2.4.

¹⁵ The observers were introduced shortly before the council (ὁ θεωρήσας τὰ ἐν τοῖς ἄλλοις ἀνθρώποις νόμιμα, 952b5-6). See also chapter four, section 4.3.3, p. 170.

¹⁶ Leg. 961a1-b3: [1] δέκα μὲν τῶν νομοφυλάκων τοὺς πρεσβυτάτους αἰεί, [2] τοὺς δὲ τὰριστεῖα εἰληφότας ἅπαντας δεῖν εἰς ταῦτό συλλέγεσθαι τούτοις, [3] ἔτι δὲ τοὺς ἐκδημήσαντας ἐπὶ

function, the council is an “anchor of the entire *polis*” (ἄγκυρα[ν] πάσης τῆς πόλεως, 961c5).¹⁷ After a rather solemn exhortation,¹⁸ the Athenian goes on to compare a *polis* to a ζῷον. This, it immediately becomes clear, evokes a wholly different set of associations than does the analogy between πόλις and ζῷον in *Republic*. In the present context, a ζῷον is indeed a “living animal”, and in need of a means that ensures its preservation. Generally speaking, the preservation of a ζῷον depends on two faculties: on the ἀρετή of the soul, and on the ἀρετή of its head. It is, in short, the ἀρετή of these two that for every ζῷον secures its salvation (ἡ τούτοις ἀρετὴ δῆπου παντὶ παρέχει ζῶν σωτηρίαν, 961d5). The ἀρετή of the soul is νοῦς; the ἀρετή of the head are the two “sense-perceptions” (αἰσθήσεις), “sight” (ὄψις) and “hearing” (ἀκοή). The general statement about the faculties that ensure a ζῷον’s preservation prepare the reader for the identification of these faculties in the council itself (see below, section 6.2).

In yet another argumentative step, the metaphor of the council as “anchor” of the *polis* is amplified: a *polis*’ endeavour to secure its own preservation is likened to “the art of ship-steering”, ἡ κυβερνητικὴ τέχνη.¹⁹ This, it soon becomes apparent, is not the art of the expert helmsman: it draws on νοῦς *in combination with* the αἰσθήσεις of sight and hearing; analogous to the preservation of a ship, that is, in all circumstances, secured by the κυβερνήτης

ζήτησιν εἴ τί που πρὸς τὴν νομοφυλακίαν γίγνοιτο ἐν καίριον ἀκούσαι καὶ σωθέντας οἴκαδε, δόξαι, τούτοις αὐτοῖς διαβασανισθέντας, τοῦ συλλόγου ἀξιοκοινωνήτους εἶναι· [4] πρὸς τούτοις δὲ ἓνα ἕκαστον δεῖν προσλαμβάνειν τῶν νέων, μὴ ἔλαττον ἢ τριάκοντ’ ἔτη γεγονότα, πρῶτον δὲ αὐτὸν κρίναντα ἐπ’ αἴσιον εἶναι φύσει καὶ τροφῇ, τὸν νέον οὕτως εἰς τοὺς ἄλλους εἰσφέρειν κτλ. For the composition of the nocturnal council, see also below. Cf. 964e1-965a4.

¹⁷ Leg. 961c4-6 (the Athenian): φημί, εἴ τις τοῦτον βάλοιτο οἷον ἄγκυραν πάσης τῆς πόλεως, πάντα ἔχουσιν τὰ πρόσφορα ἐαυτῇ, σῶζειν ἂν σύμπαντα ἃ βουλόμεθα.

¹⁸ Leg. 961c8-9.

¹⁹ The transition from the council as the “anchor of the entire city” to the combined efforts of those who are concerned with keeping the ship on course in the κυβερνητικὴ τέχνη (the κυβερνήτης and ναῦται, 961e3) is not entirely straightforward. The metaphor of the anchor may entail that the primary function of the council is to either (a) to keep the ship on the exact same place at sea in all circumstances, or (b) that the council is primarily necessary in order to keep the ship from drifting away in more dangerous circumstances, *i.e.*, that the council’s function is preventive, rather than active, as suggested by the analogy with the κυβερνητικὴ τέχνη. For another use of the κυβερνητικὴ τέχνη in *Laws*, see chapter three, p. 96 (ναυτικὴ τέχνη).

ἄμα καὶ ναῦται: the helmsman *together with* the sailors (and it is thus not the qualification of the helmsman alone upon which the preservation of the city depends). The faculty of νοῦς is “mixed with” the most beautiful sense-perceptions of sight and hearing.²⁰

This (κυβερνητικός) νοῦς that is active in conducting the process of seafaring has an *object*; the νοῦς mixed with the most beautiful senses is said to be γενόμενος (...) εἰς ἓν (961d9-10), and ὁ περὶ τί νοῦς (961e1). The object of this mixed νοῦς is its “goal”, the σκοπός of the relevant τέχνη. Every professional, whether a steersman, military general, or doctor, “aims” (στοχάζοιτ’ ἄν) at a particular form of σωτηρία.²¹ The goal of the steersman with νοῦς is the salvation of his ship in all circumstances,²² that of the general with νοῦς victory over his enemies, and that of the doctor with νοῦς a healthy bodily constitution.²³ This demonstrates the intrinsic connection between νοῦς and σωτηρία: the natural object of νοῦς is σωτηρία; conversely, aiming for σωτηρία requires νοῦς.

The nocturnal council as the salvatory mechanism of the *polis* embodies νοῦς and the two most beautiful senses, the ἀρεταί of head and soul; and in order to be able to focus on ἓν, one needs πᾶσα ἀρετή (962d2). The leading

²⁰ Leg. 961d8-10: συλλήβδην δὲ νοῦς μετὰ τῶν καλλίστων αἰσθήσεων κραθεῖς, γενόμενός τε εἰς ἓν, σωτηρία ἐκάστων δικαιοτάτ’ ἂν εἴη καλουμένη; In other words, σωτηρία is the best name for the mixed νοῦς that is directed at a single object. Cf. 961e1-3: ἀλλ’ ὁ περὶ τί νοῦς μετ’ αἰσθήσεων κραθεῖς σωτηρία πλοίων ἓν γε χειμῶσιν καὶ ἐν εὐδίας γίγνεται ἄν; 961e3-5: ἄρ’ οὐκ ἐν νηὶ κυβερνήτης ἄμα καὶ ναῦται τὰς αἰσθήσεις τῷ κυβερνητικῷ νῷ συγκερασάμενοι σώζουσιν αὐτούς τε καὶ τὰ περὶ τὴν ναῦν;

²¹ Leg. 961e7-962a3. Cf. Leg. 963a11-b7. SCHÖPSDAU (2011), *ad* 961e8ff.: “Jede Techne erfordert eine spezielle Vernunft (νοῦς), die sich auf diese Techne versteht und deren spezifisches Ziel kennt; so gibt es je nach Fachgebiet einen κυβερνητικός, ἰατρικός, στρατηγικός und einen πολιτικός νοῦς (961e1, 962b7, 963a-b)” (589).

