

Knowledge and Law in Plato's *Laws*

George Klosko

University of Virginia

Although at one time the nocturnal council, discussed in Book XII of the *Laws*, was widely viewed as inconsistent with institutions presented in the earlier books, Glenn Morrow apparently solved this problem, in *Plato's Cretan City*, and his interpretation is accepted by most recent scholars. I revisit the case for inconsistency. As interpreted by Morrow, the nocturnal council is charged with attempting to improve the laws of Magnesia, through application of philosophic knowledge. However, textual evidence demonstrates that, at one point while he was writing the work, Plato was committed to the rule of all but unchanging laws, and to the extent laws were subject to revision, the nocturnal council played no role in this process. Unlike other inconsistencies in the *Laws*, this is a major conflict. Although we cannot be sure how to explain it, the most likely explanation posits a change of plans on Plato's part, the philosophical implications of which he did not fully work out.

In *Plato's Cretan City*, Glenn Morrow provides a solution to the riddle of the nocturnal council (Morrow, 1960, ch. 9).¹ While many scholars had viewed the nocturnal council as an 'afterthought' on Plato's part and inconsistent with other aspects of the ideal city described in the *Laws*,² Morrow explains away apparent inconsistencies and presents an interpretation that is both reasonable and attractive. Since publication of his work, his view has gained general acceptance.³ In this article, I criticize this interpretation. The nocturnal council is not only fundamental to the political theory of the *Laws*, but also to our understanding of the movement from the rule of philosophic knowledge to the rule of law that dominates Plato's later political theory. And so the subject should not be considered closed. In spite of the attractive features of Morrow's interpretation, it glosses over severe difficulties with the textual evidence, which suggest a somewhat different and messier account.

The textual evidence we will examine strongly indicates that, for a considerable period when he was working on the *Laws*, Plato maintained a position on the relationship between political knowledge and law inconsistent with that implied by Morrow's view of the nocturnal council. Briefly, while Morrow holds that the nocturnal council functions as a kind of legislative commission to assist in the creation of effective laws, there is strong textual evidence that laws in the *Laws* are to be all but unchanging, and to the extent they may be revised, the council plays no role in this process. Although we cannot know exactly how to explain this conflicting evidence, I address questions concerning inconsistencies in historical texts and possible implications for understanding Plato's political theory in the concluding section.



This article is in three sections. The first provides an overview of Plato's account of the nocturnal council and Morrow's interpretation. The textual evidence against Morrow's view is examined in the second section. As just noted, the third section is a conclusion, which briefly addresses problems of inconsistencies and what these mean for Plato's political theory.

Morrow's Informal View

For much of the *Laws*, the Athenian Stranger seems to argue for unchanging laws. In Book IV, the Stranger provides a brief myth of the Age of Cronus, the moral of which is distrust of human rule. No human being is capable of exercising irresponsible control over human affairs, without being filled with pride and injustice, and so the rule of law is necessary (*Laws*, 713c-14a). It is notable that, in this passage, the problem with unchecked human rule is primarily moral. Defects of character prevent people from ruling justly. But although the implication is the need for rule of law rather than of men, in themselves these circumstances do not require unchanging laws. Measures along the lines of checks and balances, which are a prominent feature of the ideal city in the *Laws*, could be enough.⁴

An important passage in Book IX conveys a similar message. The rule of law is said to be necessary, as the only alternative to living like savage beasts (874e). The reasons for this are twofold, both epistemic and moral. No man is able to perceive 'the true political art (*politikê kai alêthei technê*)'. Even if someone did understand it, if he ever rose to a position of power, his mortal nature would 'urge him on to grasping and self-interested action', which would fill the state with 'all manner of evils' (875a-c). The rule of law is second best (*deuteron*) (875d3); it pales in comparison to the rule of scientific intelligence (875d). However, although Plato appears to have lost hope in the possibility of a true scientific ruler, if a person with the requisite qualities ever did arise, he would not have to be constrained by laws: 'for no law or ordinance is mightier than knowledge (*epistêmês*)' (875c-d). Apparently, Plato retains his faith that such a ruler would be immune from the temptations that plague other human beings, although Plato believes such natures 'exist nowhere at all, except in small degree' (875d).

What then of the requirement that, in the absence of such a ruler, the laws must remain unchanged? At first sight, there is strong evidence for this position. The Athenian Stranger repeatedly notes that preservation of unchanging laws is an important value, central to the state's educational mission. He expresses admiration for Egypt, in which all matters pertaining to music and other arts were prescribed in detail and left unchanged for ten thousand years, 'literally ten thousand' (656d-57a). In describing proper education in Book VII, the Stranger elaborates on this theme (797a-d). Innovation in children's games is a great danger, leading eventually to desire to change the laws, which is the greatest of all ills to the state (*megistou kakou polesin*). If people live under unchanging laws,

which no-one recalls ever having been different, the laws are reverently upheld (798a-b). Accordingly, as in Egypt, the dates of sacred festivals and the specific hymns and dances with which they are celebrated should be consecrated for all time (798a-99b).

In addition is Plato's fear of innovation. In Book XII, the Athenian Stranger notes the need to take care lest any visitor from abroad 'introduce any innovation (*neóterizê*)' into the city, and if they do, to make sure they are punished (952e-53a).⁵

In only one context does Plato explicitly address procedures for changing the laws. The Athenian Stranger says that the original lawgiver cannot provide for every eventuality, and so the guardians of the laws (*nomophylakes*) have authority to revise and change the original laws as necessary (769b-71a). Rather than spelling out precise procedures, the Athenian moves on to discuss such things as marriage assemblies and thanksgiving festivals (771e-72a). But he returns abruptly to the subject of improving laws. The details of such festivals must be filled in by the officers of the choirs together with the *nomophylakes* (771a). During a ten-year trial period, laws are to be improved, 'until every detail is thought to have received its final polish' (772a-c). The text continues: 'After that, they must assume that the rules are immutable and observe them along with the rest of the code which the legislator laid down and imposed on them originally' (772c). It should be noted that 'the rest of the code (*tôn allôn nomôn*)' (772c5) is ambiguous. It could refer to all laws or only those concerning festivals – a problem to which we will return. Finally, in the continuation of the passage, the Athenian discusses procedures for change. If after the initial period revisions are thought necessary, proposals must be brought before all the people, all the officials and all the divine oracles. Unanimity is necessary; those objecting to changes must always prevail (772c-d). For now, we should note that the all but insurmountable obstacles to change provided by these procedures are another indication of the rigidity of the laws.⁶

