

The Nature and Purpose of Law in Early Greek Thought

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I

It took some time for the ancient Greeks to develop a clear conception of law as a human institution. The most common Greek word for law, *nomos*, does not appear in Homer at all (although an editor in the Hellenistic period, Zenodotus, tried to read it into the opening lines of the *Odyssey* by changing the text). However, this does not mean that there is nothing in Homer relevant to our theme. The *Iliad* includes a brief scene that looks like an early form of judicial proceeding (18.497-508):

There was a crowd in the market-place
And a quarrel arising between two men
Over blood money for a murder,
One claiming the right to make restitution,
The other refusing to accept any terms.
They were heading for an arbitrator
And the people were shouting, taking sides,
But heralds restrained them. The elders sat
On polished stone seats in the sacred circle
And held in their hands the staves of heralds.
The pair rushed up and pleaded their cases,
And between them lay two ingots of gold
For whoever spoke straightest in judgment.¹

This is not part of the main narrative in the *Iliad*; instead, it has, from that narrative's perspective, a somewhat imaginary character, being one of many scenes depicted on the shield that the god Hephaestus makes for Achilles to replace the one he lost when Patroclus went out to fight (and was killed) wearing his armor.

¹ Translation from Homer, *Iliad*, Translated by Stanley Lombardo, Introduction by Sheila Murnaghan (Indianapolis/Cambridge: Hackett, 1997).

Nonetheless, the scene presumably reflects real life at some point in the early Greek oral tradition of which the Homeric poems are the climax. There is no indication of how this “arbitrator” (*histôr*, literally “knower”) is to decide whose case is stronger. In particular, there is no suggestion of written statutes that might serve as guidance – which is not surprising, since writing is mentioned only once in either poem (*Il.* 6.168-70, cf. 6.177-9) and then mentioned only in terms that show very clearly that whoever composed those lines had no idea what writing actually was. The idea of a monetary reward for whoever made the best case (literally, “whoever spoke justice [*dikê*] most straight”) also seems oddly out of keeping with the nature of the dispute. Despite these obscurities, there is at least the sense in the scene of an established procedure for settling conflicts within society that might otherwise devolve into violence.

A related idea of jointly understood, if unwritten, rules that enable a society to function is drawn attention to by its absence in Odysseus’ description of the Cyclopes (*Od.* 9.106-15):

And we came to the land of the Cyclopes
 Lawless savages who leave everything
 Up to the gods. These people neither plow nor plant,
 But everything grows for them unsown:
 Wheat, barley, and vines that bear
 Clusters of grapes, watered by rain from Zeus.
 They have no assemblies or laws but live
 In high mountain caves, ruling their own
 Children and wives and ignoring each other.²

The word for law (and in the compound “lawless”) here is *themis*, which refers to what is right or what should be done, but again, not by statute. While *nomos* too can

² Translation from Homer, *Odyssey*, Translated by Stanley Lombardo, Introduction by Sheila Murnaghan (Indianapolis/Cambridge: Hackett, 2000).

mean “convention” or “custom” rather than (positive) “law” – which is one reason why it is difficult to be sure when the latter was clearly conceptualized – *themis* never means anything other than unwritten rules. However, these rules are clearly conceived as binding society together, as is shown by the juxtaposition of “laws” with “assemblies” (*agorai boulêphoroi*, literally “assemblies bringing counsel”); the Cyclopes, who have neither, are not a society, but just a collection of nuclear families who happen to live in the same general region.

Now, the one actual assembly that we see in the *Odyssey* (book 2) is itself somewhat dysfunctional. Odysseus’ son Telemachus calls an assembly to complain about his mother’s suitors eating them out of house and home while Odysseus is away (and presumed dead, at least by some). But there is no clear mechanism for lodging such a complaint, and since many of the other speakers are suitors themselves, nothing is accomplished beyond a testy exchange of words. In the end, order in Ithaca is only restored by Odysseus returning and killing the suitors with the help of his son and his few loyal servants. We are pretty far here from any developed conception of the workings of law. Yet the distinction between the anti-social Cyclopes, and humans who can confer in assemblies and relate to one another in a manner governed by *themis*, is clearly seen as an important one.

The other point of interest about the term *themis* is that at least sometimes it has the connotation of ordinances from the gods; indeed, Themis is herself a goddess personifying order and justice. This is in one way curious, since the passage just quoted says that the Cyclopes rely on the gods’ generosity and do not need to

bother with agriculture. Still, there is at least a suggestion that in ignoring *themis*, they are also falling short of standards set by the gods.

