

## The Nocturnal Council in Plato's *Laws*

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Serious problems are encountered in integrating the nocturnal council, described in Book XII of the *Laws*, into the institutional structure presented in Plato's earlier Books. These difficulties are addressed by Glenn Morrow in *Plato's Cretan City*, and most authorities have accepted Morrow's 'informal view'. This article contends that an alternative account, the 'institutional view', accords more closely with the evidence.

The relationship between the nocturnal council, discussed in Book XII of the *Laws*,\* and the institutions described in the earlier Books has long been the source of scholarly controversy. Scholars have disagreed about the role that the nocturnal council is supposed to play in Magnesia and whether this is consistent with the rest of the *Laws*. But since the publication of Glenn Morrow's *Plato's Cretan City* in 1960, something of a consensus has emerged. Morrow argues that the council is fully in keeping with the rest of the *Laws* and that it is intended to play an advisory role, with only limited formal political power.<sup>1</sup> In his review of *Plato's Cretan City*, Charles Kahn expresses his belief that Morrow has settled these questions once and for all,<sup>2</sup> and many subsequent scholars have been persuaded.<sup>3</sup> In his recent book on the *Laws*, R. F. Stalley is so convinced of the consistency of Book XII and the rest of the *Laws* that he deals with the subject in a single paragraph, attributing concern about the matter to the 'tidyminded'.<sup>4</sup>

Because of the importance of the nocturnal council for understanding the *Laws*, and indeed Plato's political thought as a whole, we should be careful about putting these questions to rest. What one makes of the nocturnal council is obviously central to one's view of the development of Plato's political theory, especially the extent to which aspects of the *Laws* are seen as departing from the

\* Note on text and translations. For the text of the *Laws* I follow E. Des Places and A. Diès, *Les Lois* (Budé series, Vols XI–XII) (Paris, Société d'Édition 'Les Belles Lettres', 1951–56). Translations are based on R. G. Bury, *Plato's Laws* (2 vols, Loeb edition) (London, William Heinemann, 1942).

<sup>1</sup> G. Morrow, *Plato's Cretan City* (Princeton, Princeton University Press, 1960), Ch. 9.

<sup>2</sup> Charles Kahn, Review of *Plato's Cretan City* in *Journal of the History of Ideas*, 22 (1961), 421.

<sup>3</sup> W. K. C. Guthrie, *A History of Greek Philosophy* (Cambridge, Cambridge University Press, 1962–81), Vol. V, p. 374; T. Saunders (ed. and translator), *Plato: The Laws* (Harmondsworth, Penguin, 1970), p. 516; M. Piérart, *Platon et la Cité grecque* (Brussels, Académie royale de Belgique, 1973), p. 232; R. Hall, *Plato* (London, Allen & Unwin, 1981), p. 134. These questions are not broached in T. Pangle, *The Laws of Plato* (New York, Basic Books, 1980) or L. Strauss, *The Argument and Action of Plato's Laws* (Chicago, University of Chicago Press, 1975).

<sup>4</sup> R. F. Stalley, *An Introduction to Plato's Laws* (Indianapolis, Hackett, 1983), p. 112.

*Republic*. Such important themes in the *Laws* as Plato's view of the feasibility of rule by rigid laws, the relationship between rule by law and rule by philosophic wisdom and the place of philosophic wisdom in the second-best state, will be heavily affected by one's assessment of the nocturnal council. In addition, one's view of the overall coherence of the *Laws* and the extent to which it appears to be a finished work will rest heavily on one's view of the nocturnal council. Accordingly, this article examines the evidence both for and against Morrow's interpretation. It is argued that, though Morrow does provide an attractive solution to serious problems in the *Laws*, this does not seem to be what Plato had in mind, and an alternative solution is proposed. Discussion is carried on in five sections. Section I reviews some problems in reconciling the nocturnal council with the material presented earlier in the *Laws*, partially by way of background. Section II discusses Morrow's view, which, for reasons that will become clear, is referred to as the 'informal view'. Sections III and IV examine problems with the informal view, while Section V is given over to an alternative explanation.

### I

Probably the main reasons that scholars are uneasy about Plato's presentation of the nocturnal council are the suddenness and the sketchiness of its introduction. The council first appears in Book X of the *Laws*, in connection with interrogating imprisoned atheists<sup>5</sup> but there is little indication of the exalted role it is to play. In Book XII it is reintroduced in connection with the need to learn from authorized foreign travellers about possible improvements in the laws.<sup>6</sup> Plato indicates that the council is to have a legislative function of some sort, and so must study various subjects.<sup>7</sup> But little more is said, before he moves on to discuss diverse regulations concerning such things as stolen goods, property holdings and executions, before returning once again to the nocturnal council. The core of the discussion here is that in order to achieve its fullest completion, Magnesia must contain an element with 'reason and sense', an element that understands the aim the laws are intended to achieve and what sorts of laws are necessary for this end.<sup>8</sup> Because Magnesia's goal is the inculcation of virtue, the council must study this,<sup>9</sup> including the unity of the virtues.<sup>10</sup> The council must also learn about the gods and so study the theological arguments presented in Book X.<sup>11</sup> Additional subjects of study are indicated—the nature of the soul, musical theory, astronomy<sup>12</sup>—but the curriculum is not described in detail. At one point Plato says that it cannot be spelled out in advance.<sup>13</sup> The councillors' education takes up the bulk of Plato's account but even in this regard his discussion is so sketchy that his student,

<sup>5</sup> 908a, 909a. Unaccompanied page references are to the *Laws*.

<sup>6</sup> 951c–d.

<sup>7</sup> 951e–952a.

<sup>8</sup> 962b–c.

<sup>9</sup> 962e–963a.

<sup>10</sup> 965c–d.

<sup>11</sup> 966c–d.

<sup>12</sup> 966d–967a.

<sup>13</sup> 968e; see below, p. 78.

