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## **Kingship and Legislation in Plato's *Statesman***

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### **Abstract**

One of the main philosophical outcomes of Plato's *Statesman* is to define statesmanship as a prescriptive (*epitactic*) form of knowledge, exercising control over subordinate *tekhnai*.

Against a widespread scholarly view according to which the *Statesman* offers a radically critical view of laws, this paper argues that the art of legislation (*nomothetikē*) has pride of place among these subordinate arts which also include rhetoric, strategy, the art of the judge and education.

### **Keywords**

Prescription – statesmanship – constitution - ideal ruler - singularity vs universality.

### **Introduction**

The present paper is the third part of a triptych of recent papers of mine devoted to exploring Plato's conception of statesmanship as a prescriptive art, supervising specific *tekhnai* which are subordinate to it and whose actions are necessary to fulfill the statesman's main objective, the production of a finely-woven social fabric, preventing civil strife from occurring. In the conclusive section of the *Statesman* (*Plt.* 303d-311a), Plato explores in great detail 'the capacity belonging to the directing art' which the art of kingship possesses 'itself' (*Plt.*

308e5-6: τὴν τῆς ἐπιστατικῆς αὐτῆ δύναμιν ἔχουσα)<sup>1</sup> and shows in particular that statesmanship exercises prescriptive control over three kindred arts: rhetoric (ῥητορικὴ), strategy (στρατηγικὴ), and the art of the judge (δικαστικὴ),<sup>2</sup> to which should be added an even more precious art, education (παιδεία).<sup>3</sup> But there is yet another art mentioned in the *Statesman*, albeit less insistently: legislation (νομοθετικὴ). Consider for instance how the Visitor from Elea, Plato’s main character in the *Statesman*, describes the specific power of the art of the judge in relation to statesmanship. He asks: ‘does its [the art of the judge’s] capacity extend to anything more than taking over *from the legislator-king* (παρὰ νομοθέτου βασιλέως) all those things that are established as lawful in relation to contracts [...]?’ (*Plt.* 305b4-7, italics mine). In this passage, the statesman is named ‘legislator-king’ which clearly indicates that legislation is closely connected to statesmanship, more closely, perhaps, than it is to rhetoric, strategy and judgeship. Hence the question I wish to raise in this paper: what use does Plato’s expert ruler make of legislative prescriptions? I will argue that Plato’s

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<sup>1</sup> Translations are borrowed from Plato, *Statesman*, Edited with an Introduction, Translation & Commentary by C. J. Rowe (Warminster: Aris & Phillips, 1995). The lineation of the original text refers to *Platonis Opera* I, ed. Duke, Hicken, Nicoll, Robinson and Strachan (Oxford: Clarendon Press, 1995).

<sup>2</sup> On the prescriptive control of statesmanship over these kindred arts, see D. El Murr, ‘Platonic political demiurgy: prescription and action in Plato’s *Republic* and *Statesman*,’ due to appear in the proceedings of the VIth GANPH Congress edited by F. Buddensieck at De Gruyter in 2022.

<sup>3</sup> On statesmanship and education, see D. El Murr, ‘Kingly intertwinement: 308b10-311c10,’ in P. Dimas, M. Lane and S. Sauvé Meyer (eds.), *Plato’s Statesman. A Philosophical Discussion* (Oxford: Oxford University Press, 2021), pp. 239-59 at pp. 240-9.

conception of ideal statesmanship in the *Statesman* allows for a *positive* and *twofold* use of legislative prescriptions.

To most readers of the dialogue, this contention will sound most unlikely. For it is a well-shared opinion that in the section devoted to law and constitutions (291c-303c), which I shall refer to hereafter as the ‘constitutional section’ of the dialogue, the *Statesman* offers a radical *criticism* of the rule of law. But that criticism is only half of the story, as I hope to make clear by examining the few passages of the dialogue in which *nomothetikē* is mentioned.

Considering the broad context of Plato’s approach to law in the *Statesman* and the constitutional section as a whole, section 1 argues that, despite Plato’s complex and much disputed treatment of existing constitutions, the constitutional section offers crucial insights on the true statesman’s specific use of legislative prescriptions. Section 2 then examines in detail one step (294a-297b) in the Visitor’s argument in the constitutional section, in which two distinct uses of legislative prescriptions by the true statesman are specified.