In Hesiod the appeal to divine standards is explicit. Here we do find the word *nomos*, but the “law” that it refers to, while certainly applying to humans, is laid down by the gods. Addressing his brother, Hesiod says (*Works and Days* 274-80):

Perses, you take all this to heart. Listen
 To what’s right [*dikê*], and forget about violence.
 The Son of Kronos [Zeus] has laid down the law [*nomos*] for humans.
 Fish and beasts and birds of prey feed on
 Each other, since there’s no justice [*dikê*] among them.
 But to men he gave justice [*dikê*], and that works out
 All to the good.³

The poem continues by outlining divine rewards for following justice and divine punishments for violating it; and the specific violation mentioned is lying under oath while giving testimony (282-3). Human justice, then, consists in, or has as a central component, refraining from violence against one another – hence the contrast with non-human animals, and hence the choice between justice and violence offered to Perses. And justice is administered in part by judicial proceedings in which truthful testimony is expected. We seem to be coming closer to a conception of law as what binds society together. But the word *nomos* is still not used of any human practice or institution; rather, it is used of the divine sanction that supposedly stands behind them.

By the time we get to Heraclitus, these elements can be combined with a notion of human law. In the roughly two centuries between Homer or Hesiod and

³ Translation from Hesiod, *Works and Days* and *Theogony*, Translated by Stanley Lombardo, Introduction by Robert Lamberton (Indianapolis/Cambridge: Hackett, 1993).

Heraclitus, written laws had become a reality. In Athens, the city about which we generally know the most, a series of laws is attributed to one Draco in the 7th century, and they are suitably draconian. Even if we discount this tradition, as scholars do to varying degrees, there is no doubt about the legislator Solon in the early 6th century. A fair amount of his poetry has survived, and he actually says “I wrote laws” (*thesmous ... egrapsa*, fr.36, ll.18-20); many of these verses take the form of explanation or justification of his policies, and a recurring theme is the importance of a fair balance between those with wealth and power and those without, the goal being to avoid violence and factionalism.⁴

Heraclitus seems to have more authoritarian leanings than Solon; among his surviving remarks are “it is law to obey the counsel of one” (DK 22B33) and “one man is to me ten thousand if he is the best” (DK 22B49, cf. 121). But his picture of law as a guarantor of safety and common purpose in society seems in just the same spirit as Solon’s. Two Heraclitus fragments are especially important in this context: (1) “Those who speak with intelligence must take their strength from what is common to all, like a city from its law, and much more strongly. For all the human laws are fed by the one divine law; for it has power over as much as it wants, and it is plenty for all and then some” (DK 22B114); and (2) “the people must fight for the law as for the city wall” (DK 22B44).⁵ The second fragment emphasizes the role of

⁴ A convenient translation of Solon’s political verses appears in Michael Gagarin and Paul Woodruff, eds., *Early Greek Political Thought from Homer to the Sophists* (Cambridge: Cambridge University Press, 1995); my numbering of the quoted fragment follows the edition used in this volume.

⁵ Unless otherwise indicated, translations are my own. DK is Diels-Kranz, *Fragmente der Vorsokratiker* (Berlin: Weidmann, 6th edition 1952), which is still the standard reference point for fragments of the Presocratic thinkers. A convenient translation

law as a protector of the people. The first adds to this the idea of law as giving a society strength and the idea of law as bringing a community together – the law is something “common to all”. But the human law is of course dependent on something else that is “common to all”, namely the divine law.

Elsewhere in Heraclitus the phrase “common to all” and related phrases are used of the ordered universe (DK 22B30) or, even more significantly, of the principle, the *logos*, that governs this ordered universe (DK 22B1, 2). It is not overbold to infer that the divine law, as referred to in the fragment above, is an aspect of this ultimate principle of the universe, and it is from this that human law derives its inspiration and its force. Heraclitus’ conception of the divine is not the same as Homer’s or Hesiod’s – he is quite explicit about this; but his conception of human law as having divine backing, as well as his conception of the benefits law confers, owe quite a bit to the less fully articulated visions of these two poetic predecessors.