This accumulation of evidence creates a strong *prima facie* case that Magnesia is to be governed by unchanging laws. Among the important scholars who view the *Laws* along these lines are Ernest Barker and R. F. Stalley (Barker, 1918, pp. 352-53; Stalley, 1983, p. 82). However, Plato greatly complicates this issue by introducing the nocturnal council in Book XII. The nocturnal council is assigned a legislative function, although Plato's account of this is fragmentary, and one cannot be sure exactly what he has in mind or how well this institution fits with what is presented in the earlier books. Plato first mentions the nocturnal council in Book X, in connection with the treatment of heretics. He returns to the subject in Book XII and discusses it in detail. The Athenian Stranger recommends sending qualified individuals abroad to observe the laws and institutions of other states. When the observers return from their travels, they report to the nocturnal council (951d). The purpose of their journeys is to learn from other states, to make it possible to improve the laws of Magnesia (951c).

The function of the council is indicated by the observers' commission. The Athenian Stranger says that the laws cannot be 'safeguarded' unless some members of the state understand its aim and the best means of attaining it (963a-b, 962b). Since the state's aim is virtue, the council must inquire into the nature of virtue, and the relationships between its four component parts – wisdom, courage, temperance and justice (963a-c). A program of higher studies is required, which is not described in detail, although it clearly resembles that of the Guardians in the *Republic*. In discussing the council, Plato repeatedly uses language that recalls the *Republic's* Guardians. For instance, one of the council's subjects of study is the Forms (*eidê*) of virtue (963c).⁷ Certain language suggests that the council exercises a function similar to that of the Guardians. Most notably, at the conclusion of his account of the body, Plato says that if this 'divine council' should come into existence, 'then the state must be entrusted to it' (969b). Thus it is not surprising that the council has been interpreted as revamped philosopher-kings (Barker, 1918, pp. 406–10; Klosko, 1988; Sabine, 1950, p. 85).

This interpretation is supported by Aristotle. In Book II of the *Politics*, Aristotle says that, although Plato wishes to make the state in the *Laws* 'more suitable for adoption by actual states, he brings it round by degrees back to the other form, that of the *Republic*' (Aristotle, 1944, 1265a3–4). This remark seems to be in reference to his view of the nocturnal council's function.

But even if this is Plato's intention, he says almost nothing about the nocturnal council's precise role. Aside from suggestive language about how it is the savior or the anchor of the state, Plato does not explain how it is to fit into the existing constitutional structure and work alongside existing institutions. Because of difficulties reconciling this institution with Magnesia's other offices, many scholars have posited a major break in the *Laws*.⁸

As I have noted, Morrow addresses this problem in *Plato's Cretan City* (Morrow, 1960, ch. 9). His interpretation, to which we may refer as the 'informal view', consists of three main claims. First, Morrow argues that the nocturnal council does not appear suddenly in Book XII. Looking back from Book XII to the earlier Books of the *Laws*, one can retrospectively detect a number of allusions to it.⁹

According to the informal view, although the nocturnal council has a legislative role, its only formal responsibilities are examining imprisoned atheists (908a, 909a), and interrogating observers returned from abroad. Morrow argues that the council does not require formal responsibilities. This is his second point. Because its members include senior officials in the state, it would be able to make its influence felt in legislative matters (Morrow, 1960, pp. 510–1). The informal view's final claim is that its account of the nocturnal council makes good sense. The council's knowledge would be a great help to the state. If the laws are not to be 'rigidly and unthinkingly adhered to' (Morrow, 1960, pp. 510–1), there must

be some body in the state able to understand their underlying principles. The importance of this knowledge is reflected in Plato's repeated description of the council as the 'savior' of the state.

An additional implication of this interpretation is that the council helps to insure that top offices are staffed with worthy individuals. The merit-based process through which its younger members are appointed (951e-952a, 961a-b), sets them apart from other office holders, who are selected through various combinations of election and lottery. Through service on the council, young men are publicly identified as worthy candidates for future office. In so far as they undertook the program of intensive studies assigned to them (esp. 952a), they would be prepared for future responsibilities.¹⁰ In addition, as Christopher Bobonich especially argues, because of the relatively large number of Magnesians who serve on the nocturnal council during their thirties and then move back into the general population, their experience significantly raises the deliberative capacities of the citizenry (Bobonich, 2002, p. 408).

And so, if Morrow is correct, not only is the nocturnal council consistent with other aspects of Magnesia, but because it exercises a continuing function of working to improve the laws, it makes an important contribution to preserving and improving the state.

Evidence Against the Informal View

Given the power of Morrow's analysis, it is not surprising that it has been so widely accepted.¹¹ But serious problems are encountered in reconciling Morrow's interpretation with other aspects of the text. The two problems on which I will focus are: conflict between the nocturnal council's role in the state and rigidity of the laws; and between its role and what Plato says elsewhere in the work about changing the laws.

Before proceeding, I should make clear exactly what I do and do not claim in this article. I believe there is strong evidence that Plato does not consistently maintain Morrow's informal view throughout the *Laws*. We can distinguish two theses:

- (1) The nocturnal council (even on Morrow's interpretation) is not consistent with the Athenian Stranger's earlier accounts of Magnesia and its political workings.
- (2) The nocturnal council is intended to function as revamped philosopher-kings (which breaks sharply with Plato's overall discussion).