### **1. Context: the constitutional section of Plato’s *Statesman***

The particular importance of the constitutional section of the *Statesman* is well emphasized by its position with respect to the single division (*diairesis*) unifying the dialogue.<sup>4</sup> To a large extent, this position is similar to that of the great cosmic myth (*Plt.* 268d-274e) which, earlier on in the dialogue, allowed the division process to continue. The method of division, on its own, turned out to be powerless when it became necessary to distinguish and separate divine from human shepherding: indeed, such an important move required nothing less than the

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<sup>4</sup> On *diairesis* and the unity of Plato’s *Statesman*, see D. El Murr, ‘La division et l’unité du *Politique* de Platon,’ *Les Études philosophiques*, 74, 3 (2005), pp. 297-324.

clear-cut distinction between two eras of the human herd and their respective modes of shepherding. Hence the need to resort to an altogether different approach embodied by the story of the phases of the universe and their anthropogonical and anthropological consequences. In that respect, the constitutional section of the *Statesman* is similar to the myth in that it makes the continuation of the division possible by introducing a difference which the division cannot handle on its own: the difference between the *actual* rulers, who claim to take care of cities and citizens, and the *true politikos*, whose normative definition the dialogue meticulously seeks.<sup>5</sup>

In the constitutional section of the *Statesman*, Plato thus explores the radical difference that separate all existing constitutions from the one, true constitution of the true statesman which must be separated out from the other constitutions ‘like a god from men’ (303b4: οἷον θεὸν ἐξ ἀνθρώπων). So it should come as no surprise that in the conclusion of the constitutional section (303d-304a), the Visitor, comparing the interlocutors’ dialectical situation ‘to that of those who refine gold’ (303d6-7: τοῖς τὸν χρυσὸν καθαίρουσι), emphasizes that they have been so far ‘separat[ing] off those things that are different from the expert knowledge of statesmanship, and those that are alien and hostile to it’ (303e7-9: τὰ μὲν

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<sup>5</sup> For a different understanding of the constitutional section of the *Statesman*, see e.g. K. Sayre, *Metaphysics and Method in Plato’s Statesman* (Cambridge: Cambridge University Press, 2006), pp. 113-124. Because Sayre fails to see the normative function of Platonic *diairesis* in the *Statesman* and elsewhere, he mistakenly includes the actual rulers and so-called statesmen of the existing constitutions in the division aiming to define statesmanship. For more details on Platonic division, see D. El Murr, ‘Logique ou dialectique? La puissance normative de la division platonicienne,’ in J.-B. Gourinat and J. Lemaire (eds), *Logique et dialectique dans l’Antiquité* (Paris: Vrin, 2016), pp. 107-133.

ἕτερα καὶ ὅποσα ἀλλότρια καὶ τὰ μὴ φίλα πολιτικῆς ἐπιστήμης ἀποκεχωρίσθαι). To put it differently, the dialectical purpose of the constitutional section is to purify and refine our understanding of statesmanship by excluding from it the ways and means of current leaders. The corresponding political purpose is to get rid of the true statesman's direct rivals by arguing that the true expert in statesmanship has nothing to do with these actual leaders, who consider themselves, but wrongly, to be statesmen.

This said, Plato's approach to law and constitutions in the *Statesman* is not purely negative, for many positive claims are also made in the constitutional section. In contrast with all existing so-called statesmen, the true statesman knows the purpose of genuine government (the good of the citizens and justice) and the means to achieve this purpose. Among these stands the law, which the true statesman uses, but not as existing rulers do.

Had Plato confined his analysis to establishing that the ideal statesman makes use of laws and to what extent he does so, the interpretation of the constitutional section of the dialogue would have been relatively simple. But in the constitutional section Plato does not merely criticize non-ideal constitutions because they fall short of the knowledge that guides the expert statesman; he also develops a complex analysis of the notion of imitation by claiming that non-ideal constitutions have an imitative relationship with the only correct constitution embodied by the true statesman. The consistency of Plato's radically critical stance with this more positive attitude to existing constitutions is one of the central issues raised by any reading of this section as a whole.

How indeed should one connect the ideality of the standard Plato calls for and which no political leader, in his view, has the slightest understanding of, on the one hand, and a

relationship between this ideal and regimes that are not at all political, on the other?<sup>6</sup> By making the knowledge-based constitution the only truly *political* constitution, Plato invalidates all existing regimes and maintains the absolute primacy of the ideal; but, by asserting that existing regimes partly imitate the knowledge-based constitution, he seems to put the difference between the truly political regime and all the others into perspective, and by the same token softens the radicalism of his critique of these regimes.