Interestingly, the idea of a cosmic counterpart of human law – or at least, of human justice – also appears in the very earliest fragment of Greek philosophy. Simplicius reports that Anaximander of Miletus identified the principle of the universe as *to apeiron*: “the indefinite” or “the unlimited”. Out of this principle emerge definite things with definite boundaries. Simplicius adds that coming into being and destruction are reciprocal processes; the source of a thing’s existence is also what it is reabsorbed into when it ceases to exist. And he then says “For they

of the surviving fragments of Heraclitus and other leading Presocratics (which clearly correlates the DK numbering system with its own) is *A Presocratics Reader: Selected Fragments and Testimonia*, Edited with Introduction by Patricia Curd, Translations by Richard D. McKirahan, Jr. (Indianapolis/Cambridge: Hackett, 1996).

give justice and retribution to one another for their injustice according to the ordering of time – he says it in this rather poetical language” (DK 12B1). The final phrase shows that some part of the previous sentence was Anaximander’s own words; scholars disagree about how much, but at least the reference to justice and injustice is likely to be a quotation.

The idea of the fragment seems to be that just as human justice ensures a proper balance among humans’ priorities and concerns, there is a cosmic principle that does something similar in the world as a whole, and thus can be thought of as a kind of justice. This does not go so far as to say that human justice is derivative from cosmic justice, as in Heraclitus’ picture; but it is clearly compatible with that idea, and was perhaps another impetus to Heraclitus to make the explicit connection between them.

II

Not everyone in Greek thought regarded law as having a divine basis. The Sophists of the late fifth century BCE made much of a distinction between *phusis*, “nature”, and *nomos*. As we have seen, *nomos* can refer to conventions or customs as well as written laws. But at least one consequence of distinguishing *phusis* and *nomos* is that laws are thought of as a human creation rather than as an offshoot of some kind of divine ordinance.

Several texts of the period offer speculative accounts of the origins of human society, in which a combination of material improvements and the growth of institutions allow people protection from the ravages of the natural world and also from attacks from one another. In the pure “state of nature” that preceded these

developments, people were vulnerable. The fullest and best known of these speculative accounts is the speech given to the Sophist Protagoras in Plato's dialogue of that name, which we can reasonably assume is based on ideas held by the real Protagoras.

Protagoras presents his account in the form of a story in which gods oversee the development of human society. But he is quite explicit that this is a choice, and that he could have presented the same ideas as a simple discourse (*logos*, 320c3-4); moreover, since we know that Protagoras was agnostic about the gods' existence or nature, he clearly cannot mean these ideas to depend literally upon divine beings having a role. The initial account does not explicitly mention law. But it does draw attention to the necessity of all humans having some sense of justice (322c-d, 323c) – society can only work if humans are the kind of beings who are capable of fair treatment of one another. And later in his speech, when he has abandoned story for argument, he talks of the importance of laws in shaping people's behavior. He speaks of these laws as "inventions of good and ancient lawgivers" (326d6), and it is a fair assumption that these would have been included in the initial political set-up, had he described it in more detail.

Another text in a similar vein puts law in a much more central position. This is a fragment of a play, ascribed by Sextus Empiricus to Critias (*M* 9.54, although elsewhere Euripides is named as the author), which begins as follows:

There was a time when the life of humans was without order,
 Beastlike and subject to force,
 When neither the good had any reward
 Nor did the bad receive any punishment.
 And then humans seem to me to have established laws
 For punishment, so that justice would be in control

...⁶ and have hubris as its slave,
And anyone who did wrong would pay the penalty.⁷

Laws make us safe from one another, and they were invented by humans for precisely that purpose. Still more briefly, a fragmentary text of the Sophist Antiphon, in one of its most fragmentary portions, allows the likely reconstruction of the words “they agreed” and “the laws”, which looks as if they may have belonged to another account of the same general kind.⁸ I shall return to Critias and Antiphon later. But for now, they complement the picture suggested by the speech of Protagoras: law has a vital function in preserving society and shaping it for the better – in this respect there is no disagreement with the earlier picture most coherently expounded by Heraclitus – but it is an invention of early humans, not a divine dispensation.

In the same period as this view first achieved some currency, we find several other ideas that look as if they are connected with it. First, if law is a human invention, it is likely that laws will be different in different circumstances – and in particular, that different political systems will have different kinds of laws associated with them. In this period, towards the end of the fifth century BCE, we start to see explicit attention to this theme. A good example, offered in a self-congratulatory spirit, comes near the beginning of the Funeral Speech put in

⁶ Part of this line is missing. One plausible supplement is Diels' *homôs hapantôn*, “of everyone equally”; another possibility is Grotius' *genous broteiou*, “of the race of mortals”.