Both (1) and (2) are defensible claims. But to make the argument of this article as strong as possible, I will argue only for the weaker contention (1).¹² Because of general acceptance of Morrow's interpretation, it is important to call attention to the problems it glosses over, which, again, demonstrate that the council as interpreted by Morrow was not consistently part of Plato's plan in composing the *Laws*.¹³

I begin with the problem of rigidity, that the laws of Magnesia are highly resistant to change. Such an interpretation of the *Laws* is supported by the Athenian Stranger's discussion of procedures for changing the laws outlined in Book VI. As we have seen, the Athenian says that the original lawgiver cannot provide for all contingencies and so the *nomophylakes* must be prepared to make needed changes (769b–771a). The key details of his account are:

- (i) The *nomophylakes* are assigned the task of figuring out what is to be done.
- (ii) This will be only during a ten-year trial period, after which the laws will be declared to be fixed (*akinêta*) (772c4).
- (iii) After that, should the need to change the laws arise, extremely demanding procedures will be required; all the people, all the officials and all the divine oracles must agree, rendering the laws all but impossible to change.¹⁴

Even if we accept the narrower reading of this passage as pertaining only to religious festivals and the like rather than all laws,¹⁵ there is strong evidence that the rest of the laws are covered by similar provisions. Although this is the most detailed discussion of changing the laws, similar procedures are invoked in regard to other areas of the law. In introducing the subject of the *nomophylakes*' filling in gaps in the law, the Athenian Stranger says that 'in many departments of our legislation, we shall leave out a vast number of matters' (770b). Discussion in these other contexts appears to flesh out this promise.

In Book VIII, discussing legal procedures for agricultural cases, the Athenian Stranger says that many details remain to be filled in. Since these 'do not deserve the attention of an aged lawgiver ... the young lawgivers shall make laws for them', after which, they will be permanently fixed (*akinêta*) (846b6–c8). In view of the language in 770a, in which the Stranger contrasts himself and his interlocutors, as old lawgivers, with the *nomophylakes*, as youthful lawgivers, the young lawgivers in 846b–c must be identified with the *nomophylakes*. Similarly, in Book XII, in regard to legal procedures more generally, the Athenian says once again that the old lawgivers will pass over many matters that are relatively inconsequential, 'and the young lawgivers shall fill up his omissions'; the *nomophylakes*, who are explicitly named here, will construct a code for these matters. When these laws are completed and sealed as unchangeable (*akinêta*), the *nomophylakes* 'shall put them into practice all their life long' (957a1–b5). It is important to note that this passage occurs after the introduction of the nocturnal council's legislative function at 951–52, only a few pages before Plato takes up the subject of the council in detail.

In at least four additional contexts, the Athenian provides for the *nomophylakes* to fill in the details of other aspects of the law, although in these passages, he does not say that these laws, once drawn up, are to remain unchanged. The four areas are regulations concerning festivals (828b3–7), rhapsodes and choral competitions (835a2–b4), sexual matters (840c11–e7) and certain penalties (855d1–4).¹⁶

Combining the matters explicitly said to be unchanging in these passages and those discussed above gives us laws explicitly said to be unchanging in five areas: musical education (656c-57b); sacrifices and dances (772c); children's games, dances and music (798a-b); rules for dealing with agricultural cases (846c); and general legal procedures (957a-b). Although it is not stated explicitly in the text, it is likely that the same holds true in the four additional areas just mentioned in which the *nomophylakes* are enjoined to legislate: festivals (828b); rhapsodes and choral competitions (835ab); sexual relations (840c-e); and certain penalties (855d). Although these laws are not explicitly said to be *akinêta*, the procedural similarities between these four areas and the others in which the *nomophylakes* are to legislate makes it likely that Plato intended this. Still, even on a more conservative interpretation in which the last four areas are not included, we have five areas in which laws are explicitly said to be unchanging. We should also bear in mind that, with one exception, Plato nowhere describes procedures for changing laws. The exception is of course the 772 passage, and as we have seen, the process described there makes it almost impossible to change laws.

The build-up to that passage suggests it is a serious discussion of a new topic (see 769a-70e). However, once the role of the *nomophylakes* has been described, the overall subject of revising laws is quickly dropped. The Athenian Stranger turns to discussion of festivals and related matters, before he returns to procedures for amending laws, although perhaps only those in regard to festivals and the like. The fact that this is the most significant discussion of procedures for changing the laws in the *Laws* gives us some reason to believe that the procedures discussed have wider implications, even if this is not explicitly stated in the text. As Morrow says, 'It is very likely that Plato thought of this, or something like it, as the procedure that would naturally be employed in any proposal for amendment' (Morrow, 1960, p. 571). In any event, the unchanging status of the classes of laws we have seen, combined with the extremely demanding procedures for changing them in the one context in which this subject is explicitly discussed, strongly indicates unchanging status for laws in general. This interpretation is supported by what the Athenian Stranger says in Book VII. If people live under laws that have 'remained unaltered for many centuries so that there exists no recollection or report of their having been different from what they are now', then people will be motivated by reverence and fear not to change anything long established. In view of the great benefits of such a system, 'By hook or by crook, then, the lawgiver must devise a means whereby this shall be true of his state' (798a-b).

Accordingly, the first challenge for Morrow's view is to reconcile the unchanging status of many laws with the legislative role of the nocturnal council. In describing the laws we have discussed, the Athenian Stranger never says their unchanging status is subject to periodic review and revision by the nocturnal council. They are simply unchanging. How do we explain this?

A recent attempt is presented by Bobonich. Briefly, Bobonich argues that Plato recognizes the need for a body in the state to review and improve legislation on

an ongoing basis. This will be a responsibility of the nocturnal council. Arguing against the unchangeable status of all laws, Bobonich examines Plato's statement concerning the dangers of innovation at 797a–d and contends that the area under discussion – children's games – is exceptional. There are special reasons to resist change in this area, and also in songs and dances, and these reasons do not pertain to other areas of the law (Bobonich, 2002, pp. 400–3). On the whole, Bobonich believes that Plato's general approach to Magnesia is characterized by openness: 'There is an open texture to the political and social institutions that Plato sketches and we should allow for a range of ways of implementing the basic structure'.¹⁷ In other words, Bobonich believes that different legislative procedures pertain to different kinds of laws. Extrapolating from his account, we may say that there are strong reasons why, of all laws, only those that are explicitly designated unchanging enjoy this status.¹⁸

I do not believe this line of argument succeeds. I will not examine the reasons Bobonich presents for the unique character of the classes of laws he discusses. There is an *ad hoc* quality to such reasons; similarly persuasive reasons could be advanced in support of leaving many other areas of the law unchanged, although Bobonich does not believe they are. In addition, he does not explain why laws in at least two additional areas are explicitly singled out as *akinêta*, those bearing on legal procedures for agricultural cases (846b–c) and legal procedures more generally (957a–b), although perhaps suitable reasons could be found. More important, Bobonich provides no reasons why Plato would have wanted different procedures for revising different laws. Plato never articulates such a policy. There is of course only one passage on procedures for revision, plus remarks on an unspecified role for the nocturnal council. But why different procedures are preferable to one uniform mechanism is a topic Bobonich does not broach.