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Phillip of Opus, wrote the *Epinomis* to elaborate upon it further.<sup>14</sup>

In numerous ways, the great importance of the nocturnal council is not reflected in the treatment it receives. Whereas Plato devotes endless space to the procedures for selecting numerous minor officials, the composition of the council is discussed only briefly and Plato's two accounts are not obviously consistent.<sup>15</sup> In addition, Plato does not directly indicate the size of the council's membership. On the basis of what he does say, it should number about a hundred, which is quite a high figure.<sup>16</sup>

Especially serious problems are caused by the role the group is to play in the state. Though this question is of great importance, Plato is again largely silent on the matter. In several respects the nocturnal council recalls the Guardians of the *Republic*. Its members are referred to as the 'guardians' of the state,<sup>17</sup> at one point as the 'real guardians of the laws' (*tous ontōs phylakas . . . tōn nomōn*).<sup>18</sup> The council's programme of studies also recalls the *Republic*. There is clear overlap in regard to such subjects as astronomy and musical theory, as well as mathematics.<sup>19</sup> Thus certain scholars argue that Plato does not describe the council's curriculum in detail because it is obviously meant to replicate that of the *Republic*.<sup>20</sup> It appears that the council's members will study the Forms, though there is a certain lack of clarity in this regard.<sup>21</sup>

The extent of these similarities suggests the possibility that the council is meant to play a role along the lines of that of the *Republic*'s Guardians. This view is supported by Plato's language. The council is described as the 'anchor' of the city;<sup>22</sup> it is repeatedly referred to as the city's 'saviour'.<sup>23</sup> It supervises (*epopteuonton*) the laws. At one point Plato says that, if this 'divine council' should come into existence, 'then the state must be entrusted to it'.<sup>24</sup> So it is not surprising that numerous scholars have viewed the council as revamped philosopher-kings,<sup>25</sup> a view that is supported by the evidence of Aristotle.<sup>26</sup>

The major problem with this interpretation is that it does not mesh well with

<sup>14</sup> On the authorship of the *Epinomis*, see L. Taran, *Academica* (Philadelphia, Humanities Press, 1975), pp. 3–47.

<sup>15</sup> 951d–e, 961a–b; see Morrow, *Plato's Cretan City*, pp. 503–4; for full discussion, see Piérari, *Platon et la Cité grecque*, pp. 210–28.

<sup>16</sup> See G. Klosko, *The Development of Plato's Political Theory* (London, Methuen, 1986), p. 217.

<sup>17</sup> 964d–e.

<sup>18</sup> 966b.

<sup>19</sup> 967d–e; cf. 817e–818a.

<sup>20</sup> P. Shorey, *What Plato Said* (Chicago, University of Chicago Press, 1933), p. 405; also Guthrie, *History*, Vol. V, pp. 373–4; Taran, *Academica*, pp. 27–8.

<sup>21</sup> See especially V. Brochard, *Etudes de philosophie ancienne et de philosophie moderne* (Paris, J. Vrin, 1966), Ch. IX; Guthrie, *History*, Vol. V, pp. 378–81; I find the brief remarks of H. Cherniss convincing in his review of G. Muller, *Studien zu den platonischen Nomoi, Gnomon* 25 (1953), p. 377; cf. Stalley, *Introduction*, pp. 135–6.

<sup>22</sup> 961c.

<sup>23</sup> 960b–e.

<sup>24</sup> 969b; see below, pp. 77–8.

<sup>25</sup> E. Barker, *Greek Political Theory: Plato and His Predecessors* (London, Methuen, 1918, reprinted 1947), pp. 406–10; G. Sabine, *A History of Political Theory* (revised ed.) (New York, Henry Holt, 1950), p. 85; J. Luccioni, *La pensée politique de Platon* (Paris, Presses Universitaires de France, 1958), pp. 288–9. Cf. Klosko, *Development*, Ch. 13, Section 3, where, in an earlier treatment, I take a more conservative view than that presented in this paper.

<sup>26</sup> Aristotle, *Politics*, 1265a2–4.

what Plato appears to say throughout the bulk of the *Laws*. According to this account, the rule of law, which is espoused throughout the first 11 Books, appears to give way to the rule of philosophy, after the model of the *Republic*. Thus Sabine says that the nocturnal council 'is entirely out of keeping with the purpose which Plato has been following' and with the state as sketched in the earlier Books. It 'not only fails to articulate in any way with the other institutions of the state but also contradicts the purpose of planning a state in which the law is supreme'.<sup>27</sup> Probably the best-known adherent of this view of the council is Barker, according to whom Plato was 'not of the same mind' when he wrote Book XII of the *Laws* as when he wrote the earlier Books.<sup>28</sup> According to Barker,

The nocturnal council is the 'perfect guardians' of the *Republic* turned collegiate and set to control, in ways that are never explained, a system of political machinery into which they are never fitted.<sup>29</sup>

As indicated above, this is also the view of Aristotle. So adherents of the unity of the *Laws* must explain the role the council is to play and how this can be fitted in with Plato's discussion in the earlier Books.

## II

As already noted, in recent years many scholars have come to believe that these problems have been resolved by Morrow's informal view. Scholars who adhere to this position generally make three claims. First, they present evidence that the nocturnal council was part of Plato's plan throughout the *Laws*, that it is not introduced unexpectedly in Book XII but is anticipated in the earlier Books. Secondly, they argue that it is not inconsistent with the state's other political institutions and can be blended with them into a rational constitutional structure. Finally, they hold that the council makes an important contribution to the state, so Plato's reasons for introducing it are readily understood. These contentions will be examined in turn.