⁷ I here recycle my translation from Sextus Empiricus, *Against the Physicists*, translated with introduction and notes by Richard Bett (Cambridge: Cambridge University Press, 2012).

⁸ The reconstruction is by Fernanda Decleva Caizzi in *Corpus dei papiri filosofici greci e latini*, vol.1 (Florence: Leo S. Olschki Editore, 1989); the text is at 186 and her commentary at 192.

Pericles' mouth in Thucydides' history of the Peloponnesian War (2.37). Pericles proudly declares that Athens, unlike its neighbors, is a democracy, and immediately connects that with the fact that in Athens everyone is equal under the law. He goes on to say that he and his fellow Athenians are obedient to those in office at any given time and also to the laws, especially those designed for the benefit of those unjustly treated. The point is not developed, but the idea is clearly that democracy brings with it a special democratic style of law – and by implication, that other political systems will have other types of law associated with them.

In the same sentence, Thucydides' Pericles says that the Athenians also obey those *unwritten* laws that are, by common agreement, shameful to violate. Again, he does not expand upon the idea, but the text at least admits of the interpretation that, whereas the written laws previously spoken of are tailored to the democratic constitution, these unwritten laws exist over and above any particular political system. That contrast, if developed in a certain direction, can deal a serious blow to the authority of humanly devised laws. The classic example of this is Sophocles' *Antigone*.

Antigone explicitly appeals to unwritten law as the justification for her decision to bury her brother, the rebel Polyneices, contrary to the edict of the ruler Creon (450-5). This unwritten law is a divine law. But whereas, in the earlier picture from Heraclitus, divine law provides a sort of foundation for human law, here the two diverge, and the unwritten divine law is seen as overriding human law, which, at least in extreme situations like this, is treated with no great respect. The human law, in this case, simply consists of the decision of Creon, the sole ruler (177, 191,

481). And one could imagine a line of thought that questioned that state of affairs, urging that human law should be the product of consultation or even a vote, rather than a single person's decision. But the idea of law as a check on arbitrary rule does not yet seem to have surfaced (I shall return to this point at the end). In any case, the *Antigone* shows no hint of it; the contrast is simply between divine law and human law. While the play does not portray any of the characters, including Antigone, as faultless, there is little doubt that Sophocles means us to see her stance as more in the right than Creon's. The implication is that, when divine law and human law conflict, human law should be the loser.

Of course, one does not need to retain a strong sense of the divine in order to find fault with human law. If laws are a human creation, and vary from one political system to another, it is not much of a stretch to conclude that they are created with the interest of some segments of society in mind, which in turn means that they may very well not be in the interest of others. It is this line of thought that produces the claim of Thrasymachus in the first book of Plato's *Republic*: that "justice is the interest of the stronger".

Explaining this claim, Thrasymachus says that the ruling faction in each type of political system "lays down laws for its own advantage: a democracy lays down democratic ones, a tyranny tyrannical ones, and so on for the others; in laying them down they declare this (namely, what is advantageous to themselves) to be just for those ruled, and they punish the person who steps outside this as violating the law and acting unjustly" (338e1-6). A natural consequence of this, which Thrasymachus does not hesitate to develop, is that unless you belong to the ruling faction in any

given city, these laws deserve no particular respect, and might as well be ignored if one can get away with it.

Another version of this kind of view of law appears in the mouth of Callicles in Plato's *Gorgias*. Here it is not the differences among laws from one society to another that is the issue. Instead, the general claim is that law has the function of taming us and making us all act with restraint towards each other, and that the naturally powerful would do much better to resist this and act in naked pursuit of their own self-interest (483c-484a) – which Callicles actually refers to as the “law of nature” (*nomos phuseôs*, 483e3). Thrasymachus' view seems to have abandoned the idea, common to the earlier phase of thought and at least some in the Sophistic period, of law as a guarantor of peace and order; instead, law is simply a device of those in power to advance their own interests. Callicles, on the other hand, retains that earlier idea, but instead of treating law, for that reason, as a vital safeguard, he thinks of it as an obnoxious restraint on the naturally strong. Either way, law – of the kind created by society, at any rate – is of little or no importance.

Again, as with Protagoras, we are dealing with characters in Plato's dialogues, not actual historical figures; and although we know Thrasymachus was a real person, Callicles is one of the very few Platonic characters of whom there is no historical record. Nonetheless, we can be confident that views of the general kind he puts in the mouths of these characters had some historical reality.