A more telling consideration is that an argument from particular areas of the law is defeated by the text. The three areas that are explicitly designated *akinêta*, in which this term is used, do not receive this status because of their unique importance but because of their unimportance. Plato says that laws in these areas will be *akinêta* after they have been drawn up or revised by the *nomophylakes*. He does not say this of laws in regard to children's games, which are discussed by the 'old legislators'. But in the three *akinêta* areas, details are to be filled in and revisions made by the *nomophylakes*, because the aged lawgivers do not wish to discuss them. It is only to make clear that, at some point, the process of revision comes to an end that the resulting laws are declared *akinêta* – *akinêta* as opposed to open to further revision. Throughout the bulk of the *Laws* Plato does not explicitly say that other laws – drawn up by the aged legislators – are to be left unchanged, because this is clearly understood from the overall tenor of the work and blanket pronouncements such as that at 797–9.¹⁹ For instance, consider the extraordinarily detailed account of procedures for electing the council described in Book VI, which take up approximately two Stephanus pages (756–8), including Plato's discussion of the significance of these particular procedures. But even

though he obviously views this as a subject of great importance, Plato does not designate these procedures as *akinêta*. The same is true of virtually the entire legal code. It is precisely because they are important enough to require detailed treatment by the aged legislators rather than later filling-in by the *nomophylakes* that these and other laws do not receive this designation.

Accordingly, specific areas of the law that are explicitly described as unchanging are generally unusual in having details that are *less* important than those of countless other laws. Combine these considerations with those discussed above, concerning both the one passage in which a procedure for revising the laws is explicitly discussed and the similarities between the procedure outlined there and the other passages we have noted, and it seems far more likely that all laws are to be covered by the same procedures. This interpretation of course has problems of its own, in raising the specter of inconsistent interpretation of the *Laws*. We will address questions concerning inconsistent textual evidence in the third section.

We turn now to the second consideration against Morrow's view, the procedures for changing and revising laws that Plato discusses. The problem here is that, in all the discussions of procedures for changing laws, the nocturnal council is not mentioned. According to the informal view, the council's main function is dealing with just these eventualities, and so the fact that Plato says nothing about it is difficult to explain. More damaging still, Plato explicitly assigns these legislative tasks to the *nomophylakes*; i.e. he proposes an alternative procedure. The *nomophylakes*' role is discussed in detail at 769a–771a. At one point the Athenian Stranger addresses them as 'saviours of the laws (*sôtêres nomôn*)' (770b). As we have seen, legislative tasks are explicitly assigned to them in many additional passages. And so it is clear that when Plato wrote these sections of the *Laws*, he intended the job of amending and improving laws for the *nomophylakes*. In one passage, the Athenian says that we must make 'the very same men lawgivers as well as guardians of the laws (*toutous autous nomothetas te kai nomophylakas*)' (770a). We should note especially that, as the discussion of revising laws concerning festivals shows, the *nomophylakes* are to make recommendations for changes, which must then be acted upon by the appropriate legal authorities. In other words, the role they are assigned here – and presumably in the other contexts we have noted – is precisely that which the informal view associates with the nocturnal council.

In response to this problem, Morrow contends that the nocturnal council is 'obviously' intended to play a role in these proceedings, which he later compares to that of a learned legislative commission in modern countries (Morrow, 1960, p. 200, p. 571). He claims that this is the 'full meaning' of the 769–71 passage, but later concedes that his interpretation is a 'conjecture, but I think a plausible one' (Morrow, 1960, pp. 501–2, p. 571). Bobonich too argues for a role for the nocturnal council in the procedures: 'The fact that Plato does not explicitly give it a formal role is a weak ground for thinking he intends to deny it any such role' (Bobonich, 2002, pp. 407–8).

This is not convincing. In at least six separate contexts, Plato describes procedures for revising laws, always assigning this responsibility to the *nomophylakes*, and never mentioning the nocturnal council. This is powerful evidence that, at the time he wrote these passages, Plato did not intend the nocturnal council to play this role. Whether Plato intended to 'deny' it such a role, I cannot say. More likely is that the subject never came up in Plato's mind; he never contemplated giving it such a role. A more reasonable interpretation is presented by W. K. C. Guthrie. He notes the conflict between the procedures for changing laws and the informal view, and attributes this to 'an organizational change' which Plato did not fully work out (Guthrie 1962–81, V, p. 369, n. 2). Thus Guthrie suggests a break in the *Laws* – a minor one – the implications of which he does not pursue.

There is a possible response to this body of evidence. All the discussions of changing laws we have seen – the only ones Plato presents in the *Laws* – concern filling in details on matters that the old lawgivers leave open. If we accept an inference that all these matters are to be addressed during an initial ten-year period following the founding of the state, then this may explain why the nocturnal council is not included. Its members will have had little time to pursue their studies; indeed, the precise make-up of their program of studies is one area that remained to be worked out (818d–e). Thus Plato may have intended for the *nomophylakes* to play their legislative role only during the initial period, turning this responsibility over to the nocturnal council when the state was firmly established.