The same tension is found at the core of the analysis of the law that will occupy section 2 of this paper. I will argue that the law is presented here as being two-faced<sup>7</sup>: its use is criticized with respect to the only source of legitimate authority, the statesman's expertise, but it is also rehabilitated (i) in the ideal constitution on the grounds that the true statesman can make use of it as a substitute, and (ii) in non-ideal constitutions, on the grounds that the absolute rule of law is better than rule by capricious and contradictory human desires. As a result, these pages of the *Statesman* seem to waver between asserting a radical standard with respect to which all current customs are called into question and an more descriptive analysis where these same customs are explained, and perhaps even justified.

This tension explains why many commentators have taken an interest in this section of the *Statesman*, for most see in it Plato's undertaking to rehabilitate democracy and a sign of his giving up the utopian approach of the *Republic* in favor of a form of legislative realism

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<sup>6</sup> See *Plt.* 303b8-c2: 'So then we must also remove those who participate in all these constitutions, except for the one based on knowledge, as being, not statesmen, but experts in faction (ὡς οὐκ ὄντας πολιτικούς ἀλλὰ στασιαστικούς) [...].'

<sup>7</sup> See M. Lane, *Method and politics in Plato's Statesman* (Cambridge: Cambridge University Press, 1998), p. 146: 'The Statesman treats laws, like names, in a Janus-faced way.'

foreshadowing the *Laws*.<sup>8</sup> Some commentators take an even further step and read *Plt.* 299b-e, a central passage of the constitutional section in which there is a crystal-clear allusion to Socrates' trial, as the *a posteriori* explanation and justification for Socrates' conviction.<sup>9</sup>

I have argued elsewhere that nothing in the *Statesman* forces us to see in the constitutional section of the *Statesman* a rehabilitation of democracy or any other non-ideal constitution. On the contrary, I think everything in the text points to Plato being as virulent

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<sup>8</sup> See e.g. G. Klosko, *The Development of Plato's Political Theory* (New York, London: Methuen, 1986), pp. 194-97, at p.196: 'In the *Statesman*, Plato retreats from the divine. He considers imperfect states on their own terms, and is willing to assess them on their own merits.' Klosko also cites Ernest Barker, *Greek Political Theory* (London - New York: Methuen - Barnes and Nobles, 1918) p. 330: 'he [Plato] came upon a new phase of his political thought, in which he makes peace with reality, and acknowledges that there is room in political life for consent and law and constitutionalism and all the slow unscientific ways of the actual world of men.'

<sup>9</sup> For a discussion of this passage (and an overview of the scholarship), see C. Rowe, 'Killing Socrates: Plato's Later Thoughts on Democracy,' *Journal of Hellenic Studies*, 121, 2001, pp. 63-76. Rowe notably quotes G. H. Sabine, *A History of Political Theory* (New York: Holt, Rineheart and Winston, 3rd ed., 1961), p. 75: 'The available stock of human intelligence is not great enough to make the philosopher-king a possibility. The humanly best solution, therefore, is to rely upon such wisdom as can be embodied in the law and upon the natural piety of men toward the wisdom of use and wont. The bitterness with which Plato accepts this compromise is apparent in the irony with which he remarks that *now the execution of Socrates must be justified.*' (italics mine).

towards democracy here as he has been in the *Republic*.<sup>10</sup> My present purpose in this paper is not, however, to reopen this vexed issue, but to focus merely on what the constitutional section of the *Statesman* has to say on the use of legislative prescriptions by the ideal ruler. Although they are closely connected, the two following questions – does the ideal statesman use laws and if so, how? to what extent are non-ideal constitutions imitations of the truly political one? – are independent from one another, as evidenced by the overall structure of the Visitor’s argument in the constitutional section, which develops into four distinct steps and treats the two questions separately.

In line with the general objective announced at 291a-c – separating ‘those who really are in possession of the art of statesmanship and kingship’ (291c4-5: ἀπὸ τῶν ὄντως ὄντων πολιτικῶν καὶ βασιλικῶν) from their toughest rivals – the first step (291c-293e) examines, among the classic list of constitutions, which is home to the expert knowledge of governing people. It appears that it does not occur in any of them. Consequently, not only are none of the so-called statesmen able to claim the title of the true statesman, but the only constitution worthy of the name is the one based on the knowledge whose definition the dialogue investigates. The gist of the argument is that the knowledge possessed by the ruler makes all the usual criteria of political legitimacy (such as wealth, consent, or legality) irrelevant. None of the constitutions fulfilling these criteria are legitimate nor genuine constitutions. In the best case scenario, that is, when they have good laws, the Visitor claims, they are merely imitations of the correct constitution.

