THE UNITY OF PLATO'S POLITICAL THOUGHT

by

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A thesis submitted in partial fulfilment of the requirements for the degree of Doctor of Philosophy

in the

Department of Philosophy

at the

University of British Columbia

April, 1974

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Date May 8/74
ABSTRACT

The orthodox interpretation of Plato's political theory understands Republic as supporting the rule of an autocratic sovereign whose power is unlimited; and Laws as supporting a form of government under which the authority of the rulers is limited by a legal code which may never be amended. This thesis argues for a different interpretation of both Republic and Laws. It argues that Plato's political theory is essentially consistent; that the theory of government advocated in Republic is in fact embodied in the constitution and code of law which Plato writes in Laws.

The first step in the argument is to show that contrary to the orthodox interpretation, Republic does not recommend the rule of a sovereign whose power is unlimited by law. Plato in fact makes clear in Republic that his ideal state will have a comprehensive code of law; and he explicitly says that the rulers themselves must obey that code. The next step is to show that those passages in Statesman which are traditionally cited in support of the orthodox view, will not in fact support that interpretation. The thesis also musters some evidence from both Republic and Statesman which suggests that even in these early political dialogues Plato favoured some (as yet undeveloped) form of constitutional government.

Now Plato's saying in Laws that the laws must have a higher authority than the rulers is the doctrine which is supposed to "cleave Plato's political theory into two distinct halves." The latter chapters of this thesis dispute the orthodox interpretation, by analysing the functions and powers that Plato assigns to the various governmental institutions which his constitution defines. The thesis argues that this doctrine should be understood as calling for a system of checks and balances on governmental power,
rather than as calling for a form of government under which the rulers would have no power to amend or supplement Plato's own code of law. In *Laws* Plato makes clear that his government will enjoy full legislative powers (including the amendment power); yet by creating an institution - the Nocturnal Council - which is instructed and empowered to preserve the "alms" and "spirit" of the state's constitution, Plato places a check on his legislature - the Guardians of the Laws - which will ensure that all legislative (and executive) acts and policies are in strict conformity with the fundamental political and educational principles on which Plato's constitution is based.

The argument to this point, then, is that the orthodox interpretation of Plato's political theory is wrong on both ends; it misunderstands *Republic*, and it misunderstands *Laws*. Having argued that Plato's three political dialogues should be understood as advocating a consistent but developing theory of constitutional government, the last chapter examines the finished constitution in some detail. By analysing the constitutional provisions for legislative, executive, and judicial powers, and by considering the checks and balances that Plato places on every governmental power and institution, the thesis concludes by asserting that in *Laws* Plato manages to write a constitution which does give all political power to experts in the art of ruling, but which nevertheless provides for a more than adequate set of safeguards against all forms of governmental tyranny.
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CHAPTER I

The relationship between Plato's Republic and Laws has been a matter of no little philosophical controversy. W. Jaeger introduces his discussion of Laws thus:

In the nineteenth century classicists did not know how to approach it. Eduard Zeller, the representative historian of philosophy in that period, declared in an early work that it was not by Plato at all. Later, when discussing Plato in the History of Greek Philosophy, he treated the Laws in an appendix — which means that he thought it was genuine enough, but was unable to fit it into the general picture of Plato's philosophy which he had drawn from the earlier dialogues.1

Now the numerous references that Aristotle makes to Laws put it beyond doubt that the dialogue is genuinely Platonic. But how to parse Plato's last and longest dialogue with the earlier ones, especially with Republic and Statesman, continues to puzzle.

T.S. Saunders remarks that

The obvious explanation of the apparent vast differences of approach between the two works (Republic and Laws) is that as Plato grew older and wiser his optimism turned to pessimism, and his idealism to realism; and that in the Statesman we can see him in the act of changing horses.2

Saunders rejects this "obvious" explanation, however, on the grounds that it confuses "attainable ideals with unattainable ideals".3 The Republic, according to Saunders, is an "unattainable ideal"; the state described in Laws is an "attainable ideal".

It makes much more sense to think of the Republic as an extreme statement, designed to shock, of the consequences of an uncompromising application of certain political principles — in fact as an unattainable ideal — and to suppose that even when Plato wrote the Republic, he had some realistic practical programme, which may well have been more or less what we find

1W. Jaeger, Paideia: The Ideals of Greek Culture, Oxford University Press, New York, 1944; p.213. The works of Zeller that Jaeger refers to are (1) the early work, Edward Zeller, Platonische Studien Tubingen, 1839, p.117. (2) The later work is Philosophie der Griechen II, p.805.
3Ibid.
in the Laws... In short Plato could perfectly well have written the Laws when he wrote the Republic, and the Republic when he wrote the Laws, for they are opposite sides of the same coin. The Republic presents merely the theoretical ideal, and - a point which is often ignored - explicitly and emphatically allow for some diminution of rigour if it were to be put into practice. The Laws describes in effect, the Republic modified and realized in the conditions of this world.\(^4\)

Barker's opinion is similar to Saunders';

The change (between Republic and Laws) is great; it cleaves Plato's political theory into two distinct halves. On the one side is the Guardian of the Republic, unfettered by law; on the other side is the "Guardian of the Law", who is its servant, and is even described as its "slave". Yet if there is change there is also consistency. The two ideals are not opposites: they are complements. The first had always been, and still continued to be, the absolute ideal of Plato: the second is a secondary or relative ideal - secondary as compared with the ideal of the Republic; relative as adapted to the exigencies of actual life.\(^5\)

Now the reason that Barker describes Plato's political theory as being divided into "two distinct halves", is that in Republic the rulers are to be "unfettered by law", while in Laws they are to be the "servants" and "slaves" of the law. Barker describes the theory of government in Republic thus:

The true statesman is a monarch: the ideal government is monarchy, because in monarchy and in monarchy alone, perfect knowledge is to be found. Provided he (the monarch) have such knowledge, what matter if he gains his subjects' consent to all that he does, or whether he acts according to any form of law? He will act of himself for the right, because he will always know what ought to be done; and to limit him by the need for consent, or by the forms of law, is only to hamper the free play of his knowledge.\(^5\)

If this is Plato's "absolute ideal", Barker describes his "secondary" ideal thus:

The sovereignty of law is one of the fundamental principles of

\(^4\) Ibid., p.28
the *Laws*. Governments must be accommodated to law, and not law to governments. If sovereignty is thus vested in law, it follows that we need not expect to find any political authority in the State of the *Laws* which corresponds to the sovereign of a modern community. No body of magistrates; no Council or Senate; no assembly, however broad, will be other than subordinate to the rule of the law.7

Barker continues his point in a footnote;

The rule of law, it should be noticed, does not bear the same meaning in Plato's *Laws* which it bears in a book such as Dicey's *Law of the Constitution*. To the English thinker it meant that executive officials, like all other persons, are amenable to the common law of the land, as made by parliamentary enactment, and that they are tried before the ordinary judges who administer this law. The rule of law is thus compatible with the sovereignty of parliament, and with the right of parliament to alter the law which the judges administer. To Plato the rule of law means that every authority in the state - not only executive officials but also the Assembly and the Council - are under a code of law which, once enacted by the legislator and definitely established in practice, is fundamental.8

Now there are passages in *Laws* which do seem to support the Saunders-Barker thesis that Plato had adapted his early political ideals to the vagaries of actual political life. At 746b the Athenian says:

> I am of the opinion that, in matters which are not present but future, he who exhibits a pattern of that at which he aims, should in nothing fall short of the fairest and truest; and that if he finds any part of this work impossible of execution he should avoid and not execute it, but he should contrive to carry out that which is nearest and most akin to it.9

An example from *Laws* of Plato choosing a "second-best" alternative over the ideal is the way that property is to be divided in the new colony. At 739 (and again at 807), in a passage which is reminiscent of *Republic*, Plato reaffirms the ideal of common property. Ownership, he says, should be eliminated from life, but because of the "origin, nurture, and education" (*Laws* 740a) of the colonists, this is impossible. Instead

8Ibid.
9Unless otherwise noted, all my quotations from Plato's text are from Jowett translations.
each colonial family is to receive an allotment of land which is inalienable and which cannot be extended. There are strict limitations on the amount of wealth that a family can accumulate; but there is to be private property. Plato apparently opts for what he considers to be a less than ideal situation because of the limitations imposed by "this world".

The same is true of the laws of marriage. In *Republic* Plato advocates the abolition of the family for the guardians; wives and children are to be communal. And he reaffirms this arrangement as ideal at *Laws* 739. But once again the colonists have not been educated for this ideal — so it is abandoned. Men are allowed wives — and the couple is allowed to raise their own children.

The most important ideal which Plato apparently thinks is unrealizable in his Cretan colony is the philosopher-king. In *Republic* the state is ruled by one or a few men — Plato is ambiguous on this point — who hold office on the grounds of merit. The educational system is geared to produce expert practitioners of the art of ruling; at every stage there are tests designed to distinguish the wisest and most virtuous. These become rulers. In *Laws* the change is dramatic, and at first anyway, surprising. Rather than being chosen on grounds of merit, the rulers that Plato appoints are elected either directly or indirectly by the people.

To further support the Barker-Saunders thesis, there are passages in *Laws* which suggest that Plato still regarded the rule of philosophy as ideal — but now as an unrealizable ideal. He tells us this in at least two places: first, in a passage extending from 709e to 712a; second, and more directly at 875:
No man's nature is able to know what is best for human society; or knowing, (no man's nature is) always able and willing to do what is best. In the first place there is a difficulty in knowing that the true art of politics is concerned, not with private but with public good (for public good binds together states, but private only distracts them); and that both the public and private good, as well of individuals as of states, is greater when the state and not the individual is first considered. In the second place, although a person knows in the abstract that this is true, yet if he be possessed of absolute and irresponsible power, he will never remain firm in his principles, or persist in regarding public good as primary in the state, and the private good as secondary. Human nature will be always drawing him into avarice and selfishness, avoiding pain and pursuing pleasure without any reason, and will bring these to the front, obscuring the juster and the better; and so working darkness in his soul will at last fill with evils both him and the whole city. For if a man were born so divinely gifted that he could naturally apprehend the truth, he would have no need of laws to rule over him; for there is no law or order which is above knowledge, nor can mind, without impiety, be deemed the subject of any man, but rather the lord of all. I speak of mind, true and free, and in harmony with nature. But then there is no such mind anywhere, or at least not much; and therefore we must choose law and order which are second-best.

To give Saunders his due, it is hard to believe that these words were written by the same man who wrote Republic. In the earlier dialogues (including Statesman) Plato seems to place all his faith in education: the whole Republic is based on the belief that we can create a truly wise, and therefore truly good, ruler. Now he is telling us that even one who is educated to the perception that "the true art of politics is concerned not with private but with public good . . . will never remain firm in his principles or persist in regarding the public good as primary in the state". Because of "human nature" we must settle for what is the "second best" alternative -- "law and order".

The passage cited above is an especially important one because it appears to be an explicit statement by Plato himself that he is giving up as idealistic the idea of the philosopher-king(s). Barker cites the passage as support for his view that ... "Plato never abandoned the ideal of the Republic, or ceased to believe that the ideal state must be
governed directly and personally by the philosophic mind."10 "He did not abandon the ideal, but he abandoned the hope of its realization".11

Skemp also cites the passage at 875; he says that when Plato wrote Statesman he still believed that

... if the true statesman did arise, men would acclaim him and the community would become a true commonwealth. These are not the words of the Laws, where the ideal ruler has become a formal possibility only, and where the only safety lies in prescribing a code of laws ... he no longer stands by the contention he makes in the Politicus that a philosophical ruler can rule without laws. In 353 (when Laws was written) there was disillusion: ten years earlier ... (Statesman) there is still hope -- hardly less so than in the Republic.12

To fully appreciate what Plato is saying at 875 we must place the passage in context. Plato is introducing legislation covering assault and wounding. He is arguing for the necessity of law even if specific laws can rarely be formulated so that they cover every case exactly as the legislator wishes. Plato is arguing that a great deal of discretion must be left to the courts. This is because "the different cases are countless and their circumstances are widely unalike ... and it is quite impossible to the legislator to leave the court no discretion at all on the further question of the amount of fines or penalty to be imposed, but deal with all cases himself, light or grave, by statute," (Laws 875e).13

Put in context, the "ideal" that Plato seems to be abandoning at 875 is a legislator who could deal personally with each and every wrongdoing of whatever sort. We must settle for the "second best" alternative which is "law and order", but the "best" alternative which

10 Barker, Greek Political Theory, p.294
11 Ibid., p.294, Note 1.
13 The quote here is from Taylor's translation.
we are giving up is a legislator who has "absolute and irresponsible power" and who could "deal with all cases himself".

The same point is much more carefully argued at Statesman 294e-295b:

... we must expect that the legislator who has to give orders to whole communities of human creatures in matters of right and of mutual contractual obligation, will never be able in the laws he prescribes for the whole group to give every individual his due with absolute accuracy ...

But we shall find him making the law for the generality of his subjects under average circumstances. Thus he will legislate for all individual citizens, but it will be by what may be called a 'bulk' method rather than an individual treatment; and this method of bulk prescription will be followed by him whether he makes a written code of laws or refrains from making such a code, preferring to legislate by using unwritten ancestral customs.

... How could any lawgiver be capable of prescribing every act of a particular individual and sit at his side, so to speak, all through his life and telling him just what to do?^1

In this passage from the Statesman, and again at Laws 875, Plato is arguing for the necessity of law. It may not be ideal — it may not give "every individual his due with absolute accuracy" — but the ideal is impossible when we are dealing with "whole communities of human creatures". No legislator can "deal with all cases himself"; he must use the "bulk method of prescription" instead.

If law is described at 875 as the alternative which is only second-best to the ideal ruler, it has received a more dignified description at 713-714. Here Plato is relating the Myth of Cronos: "there is a tradition of the happy life of mankind in days when all things were spontaneous and abundant". The reason for this paradise was that mankind was not ruled by men — rather by Gods: and the result

of this tutelage was "peace and reverence and order and justice never failing". Plato goes on:

The story has a moral for us even today, and there is a lot of truth in it: where the ruler of a state is not a God but a mortal, people have no respite from toil and misfortune. The lesson is that we should make every effort to imitate the life men are said to have led under Cronos; we should run our public and our private life, our homes and our cities in obedience to what little spark of immortality lives in us, and dignify these edicts of reason with the name 'law'. (Laws, 713e-714a).

Saunders has a footnote to this passage which is helpful in understanding it. He says:

The punning in the Greek defies rendering into English. The "divine spark" in us is reason (nous) which 'dispenses' (dianome) law (nomes) in place of the spirits (daimones) of Cronos' age.

The moral then of the myth is that we should "imitate" life in the age of Cronos. We can do so by running our homes and cities in obedience to the "edicts of reason" — laws. Plato relates the Myth of Cronos in order to argue the point he makes a few paragraphs later at 715:

Where the law is subject to some other authority and has none of its own, the collapse of the state, in my view, is not far off; but if law is the master of the government and the government its slave, then the situation is full of promise and men enjoy all the blessings that the gods shower on a state.

In Laws then Plato gives us two distinct arguments to the effect that the supreme authority in the state must be law. One argument is given at 875: law must reign supreme because "no man's nature is able to know what is best for human society and knowing (no man is) always able and willing to do what is best". The "ideal" would be if we could find such a man, but in his absence we must settle for the "second best" alternative, "law and order".

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15 Ibid.
16 Saunders' translation: in the introduction to his text Saunders interprets this passage as calling law the "dispensation of reason".
17 Saunders' translation.
The other argument is found at 713-15. Here the ideal ruler is a God — Cronos. Law is called the "dispensation of reason" and reason is the God-like element in the human soul. We can therefore imitate the ideal by making law the supreme authority in the state.

It is, of course, this doctrine — that law should be supreme — that according to Barker, divides Plato's political theory into two distinct halves. "On the one side is the Guardian of the Republic, unfettered by law: on the other is the Guardian of the Laws who is its servant and is even described as its "slave". The difference between these "two halves" is traditionally explained as Plato adapting the "ideal" of Republic to the conditions of actual political life.

Support for this explanation of the alleged doctrinal difference can be found in both of Plato's arguments for the supremacy of laws. We have seen how the argument at 875 can support Barker's contention that although Plato always held to the ideal of Republic, he nonetheless abandoned hope of its realization.

G.M.A. Grube sees the argument from the Myth of Cronos as also supporting the same contention. He thinks that the Gods in Plato's myth refer to the philosopher-ruler of Republic, and that therefore "that ruler is now relegated to a mythical past and to an equally mythical future". We must settle for a less than ideal sovereign authority.

Further support is available for this interpretation of Plato's political theory in Statesman. Here Plato states his ideal — a

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18 Barker, p.295.
19 G.M.A. Grube, Plato's Thought, Methuen & Co., London, 1935, p.299. Grube makes his point while discussing the version of the myth in Statesman; but the myth in Laws is the same one, except that it is much shorter.
philosophic ruler who may rule "with or without laws", and who is empowered to amend those laws at his discretion. Plato also seems to go some way towards rejecting his ideal as impractical.

The argument that the philosophic statesman must not be hindered by laws begins at 292e:

... it is only the man possessed of the art of kingship who must be called king, though he is just as much a king when he is not in power as when he is.

... On this principle it is the men who possess the art of ruling and these only, whom we are to regard as rulers, whatever constitutional form their rule may take. It makes no difference whether their subjects be willing or unwilling; they may rule with or without a code of laws.  

Young Socrates will agree to all of this with one reservation — that 'the saying about ruling without laws is a hard saying for us to hear' (293e). The Stranger defends his position:

In one sense it is evident that the art of kingship does include the art of law-making. But the political ideal is not full authority for laws, but rather full authority for a man who understands the art of kingship and has kingly ability. Do you understand why?

'No please tell me why'.

'Law can never issue an injunction binding on all which really embodies what is best for each; it cannot prescribe with perfect accuracy what is good and right for each member of the community at any one time. The differences of human personality, the variety of men's activities and the inevitable unsettlement attending all human experience make it impossible for any art whatsoever to issue unqualified rules holding good on all questions at all times.' (294a-b)

With this much said the Stranger asks a surprising question:

But why then must there be a system of laws, seeing that law is not the ideal form of control? We must find out why a legal system is necessary. (294c)

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20 This and the following quotes from Statesman are from Skemp's translation.

21 Following Skemp I shall refer to the respondent in Statesman as 'Young Socrates', so as to distinguish him from the philosopher Socrates.
Now, "the political ideal is not full authority for laws, but rather full authority for a man who understands the art of kingship and (who) has kingly ability": nevertheless "a legal system is necessary". There is nothing in the succeeding passages to suggest that Plato is envisaging a state in which the laws have "full authority" over a man who has "kingly ability"; on the contrary, the rulers seem to have full authority over the laws. Yet this still appears to be a change of mood from Republic, where the law is barely mentioned, and where there is no suggestion that the philosopher-king will have to settle for any second-best method of government. When Plato admits law into the commonwealth he is giving up on an ideal; he gives up on a ruler who would exercise personal vigilance over his subjects by telling them what is the good and just course of action in whatever circumstances they might find themselves (295a). The legal system frustrates the free exercise of the art of statesmanship; it prevents the statesman from giving every individual his due with perfect accuracy". For this reason a legal system is something less than ideal.

If it is true that in Republic Plato settles for nothing short of the ideal form of government, then it seems that he has already partially abandoned that ideal by conceding at Statesman 294c that "a legal system is necessary". If he has not exactly abandoned his earlier ideal, he has at least now modified it. He has not yet given up as much as he will later in Laws, where the authority of the rulers is altogether subservient to the law, but his position in Statesman does seem to be a half-way point between Republic and Laws. If it is true that Statesman at least modified Plato's ideal, it seems the more likely that he could abandon it altogether in Laws.
If Plato has already modified his ideal at *Statesman* 294c, he will later (at 301 d-e) raise doubts about ever being able to realize the ideal, even in this modified form; thus the Saunders-Barker thesis will find even further support from *Statesman*. Before giving in to doubts about the practicality of his ideal however, Plato first tells us more about the ideal itself. If the existence of a legal code does impede the statesman in the practice of his art, it need not impede him much; for he is to have full authority to amend the legal code whenever he sees fit. This argument begins at 295e:

Imagine the case of a scientific legislator. Suppose that by a written code or by support given to unwritten customs he has laid down what is just and honorable and what is not, and what benefits society and what hurts it. Suppose him to do this service for the several communities of the human flock who live on their cities as their appointed pasture, shepherd by the codes their legislators have provided. If this man, who draw up his code by the art of statesmanship, wishes to amend it, or if another scientific legislator of this kind appears on the scene, will these be forbidden to enact new laws differing from the earlier ones? Surely such a prohibition would appear as ridiculous in the case of the legislator as it did in the case of the doctor, would it not? (295e)

The doctor-ruler analogy has been introduced earlier by the Stranger in order to argue his point above. The doctor gives prescriptions to his patients in order to make them well; as the patient's condition and circumstances change, the doctor is not of course to be bound by his earlier prescriptions. He must be able to amend his rules as time passes. And so it is with the scientific legislator.

The Stranger goes on, after getting 'Young Socrates' assent to the point above:

But are you familiar with the arguments one usually hears advanced when an issue like this is raised?

No I cannot remember it at the moment at any rate.

It is quite a plausible argument: I grant that.
They contend that if a man discovers better laws than those already enacted he is entitled to get them brought into effect but only if in every instance he has first persuaded his own city to accept them. (296a).

In order to refute this argument the Stranger first gets Young Socrates to recall a point made earlier (at 292e), that only a very few citizens in any given community would have the philosophic insight necessary for a proper assessment of the law. With this established Plato falls back on his analogy between ruling and the arts of medicine and navigation. If a doctor or a ship's captain could only change his prescriptions with the prior approval of a popular lay assembly, then the arts of medicine and navigation would be thereby "annihilated". The healing of the sick would no longer be in the hands of those trained in the art of healing; doctors would be forced to obey the voice of the people—even when they knew it was detrimental to their patient. For a doctor to knowingly act to the detriment of the sick is for him to no longer be a practitioner of the art of medicine. Popular control over the art of medicine will therefore have the effect of "annihilating" that art.

So it is with the legislator. Ruling, like medicine, is an art, and final discretion must be left in the hands of the few who are expert practitioners of the art. So the philosophic legislator who has "kingly ability" must be able to alter his legal code without first getting the approval of his city.

Now the philosopher-king of Republic is surely just the kind of ruler Plato is describing in Statesman. He certainly is a "true" statesman; he certainly has "kingly ability". So what we have in Statesman is a clear statement that the philosopher-king must be able to amend his legal code at his own discretion. Or, at least he must be able to do so without the approval of his community. Plato is telling us that the
philosophic ruler must have authority over the law.

It is at this point that Plato raises doubts about the possibility of such a Ruler ever arising in a human community.

Men doubt whether any man will ever be found fit to bear such perfect rule. They despair at finding any one man willing and able to rule with moral and intellectual insight and to render every man his due with strictest fairness. They feel sure that a man with such absolute power will be bound to employ it to the hurt and injury of his personal enemies and to put them out of the way. But it remains true that if the ideal ruler we have described were to appear on earth he would be acclaimed, and he would spend his days guiding in strictest justice and perfect felicity that one and only true Commonwealth worthy of the name.

That is so of course.

We must take things as they are, however, and kings do not arise in cities in the natural course of things in the way the royal bee is born in a bee-hive — one individual obviously outstanding in body and mind and capable of taking charge of things at once. And therefore it seems men gather together and work out written codes, chasing as fast as they can the fading vision of the true constitution. (301 d-e)

So the "true" constitution — the ideal — occurs when the state is governed by a "scientific legislator" who has the authority to make and to alter laws. But the "true" statesman is hard or impossible to find. In his absence the community must fall back on "written codes"; on laws which everyone — including the government — must obey. Such a constitution is imperfect: it must "imitate" the ideal by enacting and enforcing a written code of law.

These "imitative" constitutions are twice called the "second best" alternative in Statesman, (at 297e and 300c). And this appears to be precisely the doctrine that we have found in Laws. The ideal is a philosophic legislator who could rule without law: (Statesman 294a; Laws 875). But because he must deal with different individuals in widely different circumstances, he will be forced to use a written code of law: (Statesman 294a-295; Laws 875). But a constitution which uses
law as a form of control is hardly less than ideal so long as the power to make new laws, and to amend old ones, is in the hands of a "scientific legislator": (Statesman 295e; Laws 712). But rulers who can be trusted with authority are not likely to arise: (Statesman 301d-e; Laws 711). In the absence of such statesmen we must settle for the "second best" alternative — making government subject to the law: (Statesman 297e; Laws 875).

In both Statesman and Laws then there is a substantial body of evidence to suggest that Plato has indeed resigned himself to a less than ideal form of government. Contingent upon the appearance of a truly scientific ruler, who because of his education would be perfectly wise and virtuous, Plato seems to have settled for the "second best" alternative - a government which is fettered and bound by a strict and comprehensive legal code.

Now the thesis I shall attempt to argue in the succeeding Chapters of this paper is that this interpretation of Plato's political theory is mistaken on two crucial points. First, it misunderstands the form of government recommended in Republic; and second, it also misunderstands the constitutional limitations that are imposed upon the government in Laws. Concerning the system of government proposed in Republic, Barker says that "the Philosophic rulers are absolute - absolute in the sense that they are untrammeled by any written laws". Thus in Chapter Two I shall cite numerous passages from Republic which directly contradict Barker's interpretation. Plato not only says in Republic that the

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22At Laws 712, Plato says "when supreme power is combined in one person with wisdom and temperance, then, and on no other condition conceivable, nature gives birth to the best of constitutions with the best of laws".

23Barker, Greek Political Theory, p.205.
rulers must obey the laws, he also says that they must govern under the authority of a constitution, the "spirit" and "idea" of which they are bound to uphold and preserve. So I shall first of all argue that the philosopher-king's of Republic are indeed fettered by the law.

One of the main sources which is cited in defence of Barker's interpretation of Plato's early political theory is, of course, Statesman; and we have already seen how that dialogue might be taken as supporting the recommended view. In Chapter Three however, I shall argue that the claims and arguments in Statesman - including the saying that the statesman may rule "with or without laws" - which are often thought to support the view that the philosopher-statesman would rule untrammeled by laws, will not in fact support such a thesis. I shall also argue that even Statesman provides some grounds for rejecting Barker's thesis.

