

# Knowledge and Law in the *Laws*: A Response to Xavier Marquez

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## Keywords: ••

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I am grateful to Xavier Marquez for his careful, thoughtful response to my article (Klosko, 2008), and so for leading me to re-examine the textual evidence concerning central themes in Plato's political theory. I believe Glenn Morrow's *Plato's Cretan City* is a monumental scholarly achievement and an indispensable work on the *Laws* and Plato's political theory more generally. But this of course does not mean that I agree with all Morrow's interpretations. I believe his view of the nocturnal council is important to consider once again, given the institution's centrality to Plato's political theory and the general consensus that Morrow is correct, which has more or less closed off consideration of alternative views (see Klosko, 1988; 2008). In this brief response, I will focus on the nocturnal council. The passages in the *Statesman* are difficult and convoluted and cannot also be discussed.

Briefly, as it seems to me, the main issues between Marquez and myself turn on how one construes the fact that Plato did not discuss particular subjects in certain contexts in the *Laws*. While I believe this indicates changes in Plato's views, Marquez generally believes that, by introducing various distinctions into the text, one may read into these contexts material discussed elsewhere in the dialogue. As criticism of my position this is effective, because it is hard to show that the moves Marquez makes are explicitly ruled out by the text. I believe they are not explicitly ruled out, because Plato did not contemplate them and so of course could not disallow them. Moreover, building on Morrow's contribution, Marquez presents an account of the nocturnal council that is plausible and commonsensical. One reason Morrow's view has garnered so much support is that many readers feel it is what Plato *should* have said. Students of Plato's political theory have long been puzzled by the apparent gap between his faith in philosophical intelligence, untrammelled by law, on the one hand, and unrevisable laws, on the other (e.g. Annas and Waterfield, 1995, p. 68, n. 65). Thus Marquez's contention that Plato was 'very much aware' of 'a potential space' between these poles (Marquez, forthcoming, p. ••) is obviously attractive. His position receives strong support from the fact that, in Book XII of the *Laws*, the nocturnal council is assigned the function of studying the laws of other cities with an aim to improving those of Magnesia (951b–c, 952b). This is evidence that, at some point, Plato felt the need to address this gap. But standing in the way of Marquez's and Morrow's interpretation is troubling textual evidence.

1 Before proceeding, I should say something about standards for interpreting this evidence.  
 2 As I say in my article, I believe one should normally approach a text with an attitude of  
 3 charity and assume it is consistent, unless there is strong evidence that it is not. But in the  
 4 case of the *Laws*, the usual presumption of consistency should be relaxed somewhat.  
 5 According to long-standing tradition, this was Plato's last dialogue, left unfinished at his  
 6 death, while this circumstance helps to explain an entire list of problems and inconsistencies  
 7 in the text.<sup>1</sup> The possibility of major inconsistency in the *Laws* cannot be ruled out,  
 8 although strong evidence must be provided to support it.

9  
 10 In my article, I discuss two main bodies of textual evidence: concerning the irrevisability of  
 11 the laws and procedures for changing the laws. I begin with irrevisability.<sup>2</sup>

12  
 13 In a series of contexts, the Athenian Stranger discusses the need for the laws of Magnesia  
 14 to remain unchanged. Most notably, in regard to education, he says that, as in Egypt, these  
 15 laws should remain unchanged for ten thousand years, 'literally ten thousand' (656d–57b).  
 16 The Athenian makes a broad claim concerning the benefit of unchanging laws. In general,  
 17 'nothing is more perilous than change in respect of everything' (797a). Innovation in  
 18 children's games is a great danger, leading eventually to desire to change the laws, which is  
 19 the greatest evil for city states (*megistou kakou polesin*). Ideally laws should remain 'unaltered  
 20 for many centuries, so that there exists no recollection or report of their ever having been  
 21 different from what they are now' (798a–d).

22  
 23 In other passages, he discusses specific areas of the law that are explicitly to remain forever  
 24 unchanged, *akinêta*. These include rules for choruses (772a–d), legal procedures for  
 25 agricultural cases (846b–c) and legal procedures more generally (957a–b). In numerous  
 26 additional contexts, the Athenian says the *nomophulakes* should fill in the details of other  
 27 aspects of the law, although these passages do not explicitly say that, once drawn up, these  
 28 laws should remain unchanged. Three such areas are regulations concerning festivals (828b),  
 29 rhapsodes and choral competitions (835a–b) and certain penalties (855d). Similarity of  
 30 procedures discussed in these contexts and those in regard to the laws explicitly described  
 31 as *akinêta* suggests that these other areas of the law are also to remain *akinêta*, although this  
 32 is not stated explicitly. There are also numerous additional areas in which the *nomophulakes*  
 33 are to fill in details of the legal code (see Morrow, 1960, p. 200).