²² Leg. 961e2.

²³ Leg. 961e8-962a3: ἀλλ’ οἷον περὶ στρατοπέδων νοήσωμεν τίνα θέμενοι στρατηγοὶ σκοπὸν καὶ ἰατρικὴ ὑπηρεσία πᾶσα στοχάζοιτ’ ἄν τῆς σωτηρίας ὁρθῶς. ἄρ’ οὐχ ἢ μὲν νίκην καὶ κράτος πολεμίων, ἢ δὲ ἰατρῶν τε καὶ ὑπηρετῶν ὑγείας σώματι παρασκευήν; “Consider, for instance, what would be the right mark for a general to set up to shoot at in the case of an army, or the medical profession in the case of a human body, if they were aiming at salvation. Would not the former make victory his mark, and mastery over the enemy, while that of the doctors and their assistants would be the providing of health of the body?” (transl. BURY).

principle of complete virtue is that one “looks” and “aims at” an object *that is one thing*, that is, ἀρετή.²⁴ The law codes of other cities, however, even though each aims at its own purpose, “wander” (πλανᾶσθαι) because they all aim at their own—mistaken—purpose (with distributive *polyptoton*: πρὸς ἄλλο ἄλλη βλέπει τῶν νομοθεσιῶν ἐν τῇ πόλει ἐκάστη, 962d8-9).²⁵ In some cities justice is defined (τὸν ὄρον ... τῶν δικαίων) by the aim of enabling a certain group in the *polis* to rule (ὅπως ἄρξουσιν τινες ἐν τῇ πόλει, whether those be the better or the worse); in another *polis* everything is geared towards the acquisition of wealth by some (ὅπως πλουτήσουσιν); whereas yet another *polis* directs its efforts to securing a life of freedom (ὁ ἐλεύθερος ... βίος).²⁶ The diversity of purposes among *poleis* recalls the opening scene of *Laws*: ἀνδρεία was the goal of the Cretan and Spartan laws, and from that perspective of cultural diversity it was implied that other cities have yet their own notion of ἀρετή. Some cities even focus on two goals, on freedom *and* victory in war.²⁷ Finally, there are those lawgivers who pretend to be σοφώτατοι, but who actually end up bringing about confusion by aiming for *all* goals at the same time.²⁸

In that case, the three of them, Cleinias concludes, must have been correct to state that all laws need to have a *single* goal, which is virtue: πρὸς γὰρ ἐν ἑφάμεν δεῖν αἰεὶ πάνθ' ἡμῖν τὰ τῶν νόμων βλέποντ' εἶναι, τοῦτο δ' ἀρετήν που συνεχωροῦμεν πάνυ ὀρθῶς λέγεσθαι (963a2-4). Upon the Athenian's

²⁴ Leg. 962d3-5: ἥς [sc. πάσης ἀρετῆς] ἄρχει τὸ μὴ πλανᾶσθαι πρὸς πολλὰ στοχαζόμενον, ἀλλ' εἰς ἐν βλέποντα πρὸς τοῦτο αἰεὶ τὰ πάντα οἷον βέλη ἀφιέναι. Cf. 963a2-3, 963a11-b7.

²⁵ SCHÖPSDAU translates 962d7-9: “Nun werden wir auch verstehen, daß es kein Wunder ist, wenn die gesetzlichen Einrichtungen der Städte ein schwankendes Bild zeigen, weil die Gesetzgebungen in jeder Stadt jeweils ein anderes Ziel im Auge haben”. The Athenian's critique applies to cities in comparison: every city pursues its own purpose, showing a mosaic of purposes rather than in a consistent image. This explanation is to be preferred over ENGLAND's paraphrase *ad loc.* (“because in each separate state the law-makers pursue all kinds of different aims”), which only applies to the statement in 962e6-9.

²⁶ Leg. 962d9-e4.

²⁷ Leg. 962e4-6: οἱ δὲ καὶ σύνδυο νομοθετοῦνται, πρὸς ἄμφω βλέποντες, ἐλεύθεροί τε ὅπως ἄλλων τε πόλεων ἔσονται δεσπόται.

²⁸ Leg. 962e6-9: οἱ δὲ σοφώτατοι, ὡς οἶονται, πρὸς ταῦτα τε καὶ τὰ τοιαῦτα σύμπαντα, εἰς ἐν δὲ οὐδὲν διαφερόντως τετιμημένον ἔχοντες φράζειν εἰς ὃ τὰλλ' αὐτοῖς δεῖ βλέπειν.

affirmation, Cleinias cautiously reintroduces the flip side of the coin: they previously stated that virtue was in fact four things (τὴν δὲ ἀρετὴν τέτταρα ἔθεμέν που, 963a6).²⁹ Cleinias also recalls that νοῦς is superior to the other three virtues, recapitulating the Athenian's statement in Book I that νοῦς/φρόνησις is the "leader" (ἡγέμων) of the four virtues at which the other three look.³⁰ Therefore it is in the context of the discussion of the nocturnal council that the theme of the unity and plurality of virtue is reintroduced. The reappearance of this theme in Book XII echoes the opening scene.³¹ The unity and plurality of virtue has been discussed only in Books I and II,³² and has not been referred to again until now. Although scholars have often considered the theme of the unity and plurality of virtue an oblique reference to the Idea of the Good,³³ I submit that the text of *Laws* itself (its discussion of the theme in Books

²⁹ Leg. 963a8-9: νοῦν δέ γε πάντων τούτων ἡγέμονα, πρὸς ὃν δὴ τὰ τε ἄλλα πάντα καὶ τούτων τὰ τρία δεῖ βλέπειν. Cleinias here recapitulates 631d5-6; cf. also 631c5-6, where φρόνησις is said to be the leader of the divine goods. SCHÖPSDAU (2011) *ad loc.* also proposes a reference to 967d-e.

³⁰ Leg. 631c6, d56; see also chapter three, n. 33 on p. 90.

³¹ See chapter three, p. 84, n. 2.

³² The overt thematic correspondences between the beginning and the end of *Laws* have led some scholars to speculate that the beginning and end were part of a separate work. BRUNS (1880) (cited by RITTER [1896], 348-349) claims that the council is incongruous with the ἀρχαί expounded in Book VI (cf. GUTHRIE V [1978], 369, n. 2), and concludes that the passage 961aff. is attached to the end by Philip of Opus, but originally belongs together with Book I, to "einer anderen Stufe des politischen Denkens Platons (...), die dem Standpunkt des Staates näher liege als die Hauptmasse der heute in den Gesetzen vereinten Gedanken" (RITTER, *ibid.*, 349). Along the same lines, BERGK (1880), 94-95, has argued that the final part of *Laws* together with Book I belongs to a separate work, the δευτέρα πολιτεία, whereas the rest of *Laws* (roughly) belongs to the τρίτη πολιτεία (on BERGK's argument, see chapter one, n. 13 on p. 6 above). The exposition of the nocturnal council "zeigt einen ganz anderen Charakter, wir befinden uns auf einmal aus der τρίτη πολιτεία in die δευτέρα πολιτεία versetzt" (95).