Now I have claimed that Barker's interpretation of Laws is also mistaken and unsupportable. Barker thinks that in Plato's law-state, the rulers will be fettered and bound by a strict and rigid legal code, which they may not amend or ignore in any respect, without the unanimous consent of all citizens and governmental officials. I shall argue in Chapters Four and Five that this interpretation of Laws is simply unfounded; that on the contrary, Plato's constitution quite deliberately provides the government with a means of amending both the constitution and the original code of law. However if the government in Laws is authorized to amend the law, it may not amend it in just any way, For just as the rulers in Republic are to be bound by the "spirit" and purpose of the constitution and original code of law, so the rulers in Laws will be subject to the same restraints. I shall show that Plato establishes a governmental institution which is specially charged with
the duty of reviewing the government's legislative and executive acts in order to ensure that the government has not violated the aims and purposes of the state's founding legislators. I shall also cite evidence from *Republic* which suggests that even when he wrote his first political dialogue, Plato had already anticipated the need for, and the function of, this special governmental institution.

On the basis of these arguments I shall show that the rulers in *Laws* are in substantially the same position with respect to the law as are the rulers of *Republic*. I shall introduce evidence from both *Republic* and *Laws* which shows that in both dialogues Plato clearly favours a constitutional form of government; that is, a system of government in which the rulers are legally bound by the terms of a constitution which specifies certain basic principles on which the state is founded, and which specifies certain basic objectives towards which the government must direct its energies. I shall contend in other words, that in this one respect at least, Plato's system of government would be very much like our own.

So the overall view of *Republic*, *Statesman* and *Laws* that I shall try to support is that there are no important philosophical, political or educational inconsistencies between the three dialogues. I shall attempt to show that the constitutional form of government worked out in *Laws* is in fact a rather effective and coherent attempt to put into practice the political principles and ideals first introduced in *Republic*. I shall argue in other words, that in *Laws* Plato tries to write a constitution and code of law which, if implemented, would establish the government and sovereignty of philosopher-kings.

Now in claiming that Plato's political theory is largely
consistent, I am of course denying that Plato ever abandoned hope of realizing his earliest political ideals. If Plato himself calls the law-state the "second best" method of government, and if my interpretation of Republic is sound, then the state described in Republic is itself "second-best". On the other hand if the Republic is truly an ideal state because it is governed by ideally educated rulers, then Laws shows us how this ideal might be put into practice. So my contention is this; if Plato was an idealist when he wrote Republic, then he was still an idealist when he wrote Laws; alternatively, if Laws is not the work of an idealist, then neither is Republic.

Now I have outlined my dispute with Barker and the traditional interpretation of Plato's political theory; the claim I reject is that the 'sovereignty of law' principle in Laws "cleaves Plato's political theory into two distinct halves". In the course of arguing that this interpretation is unsupportable, I have for obvious reasons, focused my attention on Plato's treatment of the state's legislative power; the issue I must examine in Chapters Two, Three, Four and Five is what if any constitutional and legal restraints has Plato imposed on the legislative powers of his government? But the legislative power is not the only power that is traditionally given to government; accordingly in the last Chapter of this paper, I shall examine Plato's constitutional provisions for the state's executive, judicial and teaching powers. I shall argue that if Plato does not distribute governmental power among the three traditional branches of government - legislative, executive, and judicial - in such a manner that each department has the means of checking the powers of the other two, he does nevertheless write a constitution which provides for a comprehensive system of checks
and balances on governmental power. I shall argue that no one of Plato's governmental institutions has absolute legislative, executive, or judicial powers; that the powers of every governmental agency are effectively checked by some other institution. Finally, I shall argue that it is this system of institutional checks and balances which enables Plato to claim that law is the highest authority in his state; and that it is this system of checks and balances that explains the exact extent to which Plato's government will be fettered by law.
CHAPTER II

The usual understanding of Republic is that the philosopher-kings would have autocratic powers, including complete authority over the law. Barker says that the rulers of Republic are to be "unfettered by law", and that "the ideal state must be governed directly and personally by the philosophic mind". Grube identifies the philosopher-king with the ideal rulers in the Age of Cronos, who, being Gods, certainly held supreme power over their subjects, who were men. Morrow describes what I have called the "usual" understanding of Republic thus:

This work is generally supposed to have been constructed upon the assumption that the presence of law would be a hindrance upon the free exercise of scientific rule. Socrates describes a society, so it is said, in which intelligence is completely sovereign, intelligence of the highest sort, of course, entirely beneficent in its aims, utilizing and directing the materials of human nature and society to bring about justice in the state, and in the individuals which compose it. Such a sovereign must be free not merely from ignorance and self-interest, but also from tradition, precedent, and prescription; for without such freedom it cannot make the fullest application of its knowledge to the problems with which it is to deal. This interpretation has a long and respected history, and may probably be taken as the orthodox view.

There is of course some reason for understanding Republic in this way. That the philosopher-kings would have absolute authority over the law seems to be implied by Plato's most fundamental moral beliefs: virtue is knowledge, and wrongdoing results from ignorance. A philosopher is the only one who has "apprehended the Good"; he is therefore the only one who is competent to rule. If he holds political power by virtue of having established himself as the wisest and most virtuous of citizens, why should his powers be limited by tradition, precedent and prescription? In short, why should he be fettered by law?

24 Barker, Greek Political Theory, p. 295.
25 Ibid., p. 294
26 Grube, p. 279.
Now this interpretation of Republic may have "a long and respected history", but surprisingly, there is very little, if any, textual evidence that can be cited in its defence. Indeed the following citation from Book 4 is virtually the only passage that Barker and the orthodox critics have offered in support of their interpretation:28

Well and what about the business of the agora, and the ordinary dealings between man and man, or again, agreements with artisans; what about insult and injury, or the commencement of actions, and the appointment of juries - what would you say? There may also arise questions about any impositions and exactions of market and harbour dues which may be required, and in general about the regulation of markets, police, harbours and the like. But, Oh heavens! shall we condescend to legislate on any of these particulars?

No, it is unseemly to impose laws about them on good men; what regulations are necessary they will find out soon enough for themselves.

Yes, my friend, if God will only preserve to them the laws which we have given them. (425 d-e)

The text re-emphasizes the point a few lines later:

I conceive that the true legislator will not trouble himself with this class of enactments, whether concerning laws or the constitution, either in an ill-ordered state or in a well-ordered state; for in the former they are quite useless, and in the latter they will either be of a kind which anyone can devise, or they will naturally flow out of our previous regulations. (427a)

Now Barker supposes Plato to be saying here that no legislation is needed upon these matters,29 but it is evident that he has misunderstood Plato on a crucial point. Plato does not say that no legislation is needed in these areas; he says, in the one case (at 425e) that the legislation which is needed can be easily worked out, provided that the rulers preserve the laws we have already established. (Or, literally, provided that "God will only preserve to them the laws which we have given them").

28 See Barker, p.278.
29 Barker, p.278.
The same point is repeated at 427a; Plato will not trouble himself with laws of this kind, because in an ill-ordered state they are quite useless, and in a well-ordered state "they will either be of a kind which anyone can devise, or (else) they will naturally flow out of our previous regulations". Plato is saying just the opposite of what Barker takes him to be saying; the point is not that these laws are unnecessary, it is that they can be worked out later, given the regulations already instituted.

If the text at 425d and 427a will not itself support the orthodox view — that Plato excludes law from Republic because it could only act as a hindrance upon the free exercise of scientific rule — we are still faced with the overall plausibility of the claim that Plato would leave his philosopher-King to rule the ideal state quite untrammeled by any laws or regulations. Barker puts his case thus:

The true statesman is a monarch: the ideal government is monarchy, because in monarchy, and in monarchy alone, perfect knowledge is to be found. Provided he (the monarch) have such knowledge, what matter if he gains his subjects' consent to all he does, or whether he act according to any form of law? He will act of himself for the right, because he will always know what ought to be done; and to limit him by the need for consent, or by the forms of law, is only to hamper the free play of his knowledge. From the praise of knowledge Plato accordingly turns to an attack upon law. We have already seen from the Republic that, where education has given a living knowledge, law has become unnecessary: we have already seen that Plato viewed an abundance of laws as the sign and token of ignorance and the want of education. If the law be within you it need not be without you.

Now there is a certain ambiguity in this passage as to whether law is supposed to be entirely missing from the ideal state, or whether it is to be present to some minimal extent. Barker says that "law has

30 see footnote infra. p. 26 for an alternative translation of this passage.
31 Barker, Political Theories of Plato and Aristotle, p.167.
become unnecessary", yet he also says that "Plato viewed an abundance of laws as the sign and token of ignorance". Perhaps the explanation of this ambiguity is that Barker understands Plato's concept of sovereignty as entailing an absence of law, and yet at the same time, he is aware that Plato mentions the existence of laws in dozens of different places in Republic. 32

However, the mere existence of laws is not necessarily a problem for the orthodox view. For the state could contain laws which do not "hamper the free play of his (the ideal ruler's) knowledge"; presumably the law will not hamper the ruler so long as he has unlimited authority over them. And Statesman would certainly support this reading of Republic — that although the state does contain laws, they in no way limit the authority of the ruler. Statesman will support this view, as opposed to the more extreme position typified by Sabine, who holds that Plato's position results in "the exclusion of law altogether from the ideal state". 33 In Statesman Plato admits that laws are necessary, even if they are less than the ideal form of control, but they will not much damage the community so long as a scientific legislator has full authority to make, amend, or ignore the laws according to the dictates of his art. The ruler will not "be fettered by law" if the dictates of Knowledge and Goodness are the only authorities greater than his own.

There is also evidence in Republic itself that the ruler has authority over such laws as the state does contain. In at least three

32 A few examples are: laws regulating poetry (380b, 383e); laws concerning religion (427b) and festivals (459c); laws governing the practice of medicine (409c); laws proclaiming a community of wives and children (453d, 457d); laws prohibiting private property for the guardians (417b); laws of war (471b); and laws concerning the curriculum for higher education (525b, 530a, 534 d-e).

33 Sabine, p. 68.
places Plato casts his ruler in the role of legislator; in other words, the ruler is given the responsibility for writing legislation. First, at 501a Plato says that the rulers "will have nothing to do with individual or state, and will inscribe no laws, until they have either received from others, or have themselves made, a clean surface". Now what Plato means by a "clean surface" here is an interesting question, but it is one which I must ignore in favour of the subordinate point of the passage, which is that after the ruler has a "clean surface", he will then impose laws on the state. A similar passage occurs at 484d; here Plato tells us that the ruler, because he has a "perfect vision" of the "true being of each thing", will be able to "frame laws about beauty, goodness and justice". The third passage which makes it clear that the rulers have the authority to pass laws occurs at 502b; And when the ruler imposes the laws and institutions which we have been describing, is it not possible that the citizens will be willing to obey them? (502b) However just because Plato's ruler has the authority to pass laws does not necessarily mean that his authority is altogether superior to the law. For he may be bound by his own enactments, or again, there may be limitations upon the range of his legislative powers. In the above passages Plato leaves no doubt that the philosopher-kings will be granted some measure of legislative authority, but if these passages do not themselves suggest that there are limitations upon this authority, neither do they suggest that there is to be no limitation upon it. Barker, in defence of the orthodox view, admits that the state does contain laws, though he thinks that they are not to be found in abundance. But in order to defend his view (that the ruler is unfettered by law), he has to show that the authority of such laws as the
state does contain is in every way subservient to the authority of the philosopher-king. We have seen that Plato does assign some legislative power to his rulers — he speaks of the ruler "imposing" laws on the state. But I know of nowhere in Republic where Plato says that the legislative authority of the ruler is unlimited in scope. So far as I know Plato does not even suggest that his ruler will have the kind of power that Barker attributes to him.

Now this is only to point out that Barker's interpretation of Republic suffers from a want of textual support. But what is an even greater problem for the orthodox view is that there is textual evidence which directly and decisively contradicts it. The crucial question is this: must Plato's philosopher-king rule in accordance with a code of law? Or is he altogether exempt from any such fetters?

The answer to this question must begin with a distinction between the situation in which we find ourselves when we are founding a state — that is where we must fashion a constitution and code of law — and the situation which prevails once the state has been created. That Plato makes this distinction is clear enough. At the beginning of Republic Socrates is challenged to define justice. He replies that justice is "sometimes spoken of as a virtue of an individual, and sometimes as the virtue of a state"; since the state is "larger" than the individual, justice should there be "more discernible" (368a). In order to find justice in its clearest perspective therefore, we must "construct a state"; we must "imagine the state in the process of creation" (369a). The larger part of Republic is devoted to founding the ideal state; Socrates frequently refers to himself, Glaucon and Adeimantus as the original legislators or law-givers (727b, 458c, 497d, 592a are examples).
This distinction between the founding legislators and the philosopher rulers who will have legislative powers once the state has been created, turns out to have the utmost bearing on the question about the relation between the ruler and the law. Perhaps this can best be shown by beginning with the passage (already quoted) at 425d-e - 427a. At 425d-e Socrates and Adeimantus agree that they need not bother working out legislation to cover "minor matters" (laws concerning "harbours, police, markets and the like" are the examples given); they agree that it is "unseemly" to impose such laws on "good men", because "what regulations are necessary they will find out soon enough for themselves", provided that they "preserve" the laws which "we have (already) given them".\(^\text{34}\) A similar thought is expressed a few lines later at 427a. This time Socrates tells us that the "true legislator will not trouble himself with this class of enactments" because "they will either be of a kind which anyone can devise or (they) will naturally flow out of our previous regulations".\(^\text{35}\)

\(^{34}\) The suggestion here that these laws can be worked out by "good men" is puzzling. Does it mean that any or all of the states citizens could do the job? This seems to be what Plato is saying, yet the legislation which is needed includes contractual law, laws concerning libel and slander, laws on assault, civil law, and tax law (425c-d). Is Plato to be taken as meaning that just anyone could write legislation in all these areas? Or is he saying that the appropriate officials - harbour masters, market wardens, police officials, etc. - would be given the task of writing the necessary regulations? Or by "good men" does Plato mean the Philosopher-Kings?

\(^{35}\) The translation of this passage is controversial. Lee translates "the real legislator... (need not) bother about making (such) laws... (because) they are partly obvious and partly the automatic result of earlier training".
Both of these passages (425d-e and 427a) are puzzling in more than one way. First, it is unclear exactly to whom Plato would leave the responsibility of writing the necessary "minor" legislation. Second, it is difficult to know how to interpret the remark at 425a - that these matters can be left to future legislators provided that they "preserve" the legal code which "we" - the original legislators - have given them. The same difficulty arises with the remark at 427a - that these laws can be left to future legislators because "they will naturally flow out of our previous regulations" (or, alternatively, because "they are ... the automatic result of earlier training").

However these interpretive difficulties are to be resolved, - and I think that subsequent passages in Republic show how they should be resolved - at least one point is perfectly clear: Plato is drawing a distinction between those laws which properly concern those who are founding a state - that is, those who are framing a constitution - and those laws which need only concern legislators who hold office once the state and its constitution have been established. That Plato makes this distinction is important to our present purpose, because in several later passages he will tell us that future legislators are to be bound and fettered by the fundamental principles on which the original legislators have based their code. There may indeed be some suggestion of this idea at 425d and 427a; however if there is, it is certainly no more than a suggestion. At 458c however Socrates speaks in no uncertain terms:

I think that if our rulers and their auxiliaries are to be worthy of the names they bear, there must be the power of command in the one, and a willingness to obey in the other; the guardians must themselves obey the laws, and they must also imitate the spirit of them in any details that are entrusted to their care. (458c)
In this instance Plato's language is absolutely unequivocal: "the guardians must themselves obey the laws", and not only this, "they must also imitate the spirit of them in any details that are entrusted to their care". Obviously this passage does much damage to the orthodox interpretation of Republic; it is simply not true that Plato's philosopher-guardians will be "unfettered by law" (the phrase is Barkers). It must be admitted however that while this passage does instruct the guardians to "imitate the spirit" of the laws in any "details" over which they enjoy discretionary power, it does not specifically suggest that the state's constitution or original code of law is to act as any special restraint upon subsequent governments. At 458c Plato does not say that the rulers are to be bound by the original code of law; he only says that they must obey and imitate the laws. However the text at 425e and 427a does mention that future legislation must be constructed in sight of the original code, and if the text at 425e and 427a is too vague to itself justify the suggestion that Plato intended to bind future governments with a constitution or set of fundamental laws, I think that the following passage, in conjunction with the others, does warrant such an opinion.

You may remember my saying before that some living authority would always be required in the state having the same idea of the constitution which guided you when as legislator you were laying down the laws. (497c-d)

This time the reference to the constitution and to the original legislator is explicit; the state is to contain some "living authority" which understands the "idea" or spirit of the constitution as it was conceived by the original legislators. So we know that successive governments must "understand" (497c) and "preserve" (425e) the constitution or original
code of law; in addition we know that they must "obey the laws", and also that they must "imitate their spirit in any details that are entrusted to their care" (458c). Although he does not work out the idea in any detail in Republic, I think that the above quoted passages make it fairly clear that Plato did favour some form of constitutional government. It is absolutely certain that the states rulers are to be "fettered by law" in one sense; for Plato says that they must "obey the laws". But I think it is at least fairly certain that they will also be fettered by law in a second sense; namely, they must govern and legislate within certain limitations that are imposed by the states constitution or original code of law.36

36 There is also one other passage in Republic where Plato seems to say that his rulers will be bound by the "spirit" or "idea of the states original code of law. At 445e Socrates remarks: "if the governors have been bred and trained in the manner which we have supposed, the fundamental laws of the state will not be disturbed". But the translation of this passage is problematic; the phrase which Jowett has rendered as "the fundamental laws" (when transliterated from the Greek) is 'ton axion logou nomon'. (I am told that the literal translation would be 'the laws worthy of reason', or perhaps 'the laws based on reason'). However difficult it is to translate this passage, it is clear that Plato is not saying simply that the laws of the state will not be disturbed if the rulers are properly educated; rather he is saying that those laws which are 'axion logou' will not be disturbed. Presumably Plato believes that these laws will, and should, remain undisturbed because they are 'axion logou'. The rulers have "been trained in the manner we have supposed" so that they will understand the 'logos' on which Plato's law is based; so that they will not disturb those laws which are 'axion logou'; so that they will preserve the 'logos' which underlies the states law and constitution. The word 'logos' is also used in this context at 497d, where Socrates says that the "living authority" must have the same 'logos' ('idea') of the constitution as did the original legislators. I think it is quite clear in both of these passages (and also at 425e - 427a and 458c where the word 'logos' does not appear) that Plato believes that properly educated governors - the Philosopher Kings - are to be guided and bound by the idea or spirit ('logos') of the states constitution and original code of law.
Perhaps the best indication of all that this was Plato's intention however is to be found in Book Four of *Republic*, where Plato gives us a list of "orders that will have to be conveyed to our guardians" (423c); that is, where he gives at least a partial indication of the limitations which he, as the original legislator, would impose upon the states future governments. The first of these "orders" is that the rulers must eliminate the extremes of poverty and wealth in the state; "the one is the parent of luxury and indolence, and the other of meanness and viciousness, and both of a revolutionary spirit" (422a). Next he would "order" the rulers not to let the state grow too large, or encompass more territory than is necessary for its survival. "I would allow the state to increase so far as is consistent with unity" (423b); the rulers must "guard against our city becoming (too) small or great only in appearance. It must attain an adequate size, but it must remain one" (423c). Adeimantus replies that this is a very "severe order", but undaunted Socrates offers one that is even "harder":

I mean the duty, of which some mention was made before, of discarding the offspring of the guardians when inferior, and of elevating into the rank of guardians the offspring of the lower classes, when naturally superior. The intention was that in the case of the citizens generally, each individual should be put to the use for which nature intended him, one to one work, and then every man would do his own business, and become one and not many; and so the whole city would become one and not many. (423c-d)

The list of "orders" continues:

The regulations which we are prescribing, my dear Adeimantus, are not as might be supposed, a number of great principles, but trifles all, if care be taken, as the saying is, of the one great thing, - a thing however which I would rather call, not great, but sufficient for our purposes.

What may that be?, he asked.

Education, I said, and nurture; if our citizens are well educated and grow into sensible men, they will easily see their way through all these, as well as other matters which I omit; such, for example, as marriage, the possession of women and the procreation of children, which will follow the general principle that friends have all things in common. (423d - 424a)
So the most important "order" that Plato would give his guardians has to do with education; Socrates continues:

Then to sum up: this is the principle that our rulers should cling to throughout, taking care that neglect does not creep up - that music and gymnastic be preserved in their original form, and no innovation made. They must do their utmost to maintain them intact. (424b)

The reason that "any musical innovations are to be shunned" is that "when the modes of music change, the fundamental laws of the state change with them". (424c)

Then I said, our guardian must lay the foundations of their fortress in music?

Yes, he said; the lawlessness of which you speak too easily creeps in.

Yes, I replied, in the form of amusement, and as though it were harmless.

Why, yes, he said, and harmless it would be; were it not that little by little this spirit of licence, finding a home, imperceptibly penetrates into manners and customs; whence issuing with greater force it invades contracts between man and man, and from contracts goes to laws and constitutions, in utter recklessness, ending at last, Socrates, by an overthrow of all rights, private as well as public. (424d-e)

These then are the "orders" that Plato would "convey" to the state's rulers: they must avoid the extremes of poverty and wealth; they must not let the state grow too large; they must distribute the offices of state according to merit; they must observe the principle of 'one man to one job'; they must preserve the educational system in "its original form"; and they must ensure that the laws concerning property, wives and families, observe the principle that friends have all things in common. It is obvious from the overall tone of these passages that Plato is setting guidelines under which the rulers must work; his regulations are "orders which will have to be conveyed to our guardians".

\[37\] For precisely the same doctrine see Laws 797.
No doubt Plato's educational system will be the main vehicle through which these guidelines will be communicated. The future rulers will be educated to the perception that poverty and wealth are the "parents" of revolution; that innovations in the educational system produce lawlessness, etc. But I think that even in Republic Plato is not entirely content to rely on education alone. Although the "orders" that he gives his guardians will certainly be conveyed through the school, I think they will also be conveyed through the state's legal code. We can be sure that Plato's state will have a constitution and basic code of law; indeed the "living authority" must serve as the special guardian of the "constitution". The reason I believe that it is these "orders" that will be declared in the state original code of law - in its constitution - is that it is these particular regulations which Plato regards as most fundamental to his state. They are basic to the preservation of order in the state; they are fundamental to the community's continued well-being. If these principles are neglected, the result is lawlessness, war, and revolution. We know that the rulers are instructed to uphold the "spirit" of the laws and constitution, and we know that the state will contain some "living authority" which

Elsewhere in Republic Plato writes particular "laws" which spell out these "orders" in more detail. He makes laws concerning the content of poetry to be used in the schools (380b-c; 383c); laws prescribing the periods during which mathematics will be studied (525b; 530c); and laws prescribing the study of Dialectic (534d-e). He also makes a law prohibiting private property for the guardian class (417b), and at 457c-d he writes his law concerning marriage and child-rearing. The law is that "all these (guardian) women are to be common to all the men of the same class, none living privately together; and, moreover, that their children are to be common, and no parent is to know his own child, nor any child his parent".
understands the original "idea" of the constitution. The implication is that the state's original code of law would specify (in detail or in outline) certain basic principles, such as 'one man to one job', and 'promotion according to merit', and that the rulers will be bound to govern within the spirit of these constitutional principles.

Now the view I am urging here is that in Plato's ideal Republic, the rulers will not only be bound by the dictates of philosophical wisdom, they will also be bound by the dictates of law. I hope it is clear from the different passages I have quoted from Republic that Plato did not regard law as a hindrance to the free exercise of scientific rule; and that in fact he saw the writing of legislation as an integral part of the statesmen's art. In Republic Plato himself writes those laws which he regards as most fundamental to the state; I think there should be no doubt that Plato believed that he could embody the dictates of philosophical wisdom in a code of law, the spirit of which - and in some instances, perhaps, the letter of which - would serve as a restraint upon the powers of the philosophic rulers. Plato's ultimate safeguard against bad government is most certainly education; but the principles his state would teach will also be embodied in a legal code. And he states unequivocally that the "guardians must themselves obey the laws".

In light of these many things that Plato has to say about law in Republic, I think we are quite justified in taking exception to the orthodox interpretation of the dialogue. The rulers in Plato's state will not be unfettered by law in the sense that the orthodox view maintains. The guardians do not have unlimited authority over the law because they are not authorized to enact any legislation they might desire; nor may they amend or disregard all of the established laws and
regulations. It is very clear for instance that the state’s legislators could not simply ignore those laws which provide for the different stages in the education of the future guardians; nor could they ignore those laws which specify qualifications for holding public office; nor could they ignore those laws which prohibit private property and families. Plato makes it perfectly clear that his basic political and educational principles will be embodied in a code of law, and he also makes it perfectly clear that his philosopher-guardians will be bound to uphold at least the spirit of that legal code. But if we can be sure that the rulers will be fettered by law to some extent, we are nevertheless hard pressed to satisfactorily explain the exact ways in which their powers are to be curtailed. Plato suggests that the laws on "insult and injury", contractual law, tax law, etc., must "flow out of our previous regulations", and he also suggests that all legislation which is enacted supplementary to the original code must be in harmony with the spirit of that code. But just what status does Plato give to the constitution and original code of law? Are the rulers allowed to amend Plato’s laws so long as they preserve their spirit? Or will they be prevented from changing the original code in any detail? I think that the former possibility is the more likely one, but it must be admitted that in Republic Plato simply does not face these important questions. Because

39It is interesting to note that in Laws Plato has himself amended his laws on private property and families. The guardians will be allowed to own property, and they will be allowed to raise their own children. But there are very stringent limitations on the amount and kind of property that may be owned; and there are provisions for strict supervision of these regulations. The same is true of families. Plato writes a large body of legislation dealing with families, and he again provides for strict supervision of the laws; in fact, he appoints special officials to ensure that children are properly trained and educated. So if Plato has changed the letter of his law, he has not changed its spirit or purpose. He still avoids the extremes of poverty and wealth, and he would still control the business of childrearing.
Republic is more concerned with the education of the rulers than it is with giving a systematic account of the form their rule would take, it is impossible to say exactly what powers the rulers would enjoy; it is impossible to answer the question 'to what extent, and in which particular instances, are the rulers to be fettered by law?'. Before Plato can answer these questions he must work out his constitution in much more detail; and in the later Chapters of this paper I shall argue that this is precisely the task that Plato sets himself in Laws. He gives the state a legislative council - the Guardians of the Laws; he creates an institutional check on his legislature - the Nocturnal Council; and he defines the powers of a very wide range of executive officials. As a result of this constitutional detail, the extent to which the rulers are fettered by law becomes much clearer. But Republic attempts none of this; Plato simply postpones the business of constitutionally defining the powers of the different governmental agencies. But if Plato attempts no systematic theory of government in Republic, I think he at least makes one thing clear; the powers of government will to some extent at least be limited by law.
CHAPTER III

If there are reasonable grounds in Republic for doubting that Plato ever intended his philosopher-kings to have unlimited authority over the law, then what of the argument in Statesman? We have already seen how this dialogue provides strong grounds for thinking that the philosophic governor should be unfettered by law.