34  
 35 If, as a rule, the laws of Magnesia are to be immutable, Morrow's interpretation is obviously  
 36 incorrect. There would be no need for a body charged with revising and improving the  
 37 laws. One important point that Marquez makes is that general irrevisability is too strong. He  
 38 calls attention to passages in the *Laws* that discuss continuous revision of laws, while there  
 39 is also a procedure for making changes. We will return to these passages below. Marquez  
 40 contends that the specific laws described as irrevivable are exceptions. For different reasons,  
 41 these laws are to remain unchanged, while others are subject to review and revision. His  
 42 main reasons are that education is especially important while the other laws are relatively  
 43 insignificant, and so not revising them will do little harm (Marquez, forthcoming, pp. ••–••).  
 44 This reasoning strikes me as *ad hoc* and unpersuasive. A motivated scholar could produce  
 45 equally persuasive reasons why virtually any other category of laws should or should not

1 remain forever unchanged. But if the nocturnal council is to head an ongoing inquiry into  
 2 the laws in general, why these particular laws should be exempt from such scrutiny is  
 3 difficult to explain.

4  
 5 The procedure for changing laws is discussed at 772a–d. This is the only discussion of  
 6 such a procedure in the *Laws*, although it is apparently presented only in regard to laws  
 7 concerning choruses. But if we accept the likelihood that something like this procedure is  
 8 what Plato had in mind for all laws (Morrow, 1960, p. 571; Schöpsdau, 1994–2003, II, p. 449;  
 9 Samaras, 2002, p. 291), we are left with a ten-year period during which laws are revised, after  
 10 which they are *akinêta*. The Stranger uses strong language against changes beyond this  
 11 point: ‘In these [laws] they must never make any change voluntarily; but if some necessity  
 12 for change (*anankê doxeie pote katalabein*) should ever seem to happen’, then the oracles,  
 13 the people and the officials should be consulted. General consent by all these bodies is  
 14 necessary. Change is allowed ‘under no other conditions at any time’, and those objecting  
 15 to change ‘shall always prevail according to law’ (772c–d).

16  
 17 As we will see below, in additional passages the Stranger discusses changing laws. Although  
 18 there is tension between these passages and a general presumption against change, a  
 19 reasonable reconciliation is forthcoming. As the Stranger says in many contexts, details  
 20 of the law should be filled in, after which the laws should remain unchanged, although  
 21 the Stranger generally does not explicitly say they are to remain unchanged. But given  
 22 the presumption of stability, this seems a reasonable general assumption. Accordingly, the  
 23 procedure may be assumed to apply generally and may be used to make necessary changes  
 24 once the ten-year period has passed. If we accept this line of argument, then it is possible  
 25 to reconcile the general presumption in favor of unchanging laws with a role for the  
 26 nocturnal council in changing them. But even if we grant the council such a role, in view  
 27 of the strong presumption against changing laws, its role seems somewhat modest, given the  
 28 inflated language with which Plato describes it (on which, more below).

29  
 30 The second body of evidence concerns the role of the nocturnal council in changing laws.  
 31 It is here, I believe, that we find the strongest evidence against the views of Morrow and  
 32 Marquez. Not only is the nocturnal council never mentioned in regard to filling in the  
 33 details of or otherwise changing laws, but an alternative body of officials is explicitly  
 34 assigned to oversee these processes, the *nomophulakes*. Personnel of course overlap between  
 35 these two bodies, as the ten senior *nomophulakes* are members of the nocturnal council. But  
 36 this does not alter the fact that, in these passages, the job of supervising revisions of the law  
 37 is assigned to the former body rather than the latter. Morrow believes the nocturnal council  
 38 is intended to play an advisory role in this process, but admits this is only a ‘conjecture’,  
 39 although he thinks it ‘a plausible one’ (Morrow, 1960, p. 200, p. 571; see also Samaras, 2002,  
 40 pp. 298–301). Given the text, W. K. C. Guthrie, a judicious scholar, posits an ‘organizational  
 41 change’ in the *Laws* in this regard (Guthrie, 1962–81, V, p. 369, n. 2).