Looking back on the earlier Books of the *Laws* from Book XII, one can retrospectively detect a number of allusions to the nocturnal council.<sup>30</sup> In Book I, the Athenian Stranger says that in a properly drafted constitution the lawgiver will entrust his statutes to the care of guardians (*phylakas*), guided some by wisdom, others by true opinion (*tous men dia phronēseōs, tour de di' alēthous doxēs*).<sup>31</sup> This obviously foreshadows the nocturnal council. In introducing the body in Book XII, the Athenian stresses the importance of having an element in the state capable of grasping the laws intellectually (*gnōmē*), not only by habit (*ethesin*).<sup>32</sup> An additional indication is found in Book VI,<sup>33</sup> where the Athenian says that the original lawgiver cannot achieve a condition in which the state improves through time unless he leaves behind a successor (*diadochon*)

<sup>27</sup> Sabine, *History*, p. 85.

<sup>28</sup> Barker, *Greek Political Theory*, p. 408, n. 1.

<sup>29</sup> Barker, *Greek Political Theory*, p. 406.

<sup>30</sup> See Morrow, *Plato's Cretan City*, pp. 501–2.

<sup>31</sup> 632c.

<sup>32</sup> 951b.

<sup>33</sup> 769a–771a.

who knows how to conserve and amend laws. This function is assigned to the *nomophylakes* (guardians of the laws, though the Greek term is preferable for reasons of clarity), who will be legislators as well as guardians of the laws (*nomothetas te kai nomophylakas*). The discussion here clearly recognizes the importance of a function virtually identical to that later assigned to the nocturnal council.<sup>34</sup> A further anticipation is found in Book VII, where the Athenian says that education in mathematics and astronomy is reserved for a select few, 'and who these are we shall say when we have come near the end—since that will be the proper place'.<sup>35</sup> This must be read as an allusion to the nocturnal council.<sup>36</sup>

Though the council undoubtedly is foreshadowed in the early Books, it is not clear how much the intimations prove. The most elaborate passage, 769–71, will be seen to conflict with the discussion in Book XII. Though the other passages note the importance of an element in the state with superior intellectual powers and attainments, as Barker notes, they say nothing about the nocturnal council as 'a regular and formal political institution'.<sup>37</sup> They certainly give no indication of the council's political function and how this can be reconciled with Magnesia's other institutions.

According to the informal view, and this is its second claim, Plato in effect never describes the council's formal political role, because it does not have one. Its only formal responsibilities are those noted above, examining imprisoned atheists<sup>38</sup> and interrogating observers returned from abroad.<sup>39</sup> But according to Morrow and most other recent scholars, the council would be able to play an important role in the state, even without formal political power. Because it contains the ten senior *nomophylakes*, the auditors and the present and past commissioners of education—the 'inner circles of the ruling class'<sup>40</sup>—it would obviously be able to make its influence felt in such matters as formal revision of laws and everyday administration and interpretation of laws.<sup>41</sup> An additional point in favour of this account is that it assigns the council a role in Magnesian society similar to that exercised by the Academy in Plato's Greece.<sup>42</sup> Though the Academy had no official position, it managed to attain a certain amount of political influence.<sup>43</sup> Various scholars detect a direct allusion to the Academy at 968b, where the Athenian mentions unnamed 'others' who might be able to help him with forthcoming legislation.<sup>44</sup>

The informal view's final claim is that its account of the nocturnal council is eminently reasonable. First, the knowledge attained by the council would obviously be of great assistance to the state. If the laws are not to be 'rigidly and

unthinkingly adhered to',<sup>45</sup> there must be some body in the state capable of understanding the reasoning behind them.<sup>46</sup> The great importance of this knowledge is reflected in Plato's repeated description of the council as the 'saviour' of the state. Moreover, the council is clearly the only body in the state with the requisite knowledge.

In addition, according to the informal view, the council fulfils another important function, by seeing that top offices in the state are staffed with worthy individuals. Its younger members are selected according to merit,<sup>47</sup> as opposed to the various combinations of election and the lot used to staff virtually all other offices. Accordingly, service in the council publicly identifies certain young men as worthy candidates for future office. In so far as they undertook the programme of intensive studies assigned to them,<sup>48</sup> they would be prepared for future responsibilities. Commentators note the parallels between the career ladders of these younger councillors and those of the philosopher-rulers in the *Republic*.<sup>49</sup>

### III

Though we have seen strong arguments in favour of the informal view, a closer examination of the text of the *Laws* shows that even stronger considerations tell against it. The first point against the informal view is that there is no direct evidence for it. At no point in the *Laws* does Plato state that the nocturnal council is to work outside of formal political channels through the influence of its members. This function has been surmised by Morrow and other commentators in order to supply a role for the council, while making sense of the fact that Plato does not integrate it into the institutional structure described in the earlier Books.<sup>50</sup> Thus their argument is: (a) the fact that the council is not assigned a specific place in the institutional structure entails (b) that it is not meant to have one. But this inference does not necessarily hold; (a) is compatible with conclusions other than (b).

Not only is there no direct evidence for the informal view but it also conflicts with the text of the *Laws* in numerous specific respects. We begin with the clearest instance of inconsistency. In bringing his account of the nocturnal council to a close at the end of Book XII, the Athenian says: 'If this divine council actually comes into existence . . . we must hand the state over to it (*paradoteon toutō tēn polin*).'<sup>51</sup> This remark—especially considered in its immediate context—clearly implies that the council is to be the main political authority in the state. Since this is the single clearest indication of the council's constitutional position, it should be taken seriously. Morrow is aware that this

<sup>34</sup> See below, pp. 81–2.

<sup>35</sup> 818a.

<sup>36</sup> Other possible indications are found at 747b and 809d.

<sup>37</sup> Barker, *Greek Political Theory*, p. 402, n. 3.

<sup>38</sup> 908a, 909a.

<sup>39</sup> 952b–d.

<sup>40</sup> Kahn, Review of Morrow, *Plato's Cretan City*, p. 421.

<sup>41</sup> Morrow, *Plato's Cretan City*, pp. 510–11; see also the scholars cited above in notes 2–4.

<sup>42</sup> Morrow, *Plato's Cretan City*, pp. 509–10, 573.

<sup>43</sup> See P. M. Schuhl, 'Platon et l'activité politique de l'académie', *Revue des Études Grecques*, 59 (1946), 46–53.