The political ideal is not full authority for law but rather full authority for a man who understands the art of Kingship, and (who) has kingly ability. (Statesman, 294c)

The entire section from 292b to 303d is devoted to establishing the conclusion that the true statesman, like the doctor, must be able to make laws and prescriptions as he thinks it is beneficial for the community to do so. And he must be able to do this without first getting the approval of his city. But this section of Statesman is only one part of the overall argument that Plato is making. The section must be looked at in the context of the whole dialogue.

The overall project in Statesman is to clarify the nature of the art of statesmanship — to say precisely what function the statesman should serve in the community — to (functionally) define the statesman. A first definition is given and then rejected:

Our argument defined it (statesmanship) as the science of the collective rearing of men — as distinct from the rearing of horses or other animals.

Quite so.

But we have to notice one respect in which a King differs from all other herdsmen.

What is that?

Do we find any herdsman challenged by a rival who practices another art and yet claims that he shares with the herdsman the duty of feeding the herd?

How do you mean?

You see how merchants, farmers and all who prepare the grain for food — yes and teachers of gymnastics and doctors as well — would all dispute the title 'feeders of mankind' with the.

40 See intra, pp 8-13.
herdsman we have called 'statesman'. These others would all contend that they are in charge of the feeding of mankind — and of feeding the leaders themselves as well as the mass of the herd. (267e - 268a)

The original definition of statesmanship — "the science of the collective rearing of men" — is rejected then because there are a host of other arts involved in the "rearing" of mankind. Each of these would dispute with the statesman his claim to be the herdsman who rears the human flock.

But we can say at once with certainty that no one else disputes a cowherd's position in any of these matters. He feeds his herd himself, and he is also its doctor. He is its matchmaker too, one might say, and none but he understands the midwife's duties when confinements occur and babies have to be brought into the world. Furthermore, insofar as his charges feel a need for games and music, who is so good as he to cheer them, who so gifted to charm and soothe them? For he is master of the music best suited to his herd, be it rendered on the pipes or in song unaccompanied. And so it is in the case of every other herdsman, is it not? (268 a-b)

What is wrong with the first definition is that the statesman is not a "herdsman" like all other herdsmen. All the others are personally responsible for feeding their flocks; they must be doctors and midwives, and when the need arises, they must entertain and calm their herds. But the statesman does none of this. Whatever position he does occupy with respect to his charges, he is not their "herdsman" in any straightforward sense.

At this point in the dialogue we meet the Myth of Cronos. Plato's purpose in relating the myth is twofold: he wants to show in a clearer light the mistake made in the first definition; he also wants the myth to assist in finding the correct definition. After relating the myth, the Stranger first clarifies his earlier mistake:

We are asked to define the king and statesman of this present era, and of humanity as we know it, but in fact we took from the contrary cosmic era (the Age of Cronos) the Shepherd of the human flock as it then was, and described him as the
statesman. He is a god, not a mortal. We went as far astray as that. (274e)

He continues a few lines later at 275c:

It appears to me now, Socrates, that the Divine Shepherd is so exalted a figure that no king can be said to attain to his eminence. Those who rule these states of ours in this present era are like their subjects far closer to them in training and in nurture than ever Shepherd could be to flock. We must go back again for reconsideration of one of our divisions. We said that there is a 'pre-directive' art concerned with living creatures, and with these in herds rather than as individuals. Without further division, we described this as the science of the rearina of herds. You recall this do you not?

Yes, I do.

It was at this point in our tracking down of this art that we began to lose the scent. We did not catch the statesman at all in this definition or name him properly. He eluded us without our knowing it while we were intent on the process of naming.

How did he do it?

There is no other herdsman who is not charged with the bodily nurture of his herd. This characteristic is absent in the statesman and yet we called him a herdsman. We should have used a wider name, covering all guardians, whether nurturers or not.

The Stranger says that his mistake was to confuse the statesman of the present era with the rulers in the Age of Cronos; the difference between the two is that the former is a mortal, while the latter is a God. The first definition captured the God — ruler, but not the statesman, because it showed the statesman as the "ruler of all the life of a state". (275a)

This he is not, because he is not concerned with the bodily nurture of his charges. The error must be corrected by finding "a wider name, covering all guardians, whether nurturers or not". The Stranger continues:

Surely 'concern' is available as such a class-name: it implies no specific limitation to bodily nurture or to any other specific activity. If we had named the art 'concern for herds', 'attention to herds', or 'charge of herds' (all of
them terms which cover all species) we could have included the statesman with the rest: for the run of the argument was indicating to us that we ought to do this. (275e)

The first definition is now revised. From "the science of the collective rearing of men", the definition is changed to the art of "concern for herds" or "attention to herds"; or, at 276b, "the responsible charge of a whole community". Plato's object in revising the original definition is to guard against a misinterpretation which might result from calling the statesman a "herdsman" or "tender of the human flock". Plato says at 276b that it is unreasonable to hold that "ruling is in no sense an art of tendance". So statesmanship is an art of tendance; the statesman is a "herdsman". The mistake Plato warns against is thinking that the statesman is like the cowherd who, as he is described at 286 a-b, must personally and directly tend to every aspect of the life of his charges. In the case of the human herd such direct and personal rule could only be accomplished by the Gods — such as those who reigned over the human flock under Cronos. The mistake was to think that the statesman could ever "attain to their eminence"; he is a man among men, he is similar to his subjects in "training and nurture" (275c). So he is the "tender of the human flock", but, he cannot be expected to deal personally and directly with his subjects.

This leaves us with the question of how the statesman is to "tend his herd". If he is unlike all other herdsmen in that he does not tend personally to the needs of his charges, then in what manner is he to deal with them? The answer to this question is given mainly in the section from 292b to 303d: this is the section we looked at closely in chapter I, and which seems to lend some plausibility to the view that Plato's philosophic legislator was to have complete discretionary
power over the law. It is in this section that Plato affirms the ideal of "full authority for a man who understands the art of Kingship, and has kingly ability" (294a). Full authority for the law is a less than ideal situation. Because of the "differences of human personality, the variety of men's activities and the inevitable unsettlement attending all human experience . . . (it is) impossible for any art whatsoever to issue unqualified rules holding good on all questions at all times" (294b). Law is "like a self-willed ignorant man who lets no one do anything but what he has ordered and forbids all subsequent questioning of his orders" (294c). Despite this however law is necessary: the Stranger's argument begins at 294d:

You have courses of training here in Athens have you not, just as they have in other cities — courses in which pupils are trained in a group to fit themselves for athletic contests in running or in other sports?

Of course we have quite a number of them.

Let us call to mind the commands which professional trainers give to the athletes under their regimen in these courses.

In what particular?

The view that such trainers take is that they cannot do their work in detail and issue special commands adapted to the condition of each member of the group. When they lay down rules for physical welfare they find it necessary to give bulk instructions having regard to the general benefit of the average pupil.

Quite so.

That is why we find them giving the same exercises to whole groups of pupils, starting or stopping all of them at the same time in their running, wrestling or whatever it might be.

Yes.

Similarly we must expect that the legislator who is to give orders to whole communities of human creatures in matters of right and mutual contractual obligation, will never be able in the laws he prescribes for the whole group to give every individual his due with absolute accuracy.

Very probably not.

But we shall find him making the law for the generality of his subjects under average circumstances. Thus he will legislate for all individual citizens, but it will be by what may be called a 'bulk' method rather than an individual treatment. (294d - 295a).
This answers the question 'how is the statesman to tend his flock'? We have already learned from the Myth that he cannot deal personally with the individual needs of his individual subjects; this point is stressed once again, and we are now told that the statesman must deal with his flock in 'bulk'.

What Plato means by the 'bulk' method of treatment is generalized legislation (295a). The statesman must give commands and instructions to his "herd" in the form of laws, but these laws will not "give every individual his due with absolute accuracy"; they can only aim at the "generality" of subjects under "average" circumstances. But because the statesman must deal with "whole communities of human creatures", and because he is a man, not a God, he must deal with his subjects impersonally; he must use laws. This is the manner in which the statesman "tends his flock".

Having argued that the statesman must use laws or the 'bulk' method of treatment (as opposed to individual treatment) Plato goes on to argue that the true statesman must be entrusted with the power to instruct and to command his herd as he thinks it necessary. In other words — he must have the authority to make and to change the laws as he sees fit. This argument is based on the analogy between the statesman and the doctor:

(Suppose that) A doctor or trainer plans to travel abroad and expects to be away from his charges for quite a long time. The doctor might well think that his patients would forget any verbal instruction he gave, and the trainer might think likewise. In these circumstances each might want to leave written reminders of his orders . . . .

Well now, suppose our doctor did not stay abroad as long as he had expected, and so came back the sooner to his patients. Would he hesitate to substitute different prescriptions for the original ones, if his patients' condition happened to be better than anticipated, because of a climatic improvement or some other
unusual and unexpected development of that kind? Would the doctor feel it his duty to maintain stubbornly that there must be no transgression of the strict letter of those original prescriptions of his? . . . Surely any such claims, in circumstances where a science is involved, and a real art is at work, would only make the man who made the claim and his previous prescriptions supremely ridiculous.

Imagine, then the case of a scientific legislator. Suppose that by a written code, or by support given to unwritten customs, he has laid down what is just and honourable and what is not, and what benefits society and what hurts it. Suppose him to do this service for the several communities of the human flock who live in their cities as their appointed pasture shepherded by the codes their legislators have provided. If this man, who drew up his code by the art of statesmanship, wishes to amend it, or if another scientific legislator of this kind appears on the scene, will these be forbidden to enact new laws differing from their earlier ones? Surely such a prohibition would appear as ridiculous in the case of the legislator as it was in the case of the doctor, would it not? (295c - 296a)

So just as the doctor must not be bound forever by the prescriptions he once made, so the statesman may need to make new laws, or alter existing ones, as circumstances in the community change.

Not only this, but the statesman must be able to amend his laws without the approval of his subjects. Statesmanship is an art, and more than any other art, it is difficult to learn (292d); there will only be a few in any community who have mastered it (292e). Those who have not must not be allowed any measure of control over those who are experts, because when final authority over any art (especially statesmanship) is vested in a popular assembly, that art is thereby "annihilated" (296a - 300a). So the statesman must be able to amend his laws, and he must be able to do so without first getting the approval of his subjects.

To this point in the dialogue (300e) Plato has argued that the statesman does not personally and directly "tend" to his charges (as does the cowherd): that instead he must issue 'bulk' prescriptions
(laws): and that he himself must have the authority to make new laws, or change existing ones, as he thinks it benefits the community to do so. After a digression on imitative or second-best constitutions, (301a-303d), Plato next distinguishes the statesman from orators, generals, and judges. The background for these distinctions goes all the way back to the Myth of Cronos and the mistaken first definition. The statesman was defined incorrectly because there were a host of other arts involved in "tending the human herd". Thus Plato distinguishes the role played by statesmanship from the roles played by the other arts which are involved in "tending the herd". To this end Plato has already distinguished the statesman from producers of products which are used by the community (287b - 289d); from slaves, labourers, and merchants (289d-- 290a); and from clerks, soothsayers and priests (290b - 290e). All of these distinctions were relatively easy and pointed out little if anything about the precise nature of the role of statesmanship in the community. But the distinctions between the statesman and orators, judges and generals proves more fruitful.

First orators:

Which is the art to which we must assign the task of persuading the general mass of the population by telling them suitable stories rather than by giving them formal instructions? I should say that it is obvious that this is the province to be assigned to Rhetoric.

But to which art must we assign the function of deciding whether in any particular situation we must proceed by persuasion, or by coercive measures against a group of men, or whether it is right to take no action at all?

The art which can teach us how to decide that will be the art which controls rhetoric and the art of public speaking. This activity can be none other than the work of the statesman (304d).

Next the statesman is distinguished from generals:

Consider the taking of decisions on military strategy once
war has been declared by the state on an enemy state. What shall we say about this? Is such decision governed by no art at all, or shall we say that there is most certainly an art involved here? How could we dream of saying that no art is concerned? Surely generalship and the whole art of warfare operates precisely in this field.

But which is the art which possesses the knowledge and capacity to form a reasoned decision whether to fight or settle a dispute on friendly terms? Is it the work of generalship or does it belong to another art?

Consistency to our earlier argument requires us to say that it is a different one which is involved.

So if our views here are to be consistent with our earlier views on the place of rhetoric, we must decide that this second art controls generalship.

I agree.

What art can we attempt to enthrone as queen over that mighty and dreadful art, the art of war in all its range except the art of truly royal rule?

None other.

Then we must not describe the art that generals practice as statesmanship, for it proves to be but a servant of statesmanship, (304e - 305a).

A similar conclusion is reached about the art which is practiced by judges:

Does its province extend beyond the sphere of the mutual contractual obligation of the citizens? It has to act in this sphere by judging what is just or unjust according to the standards set up for it and embodied in the legal rules which it has received from the kingly lawgiver. It shows its peculiar virtue by coming to an impartial decision on the conflicting claims it examines, by refusing to pervert the lawgivers ordinance through yielding to bribery or threats or sentimental appeals, and by rising above all considerations of personal friendship or enmity.

Yes, that is so. You have given us, Sir, a succinct account of the juryman's function and of his duty.

We find then that the power of the judges is a lesser thing than the power of a King. The judge guards the law and serves the King. (305b-c)

Now Plato is telling us something about the art of statesmanship when he draws this set of distinctions. He is telling us that statesmanship is an art which controls all of the other arts which contribute to the "tendance" of the community. The sense in which statesmanship controls the other arts is that it makes decisions, which it embodies
in law and ordinance that the other, auxiliary, arts must carry out. The statesman controls the orator in that he decides when the orator's art must be brought into play; that is, when persuasion, instead of coercion, is required. So with the general: it is the province of statesmanship to decide when war is to be waged. The general is the statesman's auxiliary, who carries out his decrees. So must the judge "serve the King": he must impartially judge the merits of conflicting claims in accordance with the laws given by the statesman. Plato makes his conclusion quite explicit:

If you will view the three arts we have spoken of as a group with a common character you will be bound to see that none of them has turned out to be itself the art of statesmanship. This is because it is not the province of the real kingly art to act for itself, but rather to control the work of the arts which instruct us in the methods of action. The kingly art controls them according to its power to perceive the right occasion for undertaking and setting in motion the great enterprises of state. The other arts must do what they are told to do by the kingly art. (305c-d)

Statesmanship "does not act for itself"; its function is "to perceive the right occasion for undertaking... the great enterprises of state". The statesman does not deal with his charges personally; he gives instructions in the form of laws, decrees, and ordinances, which must be carried out by his auxiliaries. His function is policy making.

Statesman then argues that the function served by the sovereign authority in a community is policy making; the sovereign must perceive the right occasion for "setting in motion the great enterprises of state". But it is not the province of the sovereign to "act for itself"; rather it exercises control over the actions of its auxiliaries. The method of control is law; the sovereign will give instructions - in the form of laws - to be carried out by the auxiliaries; the judge, the
orator, the general, etc. So the statesman is "concerned" with "all the life of the community"; in this he is like a herdsman, but unlike any other herdsman, he deals with his herd impersonally; he issues written instructions which initiate the enterprises that are carried out by his subordinates. For this reason sovereign authority will be authority over the law.

Once Plato has distinguished the statesman from several of his auxiliaries (the judge, the general, etc.,) he is free to go on and say more about the art of statesmanship itself; he returns to his analogy between statesmanship and weaving:

Then we must describe the kingly process. What is it like? How is it done? What is the fabric that results from its labours? (306a)

To answer these questions Plato introduces a doctrine which some commentators (Barker, Skemp) have found surprising in light of *Republic*. The doctrine is that "one kind of goodness clashes with another kind of goodness". (306a)

You regard courage as one part of virtue I suppose.
Surely.
Moderation differs from courage but is it a specific kind of goodness just as courage is?
Yes.
We have now to be daring and make a startling statement about these two virtues.
What is it?
This pair of virtues are in a certain sense enemies from old, ranged in opposition to each other in many realms of life. (306b)

Now we usually suppose that "all the several parts of goodness are in mutual accord: . . . (however) is there not, on the contrary, something inherent in them which keeps alive a family quarrel among them?" Plato tells us how we must go about settling this issue:

We must consider instances drawn from all levels of existence
of things which we regard as excellent and yet classify as mutually opposed. (306c)

The first instance is "restraint" and "vigour" (or, better, "courage": see Note 1 below):

We admire speed and intensity and vivacity in many forms of action and under all kinds of circumstances. But whether the swiftness of mind and body or the vibrant quality of the voice is being praised, we always find ourselves using one word to praise it — the word 'vigorous'. (306e)

On the other hand we do not quite often find ourselves approving gentleness and quietness when it is shown in many kinds of human behaviour?

Yes, very decidedly.

Do we not describe this behaviour by using an epithet which is the exact opposite of vigorous . . . ?

We constantly admire quietness and moderation, in processes of restrained thinking, in gentle deeds, in a smooth deep voice, in steady balance or movement, or in suitable restraint in artistic representation. Whenever we express such approval do we not use the expression 'controlled' to describe all these excellences rather than the word vigorous? (307 a-b)

Plato has given us an instance of "mutually opposed" characteristics both of which we regard as excellent: we sometimes praise "vigorous" behaviour, at other times we praise "controlled" behaviour.

But if we find either of these kinds of behaviour appearing out of its due time, we have different names for each of them, and in that case we express our censure by attributing quite contrary qualities when we mention them.

How so?

If speed and swiftness are excessive and unseasonable and if the voice is harsh to the point of being violent we speak of all these as 'excessive' and even 'maniacal'. Unseasonable heaviness, slowness or softness we call 'cowardly' or 'indolent'. (307b)

Not only do we praise opposite qualities then, we also praise and censure the same quality on different occasions.

The next point is that these characteristics "never meet in the

41 Jowett translates ". . . we express our praise of the quality which we admire by one word, and that word is manliness or Courage". (Jowett, Vol. 3, p.512) 'Courage' is certainly the better word in one sense, since it is courage and moderation that exhibit the conflict.
activities of life without causing conflicts" (307c): people whose
character is dominated by one or the other are in "inevitable conflict" with their opposites. This is especially true when the conflict arises over matters of great public importance. For example, men of a "moderate" character are always ready to support peace and tranquility (307e); whereas men of a "courageous" or "vigorous" character are quick to engage in conflict and war (308a).

So:

We find that important parts of virtue are at variance with one another and that they set at variance the men in whom they predominate. (308b)

With this antipathy between different parts of virtue explained, Plato is able to make his analogy between the arts of statesmanship and weaving.

The art of weaving hands over the materials it intends to use for the fabric to the carders and others concerned with preparatory processes, and yet it watches their work at every stage, retaining the direction and oversight itself and indicating to each auxiliary art such duties as it deems that each can usefully perform to make ready the threads for its own task of fashioning the web. (308 d-e)

This is exactly like statesmanship; the statesman hands over the young to educators so that they might fashion them into the kinds of products that he needs to "fashion the web of state". Through his laws on education, he bids the educators to encourage the young in activities that will make them courageous and moderate. In this way he keeps direction and control of the auxiliary arts unto himself. Some pupils cannot be taught "virtuous tendencies", but are impelled to "godlessness" and injustice. These he must expel from the community, or else make them into slaves. (309a)

The statesman will then take over all the rest — all those who under the training process, do in fact achieve
sufficient nobility of character to stand up to the royal weaving process, and yet to submit to it while it combines them all scientifically into a unity. Those in whom courage predominates will be treated by the statesman as having the firm warp-like character as one might call it. The others will be used by him for what we may likewise call the supple, soft, woof-like strands of the web. He then sets about the task of combining and weaving together these two groups exhibiting their mutually opposed characters. (309b)

So the problem for the statesman is that there are two different types of character: the courageous (vigorous) and the moderate. His job is to combine the courageous warp-like characters with the moderate woof-like characters into unity or social harmony. He must prevent the "inevitable" conflict between these two character types.

But how is the statesman to combine these conflicting characters into the "web of state"?

He first unites that element in their souls which is supernatural by a divine bond, since this element in them is akin to the divine. After this supernatural link will come the natural bond, human ties to supplement the divine ones.

What do you mean by this? . . .

When there arises in the soul of men a right opinion concerning what is good, just, and profitable and what is the opposite of these — an opinion based on absolute truth and settled as an unshakable conviction — I declare that such a conviction is a manifestation of the divine occurring in a race which is in truth of supernatural lineage. (309c)

The statesman is to scientifically combine the two character types into the "royal web" by uniting their different souls with "divine bonds": the "divine bonds" are a true opinion "concerning what is good, just and profitable".

Well then, will it not work out like this? The soul full of vigour and courage will be made gentle by its grasp of this truth and there is nothing as well calculated as this to make it a willing member of a community based on justice . . . .

What of the moderate soul? Sharing this firm conviction of truth, will it not be truly moderate and prudent, or at any rate, prudent enough, to meet its public duties? (309c)
So in order to weave the "web of state" the statesman must implant in the souls of the young a "true conviction concerning what is good, just and profitable". By making this an "unshakable conviction" he is able to unite the diverse parts of goodness.

Now we know that the statesman does not personally teach the young. He will write laws dictating the nature of their education; these laws will instruct the educators to implant the right convictions in the young by encouraging them in certain activities and by discouraging them from others. So the statesman fashions the "divine bonds" through the laws he makes. Plato makes the point explicit:

In those of noble nature from their earliest days whose nature too, has been all it should be, the laws can foster the growth of this common bond of conviction and only in these. This is the talisman appointed for them by the design of pure intelligence. This most god-like bond alone, can unite the elements of goodness which are diverse in nature and would else be opposing in tendency. (310a)

Now there remain the "human bonds" which supplement the "divine" ones. The human bonds are the marriage laws. Plato tells us that persons of a vigorous character tend to marry their like: and the same is true of moderate characters. This cannot be permitted because over the generations children born in such marriages will tend to be excessively "vigorous" or moderate. Thus the statesman must make laws which ensure that marriages occur between characters of the opposite types.

There is no difficulty in forging these human bonds if the divine bond has been forged first. That bond is a conviction about values and standards shared by both types of characters. There is one absorbing preoccupation for the kingly weaver as he makes the web of state. He must never permit the gentle characters to be separated from the brave ones; to avoid this he must make the fabric close and firm by working common convictions in the hearts of each type of citizen and making public honours and triumphs subserve this end; and, finally, each must be involved with the other in the solemn pledges of matrimony,
When he has woven his web smooth and "close woven" as the phrase goes, out of men of these differing types, he must entrust the various offices of state to them to be shared in all cases between them. (310e - 311a)

Now Plato works out the analogy between the arts of statesmanship and weaving in order to make two important points about the function served by the statesman. The first point is that the statesman, like the weaver, must exercise control over the arts which are auxiliary to his own. Thus the statesman must have authority over the judge and the general — but most important of all — over the teacher. For the teacher supplies the materials out of which the statesman must "weave the web of state".

And this brings us to the second point of comparison: the statesman, like the weaver, must combine diverse elements into a unified "fabric". He must take citizens whose dispositions are different and conflicting, and out of this diversity create harmony and unity. He must unite the diverse elements in the state by "working common convictions in the hearts of each type of citizen". The way this can be accomplished is by creating and supervising a code of laws designed to make the more courageous dispositions gentle, and the more moderate dispositions brave. The statesman must make laws concerning marriage; he must also make "public honours and triumphs subserve this end". The point to remember here is that this "bond of true conviction" must be forged by the statesman in his capacity as "the good and true lawgiver" (309d). The statesman must weave his web by making laws. For how could the statesman "be capable of prescribing every act of a particular individual and sit at his side, so to speak, all through his life and tell him just what to do"? (295a)
The closing words of *Statesman* remind us of Plato's overall purpose in the dialogue:

> You have done what was requested of you Sir, you have set beside your picture of the Sophist a picture drawn to perfection of the true king and statesman. (311c)

Plato has been concerned with defining the art of statesmanship and with saying what function the statesman must serve for the community. We learned from the opening arguments of the dialogue that the statesman is the "tender of the human flock"; but unlike any other "herdsman" he does not personally and directly see to the needs of his flock. It would require a God to provide this service for the various human communities. Then how does the statesman tend his flock? By using the "bulk method" of prescription; that is, by using laws which aim to benefit the "average" individual under "average" circumstances. Also — it is not the "province of the kingly art to act for itself"; instead the statesman gives legal instructions to be carried out by his auxiliaries. This is to say that statesmanship is the art of making policy decisions; it is the art concerned with setting in motion "the great enterprises of state". Thus the statesman is responsible for a declaration of war; the general is responsible for conducting the war. In the closing section of the dialogue we are given the end towards which the "enterprises of state" must be directed. The "absorbing preoccupation" of statesmanship is creating a social unity out of the diverse natures of the citizens. The statesman's entire code of law must be directed to this end: his laws must work towards establishing in all citizens "a true opinion concerning what is good, just and profitable".