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10 See D. El Murr, *Savoir et gouverner. Essai sur la science politique platonicienne* (Paris: Vrin, 2014), pp. 246-57. See also. C. Rowe, ‘Le traitement des constitutions non-idéales dans le *Politique* de Platon,’ *Les Études philosophiques*, 74, 3 (2005), pp. 385-400.

Young Socrates' resistance gives rise to the second step in the argument (294a-297b): how can one hold, he asks, that the true statesman will govern without laws? Note that the Visitor never said, contrary to what Young Socrates seems to think,<sup>11</sup> that one *should* govern without laws: he contented himself with claiming that obeying the law is not a relevant criterion in comparison to the ruler's expert knowledge. Plato is of course perfectly aware that this argument is profoundly paradoxical for any Greek,<sup>12</sup> as Young Socrates' resistance amply shows. Hence the following, carefully argued position: the law is an intrinsically limited means of governing, but one whose use is explicable and necessary; the true statesman will therefore make use of it, but his use will be strictly subordinate to a higher law, that of his *phronēsis*. At 297b, the Visitor repeats that governing with intelligence constitutes the only correct constitution, and that all the others, 'as was said a little earlier' (297c3, referring to 293e), are imitations of it.

'What do you mean by this? What are you saying? For I did not understand the point about imitations (τὸ περὶ τῶν μιμημάτων) when it was made just now either.' (*Plt.* 297c5-6). The third step in the Visitor's argument (297b-302b) consists in elucidating this point made in the first step and reiterated in the second. The transition from the second to the third step is completely natural, since it is the relationship of certain constitutions to the law that will explain the nature of their imitative relationship with the correct constitution. The two problems I mentioned earlier are distinct but tightly connected, for one should first understand the specific relationship that the true statesman has with *nomothetikē* to be in a position to assess in what sense and to what extent some imperfect constitutions imitate the true one.

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<sup>11</sup> See *Plt.* 293e8: τὸ δὲ καὶ ἄνευ νόμων δεῖν ἄρχειν.

<sup>12</sup> See J. de Romilly, *La Loi dans la pensée grecque des origines à Aristote* (Paris: Les Belles Lettres, 2001 [1971]), p. 189.

Owing to the previous examination on law, the fourth and final step in the argument (302b-303d) returns to the categorization of the different forms of constitution and offers a more satisfactory classification. All those who take part in the constitutions thus categorized take part in regimes that are radically different from the knowledge-based constitutions and therefore cannot claim to be true statesmen.

## **2. The limits and uses of the law**

Before examining in detail the second step in the Visitor's argument, let us start by noting that the close connection between kingship and legislation is emphasized twice outside the constitutional section, in the final pages of Plato's *Statesman*. In the first passage, already mentioned in the introduction to this paper, the phrase 'legislator-king' (305b5-6: νομοθέτου βασιλέως) occurs. In the second, the Visitor describes the importance of the law as a means of implementing true beliefs in correctly educated souls:

Then do we recognize that it belongs to the statesman and the good legislator alone to be capable of bringing this very thing about, by means of the music that belongs to the art of kingship, in those who have had their correct share of education - the people we were speaking of just now?' (*Plt.* 309d1-4: τὸν δὴ πολιτικὸν καὶ τὸν ἀγαθὸν νομοθέτην ἄρ' ἴσμεν ὅτι προσήκει μόνον δυνατὸν εἶναι τῇ τῆς βασιλικῆς μούσῃ τοῦτο αὐτὸ ἐμποιεῖν τοῖς ὀρθῶς μεταλαβοῦσι παιδείας, οὓς ἐλέγομεν νυνδὴ;)

Note the clause τὸν δὴ πολιτικὸν καὶ τὸν ἀγαθὸν νομοθέτην at 309d1 which some scholars propose to read as an hendiadys, perhaps in the light of the first passage.<sup>13</sup> Given the two articles, this reading seems unlikely, but it remains true, nonetheless, that statesmanship and legislation are understood as two closely connected activities. So room is left, in the sphere of true statesmanship, for legislative prescriptions. To elucidate how these prescriptions relate to the prescriptions of the statesman, we need to consider in detail two pages or so of the dialogue (294a-296a).