³³ E.g. BARKER (1918); FESTUGIÈRE (1936), 442-445; POPPER OS I, 215 n. 26(5); CHERNISS (1944): "From among the earliest of the dialogues on through the last—and this means, then, to the very end of Plato's life—the doctrine of ideas is the cornerstone of his thought"; CHERNISS (1953), 375-376, and (1980), 60; JAEGER (1945), 260-262 considers the unity of the virtues the "old Socratic phrase" for the Idea of the Good; BLUCK (1947), 104, n. 77: even "*Philebus* and the *Laws* defend the theory of Ideas"; GÖRGEMANN (1960), 223; MORROW (1960), 573, n. 1 finds "clear references" to the Ideas "in the closing pages (965c)"; GUTHRIE V (1978), 378-381 (with references); PIERRIS (1998); KLOSKO (2006), 184 (and 235); LEWIS (1998), 6 and *ibid.* n. 15 finds references to the Forms in 965d2, 836d7 and 966a5 (also his note 16, pp. 6-7); SCHÖPSDAU (2011), 592; ROWE (2012), 332: the nocturnal council partakes "more Socratico" in a discussion on the unity of virtue.

I and II) is the primary framework in terms of which the discussion of the unity and plurality of the ἀρεταί in the context of the nocturnal council in Book XII ought to be explained.

This phase of the discussion is of a highly dialectical character; the type of the conversation hence also recalls the opening discussion of the dialogue. The Athenian explicitly divides the roles within the conversation.³⁴ Yet Cleinias and Megillus are unable to answer the Athenian's question in what respect these four ἀρεταί can be said to be "one". The Athenian then recapitulates the distinction between ἀνδρεία and φρόνησις developed in Book II, distinguished by the presence or absence of λόγος.³⁵ It is not hard to explain in which way the ἀρεταί differ from each other, he says, 963e1-8:

Ερώτησόν με τί ποτε ἐν προσαγορεύοντες ἀρετὴν ἀμφότερα, δύο πάλιν αὐτὰ προσείπομεν, τὸ μὲν ἀνδρείαν, τὸ δὲ φρόνησιν. ἐρῶ γάρ σοι τὴν αἰτίαν, ὅτι τὸ μὲν ἐστὶν περὶ φόβον, οὗ καὶ τὰ θηρία μετέχει, τῆς ἀνδρείας, καὶ τὰ γε τῶν παιδῶν ἦθη τῶν πάνυ νέων· ἄνευ γὰρ λόγου καὶ φύσει γίγνεται ἀνδρεία ψυχὴ, ἄνευ δὲ αὐτοῦ λόγου ψυχὴ φρόνιμός τε καὶ νοῦν ἔχουσα οὐτ' ἐγένετο πώποτε οὐτ' ἐστὶν οὐδ' αὐθις ποτε γενήσεται, ὥς ὄντος ἐτέρου.

Ask me why, when calling both by the single name of 'virtue', did we again speak of them as two—courage and practical wisdom? Then I shall tell you the reason: because the one of them has to do with fear, namely courage, in which beasts also have a share, and the characters of very young children; for a courageous soul comes into existence naturally and without reasoning, but without reasoning, on the other hand, there has never come into existence, nor is there, nor will there be, a wise soul with understanding, [that would be] a sign of a different kind of virtue.³⁶ (Transl. BURY, adapted)

³⁴ In *Leg.* 963b2ff.: Cleinias and Megillus voice the position of the πολιτικός νοῦς, but the Athenian will soon take over when they prove unable to answer.

³⁵ Namely at *Leg.* 653a5-c4. For a discussion of this passage, see chapter three, section 3.3, p. 117ff.

³⁶ ἕτερον ≠ ἄλλον, and is "a different one of the same kind", hence an εἶδος of ἀρετή (φρόνησις) different from another εἶδος of ἀρετή (ἀνδρεία). ENGLAND assumes that ὄντος ἐτέρου refers to φρόνησις and paraphrases: "'for wisdom is a different thing'; i.e. it is not an *inborn, physical quality*, but a *mental acquirement*" (his italics), and is followed by SCHÖPSDAU (2011), 593 ("φρόνησις und νοῦς"). Cf. SUSEMIHL: "ein so ganz anderes Ding ist die Weisheit". RITTER (1859) on the other hand connects ὥς ὄντος ἐτέρου with λόγου and only has a bearing upon the second part of the sentence: "ohne λόγος, als ob dieser etwas von φρόνησις und νοῦς Verschiedenes wäre, gibt es

In line with the definition of *paideia* in Book II, λόγος is a necessary condition for φρόνησις and νοῦς. Ἀνδρεία is the ἀρετή applied to the *paideia* of the youngest children, referring to their early sense of rhythm and melody in music.³⁷ It is distinct from φρόνησις because the latter requires reason (λόγος), while the acquisition of ἀνδρεία does not. This passage in Book XII can therefore be read as an echo of the discussion in Book I. In Book I, the introduction of the theme of the unity and parts of ἀρετή triggered a discussion about what ought to be the basis of laws. In Book XII, this same theme acquires relevance in the discussion of the nocturnal council and its function to preserve the *polis*.

Now that the Athenian has explained in what way two of the four virtues differ from each other, he again questions his interlocutors: having himself answered the question in what way these two ἀρεταί are different and two, it is now the turn of Cleinias and Megillus to state in what way they are one;³⁸ whereupon the Athenian will again ask them to explain in what way they are four (ὅπη τέτταρα, 964a4-5). Whereas in Book I the upbeat for the introduction of the four ἀρεταί is ἀνδρεία (introduced in the discussion of the military societies of Crete and Sparta), in Book XII it is the virtue of νοῦς as the ἀρετή of the soul concerned with the σωτηρία of a ζῶον.

We have seen that the function of the nocturnal council is to preserve the law code and the *polis*. In order to do so, the council keeps its gaze fixed at a

keine φρόνιμος ψυχή" (355). In *Laches* 197a6ff. (referred to by ENGLAND) Nicias denies that animals and little children can be properly called courageous on the ground that their fearlessness is μετὰ ἀπρομηθείας καὶ ἀγνοίας. In *Laws*, by contrast, the absence of something 'prudential' or 'moderate' is inherent in the virtue of ἀνδρεία and animals and children can possess this virtue; and it is precisely the criterium on the basis of which it distinguishes between ἀνδρεία and φρόνησις.

³⁷ This seems to be the reason why ἀνδρεία is relegated to the fourth rank in the hierarchy of the virtues in Book I. The virtue of ἀνδρεία (training against φόβοι) can be interpreted as training in becoming ἄφοβος (648b6-c5). Yet ἀνδρεία can spill over into θάρρος, recklessness—ἀνδρεία itself does not entail the awareness of a norm or measure. In this respect it is distinguished from φρόνησις (and likely from σωφροσύνη and δικαιοσύνη too), that does entail λόγος: one cannot go too far in σωφροσύνη.