It is interesting at this stage to notice that *Statesman* is a continuation of the doctrinal development of *Republic*. In *Republic*
Socrates works out his theory of the ideal state; the express purpose in doing so is to show that the just life is better than the unjust life. When challenged to show that his ideal state is a practical possibility, he offers the famous paradox (473d); the ideal state is possible only when Philosophers become Kings, or when those whom we now call Kings become Philosophers. Socrates says that this is the easiest and quickest way to effect a "transformation" to the ideal form of government. In Republic we are given a detailed account of the education that Plato thinks will train men in the "art of government": he tells us that only those trained in this art should hold sovereign authority. But we have to look to Statesman in order to find an account of the precise function which the sovereign authority serves in the community. In Republic we are told that philosophers must hold political power; in Statesman we are told exactly what power they do hold — legislative power. Perhaps the reason that students and philosophers alike think that Republic argues for the rule of a benevolent dictator is that Plato says very little there about what powers his experts are to have. Republic is concerned with the education of the ruler: Statesman is concerned with the service that the ruler must perform for his community. This is the point of calling him the "royal weaver"; the ruler must combine diverse natures into a "close knit" social fabric. Every law and regulation he issues must be directed towards implanting and maintaining in his citizens a "true conviction concerning what is good, just and profitable". He must have been educated in the manner suggested in Republic in order to know that his efforts must be directed towards this end, and in order to know which activities will serve this end, and which activities will frustrate it. Republic tells us how the ruler
is to be educated; Statesman shows us why he must be educated in this way.

Now in Chapters Two and Three we have been looking at Republic and Statesman to see whether Plato was there advocating some form of government which he would later abandon in Laws. In Laws we find Plato arguing that the supreme authority in the state must be law; that the government must be the "humble servant" of the laws. The traditional understanding of Republic and Statesman on the other hand, is that Plato opts for the rule of a philosophic governor who would have absolute authority over such laws as the state might contain. In Chapter Two I indicated that there are passages in Republic which contradict this view; I now want to argue that if my reading of Statesman is correct, there is absolutely nothing in this dialogue to support this view; in other words that there is nothing at all in Statesman to suggest that Plato's rulers will be unfettered by law. The main grounds that might be cited in support of this interpretation of Statesman are:

1. Plato's insistence that the statesman have the authority to change the laws without the approval of a popular assembly;
2. his convictions that "the other arts (must) do what they are told to do by the kingly art";
3. his repeated saying that the statesman may rule "with or without laws". These arguments are usually understood as arguments in favour of a government which is unfettered by law. The statesman may rule with or without laws; if he wishes he may enact legislation without the approval of a popular assembly; and such laws as he does write are to be regarded as orders which the auxiliary officials are to carry out. Now this is to say something about the art of statesmanship; it is to say something about how the statesman will rule, about how he will "tend
his herd". But it is not to say that his own authority is greater than the law; it is not to say that he is unfettered by his own laws, or by the laws of previous governments. When Plato says that the statesman's legislative powers should not be limited by a popular assembly, he has not said that they should be altogether unlimited; and when he says that the auxiliary officials must always obey the rulers' laws, he has not said or implied that the rulers themselves are to be exempted from this requirement.

But what of the saying that the statesman may rule with or without laws? Does this not suggest that the ruler is to be given almost unlimited discretionary powers? And how could the statesman be fettered by laws, if indeed he may rule without laws? Now Plato uses this or a similar phrase three times in *Statesman*, but I think it is fairly obvious that in none of these instances is he saying that the statesman may rule in any manner that he chooses; I think it is quite clear that in each of these passages Plato says nothing to warrant the conclusion that the statesman may rule unfettered by law. But let us look at each of the three passages:

(1) On this principle it is the men who possess the art of ruling and these only, whom we are to regard as rulers, whatever constitutional form their rule may take. It makes no difference whether their subjects be willing or unwilling; they may rule with or without a code of laws; they may be poor or wealthy. (293a)

Now the context in which this passage occurs makes it virtually certain that what Plato is here arguing is that the main criterion for judging of political constitutions is not whether the subjects are willing or unwilling; it is not whether the rulers are rich or poor; nor is it whether they rule with or without a code of laws. The first criterion
is whether or not the rulers "possess the art of ruling". So Plato is clearly not saying that in his ideal state the philosopher-governors may rule with or without a code of law. The point is simply that the presence or absence of a written legal code is not the main criterion by which we should judge political constitutions, rather the criterion should be the presence or absence of the art of statesmanship. If we can expand on Plato's point at all it should be taken as meaning that constitutions are good or bad depending on the ways in which they provide for the education of the state's rulers.

(2) (The statesman) will legislate for all individual citizens but it will be by what may be called a 'bulk' method, rather than an individual treatment; and this method of 'bulk' prescription will be followed by him whether he makes a written code of law, or refrains from issuing such a code, preferring to legislate by using unwritten ancestral customs. (295a)

This time Plato certainly is saying that on some occasions at least, the rulers may give the force of law to "unwritten ancestral customs". Given the overall tone of Statesman however — especially the saying that "a legal system is necessary" (294d) — I think that Plato would expect that his rulers would infrequently rely on ancestral tradition, and that for the most part they would use the more formal method of "bulk prescription". But in any event it is once again quite clear that Plato is not saying that the statesman is above the law, or that he is unfettered by the law. There is simply nothing in this passage to warrant any such interpretation.

(3) The man with real knowledge, the true statesman, will in many instances allow his activities to be dictated by his art and pay no regard to written prescriptions. He will do this whenever he is convinced there are measures which are better than the instructions he previously wrote... (300 c-d)

This time Plato says that the statesman will "in many instances . . .
pay no regard to written prescriptions". This would sound very much like Plato was exempting the statesman from the obligation to obey the laws, were it not for his following sentence; for the statesman will only disregard his "written prescriptions" when he comes up with "measures which are better than the instructions he previously wrote". Clearly Plato is saying that the statesman - like the physician, about whom Plato has just made the same point - may change or amend his laws whenever he comes up with "better" ones. So once again Plato has not said that the statesman should be unfettered by laws.

Now I have been reviewing those arguments in Statesman which might be thought to support the contention that in the early political dialogues Plato was committed to a form of government in which the rulers would be altogether unfettered by law; and I have tried to show that none of these arguments will in fact support such a contention. I now want to argue a more difficult point; I want to show that Statesman gives at least some reason for believing that Plato fully intended to place legal and constitutional fetters upon the powers of both the rulers and the auxiliary governmental officials. There is certainly no passage which makes this point as clearly as several different passages in Republic; nevertheless there is some reason for believing that such was Plato's intention.

In the Myth of Cronos we are told that in "the present cosmic era" men must manage their own affairs and govern their own cities and states (274d). Under the rule of Cronos "there were no political constitutions" (271e); this was because the rulers then had absolute powers. The Gods had unlimited authority over men (and cowherds have unlimited authority over their cows) because of their natural superiority. But human rulers are much closer in breeding and education to their subjects.
Thus they are not competent to see to every one of their needs; they are not competent to exercise absolute authority over them. This is because a host of different arts are necessarily involved in the 'tendance of the human herd'. And so a host of different officials are needed to manage the affairs of state. As examples Plato mentions judges, generals, priests, teachers, and a few less important civic officials; he also makes the point that each of these different officials practices an art different from statecraft. So if Plato assigns legislative authority to the art of statesmanship, he is also careful to indicate that the state must contain many other authorities as well. There are also (at least) judicial, military, educational, and religious authorities. The implication is that the state cannot be well governed by a single ruler who keeps all the powers of government unto himself. The community has many and varied needs, and contrary to the Age of Cronos, these needs must be serviced by different governmental authorities. I think that the overall argument in *Statesman* is designed to eliminate from Plato's political theory the possibility of the political superman - the all-wise, ever-virtuous, all-powerful, ruler, who is willing and able to serve every one of his subjects' needs.

So Plato has argued in *Statesman* that many different arts are involved in the 'tendance of the human herd'; that different governmental authorities must serve the community's different needs. Thus the judge must be empowered to make binding judicial decisions: the general must be empowered to devastate armies and cities in time of war; and the statesman must be empowered to set down his policies in the form of law. The interesting point here is that Plato quite clearly implies that there must be a distribution of state powers among...
different governmental institutions and officials; each institution and official must be granted such powers as are commensurate with his/its function. So the statesman has no more authority to sit on the judicial bench, or to direct the army in the field of battle, than the judge or general has the authority to sit in the legislative chamber. To do so would violate Plato's principle of justice - that everyone performs only that function for which his training best suits him. It would also be to ignore the lesson taught by the Myth - that only a God is qualified to serve every governmental function; that only a God is entitled to hold all of the powers of government.

Now we know that Plato's 'specialization of function' principle is absolutely fundamental to his political theory, so there is no doubt that the statesman is to be prevented from usurping the powers of other state officials, and vice-versa. We also know from Republic that Plato will "order" his rulers to observe the 'one man to one job' principle (Republic 423 c-d); given Republic's general commitment with regard to the presence of law in the ideal state, I have interpreted Plato as meaning that this "order" will be declared in legislation. Since the 'one man to one job' principle is so important to Plato, I also think that it will be declared as a matter of fundamental or constitutional law; I think in other words, that this "order" will be embodied in the "constitution" which Plato's "living authority" is bound to preserve (cf. Republic 497 c-d).

We have now seen that the 'specialization of function' principle reappears in Statesman; this time however there is little to suggest that the principle should be declared as a matter of law. Nevertheless we have seen that Plato very deliberately points out that a host of
different arts are necessarily involved in 'tending the human herd'; and that many different authorities must be involved in governing the polis. Again, each of these authorities must be granted those powers which are commensurate with its function; so Statesman certainly implies that there must be some distribution or separation of governmental powers. Now the fact that Statesman does not explicitly say that the desired distribution of powers must be provided for in the state's constitution, does not mitigate against the fact - of which Plato was well aware - that the matter of defining, limiting, and arranging, the powers of the various governmental officials and institutions is precisely the business that is normally provided for in a state's constitution, or, at least, in its code of law. By the Fourth Century B.C. the Greeks had already enjoyed a long history of constitutional government; the different Athenian and Spartan constitutions in particular did provide for various ways of mixing and distributing governmental powers. Given this background, and given Plato's commitments to law and to a constitution in Republic, I think there is good reason to believe that even before he wrote Statesman Plato thought that the distribution and definition of governmental powers was best declared as a matter of constitutional law. And there is one passage in Statesman which at least implies that Plato's state would have a constitution. He tells us that in the Age of Cronos "there were no political constitutions" (271e); since, in the present cosmic era, the universe is in exactly the contrary state from what is was in the former Age, the clear implication is that today, when men must "fend for themselves", they have need of political constitutions.
Nevertheless in *Statesman* there is no explicit mention of any distinctly legal or constitutional fetters upon the powers of governmental officials. And in *Republic* if Plato does indicate that there will be such fetters, he does not explicitly say that the state's constitution must carefully and precisely define and limit the powers of the various governmental authorities — legislative, executive, judicial, religious, educational, etc. So I am not claiming that in either *Republic* or *Statesman* Plato explicitly argues on behalf of this kind of constitutional restraint upon the powers of the ruler. It is possible — though I think most unlikely — that Plato was content to leave these matters upon the shoulders of governmental tradition; it is possible that he was content with an unwritten constitution. (The idea is not an untenable one; Britain has long been governed under an unwritten constitution.) However, whether the appointment of governmental offices and powers is declared as a matter of constitutional law, or as a matter of statutory law, or whether it is left undeclared as a matter of governmental tradition, one thing is perfectly clear: Plato's rulers and auxiliaries will be bound by the 'one man to one job' principle; they will be instructed and obliged not to usurp the powers and prerogatives of other governmental offices.

'If this interpretation of *Statesman* is sound, if it is true that the arguments in *Statesman* — the Myth, the mistaken first definition, the distinctions between the statesman and his auxiliaries, etc. — if it is true that these arguments do commit Plato to some method of limiting and confining the various governmental powers, then *Statesman* cannot be used as support for the view that in *Republic* Plato thought that the ideal state should be ruled personally and directly by a philosophic
dictator who would be completely unfettered by law. We looked at Republic itself in Chapter Two and found strong grounds for doubting that this was Plato's position; Republic definitely suggests that there will be some kind of distinctly legal and constitutional limitations set upon the powers of government. Here in Chapter Three I have argued first that the arguments in Statesman which might be thought to support the orthodox interpretation of Republic will not in fact support it; and second that the overall argument in Statesman provides at least some grounds for doubting the validity of this interpretation. Although the idea of distinctly legal and constitutional fetters upon the rulers is not explicitly repeated in Statesmen, neither is there any suggestion to the contrary; neither is there any suggestion that the 'specialization of function' principle will not be declared as a matter of constitutional law. So all things considered I think it is very likely that Plato always intended to limit the powers of government through the vehicle of a constitution. And even if it is true that a certain amount of ambiguity and uncertainty is created by the fact that Statesman does not repeat the legal and constitutional commitments of Republic, it is still true that Statesman cannot be cited in defence of the orthodox interpretation of Republic; it cannot be cited in defence of the claim that Plato's philosopher-governors would be completely unfettered by law.

If this way of reading Statesman is correct, then the orthodox interpretation of Plato's political theory needs some revision. In his early political dialogues Plato is not saying that the ideal state will be governed "directly and personally by the philosophic mind"; he is

1Barker, Greek Political Theory, p.294.
not saying that the state will be governed by a benevolent dictator who would have absolute power; he is not saying that the philosopher-kings will rule unfettered by law. Perhaps Plato's strongest commitment against such governments occurs in his Seventh Letter:

Let not Sicily nor any city anywhere be subject to human masters - such is my doctrine - but to laws. Subjection is bad both for masters and subjects, for themselves, for their children's children, and for all their posterity.42

Now there is nothing in Republic or Statesman to suggest that Plato intended the citizens of the ideal state to be subject to the personal will of "human masters". And there is much to suggest that citizen and ruler alike are to be subject instead to the laws. The traditional understanding of Republic and Statesman goes wrong on just this score. Barker thinks that the 'rule of law' "cleaves Plato's political theory into two distinct halves";43 Saunders thinks that the difference between Republic and Laws is that in the latter "the importance of law overshadows all, and the ideal ruler with his expert knowledge of moral values is barely mentioned".44 Sabine thinks that:

The fundamental difference between the theory of the Republic and that of the Laws is that the ideal state of the former is a government of specially chosen and specially trained men, quite untrammeled by any general regulations, while the state sketched in the latter is a government in which law is supreme, ruler and subject alike being subject to it.45

All of these critics, and many more as well, understand the ideal state in Republic as being ruled by "human masters" - as opposed to laws.

Looking at Republic in Chapter Two we found a wide range of passages which appear to directly contradict this view; looking at Statesman

42. 334 c-d; L.A. Post's translation.
43. Barker, p.295.
45. Sabine, p.68.
in this Chapter we found that there is nothing at all which might be cited in its defence, and we also found that whatever evidence there is suggests that laws and not "human masters" must be obeyed.

The question we must now face is 'to what extent is the government in *Laws* to be fettered by law'? Is there to be no authority in the state described in *Laws* which is empowered to make and to amend the laws? If there is not then Plato has certainly abandoned some very important principles on which his early political theory is based. If there is such an authority, then what is the range of its legislative competence? What exactly does Plato mean when he says that the government must be the "humble servant of the laws"?
CHAPTER IV

Laws, in its entirety, is devoted to a description of the constitution and laws with which the state is to be governed. Book One begins with a discussion of the right aim for legislation, and continues with a critique of the Spartan and Cretan legislative systems. Those systems aim at courage — but courage is only one part of virtue. The laws of the state, as we have been told in Statesman, must aim at producing the whole of virtue; that is, at producing all of the different virtues, especially the four cardinal ones, wisdom, courage, temperance and justice. The first book then digresses into a discussion of the educational possibilities of drinking parties. Book Two continues this digression and concludes that alcohol, used in moderation, can have an important educational use. Book Three looks at history with an eye to answering the question; 'what constitution should the state have'? Book Four concerns the laws themselves: the first main point is that the laws and constitution must be the supreme authority in the state; the other important conclusion of Book Four is that the main purpose of the law must be persuasion. In other words, law is primarily an instrument of education, and only in that capacity does it coerce. Book Five is a general preamble to the legal code: it deals in a general way with the duties of citizens, and explains the fundamental organization of the community. It treats such subjects as the holding of property, the selection of citizens, the size of population, the possession of money, and it divides the state into four property classes. Book Six is concerned with the creation of the offices of government: it creates legislative, military, religious, judicial and educational agencies, as well as a host of less important offices such as market wardens, country wardens, and treasurers. Book Six also begins the task of framing the
actual laws — specifically the laws of marriage. The remaining five
textbooks constitute the actual code of laws. Book Seven deals with the
laws on education; Book Eight with military training, sexual conduct,
agriculture, and trade; Book Nine with criminal law; Book Ten with
religion; Book Eleven with commercial law, family law, and certain mis-
cellaneous laws; Book Twelve continues the treatment of miscellaneous
subjects and concludes with the appointment of the Nocturnal Council —
the highest legislative authority in the government. In Laws Plato gives
us a detailed account of the constitution he has referred to, but has not
described, in Republic and Statesman. Laws does what neither of the
earlier works does — it creates various governmental agencies and assigns
certain specific powers to each of them. But before we can look at the
offices of state, we must study Plato’s claim (in Book Three) that the
state must have a ‘mixed’ form of constitution: the state must not be
a monarchy, an oligarchy, a democracy, or any of the other traditional
forms.

Plato bases his argument that the state must have a mixed con-
stitution on the lessons of history. We can pick up Plato’s historical
survey at the time when the victorious Acheans returned from the war against
Troy. During the ten years it took the Acheans to sack Troy, "the homes
of the besiegers were falling to an evil plight" (682 d). The youth had
revolted against their fathers, and the result was murder and exile.

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46 Glen Morrow, *Plato’s Cretan City*, Princeton University Press,
Princeton, N.J., 1960) points out (p. 521) that the term "mixed"
constitution never occurs in Plato’s text. Plato says that his
constitution must be a "mean" between monarchy and democracy:
it must combine certain elements of each of these "mother"
constitutions, and it must combine these elements in the "right"
proportions. For an excellent discussion of this issue see
Morrows' Chapter 10.
But the exiles returned under a new name — Dorians, whence they divided their army into three, and formed three cities — Argos, Messene and Lacedaemon (Sparta). These three cities formed the Dorian Confederacy:

Three royal heroes made an oath to three cities which were under a kingly government, and the cities to the kings, that both rulers and subjects should govern and be governed according to the laws which were common to all of them: the rulers promised that as time and the race went forward they would not make their rule more arbitrary; and the subjects said that, if the rulers observed these conditions, they would never subvert, or permit others to subvert, those kingdoms; the kings were to assist kings and peoples when injured, and the peoples were to assist peoples and kings in like manner. (684 a-b)

The Dorian constitution thus enjoyed the greatest security; two states would come to the rescue of the third if it was injured in any way.

But the confederacy failed: the only city to avoid "shipwreck" was Sparta. The reason for the failures was the "worst" sort of ignorance in the kings: the specific kind of ignorance that Plato blames is the 'hating of that which a man thinks is good and noble, and the loving of that which he knows to be unrighteous and evil'. This kind of ignorance is especially prevalent among kings because they lead a "proud and luxurious life". The chief aim of the kings of Argos and Messene was "to get the better of the established laws" (691a): they did not honour what they knew to be good and just, namely the "principles which they had agreed to observe by word and oath". (691a) Plato sums up the lesson he draws from the failure of the Dorian Confederacy:

If anyone gives too great a power to anything, too large a sail to a vessel, too much food to the body, too much authority to the mind, and does not observe the mean, everything is overthrown, and, in the wantonness of excess, runs in the one case, to disorder, and in the other, to injustice, which is the child of excess. I mean to say, my dear friends, that there is no soul of man, young and irresponsible, who will be able to sustain the temptation of arbitrary power — no one who will not, under such circumstances, become filled with folly, that worst
of diseases, and be hated by his nearest and dearest friends: when this happens his kingdom is undermined, and all his power vanishes from him. And great legislators who know the mean should take heed of this danger. (691 c-e)

Plato is apparently saying that the reason for the failure of the two cities is that their kings had "too great a power": the point is not as clear is it might be however, because Plato says "there is no soul of man, young and irresponsible, who will be able to sustain the temptation of arbitrary power": are we to assume that an older and more responsible king could be trusted with arbitrary power?  

That Plato is here arguing against the exercise of arbitrary power, regardless of the age of the man who has it, is likely because of what follows. The next question is 'why did Sparta succeed where its sister cities failed'?

A God, who watched over Sparta, seeing into the future, gave you two families of kings instead of one; and thus brought you more within the limits of moderation. In the next place, some human wisdom mingled with divine power, observing that the constitution of your government was still feverish and excited, tempered your inborn strength and pride of birth with the moderation which comes of age, making the power of your twenty-eight elders equal to that of the kings in the most important matters. But your third saviour, perceiving that your government was still swelling and foaming, and desirous to impose a curb on it, instituted the Ephors, whose power he made to resemble that of magistrates elected by lot; and by this arrangement the kingly office, being compounded of the right elements and duly moderated, was preserved and was the means of preserving all the rest. (691e - 692a)

The "kingly office" was preserved because it was "compounded of the right elements". But the "kingly office" is not identical with the kings themselves; rather it is the sovereign authority of the state, of which kings are but one of the three "right elements". The "kingly

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47 The question is an important one: If an older and wiser ruler with arbitrary power is trustworthy, then the passage might be evidence in support of the orthodox interpretation of Plato's political theory in Republic.

48 Also because of the passage at 875: there is no clause there restricting the point to a "young and irresponsible" dictator.
office" consists of the kings, the elders, and the ephors. It was preserved because its powers were divided among three offices of government: this is in contrast to the arbitrary powers of the kings of Messene and Argos. Sparta succeeded because its constitution provided for no "great and unmixed powers" (693b). The clear implication is that the assignment of unlimited or arbitrary power to one man is sure to bring about the ruin of the community.

Plato now introduces a general point concerning the nature of the ideal constitution.

There are two mother forms of states from which the rest may be truly said to be derived; and one of them may be called monarchy and the other democracy: the Persians have the highest form of the one, and we (the Athenians) of the other; almost all the rest, as I was saying, are variations of these. Now if you are to have liberty, and the combination of friendship with wisdom, you must have both these forms of government in a measure; the argument emphatically declares that no city can be well governed which is not made up of both. (693)

The ideal constitution then must be a mixture of, or a mean between, the two "mother" forms of constitution, monarchy and democracy. This conclusion is so far based on the historical experiences of the Dorian League. Argos and Messene had 'unmixed' constitutions; they were pure monarchies. But Sparta had a constitution which combined elements of monarchy and elements of democracy. The kings and elders were the monarchial elements, but the Ephors were appointed by lot and were thus a democratic factor. Plato next studies the exemplars of the two "mother" constitutions — Persia and Athens — in order to further support his conclusion above.

There was a time in Persia when the state enjoyed a moderate, balanced constitution. Under Cyrus the citizens enjoyed a moderate amount of liberty; Cyrus was not hungry for power, nor was he jealous
of his subjects. He thus permitted "liberty of speech" (694a) and valued the counsel of his subjects whenever it was wise. As a result his soldiers were on good terms with their generals and showed their willingness to fight in time of danger.

But Cyrus "from his youth upwards was a soldier" (694d) and paid no heed to the education of his sons who would succeed him. They were educated in their father's absence by the "royal harem" — by women and eunuchs. They were raised "from their childhood as the favourites of fortune, who were blessed already, and needed no more blessings" (694a). No one was permitted to oppose their will — everyone was required to praise everything they said and did.

And so, after the death of Cyrus, his sons, in the fullness of luxury and licence, took the kingdom, and first one slew the other because he could not endure a rival; and, afterwards, the slayer himself, mad with wine and brutality, lost his kingdom through the Medes and the Eunuch, as they called him, who despised the folly of Cambyses.49 (695b)

His throne was seized by Darius, who was not the son of a king, and who therefore was not raised in a luxurious manner. Under Darius the kingdom again prospered in the tradition of Cyrus. But like Cyrus, Darius was a soldier who paid no mind to the education of his sons. Consequently, his son Xerxes, like Cambyses, led "the evil life which is generally led by the sons of very rich and royal persons"; Plato draws his conclusion:

We remarked that the Persians grew worse and worse. And we affirm the reason for this to have been, that they too much diminished the freedom of the people, and introduced too much of despotism, and so destroyed friendship and community of feeling. And when there is an end of these, no longer do the governors govern on behalf of their subjects or of the people,

49 Cambyses was the surviving son of Cyrus.
but on behalf of themselves; and if they see that they can gain ever so small an advantage for themselves, they devastate cities, and send fire and desolation among friendly races. (697 d-e)

The Persians "grew worse and worse" because they "introduced too much of despotism". Plato's meaning is that every Persian king had unlimited powers, and this proved disastrous even for the virtuous pair — Cyrus and Darius. Instead of confining themselves to the proper business of statesman, they had the powers of generals and educators as well. Their sons were not turned over to the educators for their upbringing; they were instead pampered in their soldier-fathers' absence, by the royal servants. Instead of a distinction between the functions of the statesman, the general, and the educator (etc.), and a corresponding distribution of powers, all power was held by one king. To reinvoke the voice of the Statesman, only a God could provide all of these services for a human community. A mortal — at best — can only be a master of one art. The Persians "introduced too much of despotism" and it proved to be their undoing.

Plato continues his argument in favour of a "mixed" constitution by examining a historical example of the failure of the other extreme from tyranny — democracy. The example is Athens. In ancient times the Athenians were a "reverent" race, and were content to live in obedience to the established laws of the day. "Under ancient laws, my friends, the people were not as now the master, but rather the willing servant of the laws" (700a). Plato uses the laws of music as an example: music was divided into four different forms, and the rules governing each form were strictly adhered to by composers and players. Also the "directors of public instruction" insisted upon silence in the audiences; if necessary the young were kept quiet to the end of a performance by
"a hint from the stick". "Such was the good order which the multitude were willing to observe; they would never have dared to give judgement by noisy cries" (700d).