Another portion of the papyrus fragment of Antiphon mentioned earlier – a much better preserved portion – expounds a further view of this general kind. Antiphon begins by saying that justice consists in following the laws of whatever

city one happens to live in. He continues “A person would use justice in a way most advantageous to himself, then, if he considered the laws important when there are witnesses, but matters of nature important when alone without witnesses”. The fragment then goes on to detail the ways in which law and “nature” – meaning people’s natural inclinations – are opposed to one another. Laws attempt to shape the ways we perceive and react to the world around us, but this is a stifling of what our unobstructed natures would lead us to want and to do.⁹ Antiphon does not explicitly claim, with Thrasymachus, that the laws vary from one city to another, although the reference to the laws “of the city in which one is a citizen” may be a gesture in that direction. But the notion that they are imposed on us contrary to our true interests is clearly in agreement with both Thrasymachus and Callicles.

Once the idea that law has a human rather than divine origin is out of the bag, the way is clear for some people to find this law less authoritative than it was previously taken to be. To this we can add that even people who retain a strong sense of the value of law in ensuring social order may also be troubled by the ease with which its authority can shrivel under pressure. Thucydides is a good example of this – and here we are not talking about words put by Thucydides into some historical character’s mouth, but of his own reflections on various dire turns of events. Speaking of the plague that hit Athens in the early years of the war, Thucydides remarks that respect for law (and also fear of the gods) completely crumbled in the face of it; if you expect to die in the near future, law quickly loses its

⁹ Greek text and full English translation in André Lake & Glenn W. Most, ed./tr., *Early Greek Philosophy* (Cambridge, MA: Harvard University Press, Loeb Classical Library, 2016), vol. IX, chapter 37, text D38a (but the translation in the main text above is mine).

capacity to restrain your anti-social behavior. And his account of the civil war in Corcyra is a similar case; in a situation of revolution, when conspiracies abound, respect for the law and for its socially beneficial effect evaporates (3.82.6).¹⁰

Another striking example of concern about the efficacy of merely human law is the fragment of Critias (or Euripides) cited earlier (quoted in Sextus Empiricus, *M* 9.54). As we saw, this fragment begins by citing the benefits of law in restraining people's behavior. But the passage continues by saying that the device of enacting law only worked when people were being observed by others; if there were no witnesses, they kept on acting in the same violent way they used to. And so, the author (or the speaker – this is a drama) continues:

at that point it seems to me
That some cunning man, wise in judgement, first
Invented fear of the gods for mortals, so that
There would be something for the bad to fear, even if
They did or said or thought something in secret.
So that is how he introduced the divine,
Saying that there is a god, flourishing in life without end,
Hearing and seeing with his mind, aware of
And attending to these things, bearing a divine nature,
Who will hear everything that is said among mortals
And will be able to see everything that is done¹¹.

The passage continues in a similar vein; and the notion that there is a god is explicitly said to be false. Yet this false notion is broadcast in society in order to give the law the kind of force that it lacks on its own. On this view, then, laws of merely human origin are too easy to ignore. Although the divine sanction that Hesiod and Heraclitus took the law to have is actually fictional, it is necessary that people

¹⁰ I leave aside 3.84, which has further reflection on the relation of law and human nature, but is generally considered to be an insertion not composed by Thucydides.

¹¹ See again n.7.

believe in a divine power overseeing us all; only in that way can law do the work it is supposed to do.

There are difficult questions about what the author is intending with this passage.¹² The initial expression of respect for the law as a force for social cohesion seems genuine. And yet, if its success in this role really depends upon the belief in an all-seeing god, why publicly proclaim that that belief is false? Interpretation is challenging; we do not know how this speech connected with the rest of the drama in which it belonged. The play is generally thought to have been about Sisyphus, but no other pieces have survived. Certainly, we cannot assume that the ideas put in the mouth of a character in a drama are ideas that the author favors or wants the audience to take seriously. Still, the view as expressed by this character is an intriguing case of concern about the limits of the power of merely human law, and one that, given the range of other views we have seen from the same period, seems very much of its time.

I have identified two broad trends in early Greek thought: first, a gradual growth towards a notion of law, including written law, as a force for social harmony and cohesion, but bolstered by some form of divine justice or law; and second, a notion of law as a purely human creation, still perhaps with the aim of social harmony and cohesion, but subject, precisely because of its merely human origin, to various challenges, including as to whether its alleged aim is a mask for more sinister motivations. In the space available, I cannot take the story much further. But

¹² I have discussed some of these in "Is there a Sophistic Ethics?", *Ancient Philosophy* 22 (2002), 235-62, at 251-4.

in what remains I will hazard a few remarks about Plato's response to these trends, and note a few points in the subsequent history that seem to connect with them.