³⁸ *Leg.* 964a2-4: ἥ δὲ ἐν καὶ ταῦτόν, σὺ πάλιν ἀπόδος ἐμοί. διανοοῦ δὲ ὡς ἐρῶν καὶ ὅπη τέτταρα ὄντα ἐν ἐστὶ, καὶ ἐμὲ δὲ ἀξίου, σοῦ δείξαντος ὡς ἐν, (...).

single goal (σκοπός). This single goal is virtue as a whole, a complex unity, being one and four at the same time. The theme of the unity of the virtues thus enters again in the context of a discussion of the function of the nocturnal council. The theme of the unity and plurality of ἀρετή is one of the primary subjects which the members of the council ought to comprehend.³⁹

6.1.2 The qualifications of the nocturnal council

In order to secure its own preservation, a *polis* needs an element that knows (τι τὸ γινῶσκον, 962b5) the following objects: (1) the goal, whatever the political goal may be; (2) in what manner the *polis* may partake in this goal; (3) and who or which (a) of the laws themselves, and (b) of the citizens, gives right or wrong counsel.⁴⁰ This is a reformulation of the claim, discussed above, that a ζῶον needs a νοῦς to aim at its σωτηρία. A *polis* needs a πολιτικός νοῦς. It will thus come as no surprise that a *polis* lacking such an element will invariably act at random, being devoid of both νοῦς and sense-perception (ἄνους οὔσα καὶ ἀναίσθητος, 962c1-2): it requires νοῦς to *aim at* complete virtue.

But the council is not only to aim at virtue; it must also possess “complete virtue” (δεῖ δὴ τοῦτον [...] παῖσαν ἀρετὴν ἔχειν, 962d1-3) if it is to aim at σωτηρία.⁴¹ Here the two lines of argument converge: the council must *aim at*

³⁹ Cf. MÜLLER (1968), 26: “Das gesuchte ἔν in den heterogenen Vier, das ja nie gefunden zu werden scheint, könnte nur ein τι ἐν τῇ ψυχῇ oder ἕξις ψυχῆς sein, also etwas bloßes Formales.”

⁴⁰ Leg. 962b6-9: πρῶτον μὲν τοῦτο ὃ λέγομεν, τὸν σκοπόν, ὅστις ποτέ ὁ πολιτικός ὢν ἡμῖν τυγχάνει ἔπειτα ὄντινα τρόπον δεῖ μετασχεῖν τούτου καὶ τίς αὐτῷ καλῶς ἢ μὴ συμβουλεύει, τῶν νόμων αὐτῶν πρῶτον, ἔπειτα ἀνθρώπων. The indefinite relative ὅστις, the indefinite temporal adverb ποτέ, and τυγχάνει plus participle imply that the contents of the goal are not a given, but up to the particular lawgiver. Therefore this phrase should not be translated, with ENGLAND, as “what our aim as politicians is”, but, “was auch immer dieses Ziel des Staatsmannes für uns sein mag” (SCHÖPSDAU [2011], 151).

⁴¹ Leg. 962d3-5: ἥς [sc. πάσης ἀρετῆς] ἄρχει τὸ μὴ πλανᾶσθαι πρὸς πόλλα στοχαζόμενον, ἀλλ' εἰς ἓν βλέποντα πρὸς τοῦτο αἰεὶ τὰ πάντα οἷον βέλη ἀφιέναι. “(...); and the prime virtue is not to keep shifting its aim among a number of objects, but to concentrate its gaze always on one particular mark, and at that one mark to shoot, as it were, all its arrows continually” (transl. BURY). Leg. 963a1-4 recapitulates 631b3ff. (πάλατι τιθέμενον), which is also taken up in 705d6-706a4 and ἦν

(στοχάζεσθαι) one single goal, *πᾶσα ἀρετή* (section 6.1.1). At the same time, the council also needs to *possess* *πᾶσα ἀρετή* itself. Indeed, the composition of the council is such that it unites νοῦς and the two senses and thus, *as a whole*, possesses complete virtue. We may recall that the council consists of four types of members: [1] the ten most senior lawguards (961a2-3, cf. 951d7-e1); [2] all the prize-winners of distinctions in virtue (961a3-4, cf. 951d7-8, “of the priests the ones who have won honours”);⁴² [3] the observers (after they have been scrutinized on their return) (961a4-8); and [4] a number of promising young men between the ages of 30 and 40, to be selected and introduced by the aforementioned members, one by each of them (961a8-b4, cf. 951e3-5).⁴³ If a junior is found adequate (ἐπ’ἀξιον) in both nature and education (φύσει καὶ τροφῇ), he is henceforth allowed to attend the meetings of the council. These νέοι represent the sense-perceptions in the council, while its older members represent the faculty of νοῦς, 964e2-965a4:

(...), τῶν δὲ φυλάκων τοὺς μὲν νέους οἷον ἐν ἄκρᾳ κορυφῇ, ἀπειλεγμένους τοὺς εὐφρεστάτους, ὁξύτητας ἐν πάσῃ τῇ ψυχῇ ἔχοντας, περὶ ὅλην κύκλῳ τὴν πόλιν ὁρᾶν, φρουροῦντας δὲ παραδιδόναι μὲν τὰς αἰσθήσεις ταῖς μνήμαις, τοῖς πρεσβυτέροις δὲ ἐξαγγέλους γίγνεσθαι πάντων τῶν κατὰ πόλιν, τοὺς δὲ νῶ ἀπηκασμένους τῷ πολλῷ καὶ ἄξιᾳ λόγου διαφερόντως φρονεῖν, τοὺς γέροντας, βουλευέσθαι, καὶ ὑπηρέταις χρωμένους μετὰ συμβουλίᾳς τοῖς νέοις, οὕτω δὲ κοινῇ σῶζειν ἀμφοτέρους ὄντως τὴν πόλιν ὅλην.

δὲ ἢ συγχώρησις ἔν ἔχουσα κεφάλαιον in 770c7 (συνεχωροῦμεν). On the συγχώρησις of the interlocutors to aim at complete virtue in 770c7, see chapter four, section 4.2, p. 152.

⁴² The prize-winners in virtue-contests: 829c2, 919e4. As has been signalled repeatedly (e.g. GUTHRIE V [1978], 370, n. 2), there is a slight discrepancy between the accounts of the nocturnal council in 951d-e and 961a-b: at 951d the class of the ἀριστεία-winners is limited to priests. A second discrepancy is that at 951e1-3 the current minister of education and all his predecessors are also included in the council (ἔτι ὁ περὶ τῆς παιδείας πάσης ἐπιμελητὴς ὁ τε νέος οἱ τε ἐκ τῆς ἀρχῆς ταύτης ἀπηλλαγμένοι).