But as time went on, "the poets themselves introduced the reign of vulgar and lawless innovation" (700d):

They were men of genius, but they had no perception of what is just and lawful in music; raging like Bacchanals and possessed with inordinate delights — mingling lamentations with hymns, and paeans with dithyrambs; imitating the sounds of the flute on the lyre, and making one general confusion; ignorantly affirming that music has no truth, and, whether good or bad, can only be judged of rightly by the pleasure of the hearer." (700e)

By composing such "licentious works" the poets inspired the masses with "lawlessness and boldness, and made them fancy that they can judge for themselves about melody and song" (701a). Thus music gave rise to a "universal conceit of omniscience and general lawlessness" (701a).

Consequent upon this freedom comes the other freedom — disobedience to rulers; and then the attempt to escape the control and exhortation of father, mother, elders, and when near the end, the control of laws also; and at the very end there is the contempt for oaths and pledges, and no regard at all for the Gods. (701b)

Plato's version of the history of Athens may or may not be sound when he blames the poets for the moral collapse of the community. The point matters little since Plato is not directly concerned with the historical question 'how did Athens come to suffer from an excess of freedom'? Rather, he is concerned with the philosophical question 'how much freedom should the citizens enjoy'? Athens is Plato's example of an excess of freedom. The poets "were men of genius, but they had no perception of what is just and lawful is music" (700e). When they were

Lamentations, hymns, paeans and dithyrambs, are the four forms of music mentioned earlier.
allowed to compose their works according to the pleasure of their
audiences, they, and the multitude who became the judges of musical
worth, were granted excessive liberty because the ordinary citizen does
not have an "understanding of good and bad in music and poetry" (701a).

So, to the question 'when do citizens enjoy excessive freedom?' Plato's (generalized) answer seems to be 'when they are licenced to do
what they are unqualified to do'. The problem which besieged Athens was
an "insolent refusal to regard the opinion of the better by reason of an
over-daring sort of liberty" (701b).

Plato has now shown us an excess of centralized authority (Persia)
and an excess of freedom (Athens). The lesson is that the "right" con-
stitution must be a "mean" between monarchy and democracy. When writing
a constitution the legislator can achieve this "mean" only by keeping
three things in view: first, he must ensure that the state is free;
second, he must ensure that the state is "at unity with herself" (this
means that there must be a concord or agreement between the rulers and
the ruled); and third, he must ensure that the state contains wisdom
(this means that it must contain a qualified "superior authority"). The
legislator must learn from the mistakes of Athens and Persia and deal
with two correlative questions: (1) 'what freedoms are the citizens
qualified to enjoy'? and (2) 'how can the powers of state be distributed
so that no one body has too much authority'?

This brings us to the end of Book Three — in Book Four Plato
begins to answer the question he has just posed. The first point begins
at 712c:

But what form of polity are we going to give the city?
Tell us what you mean a little more clearly. Do you mean
some form of democracy, or oligarchy, or aristocracy, or monarchy? For we cannot suppose that you would include tyranny.

The Stranger replies with a question of his own:

Which of you will first tell me to which of these classes his own government is to be referred? (712d)

But neither Cleinias nor Megillus is able to answer. Megillus replies that his city, Sparta, seems in some ways a monarchy, in others an aristocracy, and yet in other ways a democracy. Cleinias is unable to answer for the same reason. The Stranger replies:

The reason is, my excellent friends, that you really have polities, but the states of which we were just now speaking are merely aggregations of men dwelling in cities who are the subjects and servants of a part of their own state, and each of them is named after the dominant power; they are not polities at all. (712e - 713a)

Plato goes on to explain this doctrine — that the states we call monarchies, aristocracies, oligarchies, democracies, etc., "are not polities at all"; but we are first reminded of the lesson taught by the Myth of Cronos:

Cronos knew what we ourselves were declaring, that no human nature invested with supreme power is able to order human affairs and not overflow with insolence and wrong. Which reflection led him to appoint not men but demigods, who are of a higher and more divine race, to be the kings and rulers of our cities; he did as we do with flocks of sheep and other tame animals. For we do not appoint oxen to be the lords of oxen, or goats of goats; but we ourselves are a superior race, and rule over them. In like manner God, in his love of mankind, placed over us the demons, who are a superior race, and they with great ease and pleasure to themselves, and no less to us, taking care of us and giving us peace and reverence and order and justice never failing, made the tribes of men happy and united. And this tradition, which is true, declares that cities of which some mortal man and not god is the ruler, have no escape from evils and toils. Still we must do all that we can to imitate the life which is said to have existed in the days of Cronos, and, as far as the principle of immortality dwells in us, to that we must hearken, both in private and public life, and regulate our cities and
houses according to law, meaning by the very term 'law', the
distribution of mind (reason?).51 (714a)

The point of the myth is that man's interests are best served by the
rule of a superior race; left in his own charge man has no respite from
toil and misery. However "in the present cosmic era" man has been left
to govern himself. He must therefore approximate the rule of a superior
race as closely as possible, by hearkening to the superior (immortal)
element within his soul — reason or mind. Thus he must regulate his
public and private lives according to 'law', because law is "the
distribution of mind". The rule of law is superior to the rule of men
because "no human nature invested with supreme power is able to order
human affairs and not overflow with insolence and wrong". A sentence
from Statesman is helpful in understanding Plato's point here; at
Statesman 300c laws are said to be:

written copies of scientific truth in the various departments
of life they cover, copies based as far as possible on the
instructions received from those who really possess the
scientific truth in these matters.

Plato is telling us that in the absence of a superior race of rulers,
man must be governed by the highest element within his own nature —
reason. To be governed by reason is to be governed by law, because
law is the vehicle which "distributes" reason.

However:

You are aware — are you not — that there are often said
to be as many forms of law as there are of governments, and of
these we have already mentioned all of those which are commonly
recognized. Now you must regard this as a matter of first-rate

51 Plato here draws the same lesson that he draws from the Myth in
Statesman but it is now reached more directly. In Statesman the
lesson was that the statesman must rule over the human flock
im impersonally and indirectly: the dialogue then goes on to ex-
plain that the impersonal form of rule is the rule of law. Here
Plato directly says that we must regulate our cities by law.
importance. For what is to be the standard of just and unjust is once more the point at issue. Men say that law ought not to regard either military virtue, or virtue in general, but only the interests and power and preservation of the established form of government:

'Surely', they say, 'the governing power makes whatever laws have authority in the state'.

True.

'Well', they would add, 'and do you suppose that tyranny or democracy, or any other conquering power does not make the continuance of the power which is possessed by them the first or principle object of their laws'? (714 b-c)

The forms of government which are based on this principle — that law should serve the interests of the ruling party — are not real governments ("polities") at all.

When there has been a contest for power, those who gain the upper hand so entirely monopolize the government, as to refuse all share to the defeated party and their descendants — they live watching one another, the ruling class being in perpetual fear that someone who has a recollection of former wrongs will come into power and rise up against them. Now, according to our view, such governments are not polities at all, nor are laws right which are passed for the good of particular classes and not for the good of the whole state. States which have such laws are not polities but parties, and their notions of justice are simply unmeaning. (715 a-b)

Now the Myth teaches that the state must be regulated by law; but laws are most often merely the instruments which the ruling class uses to maintain its position. How are we going to solve this difficulty?

Plato answers the question in the sentences immediately following the passage above:

I am going to assert that we must not entrust the government in your state to anyone because he is rich, or because he possess any other advantage, such as strength, or stature, or again birth: but he who is most obedient to the laws of the state, he shall win the palm; and on a similar principle shall all the other offices be assigned to those who come next in order. And when I call the rulers servants or ministers of the law, I give them this name not for the sake of novelty, but because I certainly believe that upon such service or ministry depends the well — or ill-being of the state. For that state in which the law is subject and has no authority I perceive to be on the highway to ruin; but I see that the state in which the law is
above the rulers, and the rulers are the inferiors of the law, has salvation, and every blessing that the Gods can confer.

Plato reconciles the lesson of the Myth — that the state must be regulated by law — with the problem which occurs in most states — that the laws serve only the private interests of the rulers — by giving the law higher authority than the rulers. The law can be made to serve the interests of the whole state by making it the supreme sovereign authority in the state.

Contrary to the orthodox interpretation of Plato however, this does not mean that the state must contain no agency which is legally competent to exercise authority over the law. It does not mean that Plato is settling for what he calls a "second best" constitution in *Statesman* (at 297e and 300c), i.e. a state which has no authority to amend its constitution and laws. Once again, I shall let Barker speak for the traditionalists:

The sovereignty of law is one of the most fundamental principles of the *Laws*. Governments must be accommodated to law, and not law to governments. If sovereignty is thus vested in law, it follows that we need not expect to find any political authority in the state of the *Laws*, which corresponds to the sovereign in a modern community. No body of magistrates; no council or senate; no assembly, however broad, will be other than subordinate to the rule of law.

Barker continues in a footnote:

The rule of law, it should be noticed, does not bear the same meaning in Plato's *Laws* which it bears in a book such as Dicey's *Law of the Constitution*. To the English thinker it meant that executive officials, like all other persons, are amenable to the common law of the land, as made by parliamentary enactment, and that they are tried before the ordinary judges who administer this law. The rule of law is thus compatible with the sovereignty of parliament, and with the right of parliament to alter the law which the judges administer. To Plato the rule of law means that every authority in the state — not only the executive officials, but also the assembly and
council — are under a code of law which, once enacted by the legislator and definitely established in action, is fundamental.  

Now the argument of Plato's that gives rise to this interpretation of *Laws* is that the laws must be made "superior" to the rulers, because otherwise they may use the law as a means of serving their own interests. But Plato has already told us how to avoid this likelihood, and the way he suggests does not involve the surrender of the state's sovereignty. We must, instead of this, follow the lead of the Spartan constitution; we must not assign too much authority to any one "element" of the "kingly office"; we must not assign too much authority to any single governmental institution. In the "right" constitution law will be "superior" to the rulers, but this does not mean that the rulers may never alter or supplement the legal code. It means that no one office of government should have supreme (unchecked) authority over the law.

Plato wants to follow the example of Sparta, and divide the sovereign authority between two or more institutions; he wants these institutions to "moderate" each other's power; he wants to write a constitution which provides for a system of checks and balances on sovereign (legislative) power. Plato can say that law is the highest authority in the state because no single institution is granted complete legislative powers.

This doctrine — that the law should have higher authority than the rulers — is Plato's answer to the question 'how can we fashion the

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constitution so that it is the right mean between monarchy and democracy? The first principle of the mixed constitution, in other words, is that law must be the highest authority in the state. Now on the basis of the argument from history — from the success of Sparta and the failures of Argos and Messene — I have interpreted this doctrine as implying that the state must contain some system of checks and balances on legislative power. Plato's conception of a mixed constitution also makes this interpretation preferable to Barker's. If Barker is right — if the state does not contain an efficacious sovereign authority — then the constitution does not contain a monarchical element. Only if the 'supremacy of law' principle means that sovereign power is divided between several institutions which together have all the power of monarchs — only on this interpretation of the principle will the state contain the monarchical element. On this interpretation the constitution will be a mixture of monarchy and democracy, in that, like a monarchy, the state will contain a supreme authority, (in this case, the combined authority of the state's legislative institutions); while like a democracy, the citizens will be free of despotism. No one ruler or group of rulers has complete jurisdiction over the law, (and therefore complete power over the citizens), yet the state does contain its sovereign authority. Thus Plato's notion of the mixed constitution is crucial to an understanding of Laws; along with the argument from history it provides the key to interpreting the controversial part of the dialogue — the demand that the law have higher authority than do the rulers.

The point here — that the constitution must provide for a distribution of powers — goes beyond anything Plato has suggested in Statesman. There we noticed him distinguishing between the different arts
which are necessarily involved in the government of the community. He mentioned judges, generals, orators, teachers, and of course, statesmen and he implies that each of these arts must have powers commensurate with the function it serves. But here, in Book Four of *Laws*, Plato is suggesting something further; a distribution of powers among the statesmen themselves. In *Statesman* Plato does not suggest — though he does in *Republic* — that there will be different legislative tribunals which have different powers, and which serve as a check upon one another. But this is precisely the doctrine that he introduces here in *Laws*. The Spartan constitution is praised because the "kingly office" — the sovereign authority in the state — is composed of the "right elements". Plato does not give us any precise account of how these different Spartan institutions serve as a "check" upon each other; he does not tell us exactly what powers are held by which offices. But he does tell us that the power of each is "moderated" by the other. And this is the kind of constitution he will fashion for Magnesia. First then, there is the distribution of powers suggested by *Statesman* — that is, different powers for the different branches of government: legislative, judicial, educational etc. Secondly — in *Laws* — there is also a distribution of powers within the legislative branch itself.

The proof that this is Plato's point in Book Four is ultimately to be found by examining the legislative offices he fashions in the later books. In the next chapter I shall do just this. My concern here is with the doctrine that the laws must have a higher authority than the rulers. I have argued that this doctrine means that legislative power must be distributed in such a manner that each legislative office serves as a check upon the activities of the others: Plato means to
create a system of legislative checks and balances.

Now Barker, Saunders, Sabine etc. are quite right in their claim that the actions of the rulers are now inhibited by law, that the philosopher-statesmen are not to have a completely free hand in governing the community. In Statesmen Plato insists that the statesman, like the doctor, must have the authority to issue and amend his prescriptions (laws) as he thinks it serves his subjects' interests. Whereas now in Laws we find him saying that this kind of authority must be distributed among several different governmental offices, so that the power of each "moderates" the powers of the others. However, Statesman does not tell us that legislative power is to be held by one individual statesman or by one council of statesmen. Plato is non-committal on this issue; what he does argue is that legislative responsibility must be assigned only to those who have mastered the art of statecraft. Because Statesman neither assigns legislative authority to one office of government, nor insists that it must be distributed among more than one office, it is difficult to say whether or not this doctrine in Laws represents a change in Plato's thinking.

It might be argued, however, that the overall tone of Statesman suggests that Plato was not thinking of balancing legislative powers between different institutions of state. Perhaps in the absence of any suggestion to the contrary, we can assume that Plato's 'doctor-statesman' analogy implies that the statesman has sole responsibility for the treatment of his subjects, and that his prescriptions are subject to no authority other than his own. The analogy with medicine would provide a strong case for this interpretation of Statesman, were it not for what Plato says in Republic. There the guardians are called upon to "obey
the laws" and to be faithful "to their spirit in any details we leave to their discretion", (458c). Also "the state must always contain some authority which will hold to the same idea of its constitution that you (the legislator) had before you in framing its laws" (497). Apparently, the legislative efforts of the guardians are subject to the scrutiny of some other authority which will ensure that their laws are faithful to the original spirit of the constitution. Apparently there is to be more than one office of government which has legislative authority.

But perhaps these passages in Republic are too vague and too isolated to warrant the conclusion that Plato always felt the need of balancing legislative powers. This objection seems especially justified in light of the silence in Statesman, where some suggestion of a balance of powers would have been more than relevant had Plato always intended it. Even if these isolated passages from Republic are discounted, and it is admitted that the 'balance of powers' doctrine is a change of mood from the earlier dialogues, the change is nowhere near as radical as the traditionalists believe it is. Even if there is very little textual support for the claim that Plato had always subscribed to some theory of legislative balances, there is nevertheless ample textual evidence that the philosophic rulers of the early dialogues were not altogether "unfettered by laws" (Barker) and "quite untrammeled by any general regulations" (Sabine). Even if the passage at Republic 497 does not imply the existence of an institutionalized check on the legislative power of the guardians, the passage at 458c does explicitly call upon them to "obey the laws". The guardians of Republic do not have a totally free hand: they must govern within the framework of laws. As
well as this, *Statesman* distinguishes the function served by the legislator from the function served by several of his auxiliaries; thus the constitution of the state will assign legislative powers to the statesman, military powers to the general, judicial powers to the judge, etc. These constitutional provisions do restrict the powers of the rulers; they are "general regulations" which must be observed by the statesman.

In *Statesman*, then, there is no suggestion at all of a distribution of legislative powers, and in *Republic* there is only a suggestion of it; so the doctrine may well be new to *Laws*. Nevertheless the traditional view is incorrect when it holds that this doctrine "cleaves Plato's political theory into two distinct halves". In the early dialogues Plato may not impose as many restrictions upon the legislative efforts of the guardians as he imposes upon them in *Laws*, but the differences are of degree. The kind of sovereign authority — one whose powers are less than absolute — is continuous through all three dialogues. Plato was not an absolutist who abandoned his ideal in his old age. I think that his political theory shows a gradual development from *Republic*, where he insists that political power be in the hands of experts, to *Statesman* where he indicates the kind of powers his experts are to have, to *Laws* where he fashions the institutions through which his experts must exercise their powers.\(^53\)

\(^53\) In this chapter I have argued that the first and main principle of Plato's 'mixed' constitution is the supremacy of law over the rulers. This is a mean between monarchy and democracy, in that the state does contain a supreme authority—law (the monarchical element), but at the same time the citizens are free from subjection to human masters (the democratic element). While this is the most important place where Plato's constitution observes a "mean" between the two "mother" constitutions, it is by no means the only place. See 756-7 where the method of electing the council is said to combine monarchical with democratic elements. Morrow sees both the balance of powers doctrine and the election of the council as instances of a basic philosophical principle of Plato's — that wherever possible — the "middle way" is the best way. See Morrow, Chapter 10.
Plato says at *Laws* 715e that the law must have higher authority than the rulers. In the last chapter I argued that in saying this Plato is not settling for what he considers to be a "second-best" constitution; i.e., one under which the rulers have no legislative authority, in that they must strictly adhere to the already established laws and customs. This "second-best" constitution is one which Plato would favour only where the state is governed by "politicians"—tyrants, oligarchs or democrats who are not expert statesmen. Without extensive training in "political science", these rulers will not be able to perceive that "the true art of politics is concerned not with private but with public goods" (*Laws* 875a). Under such circumstances it is better if the rulers are required to obey the laws, and are prevented from changing them in any way. If they were given any significant measure of legislative authority, they would, in their ignorance, be likely to use the laws to further their own interests.  

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54 This notion of the "second-best" constitution comes from *Statesman* (297c; 300c). There Plato says: "our second best method of government is to forbid any individual or group of individuals to perform any act in contravention of these laws" (300c). That Plato means by this, that the rulers are not to have the authority to change existing laws in any way is evident from the sequel. Plato remarks that the true statesman will in many instances change the laws he has already enacted, but;

"an individual or a group who possess a code of laws but try to introduce some change in them because they consider it an improvement are doing the same thing according to their lights as the true statesman. But if they acted like this with minds unenlightened by knowledge they would indeed try to copy the true original, but would copy it very badly" (300d).

When "minds unenlightened by knowledge" are given authority to change the laws they only copy the true statesman "very badly". The rule of the unenlightened comes nearer to the "true" constitution if the rulers are not given the authority to change the laws (300 a-b; 301 a). The phrase "second-best constitution" also occurs at *Laws* (739; 607): but here Plato means a state which permits private ownership and families (the best state has a community of wives, children and property).
But when Plato gives the law higher authority than the rulers, he is not settling for a government of lay politicians who must be denied legislative powers. He is drawing upon the lessons of history, and arguing for a system of checks upon legislative power, such that no one organ of government has absolute sovereignty over the laws. The proof that this — rather than the second-best constitution — is Plato's intention at *Laws* 715 is to be found by examining the governmental institutions that he fashions in the later books. I want to make my case by examining four such institutions: the Assembly, the Council, the Guardians of the Laws, and the Nocturnal Council.

**The Assembly**

Membership in the Assembly is the right of all citizens:

> Let anyone who likes go to the assembly and to the general council: it shall be compulsory to go on all citizens of the first and second (property) classes, and they shall pay a fine of ten drachmæ if they be found not answering to their names at the assembly. But the third and fourth classes shall be under no compulsion, and shall be let off without a fine, unless the magistrates have commanded all to be present in consequence of some urgent necessity. (764a)

Everyone who is a member of one of the four property classes is eligible to take part in the proceedings of the assembly. This includes not only the actual owners of property, but also their sons, daughters and wives. Plato nowhere explicitly mentions that women shall sit in the Assembly, but they are eligible to hold public office after the age of forty, and they are called upon to engage in military service (785b). Since elsewhere (753b) Plato says that membership in the Assembly is the right of all who are, or have been, members of the armed forces, it is quite certain that women were also to sit in the Assembly.

The significance of who is eligible for membership in the Assembly
can only be fully appreciated after we look at who is not eligible. Membership is restricted to those who are members of one of the four property classes; these are the "citizens" of Plato's state. The citizens are prevented by law from engaging in any profit-making activity other than the management of their farms (743d). They may not engage in any form of trade (919d-920a; 849b-d); nor may they engage in any form of handicraft or art (846d). These occupations are to be left to resident aliens and their slaves. Thus all merchants and artisans, as well as all who are labourers (slaves), are not permitted a seat in the Assembly; indeed they are not given any part in the government of the community. This is because citizenship is itself an occupation which requires a full time commitment:

"he who is to secure and preserve the public order of the state has an art which requires much study and many kinds of knowledge, and does not admit of being made a secondary occupation". (846d).

So Plato's city is composed of two distinct classes: there are the citizens who own land and sit in the Assembly, and there are the merchants, tradesmen and slaves, who perform vital functions for the community, but who have no voice in its government. This distinction conforms exactly with Republic, where the state is composed of the Guardian class (the rulers together with their auxiliaries, including all those who serve in the armed forces) and the rest of the population (tradesmen, merchants, slaves, etc.) who are said to provide the state with its basic economic needs. In Republic one becomes a Guardian or a member of the 'economic' class according to the aptitudinal characteristics that he displays in the schools. Those students who show intellectual capabilities, and who are better at withstanding the
temptations of pleasure and pain, are selected to receive a higher education which qualifies them for holding some position of authority in the community. From among these Guardians the very best are chosen to be the rulers.

In *Laws* the educational system is less egalitarian, and according to Plato, less ideal. Plato apparently thinks that families, (which are permitted in *Laws* but prohibited in *Republic*) necessitate a revision in the educational system. In *Laws* it is doubtful that Plato intends all youngsters - regardless of their parentage - to receive the same education up to the point where they begin to distinguish themselves aptitudinally. The educational scheme that Plato outlines in *Laws* is for the children of citizens, for those who are born into one of the four property classes. Plato does not explicitly say that the children of slaves and resident aliens are to receive a different education but this does seem to be his intention. The main evidence for this occurs in Book (1):

According to my view, anyone who would be good at anything must practice that thing from his youth upwards, both in sport and earnest, in its several branches: for example, he who is to be a good builder, should play at building children's houses; he who is to be a good husband-man, at tilling the ground; and those who have the care of their education should provide them when young with mimic tools. They should learn beforehand the knowledge which they will afterwards require for their art. For example, the future carpenter should learn to measure or apply the line in play; and the future warrior should learn riding, or some other exercise, for amusement, and the teacher should endeavour to direct the children's inclinations and pleasures, by the help of amusements, to their final aim in life. The most important part of education is right training in the nursery. (643b-c).

Plato's main point here is that "anyone who would be good at anything must practice that thing from his youth upwards". The educational system of *Laws* provides the youth with practice in riding, dancing and
singing from six to nine years; reading and writing from ten to thirteen; lyre playing from thirteen to sixteen; and arithmentic, geometry, astronomy, wrestling and military exercises from sixteen to twenty. This is only the barest possible outline of the education system, but it is sufficient to show that the system is designed to produce Guardians, as opposed to tradesmen and merchants. How the children of non-citizens are to be educated Plato does not say, but presumably they will be trained for the occupations which await them in their later lives. Perhaps in exceptional cases the children of resident aliens could be admitted to the schools designed for citizens, since Plato does say that exceptionally deserving aliens can receive the privilege of life-long residence. (850c-d). This privilege would be extended to their children, who might then be admitted to the schools and gymasia by special permission of the Assembly. Plato does not mention how the children of slaves are to be educated, but the children of mixed unions of citizen and slave are to be exiled from the colony. (930d-e).

The reason for the differences between the educational systems of Republic and Laws is, I think, the family. When the population is permitted to raise their own children, they are sure to "direct the children's inclinations and pleasures" towards a station in life similar to their own; because "the most important part of education is right training in the nursery". Plato seems to think that as a "second-best" alternative, the schools should continue the kind of training the parents have already begun.

Plato continues after the passage quoted above and leaves no doubt that his educational system is designed to create citizens as
opposed to merchants, artisans and slaves:

At present, when we speak in terms of praise or blame about the bringing-up of each person, we call one man educated and another uneducated, although the uneducated man may be sometimes very well educated for the calling of a retail-trader, or of a captain of a ship, and the like. For we are not speaking of education in this narrower sense, but of that other education in virtue from youth upwards, which makes a man eagerly pursue the ideal perfection of citizenship, and teaches him rightly how to rule and how to obey. (643e).

The percentage of the population that Plato intends to receive this education is difficult to determine. But one passage gives a good indication. At 848a Plato says that the food grown by the colony must be divided into three parts; one for citizens, one for slaves, and one for tradesmen and merchants. Presumably Plato is envisaging a state where roughly one-third of the population are citizens; that is, where one-third of the population shall sit in the Assembly and take a part in the government of the community. Plato gives all citizens a seat in the Assembly, but citizenship is an art which is practiced by only one-third of the population. These have been specially educated in virtue from the nursery upwards; they have learned "how to rule and how to obey". The citizens of Plato's state in Laws are like the Guardians of the state in Republic; only they take part in the government of the community, because only they are educationally qualified to do so.

The significance of this comparison between the citizen members of the Assembly in Laws, and the Guardians of Republic, becomes apparent when we consider the powers that Plato gives to the Assembly. The main function it serves is the election of the higher governmental officials. The Assembly elects the Council, the exegetes of religious law, the auditors of official accounts, the euthnoi, the generals, the city wardens, the market wardens; with very few exceptions (the Minister of
Education, the Nocturnal Council) the Assembly elects all the officials of government. But most important of all it elects the Guardians of the Laws. We shall see that these officials have the bulk of the responsibility for enacting legislation; for "setting in motion the great enterprises of state". Their authority is subject to some measure of scrutiny by the Nocturnal Council, but the Guardians of the Laws are the main governing body.