<sup>44</sup> Morrow, *Plato's Cretan City*, p. 508; Guthrie, *History*, vol. V, p. 373.

<sup>45</sup> Morrow, *Plato's Cretan City*, p. 501.

<sup>46</sup> The comparison with *Republic* 497c–d is instructive here; Morrow, *Plato's Cretan City*, pp. 502–3.

<sup>47</sup> 951c–952a, 961a–b.

<sup>48</sup> Especially 952a.

<sup>49</sup> Morrow, *Plato's Cretan City*, pp. 508–9.

<sup>50</sup> 'Yet a little reflection will show us that there are many ways whereby the Council could influence public policy in an interpretative and advisory capacity . . .' (Morrow, *Plato's Cretan City*, pp. 510–11).

<sup>51</sup> 969b.

remark conflicts with his interpretation and so is at pains to downplay its importance. His case against it amounts to the contention that it is an isolated remark and so should not receive much weight.<sup>52</sup> Accordingly, evidence that this is not an isolated remark does serious damage to the informal view.

Such evidence is found in an important passage at 968c, though Plato's language is difficult to construe and has generated controversy. This passage is concerned with legislation needed to set up the council. The Athenian says:

(i) it is not possible at this stage, Megillus and Cleinias, to enact laws about these things (*peri tōn toiousōn*), before it [i.e., the nocturnal council] is duly framed; (ii) when it is, its members must themselves ordain what authority they should possess (*tote de kurios hōn autous dei gignesthai nomothetein*); . . .<sup>53</sup>

The meaning of clause (i) is clear but (ii) is subject to dispute. The translation of (ii) given here is Bury's.<sup>54</sup> According to this construal, the council is to decide for itself the authority that it will possess, after it has been set up. Of course, according to the informal view, the council's role has been determined already and is to fall outside the existing political structure. Thus the conflict is sharp; this passage supports a line of interpretation concerning the council's role similar to that indicated in the passage from 969b just discussed.

Now, because the language in 968c is so difficult, no great weight should be placed on the specific translation I have presented. Other construals of the crucial clause are found in the literature and must be discussed, a task relegated here to the notes. It is important to remark that the construal of the passage demanded by Morrow's view is improbable. Though Bury's construal is also a minority reading, it is similar to the most commonly accepted reading, presented for instance by Taylor:

(i) As to laws on such a point . . . it is impossible to lay them down now, before the institution has been framed—(ii) it will be time to define its statutory powers when it exists . . .<sup>55</sup>

According to this interpretation too, the council's constitutional position remains to be determined, though the council will not decide this for itself. Thus this reading too contradicts the informal view of the nocturnal council's place in the state.<sup>56</sup>

Other aspects of Plato's discussion conflict with the informal view. In 965c the Athenian describes the ideal state presided over by the nocturnal council as a 'divine polity' (*theias politeias*). As Guthrie points out, this is a slip.<sup>57</sup> Magnesia is only the 'second best' state.<sup>58</sup> In Book V Plato says that 'our converse is with men, not gods'.<sup>59</sup> Thus in describing this 'second best' state as 'divine', Plato departs from the spirit of the earlier books. An additional specific conflict is seen at 964b, where Plato mixes up the nocturnal council with the *nomophylakes*.<sup>60</sup> In itself this is a small matter, but since it fits into a pattern of apparent conflicts, it should be noted.

Our final consideration here is general and subjective but still important. One problem with the informal view is that it does not seem to justify the exalted language Plato uses to characterize the nocturnal council. He repeatedly describes it as the 'saviour' of the state, as the state's 'anchor'. We have seen that members of the council are called 'guardians' and the 'real guardians of the laws'. In addition, the individual councillor is described as an *archōn*, 'magistrate' or perhaps 'ruler', 'of the whole state'.<sup>61</sup> In sum, the function assigned to the nocturnal council does not accord with Plato's language.

Thus we have a series of instances, both specific and general, in which the informal view conflicts with what Plato says in Book XII. It should be noted that these are not isolated inconsistencies; all fall into a pattern. It will be seen in Section V that the institutional view is able to cover the evidence and readily clear all of them up.

#### IV

This pattern of conflict between the informal view and the text of the *Laws* is

nocturnal council. Taran's argument in favour of his reading is unconvincing; the fact that 968d5–e5 refers only to education does not prove that 968e5 does also. Moreover, Taran's view has grave difficulties when it comes to reconciling the means through which he postulates Magnesia is to be founded and the means described in the earlier books (which are themselves inconsistent; compare 709e–711d, and Book IV *et seq*; for problems in reconciling the earlier accounts, see Stalley, *Introduction*, pp. 91–2; for Taran's account, see *Academica*, pp. 19–24). (c) It should be noted that the construal of Cherniss and Taran appears to be compatible with both the view of the council's authority defended in this paper and the informal view. (d) Morrow defends his view mainly on the basis of his construal of *tōn toiousōn* in 968c3–4, as applying exclusively to educational matters, implicitly excluding matters of political authority (*Plato's Cretan City*, p. 513, n. 22). This point has little logical support. Of commentators checked, Saunders supports Morrow's reading, while Cherniss and Taran offer a similar construal. [Saunders should be criticized for impermissibly loose translation. He (quite openly) reads Morrow's interpretation into the text (*Laws*, p. 529, n. 13). This is one context in which Pangle's criticisms of Saunders's 'Penguinification of Plato' clearly apply (*Laws*, pp. x–xi).] (e) The final sentence of Morrow's note is remarkably weak; it makes one wonder if he completely grasped the point at issue. (f) Though Diès gives the majority view, the account of the nocturnal council's powers presented in his *Introduction* is actually the Bury view ['Déterminer à l'avance par une loi leurs pouvoirs serait impossible; une fois en place, ils les déterminent eux-mêmes.' (XI, p. lxxxviii)]; (g) English translations of the sentence: Taylor and Jowett present the majority view; Bury is as indicated; Saunders supports Morrow; I am unable to make out Pangle's construal of the Greek.