When faced with Young Socrates' incomprehension and reluctance to accept that 'we must govern without laws' (293e8),<sup>14</sup> the Visitor offers a complex analysis of the limits of legislation but, at the same time, accounts for its necessity in the ideal constitution governed by true statesmanship. The full scope of the problem is formulated by the Visitor in the following sentence:

V.: Now in a certain sense it is clear that the art of the legislator belongs to that of the king (τρόπον μέντοι τινὰ δῆλον ὅτι τῆς βασιλικῆς ἐστὶν ἢ νομοθετικῆς); but the best thing is not that the laws should prevail, but rather the kingly man who possesses wisdom (τὸ δ' ἄριστον οὐ τοὺς νόμους ἐστὶν ἰσχύειν ἀλλ' ἄνδρα τὸν μετὰ φρονήσεως βασιλικόν).

Do you know why? Y.S. What then is the reason? (*Plt.* 294a6-9)

That legislation falls under the king's expertise should not be understood as a fact the Visitor gets from common sense or empirical knowledge: it is not a question of *describing* what

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<sup>13</sup> See Platon, *Le politique*, introduction, traduction et notes par L. Brisson et J.-F. Pradeau (Paris: GF-Flammarion, 2011), p. 206 (with n. 391, p. 269). Brisson and Pradeau translate: 'l'homme politique, c'est-à-dire le bon législateur.'

<sup>14</sup> I modified Rowe's translation who renders τὸ δὲ καὶ ἄνευ νόμων δεῖν ἄρχειν into 'but that ideal rule may exist even without laws [...]' (Rowe, *Statesman*, p. 127).

existing regimes do, which most often use laws. Rather, it is a question of highlighting, from the start of the argument, that *true* political expertise includes a legislative dimension. The true statesman will therefore use laws, but laws should not ‘prevail’ or win over the prescriptions of his intelligence. By formulating the problem in this manner, the Visitor prompts us to examine not only the *intrinsic* limits of the law, but also its instrumental status under the rule of the true statesman's *phronēsis*.

To elucidate the issue at stake here, I borrow a conceptual distinction introduced by André Laks when reading the same passage.<sup>15</sup> According to Plato, Laks argues, the law takes on two different aspects: an *epitactic*, or prescriptive aspect, and a substitutive, or vicarious, one. As I see it, the point of the analysis of the law that follows is precisely to bring alternatively each of these two aspects into play with respect to the standard of the statesman's *phronēsis*. Let us carry on reading the same passage:

V.: That law could never accurately embrace what is best and most just for all at the same time, and so prescribe what is best. For the dissimilarities between human beings and their actions, and the fact that practically nothing in human affairs ever remains stable, prevent any sort of expertise whatsoever from making any simple decision in any sphere that covers all cases and will last for all time. I suppose this is something we agree about? Y.S.: Certainly. V.: But we see law bending itself more or less towards this very thing; it resembles some self-willed and ignorant person, who allows no one to do anything contrary to what he orders, nor to ask any questions about it, not even if, after all, something new turns out for someone which is better, contrary to the prescription

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<sup>15</sup> A. Laks, ‘Platon’ in A. Renaut (ed.) *Histoire de la philosophie politique*, Tome 1: *La Liberté des anciens* (Paris: Calmann-Lévy, 1999) pp. 57-125 at pp. 112-3.

which he himself has laid down. Y.S.: True; the law does absolutely as you have just said with regard to each and every one of us. (*Plt.* 294a10-c6)

The starting point of the argument is the prescriptive function of the law (294b2: ἐπιτάττειν): like statesmanship itself, whose prescriptive role is minutely explored in the *Statesman*, the law prescribes what must be, or proscribes what must be banned, aiming in all cases for ‘what is best’ (294b2: τὸ βέλτιστον) for the citizens. However, comparing the prescriptions of the law with that of the true statesman also helps explain the intrinsic limits of legislative prescriptions. By its very form, the law is simple, and because of this simplicity, its prescriptions tend toward universality or, at the very least, generality: these prescriptions are indeed valid ‘for all’ (294b1: πᾶσιν) and the basic principle of the law is to make a ‘simple decision in any sphere that covers all cases and will last for all time’ (294b4-6: ἀπλοῦν ἐν οὐδενὶ περὶ ἀπάντων καὶ ἐπὶ πάντα τὸν χρόνον ἀποφαίνεσθαι). The law is thus essentially general, simple, and stable. The problem is that simplicity and stability are two properties that are lacking in the target of legislative prescriptions: confronted with the *dissimilarities* between human beings and between their actions (294b2-3: αἱ γὰρ ἀνομοιότητες τῶν τε ἀνθρώπων καὶ τῶν πράξεων), the laws prescribes the same thing for radically different people carrying out actions that are themselves radically different from one another. The law, by its very form, cannot adapt to the *singularity* of cases and situations. Legislation is also confronted with the passage of time and the inevitable mutability of human affairs (294b3-4: τὸ μηδέποτε μηδὲν ὡς ἔπος εἰπεῖν ἡσυχίαν ἄγειν τῶν ἀνθρωπίνων) and so does not adapt to circumstances nor to their evolution over time. Hence, because of their very form, which implies generality, simplicity and stability, laws cannot adapt to their singular, complex and everchanging object.