That these Guardians are elected - rather than appointed on the grounds of their moral achievements - would seem to be one of the main instances where Laws compromises the principles of Republic. Plato says at Laws 950c that ordinary men, though they may be less than wholly virtuous themselves, are nonetheless able to perceive virtue in others: he seems to think in Laws, what would have sounded very strange in Republic, that "the many" are competent to choose wise and virtuous rulers. But "the many" to whom Plato grants this privilege are the citizens or Guardians who have been carefully educated to exercise the authority they are granted. The Assembly elects the higher officials of state, but the Assembly is manned only by those who have themselves been educated to a "right opinion concerning what is good, just, and profitable". Only those who have been trained "how to rule and how to obey" are given a franchise. Plato hopes (with good reason, I think) that Magnesia's rulers will be the most virtuous of those who have been educated in virtue.

Besides the election of officers, the Assembly is given very few specific powers. At 768 Plato gives the Assembly the right to try cases involving an offence against the state:
In the judgement of offences against the state, the people ought to participate, for when anyone wrongs the state all are wronged, and may reasonably complain if they are not allowed to share in the decision. Such causes ought to originate with the people and they ought also to have the final decision of them, but the trial of them shall take place before three of the highest magistrates." (768a).

Apparently Plato intends the Assembly to function as something of a jury in these cases. The case will be heard by judges; but the power of verdict is to rest with the Assembly. There are three other places in Laws where the Assembly is given specific powers: at 922 the "great body of the citizens" is said to be responsible for making awards of merit. At 772 Plato is discussing the laws concerning sacrifices and dances; he points out that his legislation in this regard is bound to leave out certain details which only come to light through experience. These omissions must be corrected by the Directors of Choruses and the Guardians of the Laws. After ten years of experience with these laws and their revisions, Plato expects that they will need no further amendment. If however, some revisions do become necessary after that time, they must be ratified by the Assembly. Finally, the Assembly is given the power to grant extensions of residence to aliens (who normally must leave after twenty years). (850b).

Whether or not Plato intended the Assembly to serve functions other than the above is difficult to say. It meets on a regular basis - but we are not told how often. If it has no duties beyond the above, it would seem that its meetings would not have to be frequent. It may also be called into special session to deal with emergencies; but Plato does not tell us what emergencies it must cope with. The Assembly is not actually a legislative or deliberative body at all. It plays an indirect, but crucial role in the state's legislative processes however; it elects
the Guardians of the Laws - who do have broad legislative powers. These officials are the rulers of the colony - and Plato trusts their selection to the Assembly. But I do not think that this compromises the principles of Republic; certainly Plato did not see it as a democratic element in his constitution. The way any state selects its rulers is perhaps the most important feature of its constitution. Plato leaves this selection to those who have been educated to choose wisely.55

The Council

As an organ of government Plato's Council is remarkably unimportant. Its lack of significant powers is remarkable only because this is such a sharp reversal from the practice of most fourth-century Greek states.56 Plato's Council is the executive body of the Assembly; it calls its meetings and "guards" the city in the intervals between them. It receives heralds and ambassadors from foreign cities; it also listens to petitions and information from Magnesians. Also it likely supervises

55 That Plato sees the election of officials by the Assembly as a "just" way of selecting rulers is evidenced by the text at 757. There Plato is describing the election of the Council: the Assembly elects 180 candidates out of which the 90 Council members are chosen by lot. Plato next distinguishes two senses of 'just' and of 'equality': the 'real' justice is represented by the election, while the 'secondary' justice is represented by the use of the lot. Real justice assigns duties, honours, authority, etc., according to merit; the point is that the Assembly deserves this authority - its members are qualified to perform this function. Plato also says that this manner of selecting Councillors is a mean between Democracy and Monarchy. The democratic element is the lot; the Monarchial element is the election of candidates by those who know who would make the best officials.

56 On this score see Morrow p. 168-178.
the elections that are held in the Assembly. But beyond this Plato assigns the Council no powers whatsoever. The only significant function it seems to serve is in relation to the Assembly. The larger body is too cumbersome to fulfill its own function without the direction of an executive committee - the Council.

The Guardians of the Laws

This is a board of thirty-seven members who must be at least fifty years of age; they hold office from the time of their election until their seventieth year (754d-755a). The first statement of their duties is minimal: "Let them, in the first place, be the guardians of the law", and secondly of the registers of property (the records of each citizen's assets). (754d). The reason Plato initially only assigns them the task of guarding the registers of property is that the law concerning property limitations is the only law formulated to this point in the text. Plato then adds: "as the work of legislation progresses, each law in turn will assign to them their further duties." (755b).

This promise is amply fulfilled. In the succeeding pages Plato frequently comments that the legislation he is writing is incomplete. At 769 the legislator is compared to a painter:

"You know the endless labour which painters expend upon their pictures - they are always putting in or taking out colours, or whatever be the term which artists employ; they seem as if they would never cease touching up their works, which are always being made brighter and more beautiful. (769a-b).

A few lines later:

"And is not the aim of the legislator similar? First he desires that his laws be written down with all possible exactness; in the second place, as time goes on and he has made an actual trial of his decrees, will he not find omissions? Do you imagine that there ever was a legislator so foolish as not to know that many things are necessarily omitted, which someone
coming after him must correct, if the constitution and the order of government is not to deteriorate, but to improve in the state which he has established?" (769d).

Thus the Guardians must be "not only guardians of the law, but also legislators" (770a); they must fill in the omissions that necessarily occur in the original formulation of the state's code of law. The original legislator - in this case Plato - will "describe what is important and will give an outline, which you (the Guardians) shall fill up". (770c). But as well as 'filling in the outline', the Guardians must also revise or reject whatever laws and regulations prove to be an impediment to the aim of the true legislator, which is to make men virtuous.

There are numerous examples of the supplementations and revisions that Plato thinks will be necessary. The regulations concerning choral dances (772a-c), religious festivals and contests (828b; 835a), civil disputes (844a), and some details of legal procedure (846b-c, 855c-d, 967a) are all intentionally left incomplete. In each case Plato says that the Guardians of the Laws must complete the legislation after benefiting from experience and/or from consultations with the minor officials who are relevant in each area. An instance of Plato thinking that a law may need to be revised, rather than merely supplemented, is the law concerning sexual relations. If the "first" law proves too strict for the Magnesians, "the Guardians of the Law, exercising the function of lawgivers, shall devise a second law against them." (840c). Thus the Guardians are empowered not only to supplement particular existing laws, they are also empowered to pass new laws and to amend old ones.

That the legislative powers granted to the Guardians are very broad is evident from the wide range of matters concerning which they
must make regulations. In association with the market-wardens they must allocate stall space in the public market (849a); make regulations limiting the amount that a retail-trader can charge for his goods (920a-c), and make regulations concerning the sale of spoiled food. (917c). In each case the role of the market-wardens appears to be advisory: in the Guardians is vested the authority to pass laws and make regulations. The same principle is evident when the Guardians are associated with the Generals concerning the import and export of materials used for military purposes: the Generals are given the authority to import and export such products, but "the Guardians of the Law shall make fit and proper laws about them." (847d).

On other occasions the Guardians sit on a board with other officials, the whole board being charged with the responsibility for making the necessary regulations. The nature of musical contests, as well as the occasions on which they are to be held, is the responsibility of a committee consisting of "the judges and the Director of Education and the Guardians of the Law." (835a). This committee must become "legislators of the times and nature and conditions of the choral contests and of dancing in general." (835a). Also; games must be devised which permit the unmarried citizens to become acquainted with one another. The Directors of Choruses, together with the Guardians of the Law, will be the body responsible for the legislation needed in this regard. (772a). A third example of the Guardians acting in concert with other officials as a legislative body is the regulation of festivals and sacrifices. The "interpreters, and priests and priestesses, and prophets shall meet, and, in company with the Guardians of the Law, ordain those things which the legislator of necessity omits." (828a).
There are other instances where the Guardians, either by themselves or in committee with other magistrates, are required to act as "lawgivers". They must make regulations concerning the construction of buildings (779d); they must pass laws dictating which forms of dance and song are appropriate to various state occasions (816c); and they will have to attend to the "innumerable little matters" of legal procedures (846c, 855c-d, 871c, 957a). Every time Plato foresees the need for legislation to supplement his own, he assigns the responsibility to the Guardians of the Law. Even where he includes other magistrates in the legislative process, the Guardians must also be present. I can find no passage in *Laws* in which Plato assigns legislative authority to any officials other than the Guardians. (The exception to this rule is the Nocturnal Council, which is considered below.)

As well as their legislative duties the Guardians have special supervisory powers: they must supervise the import and export of all goods (847d); they must supervise the important festivals and contests (835a); they must see that no citizen accumulates too much wealth (754d-e); and they must supervise the enforcement of the law which exiles all children born of a union between citizen and slave. As well they have special duties regarding family law: they are responsible for the care of orphans (924b-c); they must reassign property when a citizen dies without heirs (877d); they enforce the rules regarding the marriage of heiresses (926b-d); they hear charges regarding the mistreatment of parents (932a-b); and they are responsible for maintaining modesty and propriety at funerals (959c). The Guardians usually carry out these duties as a board, or else in smaller groups ranging from three to fifteen members.
Lastly the Guardians have certain judicial powers. They act as a court to hear cases where a litigant has resisted a court judgement against him (958c); along with the select judges they hear all cases involving the death penalty (855c); and they are the court before which the select judges and euthnois are tried. (967e, 948a). Also they may fine a man for improper expenditure at a wedding or a feast (755b, 959d), and they sometimes form a court of arbitration between magistrates and citizens. (784b).

Plato never gives a generalized description of the functions served by these officials - except in what is implied by their title - Guardians of the Law. There are I think, two senses in which this board of elders "guards the Law". First, they are in many instances responsible for seeing that the laws are enforced. Thus they "guard" the registers of property and see that the laws concerning the family are observed. But any citizen in Plato's state may bring a charge of misconduct against any official or fellow citizen (856c); also an audit of every official's activities is conducted at the termination of his services. The purpose of this audit is to assess his conduct during his tenure of office; charges may be laid for any misconduct. Thus Plato has built institutions into his legal code which are specially designed to ensure that the laws are obeyed. While the Guardians of the Law also serve this purpose in some instances, it is not the main sense in which they "guard the laws."

The second sense in which they are guardians is paradoxical. They are empowered to issue laws and regulations on their own initiative; they are also empowered to amend at least some of the laws which were passed by previous legislators. They are empowered to revise and supplement the legal code as the state encounters new circumstances and
experiences problems not envisaged by previous legislators. To reinvoke the language of *Statesman*, the Guardians have the authority to issue "bulk prescriptions" concerning what is the "just and honourable" course of action for an individual to take in a particular situation. The Guardians must be given this authority because no legislator can ever imagine every circumstance which his legislation must cover. "Do you imagine that there ever was a legislator so foolish as not to know that many things are necessarily omitted (from his code of law) which someone coming after him must correct, if the constitution and order of government is not to deteriorate"? (769d). The second sense in which the Guardians must "guard" the laws then, is that they must "correct" them, so that they might better achieve the purposes for which they were designed.

The reason that this might be thought paradoxical - or worse, contradictory - is that Plato elsewhere insists that the law has a greater claim to authority than do the rulers (715). How is this possible when the rulers are empowered to "correct" and amend the laws? If the Guardians are given this power, how can we be sure that they will not use the laws to strengthen their own position - to further their own interests? Plato's answer is the Nocturnal Council!

**The Nocturnal Council**

1. **It's Membership**

Plato introduces the Nocturnal Council at 951d:

"This shall be a mixed body of young and old men, who shall be required to meet daily between the hour of dawn and the rising of the sun. They shall consist, in the first place of the priests who have obtained the rewards of virtue, and, in the second place, of guardians of the law, the ten eldest being chosen; the general superintendent of education shall also be a member, as well the last appointed as those who have been released from the office; and each of them shall take with him
as his companion a young man, whomsoever he chooses, between the ages of thirty and forty. (951d-e).

Unfortunately Plato gives us a second description of the Council's membership just a few pages later: what is unfortunate is that the two passages are different. The second description includes the ten oldest guardians, and "all those who have obtained prizes of virtue." "And the council was also to include those who visited foreign countries in the hope of hearing something that might be of use in the preservation of the laws, and who, having come safely home, and having been tested in these same matters, had proved themselves worthy to take part in the Assembly." (961a). This second passage differs from the first in three ways. (1) Plato omits the Director of Education and all his predecessors in office: (2) he includes "all" who have been granted awards of virtue, (instead of just the priests who had been so rewarded); and (3) he includes the special envoys or "spectators" who go abroad for the purpose of studying foreign laws and constitutions. The last mentioned is consistent with the first passage (at 951d-e) because Plato there says that these spectators must report to the Council upon their return and participate in its discussions. There seems to be no way of reconciling the second difference: are only the priests, or are all who have been awarded for their virtue, to sit on the Council? Probably anyone who receives such a great honour would be eligible, he would certainly be well qualified; but the issue appears to be of little consequence anyway. The important difference between the two passages is the omission of the Director of Education from the second one. This is very likely an oversight because of the high esteem with which Plato regards this office; he describes it as "the greatest of all the great offices of
state." (765e). Again, when speaking of wise men who may visit Magnesia in order to study its laws, Plato says that such visitors should go "unbidden to the doors" of Magnesia's wisest and most virtuous citizens. And of these he singles out the Director of Education as one of the citizens most worthy of such visitors. The official that Plato appoints to oversee the state's educational system must obviously be one of the wisest of the guardians. Despite the passage at 961, I think it is very probable that the Educator is an important member of the Nocturnal Council.

11. The Council's Educational Function

The account that Plato gives us of the function served by the Nocturnal Council is somewhat general and unspecific. We have seen that the Council is to be a "mixed body of young and old men"; Plato has this to say about the relationship between the elder and the junior Councillors:

> the younger guardians, who are chosen for their natural gifts, (are) placed in the head of the state, having their souls all full of eyes, with which they look about the whole city? They keep watch and hand over their perceptions to the memory, and inform the elders of all that happens in the city; and those whom we compared to the mind, because they have many wise thoughts - that is to say, the old men - take counsel, and making use of the younger men as their ministers, and advising with them - in this way both together truly preserve the whole state. (964e-965a).

Now this passage suggests that the younger men will, in one way or another, serve as the assistants of their elders. This suggestion is never elaborated however; we are never told in what sense the elder men will "make use of the younger men as their ministers." But the passage also contains another suggestion: the young men have earlier been compared to the "noblest senses" - to the "eyes and ears" - of an organic creature; here Plato says that they must have "their souls all
full of eyes with which they look about the whole city." At first glance this might appear to explain the sense in which the young men are the "ministers" of their elders; it might seem that Plato is assigning the junior Councillors some sort of police duty. But this, I think, would be to misunderstand Plato's metaphor. The younger members of the Council are the "eyes and ears" of the state in the sense that they are its students; they "look about the whole city" not as police, but as students of government. They must study the whole community; the project is a stage in the study of the art of ruling.

Plato in fact leaves no doubt that the younger Councillors are students, and that the elder Councillors are their teachers. When first introducing the Council he has this to say about its activities:

(its members) shall always be holding conversation and discourse about the laws of their own city or about any specially good ones which they may hear to be existing elsewhere; also about the kinds of knowledge which may appear to be of use and will throw light upon the examination, or of which the want will make the subject of laws dark and uncertain to them. Any knowledge of this sort which the elders approve, the younger men shall learn with all diligence. (951e-952a).

So the Council, among other things, is certainly an institution for the higher education of its younger members. It must study laws, both domestic and foreign; and it must also pursue those studies which will throw light upon its main concern - legislation. In fact any subjects which the elder members think important must be studied diligently by their younger "ministers".

That these younger members of the Nocturnal Council are students of statesmanship, that they are the "select few" who will later in their lives become the expert statesmen that Plato relies on in Republic and Statesman - this becomes evident when the whole educational system of Laws is compared to the system in Republic. Laws, like Republic, provides
for advanced studies for those students who show themselves particularly adapted to statesmanship. The curricula in the two dialogues are closely parallel; both combine theoretical studies with practical experience in government. The parallel between the two dialogues is somewhat difficult to establish only because Republic is primarily concerned with the education of the rulers, whereas Laws is primarily concerned with the lower level of education which all citizens are to receive.

We have already seen that the educational system in Laws is designed for citizens as opposed to merchants, tradesmen and slaves. Citizens must be trained in the art of citizenship because that art cannot be practiced as a "secondary occupation." (846d). The other residents of the city will be educated in different arts, but all citizens are to receive the same education up to the age of twenty. From ten to thirteen years they study "letters"; from thirteen to sixteen years they take up lyre-playing. (810a). What they study after the age of sixteen is nowhere stated explicitly, but it is implied by the conjunction of several different passages. In the passage extending from 818e-820e, Plato says that a basic knowledge of mathematics is necessary for all citizens. Such studies make "the arrangements and movements of armies and expeditions" more intelligible, and "in the management of a household they make people more useful to themselves." (819c). A basic knowledge of Astronomy is also said to be helpful for all citizens. (820e-822d). As well as Mathematics and Astronomy the
state must teach Gymnastics. The importance of physical exercise is stressed by Plato for all ages, but, when they are young, citizens must be trained for military service. Their gymnastic training is very extensive:

"we include under gymnastics all military exercises, such as archery and the hurling of weapons, and the use of the light shield, and all fighting with heavy arms, and military evolutions, and movements of armies, and encampings, and all that relates to horsemanship." (813a).

As well Plato stresses the importance of wrestling (814a) and dancing (814e-817d).

What Plato does not explicitly tell us is that education in Mathematics, Astronomy and Gymnastic is to occur between the ages of seventeen and twenty. However it most certainly begins after the age of sixteen because the curriculum up to that age is described in detail. Also, it must end at the age of twenty because at that age the young are eligible for military service. (785b).

Those who have distinguished themselves in the schools, and who have proved to be the bravest warriors, will carry on their education when they are finished their military service. Before introducing Mathematics and Astronomy into the curriculum for all citizens, Plato says this about these subjects:

"Not everyone has need to toil through all these things in a strictly scientific manner, but only a few, and who they are to be we will hereafter indicate at the end, which will be the proper place; not to know what is necessary for mankind in general, and what is the truth, is disgraceful to everyone: and yet to enter into these matters minutely is neither easy, nor at all possible for everyone;" (818a).

The text at 785b contains a suggestion that is inconsistent with the rest of the text. Plato says that women are to be married between the ages of sixteen and twenty. Thus it might seem that they are not to receive education in Mathematics, Astronomy and Gymnastic. Since Plato repeatedly says that women are eligible for military service, however, I think the 'marriageable ages' law is a mistake. If they are to serve in the armed forces they must be trained in Gymnastic.
Clearly Plato is saying that while everyone must have a basic knowledge of Mathematics and Astronomy (etc.), "only a few" need to study these matters "minutely" and "in a strictly scientific manner." Plato's promise that we will be told at the end who is to receive this advanced education is fulfilled by the closing pages of the dialogue. At 968a Plato says that the Nocturnal Councillors must have gone through "the whole scheme of education proposed by us"; and at 965b he says that the Councillors must be "special persons...who have received a more careful training and education" than the ordinary citizens have. There are no grounds whatsoever for doubting that Plato intends this education for those who will sit on the Nocturnal Council.

Thus Laws does provide for some system of higher education for the state's rulers. Everyone receives the same education up to age twenty, when "a few" are chosen for further studies. We are not told how long these studies are to last; nor whether they are to commence at age twenty, or whether a period of military service is to precede them. But we know that at age thirty some of those who have undergone this advanced training "are chosen for their natural gifts (and are) placed in the head of the state" - the Nocturnal Council. (964e). So, for all or some of the years between twenty and thirty, the most gifted of the youth are to study mathematics and the sciences.

This part of the educational scheme in Laws corresponds very closely to the programme in Republic. There the first selection of the more gifted youth also occurs at age twenty; those chosen are to study mathematics and the sciences (Astronomy and Harmonics) in such detail that "the detached studies in which they were educated as children will now be brought together in a comprehensive view of their connections
with one another and with reality." (Rep. 532).

Up to age thirty then there is a substantial accord between the educational programmes of Republic and Laws. But to establish a parallel between the courses of studies provided in each dialogue for the thirty year old guardians is much more difficult. In Republic at this age, the young guardians are introduced to Dialectic. (Rep. 537). These studies will lead to "the discovery of the real by the light of reason only"; they will culminate in "the perception of the absolute good." (Rep. 532a). The young guardians have advanced from the study of mathematics and the sciences to the study of the Forms or Ideas; they have begun to study Philosophy.

Now philosophical knowledge - knowledge of the Forms - is absolutely central to the education of the philosopher-kings in Republic; it is in virtue of their knowledge of the Forms - especially the Good - that they are fit to rule.

those who are verily and indeed wanting in the knowledge of the true being of each thing, and who have in their souls no clear pattern, and who are unable to look like painters at the absolute truth and to that original to repair, and having a perfect vision thereof to frame laws about beauty, goodness, and justice, if not already framed, or to guard and preserve order where it exists - are not such persons I ask simply blind?

And shall they be our guardians when there are others who... know the very truth of each thing? (464c-d)

The spirit of this and other similar passages in Republic (501a-c for example) is clear enough; unless a guardian has "true knowledge of the true being of each thing," unless he has "a perfect vision" of Beauty, Justice, and Goodness, he will not be able to preserve or frame the laws which make the state as far as possible an accurate copy of these Ideas. In short, unless the guardians know what Justice and Goodness are, they will never be able to create and preserve the good and just society.
Now a careful analysis of Plato's conception of philosophical knowledge, that is, an analysis of the kinds of knowledge that Plato would teach the thirty-year-old guardians in Republic, is much beyond the competence of this paper. Indeed there is much interpretive controversy surrounding Plato's conception of philosophical knowledge; since my present purpose is only to establish a parallel between the curricula in Republic and Laws, I shall now return to Laws and examine its curriculum. We saw that the junior members of the Nocturnal Council (at age thirty) sat on the Council as students; there they were to study the whole community, and there they were to study every aspect of legislation, both domestic and foreign. They were also to pursue "the kinds of knowledge which may be of use...or of which the want will make the subject of laws dark and uncertain to them." (Laws 952a). It is now time to ask 'exactly what "kinds of knowledge" does Plato include in the young Councillors' course of studies?' Is this part of the educational programme in Laws dedicated to the acquisition of philosophical knowledge? Or have Plato's educational commitments changed?

At the outset it must be admitted that there at least appears to be some change. In Republic the Theory of Forms provides a guiding thread to the educational enterprise; in Laws the Forms are hardly mentioned, if indeed they are mentioned at all.58

58 If the Forms play such an important role in the education of the rulers in Republic, then the fact that they are hardly mentioned in Laws must be accounted for. At least some Platonic scholars would contend that this difference should be explained by the likelihood that as Plato matured philosophically he came to abandon his Theory of Forms. The main grounds in support of this contention are the real problems that Plato finds in his own Theory, chiefly in Sophist, Parmenides and Philebus. If Plato did abandon the Theory of Forms before he wrote Laws, then he may no longer hold the view that only the philosopher (who alone understands "the true being of each thing") is fit to rule. The philosopher's unique qualification for office was his
In fact whether or not knowledge of the forms ("knowledge of the true being of each thing") plays any role in the education of the state's rulers in *Laws* is a matter of controversy. Plato nowhere explicitly says that the junior members of the Nocturnal Council must study the Forms, yet he has a great deal to say about the necessity of them possessing knowledge of the one and the many virtues. (963b-965a). And he says the same about the good and the honourable: "are our guardians only to know that each of them is many, or also how and in what ways each of them is one?" (966a). And in general, "let us proceed to enquire whether in the case of things which have a name and also a definition to them, true knowledge consists in knowing the name only and not the definition." (964a). Now to Plato these problems about the one and the many (virtues, goods, etc.) are philosophical problems; evidently philosophical knowledge (of the Forms?) is to play some role in the education of the rulers.

knowledge of the forms; if the existence of these objects of knowledge is subsequently repudiated by Plato himself, then the philosophers' title to govern may have been undermined. The relevance of this issue to my thesis is straightforward; if it is true that Plato abandoned the Theory of Forms, it may be for this reason that *Laws* substitutes the sovereignty of law for the rule of philosopher-kings. Because an examination of *Sophist*, *Parmenides*, *Philebus*, etc. is beyond the scope of this paper, I am not in a position to answer the question 'Did Plato abandon the Theory of Forms?' I shall argue however, that even if Plato did abandon his Theory, he did not abandon the view that the philosopher is in possession of certain kinds of knowledge which are indispensable to good government. Thus even if the Forms have been abandoned, the philosophers' title to govern remain intact.
Fortunately Plato gives us a good indication of exactly what role this knowledge should play. The explanation begins immediately after Plato has told us that the Nocturnal Council must "tell us what is the aim of the state and (also)...what law or what man will advise us to this end." (962b). Plato then adds:

we must assume, as the argument implies, that this (Nocturnal) Council possesses all virtue; and the beginning of virtue is not to make mistakes by guessing at many things, but to look steadily at one thing, and on this to fix all our aims.

Then now we shall see why there is nothing wonderful in states going astray - the reason is that their legislators have such different aims; nor is there anything wonderful in some laying down as their rule of justice, that certain individuals should bear rule in the state, whether they be good or bad, and others that the citizens should be rich, not caring whether they are the slaves of other men or not. The tendency of others, again, is towards freedom; and some legislate with a view to two things at once, - they want to be at the same time free and the lords of other states; (962d-e).

So the Nocturnal Council must "possess all virtue"; and the beginning of virtue is for the state to have one aim or end of its legislation. Other states go astray because "their legislators have such different aims" - freedom, riches, mastery over other states, etc. Now the aim on which the Council should fix all its attention is the process of teaching virtue; "the laws generally should look to one thing only; and this, as we admitted, was rightly said to be virtue." (963a). But:

we were saying that there are four kinds of virtue, and as there are four of them, each of them must be one. Certainly. And further, all four of them we call one; for we say that courage is virtue, and that prudence is virtue, and the same of the two others, as if in reality they were not many but one, that is, virtue. (963c).