III

Two aspects of Plato's treatment of the topic of law are especially noteworthy; one is highly specific to a single dialogue, while the other is a continuing preoccupation.

The first is the role played by the laws of Athens in Plato's *Crito*. The question in this dialogue is whether Socrates, having been convicted and sentenced to death by an Athenian jury, should escape from prison. Crito is all for this option, and claims he can easily arrange it. But Socrates insists that they should only take this course of action if it can be shown to be just; and the major portion of the argument that follows, to the effect that it would not be just to do so, is put in the mouth of the laws of Athens. Once again, "laws" (*nomoi*) need not be restricted to positive law, but can include more informal norms of conduct. But that actual statutes are at least part of what comes under the heading of *nomoi* here is clear from the fact that part of the argument involves details of the trial procedure that Socrates has recently undergone (52c).

The laws' argument centers around the idea that by living in Athens, Socrates has made an agreement to abide by themselves, its laws. In the course of this argument, much is made of the fact that Socrates owes his upbringing and his livelihood to the laws, since they are the root of the city's institutions (50d-e, 51c-d); because of this, they characterize him as their "offspring and slave" (*ekgonos kai doulos*, 50e3-4). As a result, if one is to choose to live in the city – as Socrates has

very clearly done his entire life – there are only two possibilities: either one must persuade the city to change the laws, or one must obey the laws as they are. Escaping after having been convicted under these same laws would be an attack on them, an attempt to undermine them; it would also be an extreme violation of the agreement of which his whole life has been an expression.

Whereas we have seen several versions of the view that our obligation to obey the law is limited or even non-existent, this goes to the opposite extreme. It represents an extraordinarily strong assertion of the value of law for communities and the individuals in them, and of the consequent obligation to adhere to it. Law provides not just social cohesion, as in many of the views we considered earlier – indeed, that plays little or no explicit role in the argument; law is in a very full sense responsible for our being who we are – we owe to it our whole developed selves. Going against the law is thus going against ourselves; it can never be acceptable.

The *Crito* raises many questions. One is obviously the nature and source of this agreement that we are supposed to have made to the laws of the community that raised us. Another, perhaps even harder, is whether we are supposed to swallow this argument that Socrates attributes to the laws. It looks at first sight as if Socrates is endorsing it, and many scholars have read the dialogue in this way. But if this is so, then, as has often been noticed, there appears to be a conflict with Socrates' absolute commitment, including in this very dialogue, to doing the right thing regardless of what people think; for surely it cannot be denied that the law is at least in part a reflection of the fallible opinions of those who created it. Now, if the laws' point of view does *not* line up with that of Socrates himself, there is of course

the question why he makes so much of it in his response to Crito. The most obvious answer is that this is something that Socrates thinks will appeal to Crito and lead him to the right conclusion – that Socrates should not escape – even though it is in some respects mistaken.¹³

I cannot undertake to adjudicate this issue here. What we can say is that if the laws' position is one that Plato means Socrates to agree with, and perhaps one that he agrees with himself, then we can understand one of his purposes as being to push back against those in the immediately preceding period who had a greatly reduced respect for the importance of law. Do not think you can so easily sever your ties to the laws of your community, he would be saying; law has a vital role in shaping us as mature and civilized human beings, and you denigrate it at your (and everyone else's) peril. If, on the other hand, Plato wants us to see Socrates' and the laws' position as different from one another, he can still be understood as intervening in that same debate, but in a different and more subtle way. In this case the Socratic position would allow that it can sometimes be appropriate to break the law. But this would not be for reasons of narrow self-interest, as in Antiphon's or Thrasymachus' case, or even because of a conflict with divinely sanctioned unwritten law, as in Antigone's; it would be because, if one truly understands what

¹³ A good spectrum of scholarly opinion can be found in essays 9-12 of Rachana Kamtekar, ed., *Plato's Euthyphro, Apology, and Crito: Critical Essays* (Lanham, MD: Rowman & Littlefield, 2005); Brickhouse & Smith, Kraut and Bostock all read Socrates as endorsing the laws' argument, while Harte takes the opposite view. Another work that distinguishes between Socrates' and the laws' positions is Roslyn Weiss, *Socrates Dissatisfied: An Analysis of Plato's Crito* (New York: Oxford University Press, 1998).

the best course of action is – which is also the action that is *genuinely* in one's interest – one will see that this can sometimes conflict with what law prescribes.