Interestingly, to show the contradiction between the form of the law and its target, Plato calls on an argument whose impact is not at all confined to legislation. The mobility affecting human affairs and the dissimilarities between people and between their actions do not only

destroy the pretensions to generality and stability of *nomothetikē*, but those of *any tekhnē* whatsoever (294b6: τέχνην οὐδ' ἤντινοῦν). This point is important because it sheds light on the limits of *nomothetikē* and on the limits of the true political art as well, thus foreshadowing the arguments that will follow.

At a general level, this argument appealing to the objective limits of any technical rationality in touch with sensible and human reality is perfectly coherent with the intrinsic finiteness of all human endeavors that the *Statesman* myth illustrated in its own way. The ‘dissimilarities’ (294b2: αἱ ἀνομοιότητες) mentioned in the passage quoted above are a doubtless reminder of the ‘the boundless sea of unlikeness’ (273d6-e1: τὸν τῆς ἀνομοιότητος ἄπειρον ὄντα τόπον<sup>16</sup>) which the universe avoids sinking into because god returns to the helm. So even the best organized city – and the ideal city of the *Republic* is no exception<sup>17</sup> – cannot be exempt from the entropy that all human undertakings are subject to. In my view, however, the Visitor’s argument here aims less to show the limited power of *tekhnē* in a world subject to

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<sup>16</sup> Note that τόπον at 273e1 is the reading of the mss. For a different reading, found in Proclus and Simplicius and edited by A. Diès, see Platon, *Le politique*, texte établi et traduit par A. Diès (Paris: Les Belles Lettres, 1935), p. 28 (with the *apparatus*). On the later reception of this passage in Neoplatonic and Christian texts, see the classic study by P. Courcelle, ‘Tradition néoplatonicienne et traditions chrétiennes de la “région de la dissemblance” (Platon, *Politique*, 273d),’ in *Connais-toi toi-même’ de Socrate à Saint Bernard*, vol. III (Paris: Études Augustiniennes, 1975), pp. 519-530.

<sup>17</sup> See *Resp.* 8. 546a1-3: ‘Hard though it is for a city like yours to be moved, put together as it is, still, since everything that has come into being must also perish, even a thing so well constructed will not last forever.’ Translation from Plato, *The Republic*, Introduction, Translation, and Notes by C. Rowe (London: Penguin, 2012).

the flux of becoming than to emphasize the requirements of adaptability and flexibility for prescriptive technical activity, when it concerns changing reality. The knowledge of the statesman, like any *tekhnē* whose target is human, is faced with the need to adapt its prescriptions. The formal objective limit of the legislative prescription emphasized by the Visitor thus illuminates, by contrast, as it were, the nature of the prescription coming from the true statesman's *phronēsis*, for the second does not have the flaws of the first. Consequently, the true statesman must be able in principle to 'accurately embrace what is best and most just for all at the same time, and so prescribe what is best' (294a10-b2: τό τε ἄριστον καὶ τὸ δικαιοῦτατον ἀκριβῶς πᾶσιν ἅμα περιλαβὼν τὸ βέλτιστον ἐπιτάττειν). In light of the nature of its target, such a prescription implies constant adaptability, that is, an ability to improve the orders so as to adapt to the changes the target undergoes. The true statesman's *phronēsis* is therefore *transitive*, since it informs his prescriptions with the flexibility and complete freedom that characterize its intelligence. By contrast, legislative prescription is authoritarian by definition, like an ignorant man sure of himself.

Given this analysis, why should the true statesman make any use of legislative prescriptions, as we have seen he does in several passages in which his expertise is associated to or even identified with that of the legislator? I suggest that this radical criticism of the law is, paradoxically, the first move of a broader argument whose purpose is to justify the necessity for the true statesman to use laws.

In a passage immediately following the one quoted above, the Visitor asks:

V.: Why then is it ever necessary to make laws (διὰ τί δὴ ποτ' οὖν ἀναγκαῖον νομοθετεῖν), given that law is not something completely correct (ἐπειδὴ περ οὐκ ὀρθότατον ὁ νόμος;)? We must find out the cause of this. (*Plt.* 294c10-d2)

Although the way he formulates the question may lead us to think that the Visitor is here asking why existing cities make laws, the examples he provides next, namely arts well-known to

everyone such as medicine and gymnastics, clearly show that his interest lies elsewhere: what the Visitor observes at this moment (294d4: παρ' ὑμῖν; d4-5: ἐν ἄλλαις πόλεσιν) is not how existing regimes make laws, but how those possessing an expertise *targeting a group of people* formulate their prescriptions.