42  
 43 Marquez explains away these problems by introducing a distinction between the ‘initial  
 44 period of ten years’ and ‘the *long run* revisability of the laws’ (Marquez, forthcoming, p. \*\*,  
 45 emphasis in original). While the *nomophulakes* are in charge during the former period, the  
 46 nocturnal council is responsible for the latter. He claims there is good reason for this

1 distinction as, until the state has been up and running for some time and the council  
 2 members properly educated, they would not possess the knowledge necessary for long-run  
 3 changes (Marquez, forthcoming, p. ••).

4 While this may be a reasonable position for Plato to have assumed, it confronts a theoretical  
 5 difficulty and is directly contradicted by textual evidence. The theoretical problem is that  
 6 Marquez's distinction turns on a significant difference in cognitive capacity between the  
 7 *nomophulakes* and the nocturnal council. It is in part because of the latter's greater  
 8 philosophical sophistication that long-run changes are assigned to them. But if this is the  
 9 case, it makes little sense for Plato to mandate that the work of the *nomophulakes* in filling  
 10 in the laws is to remain forever unchanged. If the *nomophulakes* are to give way to the more  
 11 qualified nocturnal council, the former's handiwork should be reviewed by the latter, not  
 12 explicitly placed off limits.

13 More important is the textual evidence. In two contexts in which the Athenian Stranger  
 14 discusses long-run revision of laws, oversight is explicitly assigned to the *nomophulakes*. Once  
 15 again, the nocturnal council is not mentioned. These passages clearly concern what  
 16 Marquez describes as long-run revisions of the laws. Indeed, the two passages I discuss are  
 17 cited by him as evidence of long-run changes (Marquez, forthcoming, p. ••).<sup>3</sup> At 840e, the  
 18 Stranger says that if it turns out that sexual regulations for the Magnesians are unworkable,  
 19 'then the *nomophulakes*, acting as lawgivers (*nomothetas*), must devise for them a second law'.  
 20 These regulations concern changing the laws rather than filling them in, and there is little  
 21 reason to suppose that revisions are confined to a ten-year period. More important is the  
 22 passage in Book VI in which the Stranger introduces the subject of changing the laws. He  
 23 compares the lawgivers to painters. Because the process of improving paintings is never  
 24 ending, a painter should leave a successor, who will continue to repair the picture and  
 25 improve it, so it always (*aei*) gets better over time after the painter is gone (769b–c). The  
 26 lawgiver too should appoint a successor. In spite of his efforts at precision, the passing of  
 27 time will reveal many deficiencies, so a successor is necessary, to makes sure that the state  
 28 'may always (*aei*) grow better and never in any way worse' (769d–e). The successors are the  
 29 *nomophulakes*. We must make 'the very same men lawgivers as well as guardians of the laws  
 30 (*toutous autous nomothetas te kai nomophulakas*)' (770a).

31 This is direct evidence against Marquez's position. There is no doubt that Plato did not  
 32 assign the *nomophulakes* only the task of revising laws during the initial ten-year period.<sup>4</sup> The  
 33 fact that the job Morrow assigns to the nocturnal council is explicitly given to other officials  
 34 raises an additional problem: justifying the council's exalted position in the state. One reason  
 35 Morrow's view of the council is intuitively appealing is that it provides the body a role  
 36 that could be viewed as in accord with the exalted language with which Plato describes it  
 37 (Klosko, 1988, pp. 79–81). This language is apparently central to the traditional but now  
 38 largely dismissed view that, at the end of the dialogue, Plato has the nocturnal council  
 39 assume a role along the lines of the philosopher-kings in the *Republic*.<sup>5</sup> With this possibility  
 40 set aside, what justifies the exalted language? While Plato does not give the council a formal  
 41 role (aside from interrogating imprisoned atheists [908a–09a]), he does not explicitly rule  
 42 out possible roles. Thus we may feel justified in reading responsibilities into the text,  
 43 although they are not explicitly discussed. This is essentially what Morrow and Marquez

1 have done. But their attribution to the council of a general, informal, advisory role is less  
 2 persuasive if we recognize that central components of this responsibility are repeatedly and  
 3 explicitly given to other officials. Once again, I believe this indicates a change in Plato's  
 4 plans. Morrow and Marquez may well be right about what Plato would have said, had he  
 5 lived to reconcile conflicting aspects of his text. But this would have required revision of the  
 6 earlier books of the *Laws* to eliminate the conflicts noted here.<sup>6</sup>

7 (*Accepted*: 2 March 2010)

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## 15 **Notes**

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 18 1 See 'irregularities', under '*Laws*' in the index to Morrow, 1960, and, especially, p. 127, n. 10, and pp. 396–8; Klosko, 2008, pp. 467–9.  
 19 2 For translation of the *Laws*, I use Bury, 1942, occasionally modified slightly. Stephanus pagination is used.  
 20 3 840e is cited 'compare'. It is not clear what Marquez means by this designation in this context.  
 21 4 The address to the *nomophulakes* at 770b–e focuses on filling gaps in the laws, but 770e–71a concerns changing laws.  
 22 5 This is apparently the view of Aristotle, *Politics*, 1265a3–4. For discussion and references, see Klosko, 1988.  
 23 6 I am grateful to Jon Mikalson, Dan Devereux and Ryan Pevnick for comments on a previous draft.