⁴³ The two passages in which the composition of the nocturnal council is described, 951d5-e5 and 961a1-b6, are not entirely parallel: see SCHÖPSDAU (2011), 576-579. “Die Diskrepanzen betreffen nur kleinere Details und lassen sich zwanglos damit erklären, daß der Athener aus dem Gedächtnis rekapituliert, wobei er selber eine gewisse Ungenauigkeit der Rekapitulation einräumt (vgl. 961b8)”, 577; see also the further references *ibid.*

(...); and, of the wardens, the younger ones, who are selected as the most intelligent and nimble in every part of their souls, are set, as it were, like the eyes, in the top of the head, and survey the State all round; and as they watch, they pass on their perceptions to the organs of memory,—that is, they report to the elder wardens all that goes on in the State,—while the old men, who are likened to the reason because of their eminent wisdom in many matters of importance, act as counsellors, and make use of the young men as ministers and colleagues also in their counsels, so that both these classes by their co-operation really effect the salvation of the whole State. (Transl. BURY)

By its very composition, the nocturnal council comprises the most beautiful αἰσθήσεις and νοῦς, the two faculties upon which the σωτηρία of the *polis* as a whole depends.⁴⁴ We may recall the likening of politics to seafaring: the council possesses both the κυβερνητικὸς νοῦς (of the steersman) and the αἰσθήσεις (of the sailors). The elderly lawguards and prizewinners in virtue and the observers embody the faculty of νοῦς. Νοῦς is informed by the senses: ὄψις, embodied probably by the θεωροί, and ὄψις and ἀκοή of the younger members.⁴⁵ The talented younger members (bringing with them the qualification of φύσις, as they are required to be εὐφύεστατοι, 964e3) will receive a kind of *paideia* under the direction of the council that will also prepare them to attend the council once they are older.⁴⁶

We can now see that the council as a whole will possess complete virtue. As in Books I and II, the ἀρεταί are associated with age categories. Yet the distinction between the virtues, or rather one cardinal distinction between the two most opposite virtues is not mapped on the individual human life from infancy to the end and the age categories in the *polis* as a whole, but on the council, *i.e.* on a small part of the *polis*. The αἰσθήσεις are represented by the younger members (*cf.* ἀνδρεία); νοῦς is represented by the older ones (*cf.*

⁴⁴ *Cf.* Leg. 967d7-968a1.

⁴⁵ *Cf.* SCHÖPSDAU (2011), 580.

⁴⁶ *Cf.* MÜLLER (1968), 23, n. 1: "Geist und scharfe Wahrnehmung werden hier fast gleichgeordnet: ihre Mischung bringt die Rettung (961d). (...) Mögen sie dann auch nur dienende Funktion haben, so ist doch die Bedeutung, die die Wahrnehmung auf solche Weise bekommt, schon ein Hinweis, daß der Geist nicht mehr der das Eidos schauende Geist ist."

φρόνησις).⁴⁷ Not only the council's function, but also its qualifications therefore yields a picture that is incompatible with the function and qualification of the philosopher-kings as described in *Republic*. The kind of knowledge that is implied in the description of the council suggests experience, aggregated knowledge, and possibly shared deliberation.⁴⁸ There is no suggestion whatsoever that the council possesses expert knowledge of metaphysical objects, or that it requires knowledge of such a kind for performing its function. Moreover, the age requirement (all members of the council must be above 50 years of age, with the exception of the "promising young men") suggests that insight is linked to life experience, in the same way as we saw that in chapter three age was connected to φρόνησις and ἀληθῆς δόξα;⁴⁹ so these older members have become distinguished members within their own society.

In further notable contrast to the philosopher-rulers,⁵⁰ the council receives reports from those officials called "observers" (θεωροί).⁵¹ The

⁴⁷ See chapter three, p. 116 and n. 137 on p. 118.

⁴⁸ *Contra* those scholars who have asserted that the nocturnal council possesses transcendent knowledge: e.g., SAUNDERS' (1962): their task is to attain an "understanding of the metaphysical basis of the laws" (54); cf. GUTHRIE V (1978), 370-371, the guidance of the nocturnal council is based on "genuine knowledge". BRISSON (2005): *Laws* and *Republic* have the same objective: "to give power to those who possess knowledge" (*contra* BOBONICH 2002), cf. PRADEAU (2004), 123. See also note 51 below.

⁴⁹ RITTER (1896), 350, sees another parallel between Book II and XII and supposes that the νυκτερινὸς σύλλογος constitutes "nichts anderes als eine Selektia aus jenem Chore", i.e., the Dionysian chorus. The ages of the chorus and council coincide: the members of both are to be between 30 and 60. See also SCHÖPSDAU (2011), 576. That the council is in some ways analogous to the Dionysian chorus (which consists of all citizens between 30/40 and 60) says a lot about *Laws*' estimation of people for virtue. The council "ist in seiner ersten Einrichtung oder seinen unteren Stufen schon ein treffliches Mittel dazu, dass in stetigem gegenseitigem Umgang, gegenseitigem Wetteifer und gegenseitiger Beobachtung (...) die Tüchtigkeit zur Geltung komme und ihren gebührenden Platz erhalte" (RITTER, *ibid.*, 350).

⁵⁰ For the absence of the theory of Forms, see: ZELLER (1938), esp. 37-43; LAKS (2010), 221, and n. 19 *ibid.*: "The appearance of the phrase *pros hen blepein* (12. 962d4, 963a2-3) is hardly enough to mandate its presence [sc. the theory of Forms]".

⁵¹ Aristotle's remark in *Pol.* 1265a3-4 suggests that he considers the council to resemble the philosopher-kings of the *Republic*. Modern equations of the nocturnal council with philosopher-kings often rest on the basis of the alleged similarities in their objects of study (cf. Arist. *Pol.* παιδείαν τὴν αὐτὴν, 1265a7): BARKER (1907), 202; BARKER (1918), 406-410; TAYLOR (1926) for the claim that the members of the council are dialecticians; GUTHRIE V (1978), especially 368-375: the education of the council seems to be "a revision of that of *Republic* 7", 375 (cf. PELOSI [2010], 116 n. 1:

experience of the nocturnal council is much more reminiscent of contemporary mainstream Athenian notions of philosophy like that of Isocrates. The importance of φρόνησις in *Laws*, which is the defining attribute of the nocturnal council, and which, after all, became the primary virtue in Aristotle's moral naturalism, reflects the shift in orientation from transcendent knowledge to experience-informed knowledge "embedded" in, and informed by, human life and society in its most harmonious and enduring form.