Although there is no evidence to support this interpretation, I believe it is plausible, and may well have been what Plato would have settled on, if he had attempted to reconcile the details of his different accounts. But I believe the absence of direct evidence in support of it tells strongly against it as an explanation of what Plato was thinking when he wrote the passages in question – including, again, the one at 957a–b, which occurs after the topic of the nocturnal council had been raised and only some three Stephanus pages before Plato began to discuss the council in detail. According to a supporter of this interpretation, the main reason for assigning ultimate legislative power to the nocturnal council is its superior intellectual qualifications, based on the course of studies spelled out in Book XII. But it follows from this that the *nomophylakes*, especially during the first few years of the state's existence, are at a lower intellectual level. If Plato had planned to transfer legislative authority after the initial ten-year period for this reason, it would have made little sense for him to designate their handiwork as unchanging. The same reasons that would have led him to replace the *nomophylakes* with the nocturnal council should have led him to have the latter body review the former's handiwork. The most reasonable conclusion to draw from the fact that Plato requires the legislative handiwork of the *nomophylakes* to be left unchanged is that, at the time he wrote the relevant sections of the *Laws*, he did not envision a legislative body with superior intellectual qualities and ongoing responsibilities to revise the laws.

To sum up here, I believe the two areas of the *Laws* we have looked at are inconsistent with Morrow's informal view. There are strong reasons to believe that, at one time, Plato intended the laws in Magnesia to be unchanging, and to the extent that he discussed procedures for changing them, this task was given to the *nomophylakes* rather than the nocturnal council. The questions we must now address concern the implications of these findings.

Inconsistency in the *Laws*

The obvious problem with the interpretation I have advanced is that it leaves the *Laws* with a major inconsistency. In portions of the work, Plato presents the laws as unchanging, while with the introduction of the nocturnal council, he reverses this position, as the council is to have an ongoing legislative function. I will discuss implications of two kinds, concerning, first, how such inconsistencies should be interpreted, and then concerning Plato's political theory.

Ordinarily, it is a rule of sound interpretation that one should attempt to find a consistent account of a given text. If there are apparent inconsistencies, the text should be interpreted charitably; significant efforts should be made to render these consistent with the overall interpretive structure. This may require recognizing peculiar features of the author's historical context, unearthing unspoken assumptions or perhaps supplying missing steps in particular arguments. Other means may be necessary as well, but interpretive charity requires that they be attempted. The *Laws* is perhaps a special case, because of credible reports that the work was unfinished at Plato's death and completed by his student, Philip of Opus.²⁰ Still, any reasonable interpretation begins with a strong presumption that the work is consistent and so apparent problems can be explained. Not surprisingly, Morrow, Bobonich and other commentators adopt this position. Morrow concludes a brief discussion of the problems related to Philip of Opus as follows: 'Nevertheless the "axiom that every word comes from Plato" (as Von Fritz puts it) is an excellent heuristic principle, forcing us to try to explain any obscurities we may find through a more penetrating understanding of Plato's intentions, rather than by hastily blaming Plato's posthumous editor' (Morrow, 1960, p. 518 [with reference removed]; see pp. 515–8). Along similar lines, Bobonich repeatedly rejects accounts that would leave inconsistencies in the text; for instance,

accepting such a flat inconsistency on one of the most fundamental points of the *Laws*'s political theory and explaining it by the hypothesis that Plato's death prevented the final revision of the text is an unattractive interpretive strategy and we should seek less radical expedients (Bobonich, 2002, p. 392; see also p. 394, p. 405).

While I support a general principle of interpretation along these lines, it is imperative that we recognize limits. More precisely formulated, the proper interpretive rule is that there is a strong *presumption* in favor of a given text's consistency, but this presumption is rebuttable. If repeated attempts to generate

consistent interpretations are unsuccessful, we should be prepared to accept that the text is inconsistent, especially if there are strong independent reasons for believing inconsistencies are likely. The alternative is imposing an interpretive structure on some text that is out of keeping with the author's intentions, perhaps reading vast amounts into the text, with no reasonable control.²¹ I am aware of the nest of problems my suggestion raises. What constitutes adequate effort to find a consistent account? At what point do we give up and accept that some text is inconsistent? On these and other questions, scholars will disagree. However, problems like these are inherent in the interpretive enterprise. The alternative is simply willful refusal to recognize that not all texts are consistent, especially if, as is most likely true of the *Laws*, the author died before completing the work.

Accordingly, while I agree with Morrow and Bobonich on how to approach the *Laws*, I also believe that, if there is strong evidence of inconsistency that resists attempts at explanation, we should accept this. I believe the evidence discussed in the preceding section meets this standard, while the existence of major inconsistencies concerning knowledge and law in the *Laws* is easier to accept if we recognize that these problems are not alone. Other significant difficulties are present in the *Laws*, which also defy consistent explanation, although, as we will see, they raise problems of different magnitudes. Let us examine two additional, significant inconsistencies in the *Laws*.²²

First is Plato's discussion of establishing a just city, in Book IV. At the end of Book III, Cleinias reveals that he is one of ten prospective lawgivers entrusted by the Cnossians to draw up laws for their new colony (702b-d). The fiction is maintained throughout the remainder of the *Laws* that the Athenian is assisting Cleinias in his new role by proposing possible laws. Thus it is surprising that in the course of discussing such topics as the location of the city and the nature of the prospective colonists, the Athenian raises the question of the conditions that make it most possible to reform an existing state (709d-e). What is needed is a combination of a virtuous monarch and a 'praiseworthy lawgiver'. These two figures should meet and the monarch should be willing to listen to the lawgiver's advice (709e-10d, 710d-12b). This brief interlude cannot but call to mind Plato's experience in Sicily, his hope that he would be able to steer Dionysius II in the direction of virtuous reform. It is also fits in well with the movement of Plato's political theory from the *Republic* to the *Laws*. In keeping with the idea of the philosopher-king expounded in the former work, for an ideal state to come into existence, kings must be philosophers. In the *Laws*, they must only listen to philosophers. But granted all this, it is difficult to explain what discussion of this topic is doing in this particular context in the *Laws*. The question of how to bring an ideal state into existence has been pre-empted by the fortunate coincidence of Cleinias's new status. About this discussion, Richard Stalley says: 'It is difficult to escape the conclusion that Plato is here recycling material from an earlier period. The passage reeks of the Syracusan affair with Plato himself cast in the role of the

wise legislator and Dionysius as the young tyrant'.²³ No other explanation makes sense, in spite of problems this raises for the overall coherence of the *Laws*. Neither Morrow nor Bobonich discusses the problem.