Coming to such an understanding is, of course, a project that Socrates considers supremely important. He is shown failing at it in a number of Platonic dialogues, but in the *Republic* he finds some measure of success. And I think this second reading of the *Crito* would give it more point and purpose as a precursor of the *Republic*. However, I am not one of those scholars who regards Plato as a godlike figure who was in perfect control of every word he ever wrote. And so I am not sure we can rule out the first reading, in which Socrates accepts the laws' extreme view of their own authority, with all the difficulties that brings; perhaps the *Crito* is just a naïve early work.

The other Platonic theme to which I would like to draw attention is Plato's recurring tendency to think of the need for written laws as itself a sign of human imperfection.

This is plain enough in the *Republic*, where at the end of his initial account of the ideal city in books 2-4, Socrates speaks at some length (425a-427a) about the fact that what he calls "legal enactments in speech or letters" (*logôî te kai grammasin nomothetêmata*, 425b8), on a whole range of subjects on which it is currently common for cities to have them, are pointless if one has people in charge who are "fine and good" (*kalois k'agathois*, 425d7). A person of this kind is referred to as "the true lawgiver" (*ton alêthinon nomothetên*, 427a4), and this again reflects the ambiguity of the word *nomos*; these superlative rulers can enact and preserve certain *ways of life*, and this can be in a broad sense be seen as the establishing of

nomoi, but these ways of life need not, and probably cannot, be captured in specific verbal prescriptions. As we later learn, these people are the philosopher kings; and the reason why verbally specified laws are useless for them is that they have insight into the Forms, which are the true models for human conduct. While the other side of the coin is not made explicit, the clear implication is that it is only because there are no philosopher kings in the societies we are familiar with that written laws seem necessary or beneficial.

In the *Statesman*, too, we are introduced to the idea of a ruler who has genuine knowledge (*epistêmê*, 292d3, 293c7) or expertise (*technê*, 293a9) of how to rule. This person could rule just as well with or without laws (referred to as *nomoi*, but also as “letters”, *grammasin*, 293a7 – in other words, written statutes). This is initially treated with some skepticism by the interlocutor (Young Socrates, 293e). But the main speaker, The Eleatic Visitor, goes on to explain that laws can only be an approximation, vulnerable to the constant changes in human circumstances (294a-c), and eventually returns to the idea that the truly correct political arrangement would be one where a person of real political expertise was in charge, and where it was that expertise, rather than any laws, that decided what was to be done (296d-297b).

The same point is even found in the *Laws* (875c-d). Now the *Laws*, of course, is absolutely full of laws: and the *Statesman* recognizes the necessity of laws. The reason, of course, is that the *Laws* and the *Statesman*, unlike the *Republic*, are interested in non-ideal conditions – not the hopelessly corrupt political conditions Plato seems to have thought he and his contemporaries actually lived in, but still

conditions that are imaginable given human beings as they (or almost all of them) actually are. And in these conditions there is no alternative to relying on laws, flawed as they may be.

We can perhaps think of this Platonic trope as an updated version of the older notion, going back as far as Hesiod, of human institutions as having divine backing. In Plato, as in Hesiod, there is a supra-human basis for correct actions and correct social arrangements. One difference is that in Plato it is the flawed human arrangements, which can at best only approximate the truly correct ideals, that are spoken of with the word *nomos*, whereas in Hesiod *nomos* applies to the divine ordinances that stand behind the justice of the human sphere. Plato, unlike Hesiod, is familiar with detailed written laws, and with a history of treating *nomos* as a human creation. Seen in this light, *nomos* looks to him like something inferior, with the truly correct way being something quite other than law-like. Being a human creation, *nomos* can hardly be expected to achieve much on its own – though we have to do our best with it. But then, as we saw, many of those who thought of *nomos* as human, but did not believe in anything like Platonic Forms, were also far from optimistic about its power.

I close with a very few points about later developments. Aristotle shares Plato's view that law is too coarse-grained to cover all eventualities. But since he does not share, even as an ideal, Plato's notion of philosopher kings, he shows at least some inclination towards the view that rule by law is better than rule by human beings – that is, human beings untrammelled by law (*Politics* 1286a17-20, 1287a28-32); law is dispassionate, whereas human beings are not. I mentioned

earlier that the idea of law as a check on arbitrary political rule, which is so important in our own thinking, does not seem to have occurred to the Greeks of the fifth century BCE. In these brief and undeveloped remarks of Aristotle, we see perhaps the first inkling of this idea.