<sup>57</sup> *History*, vol. V, p. 371, n. 5.

<sup>58</sup> 739a–c, 875d.

<sup>59</sup> 732c.

<sup>60</sup> Cf. 966b; Stalley, *Introduction*, p. 134.

<sup>61</sup> 968a; some translations: 'magistrate' (Bury, Taylor and Diès); 'govern' (i.e., 'governors') (Saunders); 'ruler' (Pangle).

<sup>52</sup> Morrow, *Plato's Cretan City*, p. 512; cf. Taran, *Academica*, p. 22, n. 83.

<sup>53</sup> 968c3–5; divisions supplied.

<sup>54</sup> Bury, *Laws*. This is based on the construal of C. Ritter, *Platons Gesetz* (Munich, Beck, 1896), which is called 'very attractive' by E. B. England, in the main English commentary on the text, *The Laws of Plato* (Manchester, Manchester University Press, 1921).

<sup>55</sup> A. E. Taylor (translator), *The Laws*, in E. Hamilton and H. Cairns (eds), *The Collected Dialogues of Plato* (Princeton, Princeton University Press, 1961) (divisions supplied).

<sup>56</sup> Points concerning 968c3–5: (a) The majority reading is supported by Taylor, Jowett, Robin England, Muller and Apelt (references in Morrow, *Plato's Cretan City*), and also by Diès (*Des Places and Diès, Lois*). I reject it because of the trenchant criticisms of Cherniss (Review of Muller, *Studien zu den platonischen Nomoi*, pp. 373–4). Cherniss's construal of the passage is supported by Taran (*Academica*, p. 21, n. 78). (b) I accept Bury's view, because Cherniss's criticism of the majority view does not apply to this; he does criticize this for grammatical awkwardness. I prefer this to the Cherniss–Taran view, the language of which is equally awkward, while neither Cherniss nor Taran explores the implications of their reading by discussing the constitutional position of the

reinforced by important discrepancies with the earlier Books. I will concentrate here on two particular conflicts.

First, as described in the earlier Books, the laws of Magnesia are to be all but completely resistant to change. This rigidity does not rest well with the informal view, according to which the council is a body intended mainly to give advice about changing laws, and according to which the council's function is still important enough to justify Plato's exalted description of it. Though Plato does not explicitly say that the laws are to remain unchanged, numerous considerations suggest that this is the case. The Athenian wishes to emulate Egypt, in which matters pertaining to music and other arts were left unchanged for thousands of years.<sup>62</sup> He declares that innovation in children's games is a great danger, as it leads to changes in the laws, the greatest of all ills (*megistou kakou*) in the state. Since stable laws are a great good, the lawgiver must aim at stability, again, akin to that of Egypt.<sup>63</sup>

Though Plato discusses procedures for changing the laws, this does not appear seriously to undermine their rigidity. In Book VI the Athenian says that the original lawgiver cannot provide for all contingencies and so the *nomophylakes* must be prepared to make needed changes.<sup>64</sup> The discussion here is obscured by the fact that the Athenian abruptly turns his attention to matters connected with various celebrations and festivals.<sup>65</sup> The details of these occasions must be filled in by the officers of the choir working in conjunction with the *nomophylakes*.<sup>66</sup> Improvements will be made during a ten-year trial period, until all details are worked out.<sup>67</sup> The text then continues: 'this done they shall decree them [the improvements] as fixed rules and employ them as well as the rest of the laws originally decreed by the lawgiver' (*meta tōn allōn nomōn hous etaxe kat' archas ho theis autois nomothetēs*).<sup>68</sup> It is not clear exactly what the Athenian means here by 'the rest of the laws'. This could refer to all the laws of the city or only those concerned with the occasions currently under discussion. The narrower, more conservative construal is preferable,<sup>69</sup> but because the passage directly follows the discussion of amending laws in general, the wider construal is possible. A strong indication that Plato intends all laws to be left unchanged is that he provides similar trial periods for improvements in other areas, after which, we may surmise, these too must remain unchanged.<sup>70</sup>

Once the trial period has ended, it is difficult indeed to alter laws. If changes are deemed 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 have their way.<sup>71</sup> Again, though this specific context probably

<sup>62</sup> 656d–657a.

<sup>63</sup> 798a–b, 799b.

<sup>64</sup> 769b–771a.

<sup>65</sup> 771c–772a.

<sup>66</sup> 772a.

<sup>67</sup> 772a–c.

<sup>68</sup> 772c.

<sup>69</sup> England, *Laws*, on 772b6; Stalley, *Introduction*, p. 82; Morrow, *Plato's Cretan City*, p. 571, n. 54; Barker, *Greek Political Theory*, p. 363, n. 1; Guthrie, *History*, Vol. V, p. 368.

<sup>70</sup> E.g., 843e, 846b–d, 957b; in 846b–d and 957b Plato stresses the permanence of the regulations once they have been enacted. See Barker, *Greek Political Theory*, pp. 352–3; Stalley, *Introduction*, pp. 81–2; cf. Hall, *Plato*, pp. 98–100.