6.2 The Athenian stranger

In the previous section it has been suggested that the nocturnal council does not reintroduce the philosopher-kings. We may now turn to the Athenian stranger. He is the person who formulates the laws in *Laws*—if *Laws*, therefore, operates once again with the concept of the philosopher-king, the Athenian stranger seems to be the most plausible candidate. Before we examine the role of the Athenian as a lawgiver in the dialogue, we may first remember that the figure of the lawgiver himself is not a topic extensively discussed by the

Leg. 967d4-968a1 is a condensed expression of the link between musical, cosmological, ethical and psychical harmony of *Resp.* VII and *Tim.*); KLOSKO (1988) assigns the council the same powers as the philosopher-kings; its introduction "creates a fundamental break in the argument of the *Laws*", (85), the contrary view is argued for by LEWIS (1998); BRUNT (1993) argues that the nocturnal council is a return to the "autocratic rule of true philosophers" (250-251); LISI (1998) argues that the rule of law is temporary and lasts until the philosophers of the council have completed their education and can take over; NIGHTINGALE (1999a), 104 n. 14, assumes that its members receive a philosophical education, which however does not entail that the members are above the law [with ref. to MORROW (1960), 511-514]. See also the literature summed up in LEWIS (1998), 2 n. 1. Others have emphasized the distinctions between the council and philosophers of the *Republic*: SAUNDERS (1992), 468; COHEN (1993) speaks of a "radical break" (301) between *Republic* and *Laws*. KLOSKO (2006), 252-258 argues for an informal, advisory role of the council in contrast to the "legislative authority" of the philosophers; cf. BOBONICH (2002), 391-395 (seconding MORROW [1960], 511-514): Plato does not have to be explicit about the exact powers of the council because *Laws* is not to be understood as a blueprint: "We should thus allow for a range of ways in which the outline of Magnesia sketched above can be realized. They will fall between excluding the nocturnal council from any political role at all and seeing its members as philosopher kings in disguise" (395). ZUCKERT (2009), 132 n. 137.

interlocutors.⁵² Apart from the fact that, in order for a law code to come into existence, *someone* has to lay down laws, nothing specific is said about what qualifies a lawgiver needs to have. The lawgiver is an argumentative presence in a discussion about lawgiving.⁵³ This forms a notable contrast to the philosopher-king in *Republic*, whose qualifications, education, and, to the extent possible, object of knowledge, receive an elaborate discussion. In *Laws*, by contrast, the discussion of lawgivers is very limited.

In the text of *Laws*, when the interlocutors lay down a law code, it is the Athenian who performs the role of lawgiver. What do we hear about him, and what qualifies him to frame laws, albeit in speech (λόγῳ)? Why is the Athenian accepted as an authority by his interlocutors, and what sort of authority is this supposed to be?

The identity of the anonymous Athenian stranger has been the object of quite some speculation. He is presented as an anonymous “stranger” (ξένος), and he is the only interlocutor about whose provenance nothing is revealed (contrary to that of Megillus in 642b2-c6; and that of Cleinias in 642d4-e5). Some interpreters, among whom already Aristotle, have assumed that the anonymous Athenian is in fact Socrates.⁵⁴ Others, by contrast, have drawn attention to the

⁵² See chapter three, p. 104, chapter five, p. 206.

⁵³ The interlocutors reason about what “the lawgiver”, or “the sensible lawgiver”, will likely do about a particular problem: νομοθέτης ἀκριβής in 628d7; a lawgiver who is even μικρὸν ὄφελος in 630c2, 647a8, 663d6; ὁρθὸς νομοθέτης in 660a4; ἀγαθὸς νομοθέτης in 671c3, 688a5, 742d4; μεγάλαι νομοθέται in 691d5; νομοθέται ἔμπειροι in 692b4, cf. 948d3; νομοθέτην ἄξιον ἐπαίνου in 710c8; νομοθέτης ἄκρος in 710d7; ἔμφρων νομοθέτης in 729b5-6; τὸν ὁρθῶς νομοθετοῦντα in 742e1; καὶ μικροῦ νομοθέτης in 890d3. This sensible lawgiver is merely a point of departure for their own reasoning, not a final authority to whom they attribute their proposals. Alternatively, NIGHTINGALE (1993) argues that “the utterances of the Athenian-as-lawgiver are invested with an authority that is divine” (299, see especially 284, 295, 299-300). Similarly, YUNIS (1996), 230: “Plato’s lawgiver speaks virtually as the mouthpiece of god, and thus represents divine authority: the source of the lawgiver’s discourse, like the source of law itself, is the divine reason that animates the benign universe”. Cf. JAEGER (1945) III, 340 n. 77: “God himself is the ultimate lawgiver. The human lawgiver speaks out of his knowledge of God; and his laws derive their authority from God”.

⁵⁴ *Pol.* 1265a10. PANGLE (1980) in his essay, pp. 378-379: “nameless old Athenian philosopher who acts and talks in a manner reminiscent of Socrates”; PLANINC (1991), 26, says that both the *Republic* and *Laws* describe Socrates; ROWE (2007), 90 n. 20 “Socrates replying”.

differences between Socrates and the Athenian; most notably, Socrates never left Athens, and it seems that part of the effect of the Cretan setting is to suggest that we are in a different conceptual realm.⁵⁵ The most widely-endorsed hypothesis seems to be that the Athenian stranger is a spokesman for Plato himself.⁵⁶ However, as with all of Plato's dialogues, the Athenian is a fictional character in an imaginary setting. Even if he would express views to which the historical Plato would have subscribed, it is legitimate to ask, first and foremost, how the Athenian is portrayed as a character in a literary work. It is true that especially in the discussion in the first two books, his attitude and type of remarks (that is, questioning his interlocutors) is highly reminiscent of Socrates. However, a specific identification along the lines of 'the Athenian is Socrates', or 'the Athenian is Plato' does not furnish insights into the qualifications that underlie his role as lawgiver and the main speaker in the dialogue, and risks losing the *dramatic* function and character of the Athenian out of sight.

The Athenian gives long monologues and expositions of the laws and political magistracies.⁵⁷ But rather than interpreting this as a sign of Plato's waning faith in the dialectical method, it should be noted that the expositions

⁵⁵ STRAUSS (1959), 153-154, points out that Socrates did not make laws; MONOSON (2000), 233: "[t]he absence of Socrates artfully records Plato's acknowledgment of the limitations of the life of Socrates as a model for understanding the full range of special knowledge that may be politically significant"; ZUCKERT (2009), 52 n. 5, 58-62, 84-85, 136. Her main thesis is that *Laws* 'predates' Platonic philosophy. The *Laws* presents incompatible views of the universe: the naturalistic of presocratic philosophy, and the (Socratic) unity of the virtues; it thus creates the room for *Platonic* political philosophy to present a worldview that integrated the two (see especially 144-146). "The Athenian thus sounds very much like Socrates" (135).

⁵⁶ CICERO, *De Legibus* 1.4.15 seems to be the first who took this position. Of the same opinion are GADAMER (1980), 71, "A figure in whom more than anyone Plato has most obviously hidden himself"; KLOSKO (2006), 198: "probably a stand-in for Plato himself"; SAUNDERS (1992), 469 "clearly Plato himself"; SCHOFIELD (1997), "the figure who displaces the philosopher in the Stranger's account is the lawgiver: to be interpreted (...) as a sort of projection of Plato's own authorship of the legislative project of the dialogue" (236; cf. 232); and BOBONICH (2002), 8: "Plato's spokesman in the *Laws*" (cf. BOBONICH [1996], 254-255, 260).