The Nocturnal Council then must know that the aim of the state (and of every one of its laws) is the production of virtue. In order to know whether a particular law does or does not aim at virtue, the Council
must have an adequate knowledge of what virtue is. But this is a
difficult matter. In order to know what virtue is, one must know in
what respects the four virtues are different from one another, and
what is more difficult, one must know in what respect the four separate
virtues are one. That is, one must know in what respect each is a
virtue.

Then, as would appear, we must compel the guardians of our
divine state to perceive, in the first place, what the
principle is which is the same in all the four (virtues) -
the same, as we affirm, in courage and in temperance, and
which, being one, we call as we ought, by the single name
of virtue. (965d).

This problem - that virtue is both one and many - is certainly familiar
to the student of the early dialogues. Its reappearance here in the
closing pages of *Laws* means that Plato still requires a special kind of
knowledge in his guardian-rulers; he is saying that they must be able
"to perceive...what that principle is which is the same in all the four
(virtues)...and which, being one, we call...by the single name of
virtue." Apparently Plato is saying that his guardians must know the
"real nature" of virtue.

Plato also tells why the guardians must possess this knowledge:

Did we not say that a workman or guardian, if he be perfect in
every respect, ought not only be able to see the many aims, but
he should press onward to the one? This he should know, and
knowing, order all things with a view to it. (965c).

Now the "aim" for Plato's guardians is virtue. The statesman must know
the "one idea" or "principle" which is virtue, so that he can "order all
things (in the state) with a view to it." If the guardian has no
adequate knowledge of virtue, the city is "unguarded (and) should
experience the common fate of cities in our day." (964d). But virtue
is not the only thing that the guardians must know:
what about the good and the honourable, are we to take the same view? Are our guardians only to know that each of them is many, or also how and in what ways they are one? (966a)

The very important point that Plato makes in these passages is that the guardians must have perceived Virtue and Goodness if they are to order the state in the image of these "ideas". So in *Laws* the statesman's title to rule is still based on knowledge; he must know "that principle... which, being one, we call...by the single name of virtue". These passages from the closing pages of *Laws* make it quite certain that Plato still believed in the possibility of extensive moral knowledge and understanding; he still believed that a few (the Nocturnal Councillors at least) could know much more about virtue and justice and goodness than the many know. These "ideas" they should know, and knowing them, they should order all things "with a view" to them.

This doctrine - that the guardian must know the one "idea" which is virtue, so that he can "order all things with a view to it" - this doctrine is precisely the one that we found in *Republic*; and this parallel between *Republic* and *Laws* is an important one. In both dialogues Plato believes that the guardians' fitness to rule is based on their knowledge of the real nature of things, especially of virtue and goodness. In both dialogues the rulers must know the one "idea" which is virtue (and the "one idea" which is Goodness) in order that they may imitate these "ideas" when they are ordering the state, or when they are trying to preserve order where it already exists. The fact that Plato requires this kind of knowledge from his Nocturnal Councillors has importance to more than one question, but its relevance to my immediate concern is straightforward: the junior members of the Nocturnal Council are there as students of what the elder members already
know; in other words, between the ages of thirty and forty, the most
gifted of the young guardians in *Laws* will endeavour to understand
"what is and what is not well according to nature". (966b). Their
studies are designed to lead them to the perception of the "one
principle" which is virtue, and the "one idea" which is goodness. In
*Republic* Plato says that the thirty-year-old guardians must study
Dialectic, the process which leads them to a knowledge of the "real
ideas", which will lead them to "the perception of the absolute good".
So the schemes for educating the rulers in both dialogues have very
similar objectives, i.e. knowledge of virtue and goodness. It remains
to enquire whether or not in *Laws*, Plato still believes that the
dialectical process is the best means of reaching this objective.

Although Plato describes Dialectic differently in different
dialogues, the one feature that seems to be common to all of his
descriptions, is that at the end of the dialectical process the mind of
the dialectician has grasped the truth about the real nature of a thing.
In *Republic* the dialectician begins with "scientific hypotheses" and
moves to the real ideas; in *Symposium* he begins with the sensible, and
ends up knowing the "ideal"; in *Sophist* and *Statesman* he 'divides' the
'whole' into its parts, and 'collects' the 'elements' into the 'whole',
but the end result in these two dialogues is a true "portrait" or
"definition" of the Sophist and Statesman. What is common to all these
accounts of the dialectical process is that the process is conducted for
the sake of gaining knowledge about the real nature of the subject under
investigation. Although Plato does not explicitly say that the junior
members of the Nocturnal Council will study Dialectic, he does say (when
considering their education) that the most "exact way of considering or contemplating anything (is) being able to look at the one idea gathered from many different things". (965c). This project of beginning with the "many things" and moving to the "one idea" which can be gathered from them, is certainly very close to the process which Plato has elsewhere called Dialectic. And in *Laws*, as elsewhere, the process is conducted for the sake of gaining knowledge of the real nature of things (of virtue and goodness); this is precisely the result that the dialectical process is designed to achieve.

Fortunately Plato also gives us some indication in *Laws* of what the starting point of the dialectical process might be. He says that the young members of the Council shall study "the laws of their own city... (as well as) any especially good ones they may hear to be existing elsewhere; also (they must know) about (any) other kinds of knowledge which...will throw light upon this examination, or of which the want will make the subject of laws dark and uncertain to them." (951e-952a). Obviously it is legislation which provides the focal point to their studies; they must examine both domestic and foreign legal codes, and they must also study any other subjects which "may throw light upon this examination". It is not hard to imagine why the study of law is a suitable beginning to the dialectical process; if we remember that the object of all of Plato's legislation is the promotion of virtue, it is easy to see how the study of law could lead to an understanding of the "one principle" which is virtue. For as the student comes to understand the exact purpose or aim of many different laws, he gradually becomes acquainted with the many different parts or elements of virtue (and with the many different virtues). From his knowledge of the many different
virtues, and with the aid of dialectic, the student will eventually comprehend "that principle which is the same in all the four (virtues)... and which, being one, we call... by the single name of virtue" (Laws 965a). In short from the study of many different laws, the student is supposed to "gather" the "one idea" which is virtue. Although the point is never made explicitly, I think it is quite certain that the student members of the Nocturnal Council will be engaged by a method of study which is very close to the process which in Republic, Plato has called Dialectic. 59

59 I have now argued that the guardians in Laws must possess knowledge of the real nature of justice, virtue, and goodness, and that the student guardians must be guided to this knowledge through the study of Dialectic. Plato's reference to the "one idea" which is virtue (965c), to the "one principle" which is virtue (965d), to the "many different virtues" (963b-965e), and to the "one" and the "many" goods (966a) - these references seem to cast some doubt on the claim that Plato abandoned his Theory of Forms. There may, however, be over-riding reasons in some of the other dialogues for believing that he had abandoned the Theory. If so, reasons might be found for the apparent reappearance of the Forms in Laws. I am not going to take a side on this issue; I leave the problem to those more directly concerned with Plato's epistemology than I. What I do want to note however is that even if Plato did abandon the Theory of Forms, he did not abandon his belief that the philosopher - the student of Dialectic - possesses knowledge of virtue and goodness that is indispensable to good government. It is the philosopher who knows what virtue is; and he who is in possession of this knowledge is the only one who is in a position to "order all things (in the state) with a view to it (virtue)". Even if Plato did abandon his early belief that the Forms are the objects of knowledge and of philosophical activity, he did not abandon his view that a few (philosophers) can possess knowledge which is vital to ordering (or preserving order in) the community. Thus even if the Theory of Forms has been abandoned, the philosophers' title to government remains intact.
So the thirty-year-old guardians in *Laws* will be engaged by the study of Dialectic for the sake of gaining knowledge of the "one idea" which is virtue; they must also know how and in what ways the good is both one and many. So far the educational provisions for this age group in *Laws* are in substantial agreement with the more detailed description of the curriculum in *Republic*. But in *Laws* when Plato says that the good is both one and many, it is not at all clear that his conception of the good is the same as it was in *Republic*. Both dialogues proclaim that students of government must apprehend the good, but in *Republic* at least, the good is not an ordinary object of knowledge; it is not just one Form among the many Forms. It is described as "the highest object of knowledge", and as "the end of the intellectual world"; the dialectical process is supposed to culminate in "the perception of the absolute good". Also, knowledge of the Good and knowledge of the other Forms (including virtue) seem to be interdependent (*Rep.* 506a; 509b; 511b-c). Apparently the philosopher cannot know what virtue is (for instance) until he has already comprehended the good. But this conception of the good and of philosophical knowledge seem to be missing from *Laws*. Plato only once mentions that his guardians must know the good (966a); he makes this comment immediately after a lengthy discussion on the importance of knowing the "one idea" which is virtue. But there is no suggestion that the young guardians must study the "real nature" or "essence" of each of many different things in order to perceive the good; nor is there any suggestion that having perceived the good, they will only then be able to gain full knowledge of the other Ideas (such as virtue), by seeing them in the "light" of the good. Does this mean that Plato now thinks that the "one idea" which is virtue is knowable
without reference to the good? Does it mean that Plato now places less emphasis on knowledge of the many other Ideas, each of which - in Republic - was dependent upon and was a part of, the good? Does it mean that the guardians in Laws will not be lovers of knowledge, truth, and reality, in the tradition of the philosopher-guardians of Republic? Does it mean that Plato's curriculum has perhaps become less philosophical and more political?

I think that we would be forced to accept the conclusion that Laws places less emphasis on philosophical knowledge than does Republic, were it not for the one part of the curriculum in Laws that I have so far not considered. Immediately after saying that the guardians must know that the good is both one and many, Plato asks:

And may not the same be said of all good things - that the true guardians of the laws ought to know the truth about them, and be able to interpret them in words, and carry them out in action, judging of what is and what is not well according to nature? Certainly. (966b).

So the guardians must have a knowledge of "all good things"; the next question is this:

Is not knowledge of the Gods which we have set forth with so much zeal one of the noblest sorts of knowledge; - to know what they are and how great is their power...? We refuse to admit as guardians anyone who has not laboured to obtain every possible evidence that there is respecting the Gods. (966c).

Plato next reminds us of the "evidence" which he has already cited respecting the Gods.

Are we assured that there are two things which lead men to believe in the Gods...? What are they?
One is the argument about the soul... - that it is the oldest and most divine of all things...the other was an argument from the motion of the stars and of all things under the dominion of the mind which ordered the universe. (966d-e).
Now Plato has devoted the whole of Book Ten to these "arguments"; because of their complexity, I can only reproduce them here in barest outline. Also it is not clear that Plato actually gives two independent "proofs" for the existence of the Gods, rather the two seem to be merged into one. The argument(s) begin by defining soul as "the motion which can move itself" (896a); since "a thing which is moved by another (cannot) ever be the beginning of change...must not the beginning...of motion be...the self-moving principle?" (894e-895a). So soul, by definition, is the beginning of motion.

if this is true do we still maintain that there is anything wanting in the proof that the soul is the first motion and the moving power of all that is, or has become, or will be, and their contraries, when she has been clearly shown to be the source of change and motion in all things? Certainly not; the soul as being the source of motion, has most satisfactorily been shown to be the eldest of all things. (896a).

So "soul is prior to the body: (896c); it "orders and inhabits all things" (896c); it "directs all things in heaven and earth and sea" (896); it "controls...the whole world" (897b). Now:

if the soul carries round the sun and moon and all the other stars, does she not carry round each individual (one) of them? (898d).

Plato's question here is this: if the soul "controls" or "carries round" the whole universe, does she not also "carry round" each object in the universe? Plato has Clenias answer the question affirmatively.

Then of one of them (objects in the universe) let us speak and the same argument will apply to them all. Which will you take? Everyone sees the body of the sun, but no one sees his soul, nor the soul of any other body living or dead; and yet there is reason to believe that this nature, unperceived by any of our senses, is circumfused around them all, but is perceived by the mind. (895e).
The point here applies to all things in the universe - to every body "living or dead"; the point is that every object has a "soul", and though it cannot be perceived "by any of our senses", "this nature" can be "perceived by the mind." Plato next says that these "souls" are Gods:

And this soul of the sun, which is therefore better than the sun... ought by every man to be deemed a God.

... And (the souls of the) stars too, and of the moon, and of the years and months and seasons, must we not say in like manner, that since a soul or souls having every sort of excellency are the causes of all of them, these souls are Gods. (899a-b).

Whether or not this is a "proof" for the existence of the Gods is presently unimportant; what is important is that Plato is saying that the universe is "ordered", that a soul or God "controls" the motions or "actions" of the universe as a whole, as well as the "actions" or "motions" of each object in the universe. Plato sums up his conception:

The ruler of the universe has ordered all things with a view to the excellence and preservation of the whole; and each part, as far as may be, has an action and a passion appropriate to it. Over these, down to the least fraction of them, ministers have been appointed to preside, who have wrought out their perfection with infinitesimal exactness. And one of these portions of the universe is thine own, unhappy man, which, however little, contributes to the whole, and in order that the life of the whole may be blessed; you are created for the sake of the whole, and not the whole for the sake of you. (903c-c).

Now Plato has made several important points in these pages from Book Ten. Soul is defined as "the motion which can move itself". Body is that which is "moved by another"; bodies are "born to obey the soul, which is the ruler". (896b). Further every object in the universe, "down to the least fraction of them", is "inhabited" by soul; the soul "carries round" each object; it is responsible for its "actions", for its behaviour.

While these souls cannot be perceived "by any of our senses", they can
"be perceived by the mind". We are also told that the souls of individual objects are the "ministers" of the "mind of nature", who has created everything in the universe in order that "the life of the whole may be blessed".

So when Plato says that his guardians must "labour to obtain every possible evidence there is respecting the Gods" (966c), he is saying that they must understand how the universe is "ordered...with a view to the excellence and preservation of the whole", and that they must understand how "each part, as far as may be, has an action and a passion appropriate to it". Knowledge of the Gods is "one of the noblest sorts of knowledge" (966b) because it is knowledge of "the order...of all things under the dominion of the mind which ordered the universe" (966e); because it is knowledge that everything in the universe is created "for the sake of the whole and not the whole for the sake of it"; because it is the knowledge that what happens in the universe happens as a result of "an intelligent will accomplishing good". (967a).

Now this notion of the "good or "excellence" of the whole universe is important. Plato tells us at 966a that his guardians must have a knowledge of 'the one and the many goods'. At 966e we are told that everything in the universe is ordered; at 967a that this ordering is done by an intelligence (God) whose goal is the accomplishment of the good. This God or "mind of nature" appoints "ministers" to preside over each object or "portion" in/of the universe. These subordinate Gods or minds are responsible for the behavior of the objects they "inhabit"; they direct their "actions" with a view to the good of the whole universe. These Gods cannot be apprehended by the senses, but they can
be perceived by the mind; in other words, they are knowable. To possess knowledge of these Gods is to possess knowledge of the order they create; it is to have knowledge of the contribution that each "portion" of the universe makes to the good of the whole. So to possess knowledge of the subordinate Gods - the "appointed ministers" - this is to know the good of the objects they inhabit; it is to have knowledge of the many good things. Knowing the "mind of nature" on the other hand, is to know the good of the whole; it is to know the one good which He easily accomplishes. So in Laws, as in Republic, what can be apprehended by the mind, and more important, what the young guardians must be taught, is knowledge of the one and the many goods. Every individual sees and hears what happens in the universe, but what the young guardians must come to know is the good of what happens. What they must be taught is the place of every object and event in Plato's ordered (organic) universe.

Now I am claiming here that Plato's educational objective in Laws is very similar to what it was in Republic. In Republic the objective was knowledge of the Forms or Ideas; especially of the "highest object of knowledge" - the Good. In Laws we are told that the Guardians must possess knowledge of the one idea which is Goodness (966a); but on the basis of this one remark we have not been sure that knowledge of the Good in Laws bears any important resemblance to knowledge of the Good as it was described in Republic. In Republic the Good "fuses the power of being known into all things known" (509b); and "no one who is ignorant of the Good will have a true knowledge" of the other Forms (511b). So in Republic the Good is a special object of knowledge; Plato would teach the young guardians knowledge of the Good in order that they might then come to know all of the other Ideas - in order that they might be able to
comprehend "the whole of reality".

Now in *Laws*, although we are told that the guardians must possess knowledge of the one and the many goods, and also that they must possess knowledge of the one and the many virtues, we have found little reason for believing that Plato would still require of his student guardians that they possess knowledge of all or most of the many real Ideas. Thus it has not been clear that the educational programme in *Laws* is dedicated to producing lovers of Knowledge, Truth and Reality in the tradition of *Republic*. However, if Plato's account of knowledge of the Gods in *Laws* X does not directly tell us that the thirty-year-old Nocturnal Councillors must study the many real Ideas, that account does make it clear that they must possess knowledge of "the order...of all things under the dominion of the mind which ordered the universe" (966e); it does make it clear that they must possess knowledge of all that exists and happens in the universe; it does make it clear that they must possess very extensive knowledge of what we might call "the science of things"; in short, it does make it clear that they must indeed be lovers of Knowledge, Truth and Reality. It must still be conceded that in *Laws* Plato has not placed the emphasis on knowledge of the Ideas that he did in *Republic*; on the other hand, he places a great deal of emphasis on knowledge of the Gods, and in so far as this amounts to knowledge of everything that exists and happens in the universe, I think we are quite justified in concluding that even if knowledge of the Forms is not the focal point of the educational programme in *Laws*, nevertheless that programme does share quite similar objectives with the one in *Republic*. Certainly the exact nature and extent of the similarities and dissimilarities between the two programmes is yet to be worked out; a comprehensive
comparison of the two curricula would require a very careful analysis of Plato's conception of philosophical knowledge - knowledge of the forms - as it is worked out in Republic. I have already apologized once for omitting such an analysis; the problem is simply too broad for an adequate treatment in a paper on Plato's politics. At this stage of the argument suffice it to say that Plato's educational objective in both dialogues is to give his young statesmen a comprehensive understanding of that ordered system which in Republic he has called "Reality", which in Laws he has called "the universe", and which in both dialogues he has called the Good. In Republic it is the Forms which must be known; in Laws it is the Gods. There is a difference here, and indeed much philosophical mileage might be made of this apparent shift in Plato's epistemological thought. But from the standpoint of educational theory, I suspect that the differences between Republic and Laws may be quite minimal.  

If Republic and Laws then have more or less similar educational objectives, the two dialogues also agree in the respect that both would use the hypotheses of science as "steps or points of departure" in the realization of their objectives. In Laws Plato says that knowledge of the Gods - knowledge of the one and the many goods - can be achieved "with the help of astronomy and the accompanying arts of demonstration". (967a). This is explained in the following way: from the fact that the

60 Since in Republic it is the Forms which can be apprehended by the mind and in Laws it is the Gods which can be apprehended by the mind, it may at first glance be tempting to believe that Plato has now deified the Forms. Such a suggestion is however untenable. In Republic a particular Form is imperfectly represented in many different things; in Laws every particular object is governed by its own soul. If the soul of a thing were merely a deification of the Idea of the thing, then each object would not have its own soul, rather all the objects of that kind or Form would be ruled by the one soul or God.
sun and the stars move with "numerical exactness", we can infer that "mind was the orderer of the universe" (967c). So from the hypotheses of science (hypotheses, as opposed to knowledge, which science does not possess) we can infer the existence of an intelligence which has ordered everything in the universe with a view to the good of the whole. In Republic Plato says that the thirty-year-old guardians will use the hypotheses of science to arrive at the perception of "the first principle of the whole" - to arrive at knowledge of the Good. In Republic this process is called Dialectic; in Laws the term Dialectic is not used in connection with the jump from scientific belief to knowledge of the Gods, but so far as I can understand what Plato says in both dialogues, he seems to have very similar beliefs about the relevance of scientific truth to knowledge of the good. In Republic the hypotheses of science are described as "points of departure into a world which is above hypotheses"; the dialectician must "use the hypotheses, not as first principles, but literally as hypotheses...in order that he may soar beyond them to the first principle of the whole". (Rep. 511b). In Laws astronomical truths are said to imply the existence of order in the universe; they imply the existence of an orderer, and they also imply the existence of the good which He brings about. And in both Republic and Laws the guardians at age thirty will have just completed a ten-year period of training in mathematics and the sciences. So in both dialogues Plato has very similar objectives, and in both dialogues he prescribes very similar courses of study for the realization of his objectives.

Given these similarities between the educational commitments of Republic and Laws I think it is safe to assume that Plato considers the
junior members of the Nocturnal Council in *Laws* to be students of philosophy. In fact Plato comes very close to making this point explicit when he sums up his conception of the young Councillors' education:

> he who has not contemplated the mind of nature which is said to exist in the stars, and gone through the previous training (in the Sciences), and seen the connection of music with these things, and harmonized them all with laws and institutions is not able to give a reason of such things as have a reason. And he who is unable to acquire this in addition to the ordinary virtues of a citizen, can hardly be a good ruler of a whole state; but he should be the subordinate of other rulers. (967e-968a).

So a guardian must have "contemplated the mind of nature", etc., if he is to be "able to give a reason of such things as have a reason"; unless he can acquire this ability "to give a reasoned account of all that admits thereof" (Taylor's translation), he will not be a good ruler.

Now this ability to give a "reasoned account" of things is, for Plato anyway, precisely the ability that the philosopher has. I think there is no doubt that Plato's system of advanced education in *Laws* is designed to create rulers who are philosophers very much in the tradition of *Republic*. The junior members of the Nocturnal Council must acquire knowledge of the one and the many virtues; they must acquire knowledge of the one and the many goods; they must know that every "portion" of the universe contributes to the good of the whole; they must have perceived the connection of music with these things; they must have harmonized the state's laws and institutions with all of this knowledge; and they must be able to give a reasoned account of all that admits thereof. So I do not think that Plato places less emphasis on philosophical knowledge in *Laws* than he does in *Republic*: if the Ideas or Forms seem to receive less attention in *Laws*, this may be because Plato has revised or abandoned
his Theory of Forms, or it may be because in *Laws* he focuses his educational attention on the programme of studies which all citizens are to receive, preferring to give only the briefest outline of the course of studies which is designed for the future rulers of the state, and which he has already described once in *Republic*. Or, again, it may be that Plato quite seriously intends to do what he says he will do in the next to last speech in *Laws* - namely leave the Nocturnal Council with a significant measure of discretion over the curriculum to be studied by its junior members. (952a; 960d-69a). But even if it were clear that knowledge of the Forms was not the objective of the programme in *Laws*, it is at least clear that the programme is designed to produce rulers who can "give a reasoned account of all that admits thereof"; it is clear that the programme is designed to produce philosophers. So I do not think that Plato's educational commitments have changed; I think *Laws* leaves no doubt that Plato always believed that philosophers are the only ones who are fit to rule. One final point: the whole of Plato's educational programme seems to be founded on his belief that the universe can only be understood as an organic whole. Whether or not one agrees with this conception, it must be granted that it is ideally suited for educating the kind of rulers who will preserve the political and ethical principles on which Plato's theories of government and society are based. It is obvious throughout Plato's political writings that he has an organic theory of the state; what better way of teaching and preserving this tradition than to teach the state's future rulers to understand the whole universe on the organic model?
The account that Plato gives us of the political function to be served by the Nocturnal Council begins when he has finished with writing legislation:

"now our work of legislation is pretty nearly at an end; but in all cases the end does not consist in doing something or acquiring something or establishing something, - the end will be attained and finally accomplished, when we have provided for the perfect and lasting continuance of our institutions; until then our creation is incomplete". (960b).

Plato repeats the point a few lines later. We still must find some way of "producing the quality of unchangeableness" in our laws and institutions: "we have still to see how we can implant in them this irreversible nature". (960d). That the Nocturnal Council is to give the state this permanence we are told immediately; but how this can be accomplished is only unfolded gradually.

"Then, returning to the council, I would say further, that if we let it down to be the anchor of the state, our city, having everything which is suitable to her, will preserve all that we wish to preserve.

...

Know, Cleinias, that everything, in all that it does, has a natural saviour, as of an animal the soul and the head are the chief saviours.

...

The soul, besides other things, contains mind, and the head, besides other things, contains sight and hearing; and the mind, mingling with the noblest of the senses, and becoming one with them, may be truly called the salvation of all." (961d).

So the Council must be the "saviour" of the city: the saviour of an animal is its mind and senses. By analogy, in the Nocturnal Council, "mind" must be "mingled" with the senses, in order that it (mind) might secure the "salvation" and "preservation" of the whole state.
Now the "salvation" of an animal is a relatively simple matter: but how is the community to be kept alive and healthy? How can the laws and institutions which Plato has already designed be safeguarded against misuse? How can we ensure that the laws and constitution will serve the purposes for which they are designed? We shall see that Plato gives the same answer in *Laws* as he gave in *Republic*. He begins this way:

"with what is that intellect concerned which, mingling with with the senses, is the salvation of ships in storms as well as in fair weather? In a ship, when the pilot and sailors unite their perceptions with the piloting mind, do they not save both themselves and their craft?" (961e).

The senses of the ship's crew are "mingled" with the "piloting mind" in order to secure the salvation of the ship. Plato next considers two further examples of the same point: "What aim would the general of an army, or what aim would a physician propose to himself, if he were seeking to attain salvation?" (961e). The general aims at "victory and superiority in war; the physician and his assistants aim at producing health in the body". (961e-62a). Now a general who is ignorant of "superiority in war", or a physician who is ignorant about the health of the body, cannot be said to possess the understanding or intellect which will bring about the "salvation" of the army or patient.

Equally:

"If a person proves to be ignorant of the aim to which the statesman should look, ought he, in the first place, to be called a ruler at all; and further will he ever be able to preserve that of which he does not even know the aim?" Impossible! (962b).

Now "we have already said that the mind of the pilot, the mind of the physician and of the general look to that one thing to which they ought to look; and now we may turn to the mind political of which we will ask a question: "O wonderful being, and to what are you looking?" (963b).
The answer of course, is that the aim of the political art is the production of virtue. (963a). The laws and institutions which are created and revised by the legislator must all aim at producing virtue in the souls of the citizens.

Having argued that the aim of government is virtue, Plato continues the analogy, begun at 961d, between the state and an organic creature:

Do we not see that the city is the trunk, and are not the younger guardians, who are chosen for their natural gifts, placed in the head of the state, having their souls all full of eyes with which they look about the whole city? ...and those whom we compared to the mind, because they have many wise thoughts - that is to say, the old men - take counsel, and making use of the younger men as their ministers, and advising with them, - in this way both together truly preserve the whole state. (964e-965a).