<sup>71</sup> 772c–d.

applies only to the laws concerning festivals, the existence of similar trial periods for numerous other areas of the legal code makes it highly probable that similar procedures are intended for all laws. So it appears that once the trial period is over, all but insuperable obstacles must be overcome before laws can be changed. It is not surprising that Morrow is discomfited by the procedures for changing laws and argues that the clear sense of 772c–d should be set aside.<sup>72</sup>

An additional reason for believing that the laws are to be left virtually unchanged is the extreme detail into which the Athenian goes. In the *Statesman* Plato makes an important distinction between government by philosophical wisdom and government by laws.<sup>73</sup> Laws are deficient because they are always general, designed for average people under average conditions. Plato likens them to prescriptions that a doctor would leave if he had to be away from his patients for a time. The rule of philosophical wisdom need not be constrained by laws. Just as the doctor, who possesses the knowledge that goes into writing prescriptions, would not feel bound by past prescriptions, the statesman, who knows the science of ruling, need not abide by past legislation. Thus for Plato the direct rule of scientific intelligence is free from laws.<sup>74</sup> Accordingly, in the *Republic* the philosophers do not draw up legislation for many areas of the state, leaving this for future rulers. Among such areas explicitly mentioned are rules concerning business dealings, lawsuits, juries and markets,<sup>75</sup> that is, matters that are covered in exhaustive detail in the *Laws*. It is likely that in drawing up extensive rules for these areas, Plato recalled how he had treated them in the *Republic*. Accordingly, even though the Athenian too leaves specific areas of the legal code to his successors, the detailed nature of his legislation throughout the first 11 Books—and parts of Book XII—is out of keeping with a state that contains a philosophical element. Because such a body would be able to fill in the details for itself, it appears that there is tension between Book XII of the *Laws* and the earlier Books.

This tension is magnified when we turn to other aspects of the procedures for changing laws. This is my second point. No role in connection with changing laws is assigned to the nocturnal council. We have seen that Plato discusses improving the work of the original lawgiver. It seems that there is to be a period immediately after the founding of the state during which laws are to be revised and then left for ever unchanged. The Athenian mentions various aspects of the legal system that must be completed or otherwise improved. Examples are laws concerning religious festivals,<sup>76</sup> contests,<sup>77</sup> civil disputes<sup>78</sup> and legal procedure.<sup>79</sup> In addition, a programme of higher studies must be worked out<sup>80</sup>

<sup>72</sup> Morrow, *Plato's Cretan City*, p. 571, n. 54. The main consideration Morrow is able to bring against rigidity is the function he assigns to the nocturnal council.

<sup>73</sup> *Statesman*, 293e, ff.

<sup>74</sup> See G. Klosko, 'Provisionality in Plato's Ideal State', *History of Political Thought*, 5 (1984), 171–93; Klosko, *Development*, Ch. 10, Section 2.

<sup>75</sup> *Republic*, 425c–d; see also *Republic*, 423e, 427a, 423b–c, 460a; also 414a, 412b, 379a, 398b, 400b–c; cf. 607c–608a, 416b–c, which concern central aspects of the ideal state.

<sup>76</sup> 828b.

<sup>77</sup> 835a.

<sup>78</sup> 843e.

<sup>79</sup> 846b–c, 855c–d, 957a.

<sup>80</sup> 818d; cf. 968c–e.

and the details of certain fines<sup>81</sup> and festivals<sup>82</sup> determined. It is striking that in not one of these contexts does the Athenian mention the nocturnal council. According to the informal view, the council is brought into existence to provide for just these eventualities and so the fact that Plato does not mention it is difficult to explain. Moreover, to make matters worse, Plato explicitly assigns these legislative tasks to the *nomophylakes*. He discusses their role at some length at 769a–771a, at one point addressing them as ‘saviours of the laws’ (*sōtēres nomōn*).<sup>83</sup> In many of the other passages, legislative tasks are explicitly assigned to them.<sup>84</sup> So there can be little doubt that when Plato wrote these sections of the *Laws*, the job of amending and improving laws was intended for the *nomophylakes*. At one point 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*).<sup>85</sup> It should be emphasized that, as the example of revising laws concerning festivals shows, the *nomophylakes* are to make recommendations concerning changes, which must then be acted upon by the appropriate legal authorities. In other words, the role assigned to the *nomophylakes* here—and presumably in the other contexts where they are discussed—is precisely that which the informal view associates with the nocturnal council. This is a serious shortcoming of the informal view. It is surprising that Morrow never addresses it.<sup>86</sup>

It seems, then, that there are severe difficulties in reconciling the informal view with Plato's treatment of the matters discussed in this Section. Certainly, Morrow's handling of the problems is not adequate, while these difficulties in his account appear to have been overlooked by those scholars who endorse the informal view on the basis of his discussion.<sup>87</sup>

So it appears that the consistency of the informal view is purchased at a price. When we combine the problems discussed in this Section with the problems in Book XII discussed above, it seems clear that the difficulties are sufficiently serious to license a search for alternative explanations.

## V

In light of the problems we have examined, it seems that another explanation is in order. Thus I believe that the nocturnal council should be recognized as a departure from the argument throughout the earlier Books. The institutional view that will be defended here has two main components. First, according to this view, Plato intends the nocturnal council to hold some unspecified high political office, which is why it can be called the ‘institutional’ view. Secondly,

<sup>81</sup> 721b.

<sup>82</sup> 772a–c.

<sup>83</sup> 770b.

<sup>84</sup> 828b, 835a, 846b–c, 855c–d, 957a–b. The language in 957a–b leaves no doubt that the ‘young lawgivers’ referred to in 846b–c and 855c–d are the *nomophylakes*.

<sup>85</sup> 770a.

<sup>86</sup> Morrow assumes that the *nomophylakes* will work in consultation with the nocturnal council (*Plato's Cretan City*, pp. 200–1).

<sup>87</sup> Guthrie is an exception. He notes the problems with reconciling the informal view with the process for changing laws, and attributes the conflict to ‘an organizational change’ which has not been fully worked out (*History*, Vol. V, p. 369, n. 2). Thus Guthrie appears to posit a lesser break in the *Laws*, the implications of which he does not explore.

assigning the council this sort of role creates a fundamental break in the argument of the *Laws*. Thus we are forced to posit some change in Plato's plans as he wrote the work. Presumably, had he lived to complete the work he would have integrated the two parts into a consistent discussion. We have seen that this sort of view has been held by numerous authorities, including Aristotle. On balance the evidence supports it over other explanations.