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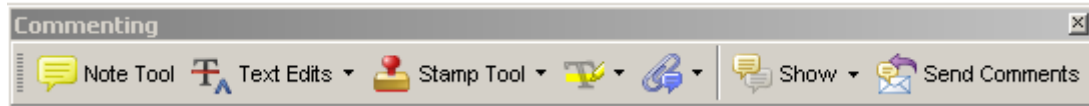
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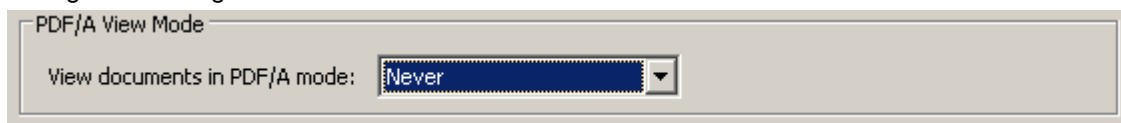
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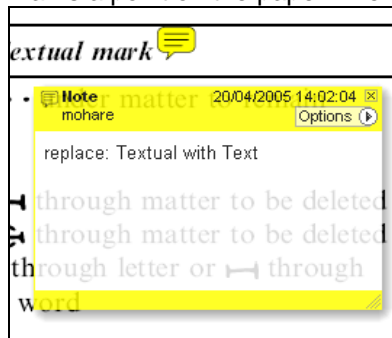
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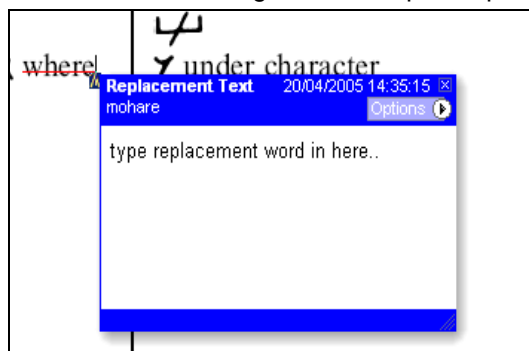


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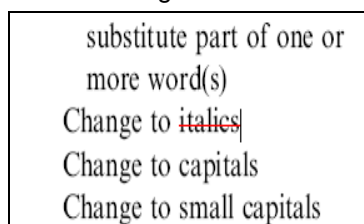


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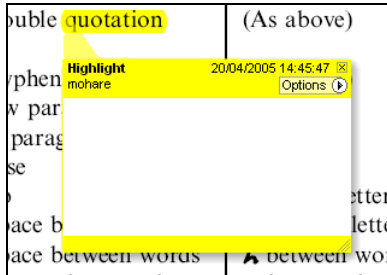


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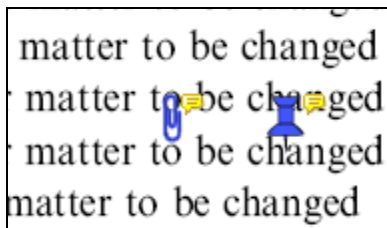


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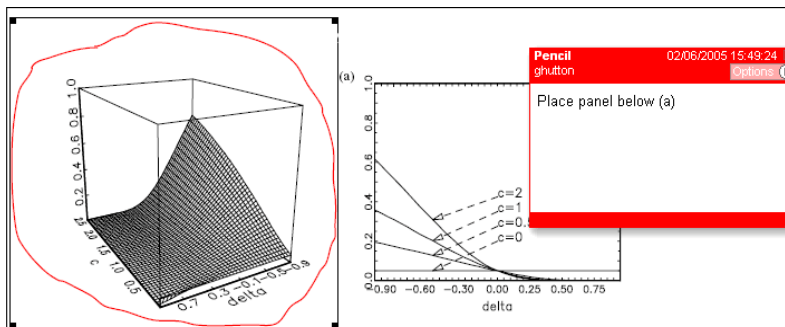


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