The idea that law should constrain rulers – and everyone else as well – is much more explicit in the Stoics; indeed, as the leading Stoic Chrysippus expresses it, law itself is the ruler.¹⁴ In this case we are talking not of human law, but of divine law. In some ways this is reminiscent of the picture suggested by Heraclitus (to whom the Stoics are indebted in other areas as well). But the Stoics develop much further the idea of a natural law that stands over and above human laws, and this influence extended into modern legal thought. While human laws vary from place to place, this higher law is of divine origin and is the same everywhere; to follow it is to be in tune with the rationality that governs the universe, and also in tune with one's own human nature, whereas to violate it is in the truest sense self-destructive (Cicero, *Republic* 3.33).

Clearly this opens the possibility that the right course of action might sometimes be to ignore the local laws of one's society and follow the natural law instead; for if the local laws are imperfect, as they surely will be, there are likely to be cases where the two conflict – and in such cases, there is no doubt which of the two should be followed. This takes us back to something like the scenario in

¹⁴ At the opening of his *On Law*, as quoted by the Roman jurist Marcianus. This appears as passage 67R in A.A. Long and D.N. Sedley, *The Hellenistic Philosophers* (Cambridge: Cambridge University Press, 1987); another passage included in this volume (but otherwise hard to track down) is referred to below using the abbreviation LS.

Sophocles' *Antigone*. But it also encourages the idea that we should work to make human law as far as possible a replica of natural law, or at any rate consistent with it, which brings us again to the Heraclitean idea of human law as "nourished" (*trephontai*, DK 22B114) by divine law.

The Stoics' contemporaries the Epicureans thought nothing of the sort; their conception of god is of a supremely tranquil being, unconcerned with prescribing to humans – that would be far too much trouble. Yet precisely because of that very lack of concern, god provides a model for humans to emulate. This lack of prescribed divine law does not prevent there being a universal standard for justice; Epicurus himself says that justice is whatever is useful for the prevention of mutual harm (*Kuriai Doxai* 31). But he goes on to say that in order for justice to be enacted, there needs to be a contract or agreement among people. The specific agreements made may vary in different times and places, because differences in circumstances may affect what is or is not useful in a given context. However, a law that is *not* in fact conducive to social harmony in the context in which it is passed is not in fact a just law (*Kuriai Doxai* 32-7).

This is an interesting mixture of elements that we have seen in earlier thinkers. Unlike the Stoics, and like the earlier Sophists, Epicurus thinks of law as a purely human creation; but like the Stoics and many others before them, he thinks of local laws as beholden to a universal standard, albeit not one with divine backing. Other Epicureans followed this general picture, including the early Epicurean Hermarchus (as paraphrased in Porphyry, *On Abstinence* 1.7.1-9.4=LS 22M) and the later Roman Epicurean Lucretius.

Lucretius' version has a twist. He gives an account of primitive humanity and the gradual development of civilization, not unlike the one from Protagoras' speech in Plato but much more detailed (5.925-1160). But in Lucretius law is a surprisingly late arrival. Prior to the introduction of law, cities were founded by kings and property was divided among the inhabitants (5.1108-12). These kings' continued craving for wealth and power eventually led to their being killed (5.1136); and as a way out of the ensuing chaos, a path was found to the birth of a political constitution and laws (5.1143-50). This no doubt reflects the early history of Rome, where the Republic was a successor to the early (and largely legendary) period of the seven kings, the last of whom was overthrown. But it also makes Lucretius another exponent, at least implicitly, of the idea of law as a constraint on arbitrary power.

These reflections could be greatly expanded; I merely wanted to give a taste of the way in which the main themes from the early period retained some hold as Greek philosophy became more mature and sophisticated. And I hope that this survey as a whole, with its concentration on the earliest phase of Greek thought, has raised issues that connect with other central topics addressed in this volume. What law is for, and why it is important, are obviously questions that are of abiding concern. The answers offered by the early Greek thinkers may be much less developed than what we can find today, but it seems to me no exaggeration to say that the questions they were addressing still resonate with us.¹⁵

¹⁵ I thank Tim Sellers for inviting me to contribute to the conference that was the starting point of this volume, and to him and the other conference attendees for their insightful comments on my presentation. I also thank Colin Starger for his sensitive editing of my original version, which helped to bring out a number of my points more clearly.

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