The main consideration in support of the institutional view is that it clears up the problems discussed earlier. We have seen a series of respects in which the informal view conflicts with the text of Book XII. It is important to note that these inconsistencies are all of a piece and all fall into place under the hypothesis that the nocturnal council is to hold high political office. It is probably to serve as philosopher-rulers, though it is impossible to say exactly what Plato had in mind. As 968c indicates, he may have intended to leave the matter somewhat open.<sup>88</sup> This hypothesis explains all the problems discussed above in Section III. It accounts for the inflated language used to describe the council and for the respects in which it mirrors the *Republic's* philosopher-kings. It accommodates the passage at 969b about ‘turning the state over’ to the council, is consistent with the construal of 968c3–5 presented above, and explains Plato's reference to Magnesia as a ‘divine polity’. Moreover, consider the Athenian's final remarks about the council:

[Magnesia will be fully realized] if . . . we have the members [of the nocturnal council] carefully selected and suitably trained, and after their training quartered in the acropolis of the country, and thus finally made into Guardians (*phylakes*) the like of whom we have never before seen in our lives for excellence in preservation (or salvation) (*sōtērias*).<sup>89</sup>

Language like this smacks of philosopher-rulers.

The institutional view also restores consistency to the discussion in the earlier Books. We have seen that there are serious conflicts between the informal view and the earlier Books. Again, the problems discussed above in Section IV, fall into place on this interpretation. According to the institutional view, when Plato originally wrote Books I–XI he was committed to the government of laws. Thus the laws of Magnesia were to be all but unchangeable, which explains the endless detail into which the Athenian goes and the extreme difficulty of making changes. Since Plato recognized that some revision was unavoidable, he assigned this responsibility to the *nomophylakes*, which required according them some higher training. Thus this view also accounts for the intimations of a more educated segment of Magnesian society,<sup>90</sup> presumably educated (but not highly educated) *nomophylakes*.

Of course the main problem with this interpretation is that it breaks the *Laws* into two distinct parts, government of laws in the earlier Books and rule by the nocturnal philosophers in Book XII. Though I would of course prefer an account of the work that did not require such a break, in light of the obviously unfinished condition of the *Laws* I do not believe that a break is implausible. There are numerous, notorious difficulties in the *Laws*, so the possibility of

<sup>88</sup> See also below, p. 85.

<sup>89</sup> 969c.

<sup>90</sup> Above, p. 76.

more severe difficulties should not be eliminated out of hand.

The *Laws* was of course Plato's last work. According to ancient tradition it was edited posthumously by Phillip of Opus, who also wrote the *Epinomis*.<sup>91</sup> During the last century a series of German scholars attempted to account for the break they perceived in the *Laws* by attributing troubling portions of the work to Phillip. Clearly, there is insufficient evidence to sustain such interpretations.<sup>92</sup> But Morrow's handling of the evidence represents an opposite extreme. He adopts the 'axiom that every word [of the *Laws*] comes from Plato', calling this 'an excellent heuristic principle', because it '[forces] 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'.<sup>93</sup> All things being equal, this is undoubtedly a reasonable way to approach the text and one cannot fault Morrow's desire to avoid speculating about Phillip. But this principle has troubling implications. It implies that *all* obscurities in the *Laws* can be explained through penetrating interpretation. I suspect that the intuitive soundness of Morrow's approach has played a large part in the widespread acceptance of the informal view. But his approach should be faulted for simply ruling out the possibility of obscurities in the *Laws* that cannot be explained away.

As commentators have long noted, the *Laws* is replete with difficulties. Aside from the numerous problems in making sense of the text—two of which are discussed above<sup>94</sup>—the work is fraught with contradictions. A simple instance is the age at which men can marry; this is said to be 25 in one place and 30 in others.<sup>95</sup> A more serious problem is the procedures for selecting *nomophylakes*, which Plato describes in great detail in Book VI but about which he gives two conflicting accounts.<sup>96</sup> In this light, it does not seem impossible that Plato's two (apparently conflicting) accounts of the composition of the nocturnal council are not consistent either.<sup>97</sup> There are innumerable other problems, gaps and inconsistencies in the Magnesian constitution which have always plagued commentators, while the difficulty of integrating the council into the discussion of the previous Books is more readily apparent in the light of the severe problems in Plato's account of the other important institution introduced in Book XII, the auditors. Plato's discussion of this body too is replete with difficulties, while there are problems in reconciling it with the previously described constitutional structure. Because these problems are familiar, they need not be reviewed here.<sup>98</sup> Because of all these difficulties, and the fact that Plato died before the *Laws* was in a finished state, it seems to me that a break in the work should be

<sup>91</sup> The evidence is collected by Taran, *Academica*, pp. 115–39; for a briefer discussion see Morrow, *Plato's Cretan City*, pp. 515–16. Note Morrow's extremely conservative handling of the evidence. Though he demonstrates impressive command of historical sources, he appears to be unwilling to recognize problems with them.

<sup>92</sup> For brief discussion with references, see Morrow, *Plato's Cretan City*, pp. 515–18.

<sup>93</sup> Morrow, *Plato's Cretan City*, p. 518.

<sup>94</sup> Above, pp. 78, 80.

<sup>95</sup> 772d; 721b, 785b.

<sup>96</sup> For discussion, see Morrow, *Plato's Cretan City*, pp. 238–40; cf. T. Saunders, 'The Alleged Double Version in the Sixth Book of Plato's *Laws*', *Classical Quarterly*, 20 (1970), 230–36.

<sup>97</sup> See above, n. 15.

<sup>98</sup> I have discussed them in Klosko, *Development*, pp. 216–17; numerous difficulties in the Magnesian constitution are discussed throughout Chs 12 and 13.

accepted, if, as I believe, this is the only way to cover the numerous problems in the textual evidence that are discussed above.

An argument such as the one presented in this paper is inherently unsatisfactory in various ways. The introduction of a break in the *Laws* obviously offends against one's natural preference for consistency and economical explanations. The kind of break I have posited also makes it difficult to say exactly how the nocturnal council was ultimately intended to fit in with the city's other institutions, or to specify the changes in the other institutions that would have been undertaken to restore consistency. If the council is to have an important political role, clearly the laws must be made less rigid. This can be accomplished either by giving the council discretionary power to make needed changes, or, more simply, by streamlining the procedures discussed above for making changes. Perhaps if Plato had lived longer he would have pursued one of these courses, though it is not possible to say which one.