The second problem area concerns means of selecting the *nomophylakes*. According to the plan the Athenian Stranger lays down, 37 *nomophylakes* are to be appointed at the founding of the state, 18 from the Cnossians and 19 from the colonists. Having described this initial procedure, the Stranger apparently moves on to means of choosing *nomophylakes* in the established state. He says: 'Later on, if the constitution still remains, the selection of officials shall take place as follows' (753b). Since *nomophylakes* are eligible to serve until they are 70 years old, this mechanism should be geared to selecting individual *nomophylakes* as those in office retire or die. However, rather than presenting a means to replace individual *nomophylakes*, the Stranger proposes a second means of replacing all 37 (753a-d). The details of this mechanism need not concern us. All we need note is that, rather than addressing the separate questions of initial and subsequent selection, Plato appears to have worked up two versions of the initial selection and included both.

Trevor Saunders has attempted to solve this problem. He claims that the appearance of conflict can be avoided if we recognize that the initial board is temporary. At some point all 37 will resign, and so the second mechanism will be used to replace them (Saunders, 1970a; see also Piérart, 1973, pp. 129–31). In spite of the ingenuity of this suggestion, it leaves three problems unresolved. First, Plato never says that the initial board will resign. And so, if this is part of his plan, why did he not say so?²⁴ More significant, it is not clear why Plato would propose such a mechanism. What is the utility of having all 37 resign, as opposed to gradually replacing individual members as they either surpass the age limit or die? Saunders recognizes this problem, but believes it is mitigated by the fact that members of the initial board can run for re-election (Saunders, 1970a, p. 234). But this merely pushes the problem back one level. Clear rationale for having them resign and run for re-election is not forthcoming, which Saunders also recognizes but dismisses: 'the brute fact is that he prescribes the election of a fresh 37 [*nomophylakes*] at one blow, which presupposes resignation *en bloc* by the original board' (Saunders, 1970a, p. 234). However, the force of this 'brute fact' is lessened by the fact that resignation is not mentioned in the text. It is Saunders' conjecture. The third problem is that, even with his reconstruction, Saunders' view does not solve the problem of explaining how individual vacancies will be filled once Magnesia is up and running. Reasonably, he suggests 'an adapted version' of the second procedure for this.²⁵

I agree with Saunders that the vacancy problem was probably intended to be solved through an adaptation of the second procedure. But far more likely than Saunders' reconstruction is that this is what Plato meant to say in the second version, but for whatever reason, he never revised his account of the second procedure or otherwise reconciled the two texts. This explanation is far less

cumbersome than Saunders'. But he presumably rejects it because it has Plato conflating two separate proposals. In this particular case, Morrow accepts inconsistency. He believes 'we have two versions of Plato's thought', that Plato's earlier thoughts had not been discarded after he had rethought the matter.²⁶ In a case such as this, our interpretation should be guided by what makes best sense of the text, even if it leaves our author contradicting himself.²⁷ While Morrow recognizes this in regard to this small problem – and many other problems I have cited but not discussed – I believe he and other scholars should also recognize it in regard to the larger questions discussed in this article.

It is beyond the purposes of this article to provide an explanation for the difficulties I have examined. I am not firmly committed to any particular hypothesis – perhaps concerning different strata in the text. Given the state of the evidence, any such interpretation would be speculation. Accordingly, my claim is that these inconsistencies should be recognized, regardless of how we explain them, while the fact they exist is independent of how we explain them. The traditional explanation is that Plato died before he could complete the work. The *Laws* was most likely written over many years, and Plato was not able to consolidate his material completely. As Eduard Zeller wrote long ago:

If we conceive the *Laws* as written by Plato in his old age, when he could no longer give artistic completeness to the work, and suppose that one of his disciples in editing it may have passed over much crudity, carelessness, and repetition, – may have ventured upon certain additions, and unskillfully supplied certain gaps, – these peculiarities are at once accounted for (Zeller, 1876, p. 550).

Although I believe this explanation is on the right track, we should recognize important differences between the inconsistencies we have examined.²⁸ The problem concerning electing *nomophylakes* may be described as one of detail. In explaining a particular electoral procedure, Plato includes two conflicting discussions of one point while apparently omitting a second point. This problem may have resulted from his attempt to revise a particular institutional feature, and could – and presumably, would – have been cleared up through careful revision of the text. No real thinking about his basic assumptions would have been required.

The problem of implementation is more difficult. Part of Plato's discussion simply does not fit in with his overall composition, whether we account for this as recycling of earlier material or through some other hypothesis. But although more awkward than the electoral inconsistency, this too need not raise questions about Plato's basic assumptions.

The problem discussed throughout this article is more troubling, in that fundamental features of Plato's theory are involved. Adherence to unchanging law is bound up with a low estimate of the moral and intellectual capabilities of the citizens of Magnesia. I believe this is generally true of the *Laws*, as seen clearly in such features of the work as Plato's view of education, which works on an

extremely low level, and the detailed regulation of the Magnesian citizens' entire lives.²⁹ To the extent that the nocturnal council is given significant power to change the laws, this implies a higher estimation of people's capabilities. It still should be recognized that, on Morrow's account of the council, Plato stops well short of the untrammelled rule of philosopher-kings, in that the nocturnal council is bound by institutional checks. But *could* the council actually improve the laws? The original laws are presumably drawn up by a lawgiver whose abilities far surpass those of the Magnesians, including members of the nocturnal council with their modicum of philosophical training.³⁰ Philosophical assumptions compatible with the latter possessing the necessary abilities conflict with those that underlie unchanging laws.