Gymnastics teachers indeed formulate prescriptions useful to ‘the majority of cases and a large number of people’ (294e1-2: ὡς ἐπὶ τὸ πολὺ καὶ ἐπὶ πολλούς). These trainers are confronted with individuals, each possessing a particular individual physical condition and particular capabilities. Yet the art of the gymnastics trainer is directed at each of them as part of a group. The Visitor does not explain why the gymnastics teachers, who could also train each individual separately, do not do so. He only points out that these teachers think it is not appropriate to ‘work piece by piece’ (294d11: λεπτοργεῖν)<sup>18</sup> to suit ‘each individual’ (καθ' ἕνα ἕκαστον), but that they should proceed ‘roughly’ (294e1: παχύτερον). Clearly, then, the case under consideration here concerns gymnastics teachers addressing groups of people in preparation for a race or some other exercise involving many individuals (294d3-5).<sup>19</sup> Strong collective coercion is thus involved, as required, e.g. in the physical training and regimen of an army. The prescriptions of the gymnastics trainer therefore take the gregarious nature of their subject into account: faced with a group of individuals, the gymnastics trainer seeks to improve the physical condition of each, while aiming for what is good for the body in general and for

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<sup>18</sup> On this relatively rare verb in the classical period, see L. Campbell, *The Sophistes and Politicus of Plato*. A revised text and English notes (Oxford: Clarendon Press, 1867), p. 139.

<sup>19</sup> This seems suggested by the use of the adjective ἀθρόος at 294d5 and 295a2, which refers to any grouping of individuals considered *en bloc* (see e.g. *Ap.* 32b4) or to any gathering of individuals in the same location (*Lys.* 203a5, *Gorg.* 490b2), or, occasionally, to the mob (e.g. *Resp.* 6. 492b5).

what suits the greatest number of people. The same goes for the legislator, as the following passage shows.

V.: Then let's suppose the same about the legislator too, the person who will direct his herds in relation to justice and their contracts with one another: he will never be capable, in prescribing for everyone together, of assigning accurately to each individual what is appropriate for him. Y.S.: What you say certainly sounds reasonable. V.: Instead he will, I think, set down the law for each and every one according to the principle of 'for the majority of people, for the majority of cases, and roughly, somehow, like this', whether expressing it in writing or in unwritten form, legislating by means of ancestral customs. (*Plt.* 294e9-295a8)

Just as the gymnastics teachers 'think' (294d11: ἡγοῦνται; e1: οἴονται) it necessary to prescribe for the greatest number, 'let's suppose' (294e9: ἡγώμεθα) that the same goes for the legislator. We think indeed that the latter 'will never be capable' (295a1: μή ποθ' ἰκανὸν γενήσεσθαι) of prescribing what suits each individual. In other words, because the prescriptions of the true statesman are, by definition, intended for a large set of individuals, he cannot address each individual, but only the greatest number. The analogy with the gymnastics trainers is therefore not merely an analogy, but also serves as an *a fortiori* argument: if the gymnastics teachers, when they address a group of individuals, seek the good of the body in general and thus prescribe what suits the greatest number of people most of the time, then it is clear that the legislator, whose art is intended for people gathered in herds, i.e. for a much larger group, will be required to prescribe in general and will not be able to issue a prescription appropriate to each individual. The prescriptive practice of gymnastics teachers working with small groups of individuals elucidates the objective impossibility of a genuinely political prescription intended for a very large number of individuals. This is precisely what the Visitor explains next:

V.: For how would anyone ever be capable (πῶς γὰρ ἄν τις ἰκανὸς γένοιτ' ἄν ποτε), Socrates, of sitting beside each individual perpetually throughout his life and accurately prescribing what is appropriate to him? (ὥστε διὰ βίου ἀεὶ παρακαθήμενος ἐκάστῳ δι' ἀκριβείας προστάττειν τὸ προσῆκον;) Since in my view, if he were capable of this, any one of those who had really acquired the expert knowledge of kingship would hardly put obstacles (ἐμποδίσματα) in his own way (ἑαυτῷ) by writing down these laws we talked about (γράφων τοὺς λεχθέντας τούτους νόμους). (*Plt.* 295a10-b5)

Thus, there is a *de facto* incompatibility between the very purpose of the statesman's prescription, which must be exact to be most effective, and so adapt to the singularity of individual situations subject to changes in circumstances, and the political nature of his prescription, which, by definition, is intended for a diversity and large number of individuals. Since it is physically impossible for the true statesman to individually prescribe what is appropriate to each particular individual, then he will have recourse to a substitute, i.e. to legal prescription. This is indeed a *de facto* limitation, not a *de jure* one, for, if the statesman's *phronēsis* could be targeted to each person individually, laws would then become useless constraints.