⁵⁷ BOBONICH (1996), 259: "(...) even when [Cleinias and Megillus] are present and do assent, there is little effort to show how their beliefs commit them to the laws' provisions". In note 19 *ibid.* he hypothesizes that this may partly be due to the unfinished state of the text (see p. 250), but that, even if acts of assent would be less sporadic, this would not help to show how the interlocutors beliefs commit them to the laws' provisions.

are motivated in the conversation itself: Cleinias and Megillus are eager to hear what the Athenian has to say. In Book I the Athenian is granted permission to speak as long as he likes—which is not motivated, as it is for instance when Socrates is compelled to proceed by telling a myth, by the inability or refusal on the part of the interlocutor to stick to the rules of dialectic.⁵⁸ In Book I, the reason why the Athenian is given the prerogative of speaking as long as he likes is motivated by his Athenian ethnicity.⁵⁹ The speaker is Megillus. The terminology is striking, 642c6-d1:

(...) τό τε ὑπὸ πολλῶν λεγόμενον, ὡς ὅσοι Ἀθηναίων εἰσὶν ἀγαθοὶ διαφερόντως εἰσὶν τοιοῦτοι, δοκεῖ ἀληθέστατα λέγεσθαι· μόνοι γὰρ ἄνευ ἀνάγκης αὐτοφυῶς, θεία μοῖρα ἀληθῶς καὶ οὔτι πλαστῶς εἰσὶν ἀγαθοί.

(...) but I regard as most true the common saying that ‘all of the Athenians who are good are so above all’, for they alone are good not by outward compulsion but by inner disposition, by divine dispensation, and truly and not forged. (Transl. BURY, adapted)

These motivations are purely *pour le besoin de la cause*. Plato uses a fictive association of the Athenians with a *natural* goodness (possibly as opposed to goodness by education) as the motivation in the framework of the conversation. This natural goodness is expressed in a threefold way: (1) it is not the result of “necessity” (ἀνάγκη) but springs from nature (φύσις) itself; (2) it comes about “by divine dispensation” (θεία μοῖρα), and (3) it is goodness “in a true way”

⁵⁸ *Leg.* 642d1-2, d3-4.

⁵⁹ The deviations from the dialectical exchange are motivated: in Book X, 892d2-893a7, for instance, by the trickiness of the *logos*. Cleinias and Megillus risk becoming the victim of a “beguiling argument” (ἀπατηλὸς λόγος) if they follow him into the river, and do well to wait on the riverbank for the Athenian’s signal that it is safe for them to proceed. The metaphor for the λόγος is that of a violent river. His motivation for proceeding momentarily on his own is twofold: first, he claims to have more experience than Cleinias and Megillus with currents (πολλῶν ἐμπειρος ῥευμάτων, 892d6-7). He recognizes a risky λόγος and is competent to assess the risk: confronting people with a λόγος that is beyond them may cost them their life. The second motivation he is made to adduce is his age: being the youngest of the three, he will go ahead to see whether it is safe for the other two to cross. If the river is fordable, then he will help them accross by his own experience (συνδιαβιβάζειν ἐμπειρία, 892e3-4). But if the river is impassable, the risk will be his and he will have spoken in due measure (μετρίως ἂν ἐδόκουν λέγειν, 892e5)—the standard of ‘due’ in this context being what the interlocutors here can handle.

(ἀληθῶς), “not fabricated” (οὐτι πλαστῶς). (1) and (3) basically say that good Athenians are not made good by external mechanisms, such as laws. Considering *Laws*’ own conception of ἀρετή as self-control, this is significant: the Athenian is a person who does not need laws.⁶⁰ In other Platonic texts, θεία μοῖρα is opposed to acting on the basis of expert knowledge (τέχνη or ἐπιστήμη).⁶¹ Something ascribed to θεία μοῖρα seems to be a kind of disclaimer—it is beyond the realm of humans to have insight in what is due to divine dispensation. Socrates in *Apology* attributes his awareness of the existence of Truth to θεία μοῖρα, where the same phrase is part of an enumeration which suggests that his awareness stems from sources of which he has no control. Both the *Phaedrus* (with its emphasis on inspiration ascribed to prophets) and the *Ion* (which deals with the inspiration of poets) assume an unambiguously ‘irrational’ conception of θεία μοῖρα, much like being in a state of *mania*,⁶² and being enchanted by Corybantic rites.⁶³

The Athenian, conversely, uses the term μαντεύεσθαι to refer to his own statements (μαντεύομαι⁶⁴), and both he and his interlocutors label his explanations “oracles”,⁶⁵ and call the Athenian a “diviner” (μάντις) in virtue of his remarkable talent for interpreting the laws of the ancient lawgivers.⁶⁶

⁶⁰ In this respect, it may be significant that he claims to know how symposia ought to be conducted in a correct way, even though he has personally only seen symposia that are badly regulated, 639d5-e3.

⁶¹ *Men.* 99e6, 110b2; *Ion* 536c2, d3, 542a4; cf. *Epist.* II, 313b5, where θεία μοῖρα is opposed to “securely binding fast proofs” (καταδέω τὰς ἀποδείξεις βέβαιως).

⁶² *Phdr.* 244b6-d5. Μαντική accrues to one “by divine dispensation”, θεία μοῖρα, 244c3.

⁶³ *Ion*, 536c2.

⁶⁴ In *Leg.* 694c5, the Athenian divines why the Persian empire was ruined under Cyrus while it was saved under Darius; cf. οἶον μαντεία 694c2; in 885c3 he divines what the atheists will say to them when they call their views misapprehensions.

⁶⁵ *Leg.* 712a4: ταῦτ’ αὖ μὲν οὖν καθαπερ εἰ μῦθος τις λεχθεὶς κεχρησμένω (the Athenian about his own preceding words).

⁶⁶ *Leg.* 634e7-635a2 (Cleinias): Ὁρθότατα γε, ὦ ξένε, λέγεις, καὶ καθάπερ μάντις, ἅπλων τῆς τότε διανοίας τοῦ τιθέντος αὐτά, νῦν ἐπιεικῶς μοι δοκεῖς ἐστοχάσθαι καὶ σφόδρα ἀληθῆ λέγειν. Cf. chapter three, p. 86. Socrates is also associated with μαντεύεσθαι, and this is therefore not an absolute point of distinction between the Athenian stranger and Socrates: *Crat.* 411b4; *Phdr.* 278e10-279a1; *Charm.* 169b4-5; *Lys.* 216d5. We find it especially often in *Resp.*: 349a4 (Thrasymachus about Socrates); 394d5, 431e7, 505e2, 506a6, 506a8 (Adeimantus about Socrates), 523a8, 531d4, 538a9,

Μαντική is a τέχνη of a radically different kind than the τέχνη of the philosopher-ruler;⁶⁷ the way in which the Athenian justifies his insight comes closer to the figure of Socrates in the *Apology* and *Crito* than to the philosopher-king. Socrates' *daimonion* is concerned purely with his own soul and only dissuades; but the mantic qualities of the Athenian seem to come closer to an actual μαντική τέχνη: he tells others what they should and should not do on the basis of his (assumed) expertise.⁶⁸ The *mantis* is often a "von außerhalb herbeigerufen[er]" specialist.⁶⁹ Moreover, according to Cicero, the Athenians consulted a *mantis* on all kinds of official occasions;⁷⁰ besides warfare, they were especially connected with the founding of a new colony.⁷¹