For this reason, the conflict discussed throughout this article is especially troubling. Once again, given our evidence, it is not possible to provide a completely satisfying explanation. Definitive pronouncements would be speculation. But in closing, I will call attention to the strong similarities between the position Plato leaves us with in the *Laws* and that of the *Statesman*.³¹ As generally interpreted, in that earlier work too, Plato leaves us with an anomaly, two diametrically opposed alternatives. The first option is direct rule of philosophical or scientific intelligence, which recalls the *Republic*. The position in the *Statesman* is that the scientific ruler, defined by possession of the true political art, should alter the laws as he sees fit, without regard to his subjects' consent and is free to use violence to achieve his ends (*Statesman*, esp. 293d–e; also 296d–e). The other alternative concerns states without scientific rulers. Such states should institute strict adherence to laws, which, in this work too, appear to be unchanging. Rigid separation of scientific rule and this strict rule of unchanging laws eliminates what appears to be reasonable middle ground, that even without philosophical knowledge, the inhabitants of ordinary states should deliberate about their laws and attempt to improve them.³²

Plato discusses the rigidity of the laws of ordinary states through an analogy between laws and prescriptions left by a physician who is away from his patients (295b–e). Plato's spokesman in the *Statesman*, the Eleatic Stranger, notes how absurd it would be for any art, including medicine, to be bound by unbreakable rules. Under such rules, expertise would be 'completely destroyed' (299e; see 298c–e). Such reasoning holds in politics. It would be absurd to require strict adherence to rules – laws – while this is especially true of laws made by people who lack the political art. Plato emphasizes the absurdity of rendering such laws immutable and beyond question with allusions to Socrates' persecution and death and punishment of anyone who would inquire into their nature (299b–c). But strict adherence to the laws is preferable to the alternative. Things would be even worse if those in power violated the rules at will 'for the sake either of profiting in some way or of doing some personal favor' (300a). Accordingly, when the best course, rule by scientific intelligence, is not possible, ordinary states should pursue the second best, rigid adherence: 'the second-best method of proceeding, for

those who establish laws and written rules about anything whatever, is to allow neither individual nor mass ever to do anything contrary to these, anything whatsoever' (300b-c).³³

Discussion in this portion of the *Statesman* is often convoluted and difficult to make out, but there is strong evidence that the laws must be unchanging as well as rigidly adhered to.³⁴ According to the Stranger, when the physician is away, subjects must adhere to the prescriptions he has left (295b-c). One reason that establishing such rules for the arts of navigation and medicine is described as absurd is that the rules are permanent, established alongside unwritten ancestral customs: 'we should then do all our sailing and caring for patients for all future time (*panta ton epeita chronon*) according to these' (298d-e). The permanence of the rules is reinforced by not allowing anyone to investigate the subjects they cover, so 'there must be nothing wiser than the laws' (299b-d). Plato's rationale for ruling out attempting to improve the laws in ordinary states – which were not made by scientific rulers – is apparently lack of faith in ordinary political processes. The Stranger appears to assume that, because politics is corrupt, even non-scientific laws cannot be changed for the better. He apparently does not distinguish between attempting to change laws and violating them. Because of the selfish motives that inspire the former, it should be considered a subclass of the latter.³⁵

In this article, I will not attempt to explain difficulties in the *Statesman*. We should note that Morrow's position on the nocturnal council could be read as an advance upon the position in that work in two respects. First, Morrow leaves us with laws that may be improved, in contrast to what is found in the *Statesman*. And while the scientific ruler in the *Statesman* is uncomfortably close to a tyrant in certain respects, Morrow posits a scientific legislative authority that is bound by law. These points give us additional reasons to appreciate the nocturnal council's sophistication and, again, may have contributed to general acceptance of Morrow's position. But as we have seen throughout this article, severe textual difficulties remain to be explained.

As it seems to me, the evidence we have reviewed lends itself most plausibly to a historical explanation. During part of the time he worked on the *Laws*, Plato still adhered to the polar position of the *Statesman*. At some point, he began to work towards a new position based on the nocturnal council, but he never completed the process of reworking his text to accommodate this change, which, again, was bound up with reworking basic philosophical assumptions. I believe this hypothesis is consistent with the textual evidence. But if it is correct, it implies that the *Laws* is more radically incomplete than many recent scholars have argued. In addition to the many details major and minor that Plato did not succeed in ironing out, the work gives evidence of a major theoretical shift, the implications of which Plato also left incomplete.

(Accepted: 26 July 2006)

About the Author

George Klosko, Department of Politics, University of Virginia, 232 Cabell Hall, Charlottesville, VA 22901, USA; email: gk@virginia.edu

Notes

I am grateful to Daniel Devereux, Jon Mikalson, Ryan Pevnick and my anonymous readers for valuable criticisms and suggestions.