Accordingly, if laws gain a form of legitimacy in the ideal constitution through their substitutive function, it remains to be seen what value should be assigned to them, when they stand in for the statesman's intelligence. By continuing the analogy with the *tekhnai*, the following page of the dialogue (295b-296a) shows that the obvious consequence of the analysis of the vicarious function of laws is that their legitimacy is found to be partial or provisional. There occurs the example of the doctor who's about to journey abroad and leaves written prescriptions for patients in case they have trouble remembering what to do (295b10-c5). If, upon his return, circumstances have changed and his prescriptions are no longer for the best, is the doctor nonetheless bound by them? Note that, until now, the written form of the law had

not been assigned any particular importance, but here<sup>20</sup> this dimension comes into its own. The *substitutive* aspect of the law partially remedies the fact that it is impossible for the statesman to be present everywhere, but the *written* form of the law seems to remedy the fact that it is impossible for him to be present all the time. So what value should we assign to the prescriptions issued by the true statesman, particularly when they are given the stability and sacredness of the written form? The Visitor's answer is clear and irrevocable: none, since the authority of the law is only second to the true source of authority – the ruler's intelligence. The intelligence of the true statesman should never be hindered, even by his own prescriptions, whether they are written or unwritten.<sup>21</sup>

I think it is no exaggeration to maintain that the treatment of the law we have been examining is as much a radical criticism of legislative prescription as an undertaking to rehabilitate its use in a certain form. The key point is to show that, even if the prescriptions of the true statesman's *phronēsis* are, by nature, superior to the prescriptions of the law, objectively limited by their very form, the use of the latter represents, nonetheless, a remedy to the true statesman's no less objective physical limitations. The point of this analysis, I repeat, was never to show that the ideal constitution governs without laws because it is ideal,<sup>22</sup> and that in reality, as it were, we are forced to resort to legislation. It is not the ideality of the true statesman that underpins this analysis of legislative prescription: it is the very nature of the statesman's

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<sup>20</sup> See *Plt.* 295c4: γράφειν, c8: τὰ γράμματα, d5: τὰ γραφέντα.

<sup>21</sup> That true intelligence should never be impeded by the law is a position that the *Laws* defend as well: see *Leg.* 9, 875c6-d2.

<sup>22</sup> To that respect the title given by A. Diès to section 293e-297b of his French Budé translation of the *Statesman* is deeply misleading: see Platon, *Le politique*, p. 60 ('L'illégalité idéale: la force imposant le bien').

prescriptive activity applied to the human herd. This activity explains why the true statesman will resort to laws, since they are instruments capable of passing on the action planned and decided by his *phronēsis*, even though the form of the law itself cannot fail to rigidify and generalize what should always remain flexible and singular. The condition for this substitutive use of the law to acquire a certain legitimacy is to subordinate legislative prescription to *phronetic* prescription, therefore modifying the laws to the extent, and as many times as required by the statesman’s intelligence. When the law is considered not only in its prescriptive, but above all in its substitutive aspect, an aspect that entails its constantly being revised and adapted to circumstances, the rationality of its use in the ideal constitution can no longer be in doubt. Hence the special place conferred upon *nomothetikē* in the *Statesman* and its being treated differently from the other subordinate arts. For the *Statesman* treats legislation just like education, as an even more precious art than the kindred arts of rhetoric, strategy, and judgeship. The treatments of education and legislation, however, differ on one important point. The dialogue makes clear that *paideia* falls under the remit of experts distinct from the statesman himself.<sup>23</sup> Not so with legislation, whose prescriptive nature is so close to that of true statesmanship that both activities can merge into one and the true statesman rightly be called a ‘legislator-king’ (305b5-6: νομοθέτου βασιλέως).<sup>24</sup>

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<sup>23</sup> See El Murr, ‘Kingly intertwinement,’ pp. 240-9.

<sup>24</sup> This paper is a partial translation and adaptation of El Murr, *Savoir et gouverner*, pp. 223-7 and pp. 236-43.