This qualification of the Athenian has several implications. The first is that it relieves Plato from having to be more specific about what qualifies a lawgiver. Μαντική is a τέχνη, but it is not a τέχνη that can "give an account" (διδόναι λόγον) of its own procedures, or of how the τέχνη may be acquired; nor is it the object of a μάθημα that can be studied and discussed by the people

538b7. Cf. furthermore *Hipp. maior* 292a3; *Plt.* 289c5 (the stranger of himself). But Socrates himself claims to be μαντεύεσθαι, apparently in cases when he cannot fully account for the truth of his claim, but nevertheless insists that it is true. In *Laws*, Cleinias' amazement at the Athenian's μάντις-like interpretative abilities has a function on the dramatic level of the dialogue rather than that it asserts the truth-status of a statement: it is part of the reason why Cleinias and Megillus agree with the Athenian and are willing to go along with him (despite of the discrepancy between the Athenian's proposals and their own cultural tradition). COLLIN (1952) distinguishes three senses in which Plato uses the term μαντεύομαι (with passages): (1) a probable inference concerning the future; (2) an imaginative reconstruction of the past; and (3) "Intuition".

⁶⁷ The word μάντις is traced back to μαίνεσθαι, "prophetische Wahnsinn" or "Inspiration" in Eur. *Bacch.* 299; Pl. *Phdr.* 244b6-d5; *Men.* 99c11-100c2; *Tim.* 71e2-72b5.

⁶⁸ On the μάντις see BOUCHÉ-LECLERQ I-II (1879-1880), HALLIDAY (1913), chapter 5; PARKER (2005), chapter 6. In the context of my argument, it should be emphasised that in everyday (Athenian) life, a μάντις is a religious professional rather than an inspired, prophetic, figure (an association found several times in Plato, see n. 67). The μάντις is the professional whom people could consult for practical questions. See VAN STRATEN (1995), 121-122. For μαντική, see also chapter one, p. 33, n. 112. For the areas of consultation, see PARKER (2005), 118, n. 11; FLOWER (2008), 100-103.

⁶⁹ Hom. *Od.* 17, 382-384. Cf. Isocr. 19, 6. Teisamenos and Aristandros are historical examples of "importierten rel. Experten" *Neue Pauly* s.v. *mantis*.

⁷⁰ *De div.* 1.95.

⁷¹ *Ibid.* 5; 10. See also MALKIN (1987), 8-9, and chapter 2; ZIEHEN in *RE* s.v. *Mantis*.

who have acquired it.⁷² The μάντις as a specialist concerned with matters of the organisation of one's life in practical matters may have rendered him an attractive model for a lawgiver. But the fact that Plato presents the interlocutors as being reminded of a μάντις signals that *Laws* is a text in which Plato refrains from making any definitive statements as to the quality of a good lawgiver. Since the Athenian Stranger formulates the laws, the problem of who is qualified to legislate is "solved" as far as the dialogue (lawgiving λόγῳ) is concerned.

Second, the Athenian succeeds in getting his interlocutors on his side (in spite of some initial resistance on their part). He demonstrates to his interlocutors that he is qualified to formulate laws. At the end of Book II, Cleinias and Megillus are persuaded of the sense of his insights and agree that ἀνδρεία does not suffice.⁷³ An important function of the opening discussion (Books I-II) is thus to show *why* the interlocutors are prepared to go along with the Athenian, and how he is able to do so. The interlocutors' assessment of the Athenian's words as reminiscent of a μάντις is part and parcel of this mechanism: they come to consider his insights superior to their own, and even superior to what they consider it is humanly possible to know.⁷⁴ In any case, the characterization of the Athenian seems designed to make clear that he is not an expert, and that we are not dealing with a philosopher-king.

⁷² NIGHTINGALE (1993), arguing that the Athenian from the very beginning construes an ideal lawgiver (above, n. 53, p. 224), claims that the Athenian must speak for this ideal lawgiver "but he tries to avoid identifying himself with this figure". "By deflecting the authorship of the laws away from the Athenian, Plato makes his lawcode appear objective, impersonal, and timeless. It is perhaps for the same reason that he decided to leave the Athenian nameless: if a particular individual had unveiled this code, it would have been less impersonal" (284, with n. 24). The laws are thus "divinely authorized" (285).

⁷³ See chapter three, p. 108.

⁷⁴ The fact that the μάντις is a paid specialist (a fact for which he is often rebuked, see PARKER [2005], 116-118) may perhaps also re-invoke (only in order to leave unexplained) the question of the motivation of the Athenian to engage in a discussion about lawgiving.

6.3 Conclusion

This chapter has examined two agencies outside the διέξοδος τῶν νόμων, the nocturnal council, part of the act νομοθεσία, and the anonymous Athenian, the main speaker in *Laws*, who formulates the law code. We have argued that none of these two serve to introduce an objectifying perspective similar to that of the philosopher-king.

The nocturnal council is introduced under the heading of σωτηρία for the *polis* and laws of the interlocutors. In the context of the discussion of the nocturnal council, the complex theme of the unity and plurality of the four virtues is resumed. Νοῦς mixed with the αἰσθήσεις is vital for being able to aim at σωτηρία. The council's constitution, a combination of the most virtuous elderly citizens (νοῦς) and younger citizens (αἰσθήσεις), is such that it contains both elements. In virtue of this, the council is able to aim at, or "look at", virtue as a whole, πᾶσα ἀρετή. The recapitulation of the theme of the unity and plurality of the virtues of Books I and II is thus very effective; not only does it, on the level of the composition of the text, create the effect of a ring composition and thus provides a suitable end; it also endows the *polis* with a body that is able to look at πᾶσα ἀρετή and aim for σωτηρία. The nocturnal council is to look at the naturalistic notion of virtue introduced in Books I and II.

This leaves us with the Athenian, who formulates the law code in *Laws*. The qualification of the Athenian remains vague—and *Laws* does not reveal much about what qualifies a good lawgiver. A reference to divine lawgivers seems to serve often as a device that makes it possible to discuss lawgiving without having to state anything about the necessary qualifications for doing so, and for making the laws themselves. Through the mouth of his Cretan and Spartan interlocutors, we hear what they think about him—apparently, they deem him qualified to discuss the subject and lay down laws. This qualification receives expression in their assessment of the Athenian's insights as those of a μάντις. But this association of the Athenian with a μάντις is founded on the

confidence of the interlocutors. The authority of the Athenian is not objective, but depends upon their trust. Authority in *Laws* is of a completely different kind than the authority of the moral expert hypothesised in a number of other Platonic texts. This is in line with *Laws'* pragmatic perspective on lawgiving: the lawgiver is the one who, in a particular situation and setting, is able to convince others that he is qualified to lay down laws in that case.