- 1 Translations of Plato are from Loeb Classics Library editions: for the *Laws*, Bury (1942), and for the *Statesman* I use Rowe (1995). Translations are occasionally modified slightly. Stephanus pagination is used. In this article, I assume straightforward readings of Plato's texts; for discussion, see Klosko (2006a, ch. 2; 2006b). For alternative views of the *Laws* and other late dialogues, see Gill and McCabe (1996).
- 2 Barker (1918, pp. 398–410); Sabine (1950, p. 85); Brunt (1993, pp. 250–1); Klosko (1988). For further references, see Morrow (1960, p. 500, n. 2). The term 'afterthought' is Brunt's.
- 3 Kahn (1961, p. 42l); Guthrie (1962–81, V, p. 374); Bobonich (2002, ch. 5); Saunders (1970b, p. 516); Piérart (1973, p. 232); Hall (1981, p. 134); Stalley (1983, p. 112). Compare Brisson (2001), who does not attribute a legislative function to the council (esp. p. 177).
- 4 On checks and balances in the *Laws*, see Klosko (2006a, ch. 13, s. 1).
- 5 *Neóterizé* here clearly means to introduce an 'innovation', as Bury (1942) translates it, *ad loc.*; similarly, Taylor (1961) and Des Places and Diès (1951–6), *ad loc.*, and see Des Places and Diès' footnote, on Vol. 12, Part 2, p. 63. This is the sense of the term and its cognates in *Laws* 798c and *Republic* 424b. These usages are as opposed to the term's political connotations in 758c, as interpreted by Saunders (1970b); Des Places and Diès, and Taylor; compare Bury (all *ad loc.*) The term's use in *Republic* 555d undoubtedly has political connotations, as apparently also at 422a.
- 6 On the detailed nature of the laws in Magnesia as an additional consideration in favor of rigidity, see Klosko (1988, p. 83).
- 7 On Forms in the *Laws*, see the remarks of Cherniss (1953, p. 377).
- 8 See references in note 2, above.
- 9 Morrow (1960, pp. 501–2). However, although the council undoubtedly is foreshadowed in the early books, as Barker notes, none of the passages in question says anything about the council as 'a regular and formal political institution' (Barker 1918, p. 402, n. 3).
- 10 Commentators note the parallels between the career ladders of these younger councillors and those of the philosopher-rulers in the *Republic* (Morrow, 1960, pp. 508–9).
- 11 References in note 3, above.
- 12 This is a weaker claim because (2) implies (1), but not vice versa.
- 13 Compare the argument of Klosko (1988), which defends both (1) and (2). Although I still believe that (2) as well as (1) provides the most plausible interpretation of the *Laws*, and so that the *Laws* is like the *Statesman* in presenting two alternative political arrangements alongside one another (see the third section, below), I no longer believe there is sufficient evidence to demonstrate this. Thesis (2) depends largely on subjective considerations.
- 14 Since the requirement of unanimity is so extreme as to make changing the laws all but impossible – and so defeat the purpose of the procedure – Morrow suggests that each of these *bodies* must go along with the proposed change, as opposed to all individual citizens (Morrow, 1960, p. 571, n. 54). Against this interpretation, see Schöpsdau (1994–2003, *ad loc.*). Bobonich views a requirement of unanimity as rhetorical exaggeration on Plato's part (Bobonich, 2002, p. 573, n. 65). Compare Rousseau's ideal state in the *Social Contract*, which needs few laws, 'and in proportion as it becomes necessary to promulgate new ones, this necessity is universally understood. The first to propose them merely says what everybody has already felt' (Rousseau, 1987, Book IV, ch. 1, pp. 203–4).
- 15 This construal is supported by most scholars, e.g. Morrow (1960, p. 571, n. 54); Barker (1918, p. 363, n. 1); Stalley (1983, p. 82); Schöpsdau (1994–2003, *ad loc.*).
- 16 In the light of these passages, the 'certain persons (*timas*)' (799b1) responsible for drawing up the schedule for dances and music should also probably be identified as the *nomophylakes*.
- 17 Bobonich (2002, p. 394); Saunders holds a similar view (1995, p. 603).
- 18 Bobonich (2002, pp. 402–3); on reasons to leave religious observances unchanged, see Piérart (1973, p. 206).
- 19 On this passage, compare Bobonich (2002, pp. 400–3).
- 20 For discussion, see Taran (1975); Morrow (1960, pp. 515–8).

- 21 For discussion, see Klosko (1983); Klosko (1984b, pp. 6–8). I should note that I do not accept the claim of Leo Strauss and his followers that inconsistencies necessarily point to esoteric meanings that are, as a rule, accessible to only Strauss and his followers. For discussion and references, see Klosko (1986).
- 22 Morrow provides a list of additional inconsistencies in the *Laws*, which he assumes were caused by the unfinished state of the work at Plato's death. See 'irregularities', under '*Laws*' in the index (Morrow, 1960, esp. p. 127, n. 10, pp. 396–8).
- 23 Stalley (1983n, p. 92); P. Friedlander notes that this device does not fit in with the context (Friedlander 1958–69, III, p. 563, n. 52).
- 24 Piérart agrees (1973, p. 131, n. 16).
- 25 Saunders (1970a, p. 234). Morrow too views this second procedure as 'essentially' what Plato envisions for later elections (Morrow, 1960, pp. 206–7).
- 26 Morrow (1960, pp. 204–5; see also pp. 238–40). His interpretation is criticized by Saunders (1970a, p. 232).
- 27 Bobonich only mentions the problem, noting the plausibility of Saunders' solution (Bobonich, 2002, p. 570, n. 28). Stalley glosses over the problem (Stalley, 1983, p. 187), as does Brisson (2001, p. 165, n. 16).
- 28 My discussion of this subject is indebted to comments of my anonymous readers for *Political Studies*.
- 29 See Klosko (2006a, chs 12–3). Compare the quite different interpretation of Bobonich (2002); for criticism of Bobonich's view of the movement of Plato's thought, see Kahn (2004).
- 30 Compare the status of the philosopher-kings in the *Republic*, who are explicitly said to possess 'the same conception of the constitution (*logon echon tés politeias ton auton*)' that the lawgivers employed in drafting the city's laws (*Republic*, 497c–d). This allows the philosopher-rulers to revise even key features of the state; see Klosko (1984a).
- 31 For discussion of the *Statesman*, including dating the work and detailed accounts of the alternative positions discussed here, see Klosko (2006a, ch. 11).
- 32 As pointed out by Annas and Waterfield (1995, p. 68, n. 65).
- 33 At least three times in the *Statesman* Plato refers to this as the 'second' (*deuteron*) option (297e4, 297e5, 300c2), which is evidence of the link between this work and the *Laws* (739a4, a7, b3, e4, 875d3).
- 34 For discussion of the relevant passages, I am indebted to Daniel Devereux.
- 35 For further discussion, see Klosko (2006a, ch. 11, s. 4). In the text of the *Statesman*, there is some ambiguity about the exact status of ordinary laws. In 300b–c, the Stranger appears to present a more positive view of them, which is inconsistent with his overall discussion. This issue cannot be discussed here, though I should note that I reject the recent attempt by Christopher Rowe to explain this anomaly. Rowe's translation of 300c5–7 is inconsistent with the clear sense of the Greek; see Rowe (1995, *ad loc.*). For other translations, see Annas and Waterfield (1995); Diès (1935); Skemp (1952). Even if Rowe's explanation for 300c5–7 were accepted, this would still leave intact the similarly anomalous 300b1–6 – his account of which is unconvincing (see *ad loc.*).

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