I believe that it is worthwhile, by way of conclusion, to speculate briefly about the kind of change that the discussion in Book XII represents. Though my remarks here cannot be proven, they seem to me to afford a reasonable explanation for the break in the *Laws*. Put briefly and simply, my view is that, in the final analysis, Plato could not bring himself entirely to shunt aside the rule of philosophy. In the *Laws* he sets out to design a 'second best' state, intended for men not gods.<sup>99</sup> This plan is carried out through almost the entire work; the laws are as close to the ideal as possible and so must be extremely detailed and all but impossible to change. Throughout the work Plato is clear about the need for laws; without them men must live as beasts.<sup>100</sup> But he still gives voice to the opinion that, should extraordinary individuals appear who are capable of ruling without law, power must be turned over to them: 'for no law or ordinance is mightier than knowledge, nor is it right for reason to be subject or in thrall to anything'.<sup>101</sup> So, though Plato believes that such individuals are not likely to be found, he cannot bring himself to accept a state entirely devoid of philosophical intelligence and cannot completely renounce the hope that philosophic individuals might appear. As he says repeatedly about the founding of the ideal state in the *Republic*, it is difficult but not impossible.<sup>102</sup>

Thus the position we are left with in the *Laws* is similar to that of the *Statesman*. In the earlier work Plato all but explicitly turns aside from the rule of philosopher-kings in favour of the rule of law.<sup>103</sup> But the art of statesmanship he goes on to describe is to be exercised by a wise autocrat, ruling without law and without requiring the consent of his subjects.<sup>104</sup> Thus the *Statesman* is readily interpreted as standing midway between the rule of philosophy in the *Republic* and the rule of law in the *Laws*.<sup>105</sup> In the *Laws* too, Plato cannot break completely with the ideals of his youth. He cannot bring his last work to a close

<sup>99</sup> 739a–e.

<sup>100</sup> 874e–875a, 713c–714b.

<sup>101</sup> 875c; cf. Aristotle, *Politics*, 1284a3–17.

<sup>102</sup> See G. Klosko, 'Implementing the Ideal State', *Journal of Politics*, 43 (1981), 365–89; Klosko, *Development*, Ch. 10, Section 3.

<sup>103</sup> *Statesman*, 268d–275c; cf. *Laws*, 713c–714a, 874d–875d.

<sup>104</sup> Especially *Statesman*, 292a–293c; also 296a–297b; cf. 276c; and cf. *Laws*, 720c–e, 690c.

<sup>105</sup> Barker, *Greek Political Theory*, p. 337; Klosko, *Development*, Ch. 11.

without returning to the hope that a philosophic element can raise Magnesia from the status of 'second best'.<sup>106</sup> The fact that this hope is badly out of keeping with the city as previously described is a problem he did not live to resolve. But at the end of his life, as Friedlander says, 'the Socrates in Plato still wins out over the Solon in him'.<sup>107</sup>

<sup>106</sup> Cf. the attractive suggestion of Cherniss (Review of Muller, *Studien zu den platonischen Nomoi*, pp. 377–9), that a philosophical nocturnal council was always part of Plato's plan. According to Cherniss, various problems throughout *Laws* are intentional on Plato's part, designed indirectly to call attention to the need for philosophic rulers. However, this seems unlikely because of (a) the direct intimations of the need for a higher plan of study in the earlier Books (which largely negate the need for indirect hints); and (b) the numerous inconsistencies between the nocturnal council and other aspects of the state, which on Cherniss's explanation, Plato would have taken pains to avoid.

<sup>107</sup> P. Friedlander, *Plato* (translated by H. Meyerhoff) (Princeton, Princeton University Press, 1958–69), Vol. III, p. 444.

## Aristotle on the Foundations of the State

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Aristotle's *Politics* shows an apparent tension between a recognition of the desirability of individual liberty and his claim that 'none of the citizens belongs to himself but all belong to the state'. We can start to resolve that tension by considering Aristotle's doctrine of man as a political animal. Aristotle offers a particular account of the nature of man according to which his specifically human capacities cannot be realized outside of the state. This is not an account adopted arbitrarily for Aristotle's political theory but follows directly from his analysis of substances in the *Physics*. On Aristotle's account of human nature, man is essentially rational and virtuous and the political theory allows the rational and virtuous man to be as free as possible without interfering with others. Some are less rational and are subject to authority in virtue of this. We can see that Aristotle's theory has advantages over rights-based theories since Aristotle has an account of what constitutes human flourishing, without which one cannot found rights claims.

Readers of Aristotle's *Politics* are likely to be disconcerted by a tension in that work between an acknowledgement of the need for human freedom and an authoritarian regard for the claims of the state. There is, of course, likely to be such a tension in the writings of any responsible political theorist but that tension has a particularly violent force in the *Politics*. In Aristotle's discussion of education in Book VIII, he claims that education is too important to be left to private preference since it must be the same for all. This is justified by the reasonable principle that 'public matters should be under public care' (1337a26).<sup>1</sup> The scope of this principle, however, sounds decidedly authoritarian: 'at the same time we should not think that any of the citizens belongs to himself, but all belong to the state since each is part of the state and the care of each part naturally looks towards the care of the whole'. (1337 a28–31). This picks up his claim in Book I that the state is prior in nature to the household and to each of us individually (1253a19). Against this we remember that Aristotle declared liberty (*eleutheria*) to be a 'starting-principle' (*hypothesis*) for

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<sup>1</sup> Translations of the *Politics* are adapted from H. Rackham (ed.), *Aristotle's Politics* (London, Heinemann, 1944), translations of the *Physics* from W. Charlton (ed.), *Aristotle's Physics I, II* (Oxford, Clarendon Press, 1970).



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