Now Plato has compared the "salvation" of the state to the "salvation" of a living creature; the state must have some institution, analogous to the head, in which the "mind" is mingled with "the noblest of the senses". Thus the Nocturnal Council is made up of younger men, who are the "eyes and ears" of the political animal, and also of older men, who are its "mind". This analogy with "rational beings" is designed to explain the function served by the Council. It is also a perfect echo of Republic. There the state is said to be the individual "writ large"; just as the soul has three parts, the state has three component classes. The guardians are the wisdom - the ruling element - in the state; their function is analogous to the rational element within the human soul. In Laws Plato says that the Nocturnal Council must be made to "resemble the head and senses of rational beings"; the Council must exercise "such a guardian power". (964a).
So the Nocturnal Council will be "the head of the state"; as such it is responsible for securing the "salvation" of the whole community:

if our settlement of the country is to be perfect, we ought to have some institution which, as I was saying, will tell us what is the aim of the state, and will inform us of how we are to attain this, and what man or what law will advise us to this end. Any state which has no such institution is likely to be devoid of mind and sense, and in all her actions will proceed by mere chance. (962c).

So in order to provide for the salvation of the state, the Council must know that the aim of government is virtue; it must also know how this end is to be achieved, or more specifically, it must know "what law or what man will advise us to this end". This passage helps to explain the first thing that Plato has to say about the Council, namely, that it must "produce the quality of unchangeableness" in the state's laws and institutions; that it must give them an "irreversible nature". (960b-d).

We already know that this 'irreversibility of law' principle cannot mean that the original code of law must never be changed, for the Guardians of the Law have been authorized to "correct" the legal code. (769d). Now in this passage Plato tells us that the Nocturnal Council will be an institution which is responsible for deciding whether or not particular laws help to achieve the aim of the state, which is the teaching of virtue. The Council is described as "the assembly of those who review the laws" (951d); apparently it will review the state's legal code in order to ensure that particular laws are the best available means for achieving the end of the state, which, once again, is virtue. So when Plato says that the Nocturnal Council must give the state's laws and institutions an "irreversible nature" he appears to mean that the Council must provide
for the "lasting continuance" of the aim of the state's legal code. Apparently the Council will sit as a kind of legislative court: it will scrutinize the legislation enacted by the Guardians, making sure that it is consistent with the aims of the original code of law and constitution. It must be the judge of which laws produce virtue and of which laws do not. Only by creating an institution such as this can we provide for the "lasting continuance" of all the laws and institutions we have established. The Nocturnal Council is the "head of the state" because it is its "mind"; it is responsible for securing the preservation or salvation of the whole community, because it is responsible for ensuring that the state does serve its original purpose, namely producing virtue in the souls of its citizens. Although Plato never makes the point explicit, the power that the Council must enjoy if it is to serve this function is what we now call the veto power. It must be empowered to veto any legislation which is enacted by the Guardians; it may exercise this power on the grounds that the proposed law is repugnant to the aims and spirit of the state's constitution and original code of law.

Plato's way of arranging (distributing) the state's legislative power then is this: the Guardians are responsible for writing legislation, but all their laws are subject to ratification by the Nocturnal Council. Now we know that the Nocturnal Councillors must have "shared in the whole scheme of education proposed by us" (968a); we know that the nocturnal assembly of the magistrates is a council of philosophers. But the ten senior Guardians are automatically seated on the Council (961a), and the implications of this arrangement are obvious. In order to be eligible to serve as a Guardian of the Laws, a citizen will have to be qualified to eventually serve on the Nocturnal Council. In other words the
Guardians of the Laws must themselves be educated in the tradition of *Republic*; they must themselves be experts in the art of ruling.

If the Guardians as well as the Councillors have received "the whole scheme of education proposed by us", it may be the case that not only does the Nocturnal Council serve as a check upon the Guardians, but the Guardians may also serve as a check upon the Council. We have seen that the Guardians may either amend or supplement the original code of law, however Plato nowhere gives any indication that the Council is authorized to write new legislation. We know that the Council may veto any legislation which is enacted by the Guardians, but there is no indication that the Councillors are themselves empowered to initiate the legislative process. However if ten of the Councillors also sit on the board of Guardians, it is obvious that at least these ten Councillors may themselves propose new laws or amendments to the Guardians. But presumably, even in this case, at least a majority of the thirty-seven Guardians must approve of a new legislative proposal before it is presented to the Council for ratification. If the Council has only the ratification power - if it may not initiate new legislation within its own chambers - then the Guardians do "moderate" the powers of the Council. The Guardians do serve as a check on the Council's powers, because their approval, as well as the Council's, is necessary before a legislative proposal assumes the full force of law. It is admittedly not clear whether Plato intends the Guardians to serve as a check upon the Council, but his praise of the Spartan constitution in Book Three certainly lends itself to just this interpretation. The reason for the success of Sparta, and the reason for the failure of her sister cities, is that the Spartan constitution, unlike the others, divided the "kingly
office" into "distinct elements", each of which would "moderate" the powers of the other offices. Further the general tone of Laws - especially at 875 - suggests that "no man" should be above the laws; that even training in "political science" is an insufficient check upon government. If the powers of the Council are not checked by some other institution - if the Council may enact legislation without the approval of the Guardians - then the Nocturnal Councillors would in effect be above the law. There would be nothing to prevent them from "making the continuance of their power...the first and principle object of their laws". (714d). In the absence of any indication to the contrary, I think we must assume that Plato did intend to make each of his legislative institutions serve as a check upon the other.

Now I am arguing here that the constitution Plato writes in Laws provides for a system of checks and balances on legislative power; that the Nocturnal Council will "moderate" the powers of the Guardians of the Law, and vice-versa. But I am also arguing another important point; I am arguing (against Barker) that the legislative branch of Plato's government - the Council together with the Guardians - though it is bound by the aims, purposes, and spirit, of the constitution and original legal code, is nevertheless authorized to amend that code. The textual evidence I have so far cited in defence of this claim consists of the one instance where Plato says that the Guardians of the Law may have to amend one of the original laws (the law governing sexual behaviour at 840c), and of the one instance where Plato says that the Guardians will undoubtedly have to "correct" the legal code from time to time. (769d). There is however one more passage which makes it clear that Plato's legislators will enjoy the amendment power. I have not introduced the passage earlier
because this time it seems to be the Nocturnal Council that is instructed to do the amending. When discussing the question of sending out ambassadors or "spectators" for the purpose of studying foreign laws and institutions, Plato notes that:

There always are in the world a few inspired men whose acquaintance is beyond price, and who spring up quite as much in ill-ordered as in well-ordered cities. These are they whom the citizens of a well-ordered city should ever be seeking out, going forth over land and sea, to find him who is incorruptible - that he may establish more firmly the institutions in his own state which are good already, and amend what is deficient; for without this enquiry and examination a city will never continue perfect any more than if the examination is ill-conducted. (Laws 951b-c).

So the purpose of sending out these observers is to "establish more firmly" the already good institutions of the state, and also to "amend what is deficient". Plato goes on to say that when a citizen who holds this "office of spectator" returns home, "let him go to the assembly of those who review the laws". (951b). There is no doubt that Plato is here referring to the Nocturnal Council, which is always "holding conversation and discourse about the laws of their own city, or about any specially good one they may hear to be existing elsewhere". (952a). Also Plato's "spectators" are themselves members of the Nocturnal Council (961a); so when Plato says that a spectator will study foreign laws in order that "he may...amend what is deficient", the passage seems to imply that it is the Council that will do the amending. If the passage is read in this way, if it is taken as meaning that the Council may amend the laws on its own authority, and without the approval of the Guardians, then the passage contradicts my suggestion that the approval of the Guardians and the Council is required for any changes to the legal code. But given that Plato has twice previously assigned the amendment
power to the Guardians, and given the fact that the overlap in membership between the two institutions provides the Councillors with a means of initiating the amendment process, I do not think that this passage mitigates against my suggestion that the approval of both legislative institutions is necessary for any changes to the established legal code. We would certainly expect that the Nocturnal Councillors would frequently be instrumental in improving or correcting the laws; but, once again, Plato's constitution already provides them with a means for doing just this. So Plato's saying at 951b that the Council may "amend what is deficient" in the legal code does not itself imply that the Council may change the law without the approval of the Guardians. But whatever is to be said for or against my interpretation of Plato's amendment procedures, one thing is perfectly clear; the legislative branch of government in Plato's law-state is not only authorized to "supplement" the original code, it is also authorized to amend it.\footnote{The laws concerning "dances and sacrifices" are an exception to the normal amendment procedures. These laws can only be changed with the unanimous consent of the Assembly. (772). Although Plato does not explain why this should be an exception to the rule, the only reason that I can imagine is that in this particular case, any improvements in the law could only be minor, and that in the case of ceremonies, it is more important to preserve tradition than to achieve perfection. Also the laws concerning the education of the young might appear to be an exception. At 797-798 Plato argues that the "sports" and "amusements" of childhood should remain unchanged from generation to generation, because if the "plays of childhood" are changed the children will grow up with a desire for new "laws and institutions". Plato says that the legislator must promote a "reverence for antiquity", but this does not mean that the laws in this area should never be changed in any detail whatsoever: it does not require that the legislator should never introduce a new "sport" or "game". Certainly Plato wants the customary "amusements" preserved whenever possible, but he also instructs the Nocturnal Council to study "education and nurture". (925b). Surely this enquiry would be conducted with an eye to possible improvements in the original laws and customs.}
But if Plato's government may amend the law, it may not amend it in just any way. For the same principle that governs legislation which is supplementary to the original code, will also govern any amendments to that code. That is, the amendment must not have the effect of reversing the bona-fide end which the original law was designed to serve. Fortunately Plato provides an example of how one of his laws might be amended such that it meets this requirement. The example is the law governing sexual relations:

Our citizens ought not to fall below the nature of birds and beasts in general, who are born in great multitudes, and yet remain until the age for procreation virgin and unmarried, but when they have reached the proper time of life are coupled, male with female, and lovingly pair together, and live the rest of their lives in holiness and innocence, abiding firmly in their original compact; surely we will say to them (the Magnesian citizens) you should be better than the animals. But if they are corrupted by other Hellenes and the common practice of barbarians, and they see with their eyes and hear with their ears of the so-called free love everywhere prevailing among them, and they themselves are not able to get the better of the temptation, the Guardians of the Laws, exercising their function as law-givers, shall devise a second law against them. (Laws 840d-e).

Now the "first law" is not actually formulated here, but clearly it will be designed to make sexual relations outside of marriage illegal. Plato's "second law" is somewhat surprising; he says that the citizens:

will be ashamed of frequent intercourse, and they will find pleasure, if seldom enjoyed, to be a less imperious mistress. They should not be found out doing anything of the sort. Concealment shall be honourable, and sanctioned by custom, and made law by unwritten prescription; on the other hand to be detected shall be esteemed dishonourable, but not to abstain wholly. In this way there will be a second legal standard of honourable and dishonourable, involving a second notion of right. (841a-b).

Apparently the second law will not require total abstinence from extramarital relations, rather it will only require discretion. Indulgence is not to be considered dishonourable, but detection is. These may be rather rare sentiments from the pen of Plato, but this certainly is the
In the matter of love we may be able to enforce one of two things; either (1) that no man shall venture to touch a person of the free-born or noble class except his wedded wife, or sow the unconsecrated or bastard seed among harlots or in barren and unnatural lusts (homosexuality); or at least (2) we may be able to abolish altogether the connection of men with men; and as to women, if any man has to do with any but those who come into his house duly married by sacred rights, whether they be bought or acquired in any other way, and he offends publicly in the face of all mankind, we shall be right in enacting that he shall be deprived of all civic honours and privileges, and be deemed to be, as he truly is, a stranger. (841d-e).

Now I am offering the above as an example of how Plato thinks that a law might be amended such that it is still consistent with the aims of the original legislators. In this case Plato specifies his aim by distinguishing three sorts of love: (1) love of body, (2) love of the soul, and (3) a mixed sort which is made up of both. (837b). He continues: "is it not rather clear that we wish to have in the state the love which is of virtue and which desires the youth to be the best possible; and the other two, if possible, we should hinder?" (837e). So the laws governing sexual relations are designed to encourage citizens in the love of the soul and to discourage them from the love of the body.

Now it is clear that Plato's second law is consistent with his original purpose. It may be less clear however that the second law is different in any important way from the first. The only difference appears to be that 'one musn't get caught'. But I think there is a more substantial difference; for the second law would only punish those who indulge their appetites indiscreetly. Presumably, if one shows some appropriate measure of discretion, but is somehow discovered anyway, he will not be subject to penalty. The second law is not directed against 'he who is discovered' but it is directed against 'he who offends publicly'.

So far as I know this is the only occasion in *Laws* where Plato explicitly shows how the guardians might be forced to amend one of the original laws. I think that Plato considers the example in order to illustrate how government can be bound by the original code, and yet still be authorized to amend it. He explicitly says that the guardians are authorized to amend this law, and yet it is evident that they may not amend it in any way whatever. They could not for instance, amend it in such a way that it permitted every sort of sexual behaviour. This would be to abandon the aim of the original law, which was to encourage the citizens in the love of soul and virtue. I have cited this example because I think it shows the sense in which Plato’s guardians will be “fettered by law”.

Now the view I am urging here is that Plato’s Nocturnal Council is an institution whose political function will be the preservation of the aims and spirit of the states constitution and original code of law. I have argued that in this capacity it will enjoy a veto power over legislation that is enacted subsequent to the original code, and also that it will be authorized to "review" the original code itself with an eye to making any improvements that it might think necessary. The Council is granted these powers in order that it might give the states laws and institutions an "irreversible nature"; in order that it might preserve the spirit and aims of the legal code which Plato - the original legislator - has written. What the Council must do is interpret Plato's legal code; it must understand and preserve its basic aims.

It is, I think, fascinating to observe the very close parallel between the function of the Nocturnal Council and one of the most important functions served by some courts of modern democracies,
especially by the Supreme Court of the United States. Hamilton, in Federalist #78, describes the duty of the high court:

The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law, It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words the constitution ought to be preferred to the statute.\textsuperscript{62}

Hamilton then, sees the court as the interpreter of law; the court must ascertain the "meaning" of the constitution; and it is its duty "to declare all acts contrary to the manifest tenor of the constitution void".\textsuperscript{63} The court will enjoy the power of "construing the laws according to the spirit of the constitution";\textsuperscript{64} where there is an "irreconcilable variance" between the spirit of the constitution and a statute, it is the duty of the court to declare the statute null and void.

The U.S. Supreme Court has in fact very often lived up to the role that Hamilton thought it should have. And it has done so in the face of Hamilton's admission that "there is not a syllable in the (constitutional) plan under consideration that empowers the national courts to construe the laws according to the spirit of the constitution".\textsuperscript{65}

As early as 1803 Mr. Justice Marshall declared that the court must uphold the constitution at the expense of a repugnant statute;\textsuperscript{66}

Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently, the theory of every such government must be that an act of the legislature, repugnant to the constitution, is void.\textsuperscript{66}

\textsuperscript{63} Federalist, p. 491.
\textsuperscript{64} Ibid, p. 506.
\textsuperscript{65} Ibid.
\textsuperscript{66} U.S. Supreme Court Reports, Marbury vs. Madison, 1803, p. 73.
The idea shared by Hamilton and Marshall — and by Plato — is that where a society is governed under the authority of a constitution, the spirit of that constitution is the fundamental law of the land. Obviously Hamilton and Marshall also agree with Plato's sentiments in Republic: "some living authority will always be required in the state having the same idea of the constitution which guided you when as legislator you were laying down the laws". (Rep. 497d). Perhaps the most famous instance in which the U.S. Court has relied on the "spirit" of the constitution occurs in Yick Wo vs. Hopkins: here the court is dealing with the Fourteenth Amendment's guarantee of the equal protection of the laws. Mr. Justice Matthews goes behind the letter of the constitutional guarantee, and declares that "the equal protection of the laws is a pledge of the protection of equal laws".67 A very recent example of the court acting as the guardian of the spirit of the constitution is to be found in the Abortion cases. The court allows that "The constitution does not explicitly mention any right of privacy. (Nevertheless) the court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the constitution".68

Now if the Nocturnal Council and the Supreme Court are alike in that each must serve as the interpreter and guardian of the state's constitution, there are also important differences between the American and Platonic institutions. Most notable is the fact that Plato's Nocturnal Council is not in our sense of the term a judicial body (although it must of course judge the constitutionality of legislation). The Council does not act as the interpreter of the law only in the event of a state or

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67 U.S. Supreme Court Reports, Yick Wo vs. Hopkins, 1886, p. 369.
private appeal; rather it sits in judgement of all legislative acts that are supplementary to the original code. Also, unlike the Supreme Court, the Council may propose amendments to the original code. (On the other hand the U.S. Supreme Court is something more than a judicial body, as is so often noted by its critics. It is in fact a Nocturnal Council for the U.S.; the concept of 'judicial institution' does not capture the full range of its powers.)

So the Nocturnal Council is not exactly a judicial body; it is in fact much more than that, it is the wisdom or "mind" or ruling element in the state. We have seen that it is a Council of philosophers; we have seen that the Councillors must be the guardians of "the aim of the state"; we have seen that they must possess knowledge of the one and the many virtues towards which every act of government should aim. If my interpretation of the Council's function here is sound, if Plato did intend the Council to serve as the interpreter and guardian of the constitution, then we can finally understand from Book Twelve of Laws, what Plato was unable to make completely clear in either Republic or Statesman; that is, we can now understand the exact sense in which Plato would make philosophers into kings. We know that Plato's Council of philosophers is the "mind" of the state; and we know that the bearing of sovereign authority is the proper function of mind. By understanding the Council's political function, by understanding the exact nature of the powers and duties that Plato would give to the eldest and wisest of philosophers, we have learned something very important about Plato's theory of government, and about his conception of the art of ruling. We have learned that the political power that Plato would give to those who have best mastered the art of statesmanship is the power to give a final
interpretation of the meaning and purposes of the states constitution. Thus Plato is quite serious when he says that he will "hand over the city" to the Nocturnal Council (969b); in assigning the Council authority over the constitution, he has left it with the power to give a final determination of the states ultimate goals and objectives. This is the power that should be given to philosophers because it is the power that is usually held by kings.
The Orthodox View Reconsidered

The traditional interpretation of Plato's political philosophy holds that by the time he wrote *Laws*, Plato had abandoned hope of ever realizing the ideal he had outlined in *Republic*. The ideal that is supposed to have been abandoned is the government of philosopher kings. For the rule of philosophy Plato has substituted the rule of law; for the philosopher kings, selected because of their educational and moral qualifications, Plato has substituted a government which is elected by all citizens; and for the Guardians of *Republic*, who are unfettered by law, Plato has substituted the Guardians of *Laws*, whom he describes as the servants and slaves of the law. The orthodox view holds that in *Republic*, law is either absent from the state altogether, or else is present only minimally; whereas in *Laws*, not only does Plato make regulations covering nearly every aspect of life, he also says that law is the highest authority in the state. Not only must the rulers obey the laws, they must obey laws of which they are not the authors. According to Barker anyway, the law-state will contain no institution which is authorized to change or supplement the code of law which Plato himself has written. 69 The state described in *Republic* is thought to be

69 Barker reconciles this interpretation of *Laws* with a fact which directly contradicts it - the Guardians are explicitly empowered to both amend and supplement Plato's code of law - by appealing to the text 772a-b. Barker admits that "the Guardians of the law may not only be its servants but ... (they) may also be its reformers. But this power is apparently only to last for the first few years after the foundation of the colony; and after that time there shall be no more changes" (*Greek Political Theory*, p.304). Now Barker admits on the next page that it is "not clear whether Plato means this provision (no changes in the laws after the first few years) to relate to the whole body of law, or only to the laws concerning dances and sacrifices", (p.305). In the Jowett, Taylor and Saunders translations there appears to be nothing unclear about the text at all. The point arises after Plato has mentioned that there will be naked dances for the states
Plato's political ideal - though it is an "unattainable ideal"; the state described in Laws is only the "second-best" alternative - but it is a realistic alternative.

unmarried citizens in order that they may become acquainted with one another. Jowett translates the sequel thus;

The Directors of Choruses will be superintendents and regulators of these games, and they, together with the Guardians of the Laws, will legislate in any matters which we have omitted: for, as we said, where there are numerous and minute details, the legislation must leave out something. And the annual officers who have experience and who know what is wanted, must make arrangements and improvements year by year, until such enactments and provisions are sufficiently determined. A ten years experience with dances and sacrifices, if extending to all particulars, will be quite sufficient; and if the legislator be alive they shall communicate with him, but if he be dead then the several officers shall refer the omissions which come under their notice to the Guardians of the Laws, and correct them until all is perfect; and from that time there shall be no more change, and they shall establish and use the new laws with the others which the legislator originally gave them, and of which they are never, if they can help, to change aught; or, if some necessity overtakes them, the magistrates must be called into counsel, and the whole people, and they must go to all the oracles of the Gods; and if all these are agreed, in that case they may make the change, but if they are not agreed, by no manner of means, and anyone who dissents shall prevail, as the law ordains. (772 a-d).

There are no important variations between Jowett's translation and those of Taylor and Saunders. In all three translations Plato explicitly attaches the "ten years of experience" clause to the laws dealing with "dances and sacrifices". He does not say, or suggest, that ten years will be ample time to establish an entire code of law that will thereafter require no improvement or change. The entire passage deals only with "dances and sacrifices"; to generalize the point any further is surely to read something into the text that is not there. Also, if the passage is interpreted as covering all the laws of the state, it is difficult to imagine why Plato never mentioned a time limit in at least some of the very numerous passages where he says that the Guardians will have to amend or supplement the original code.

In any event Barker admits that the point may not be meant to cover all legislation; yet his interpretation of the dialogue proceeds upon the assumption that the passage is so generalized. Even if the text were ambiguous, that ambiguity could hardly serve as evidence for Barker's claim that the state contains no sovereign power which has authority over the law. (Greek Political Theory, p.330).
Now my argument so far has been directed to showing that the traditional reconciliation of the apparent doctrinal differences between Republic and Laws rests on a misunderstanding of both dialogues. I want to argue, in other words, that the traditional interpretation of Plato's political theory is wrong on both ends: it misunderstands Republic and it misunderstands Laws. I want to argue that the two dialogues are philosophically consistent, and that they stand in no particular need of reconciliation.

The mistake that is traditionally made about Republic lies in interpreting Plato as a totalitarian. It is usually held that Plato's ideal state would be ruled by one or a few individuals who would be completely unfettered by law. I have argued in Chapter Two that although Republic does not fully describe the relationship between the ruler and the law, Plato does say enough to make it perfectly clear that his government is to be bound by the spirit of the laws, and by the aims of the constitution. Plato not only says that the "guardians must themselves obey the law", he also says that they must "imitate the spirit of them in any details which are entrusted to their care" (Republic 458c). If the point of the first demand is simply that the rulers must obey the prevailing code of law, I take the point of the second demand to be that they must abide by the "spirit" of the original code when they are acting as legislators; that is, when they are revising or supplementing the original code. Similar passages occur at 425e and 427a; here Plato says that he is omitting certain "details" from his code, because these can be worked out by subsequent legislators, provided they understand and preserve the laws which Plato does establish. Plato also says that
the state will always contain some "living authority" which understands (and which will presumably, preserve) the original "idea of the constitution" (497c-d). There is no difficulty in identifying those laws and principles which Plato would instruct his guardians to preserve; he will "order" the state's rulers to avoid the extremes of poverty and wealth, to preserve the educational system "in its original form", to preserve the principles of 'one man to one job' and 'promotion according to merit', etc. I think that there can be no reasonable doubt that Plato's rulers - even in Republic - will be bound by the spirit and purposes of the state's laws and constitution.

The mistake that is traditionally made about Laws is in the interpretation of the saying that the law must have a higher authority than do the rulers. This doctrine is usually understood as meaning that the rulers will not have the authority to amend or supplement the original code of law in any way. In Chapter Four I have argued that this interpretation of Laws is inconsistent with Plato's conception of a 'mixed constitution'; and that Plato's praise of the Spartan constitution also mitigates against this interpretation. I have also cited numerous passages from Laws in which Plato says quite clearly either that the Guardians will have to supplement the original code, or else that they may have to amend it; and I have also argued that in understanding the bicameral relationship between the Guardians of the Law and the Nocturnal Council, we understand the exact sense in which Plato's rulers can be fettered by the laws and constitution, and yet at the same time, be authorized to amend any of those laws, including the constitution.

So the rulers in Plato's law-state, though they are bound by the
spirit, aims, and purposes of the original code of law, are nevertheless authorized to amend that code. This means that the government in Laws is in much the same position with respect to the law as is the government in Republic. Plato does not discuss the question of amendment in Republic, but at least one passage may indicate that the guardians would be authorized to amend the original code. Plato says that "the guardians will not disturb any of the fundamental laws of the state" (Republic 445e); however this comment is to be construed, it seems to imply that the guardians may "disturb" some of the original laws. And if Plato says little about amending the law in Republic, he says a great deal about the subject in Statesman. Much of the argument in Statesman is directed to showing that the true king and statesman must have full authority to amend both his own laws and those enacted by previous legislators. But Republic says, if Statesman does not, that the rulers will be bound by the spirit of the original legal code. And this is just the position that we have found in Laws. In both Republic and Laws then, the rulers are empowered to pass legislation so long as they "preserve" and "imitate" the original code of law; and in both dialogues the state is to contain some institution which understands and preserves the original "idea of the constitution". Plato's position in Republic is much less developed, and is much less clear, than it is in Laws, but I think there is no question of inconsistency between the two works. In fact, given Republic's general commitments to law and to the constitution, and given the passage in which Plato tells us that the state must always contain some "living authority" which holds to the "idea" or "spirit" of the constitution and original code of law, I think we can safely venture to say that Republic anticipates the mature constitutional theory of
Laws to a rather remarkable extent.

My conclusion then is this: with respect to the relationship between the rulers and the law, all three of Plato's dialogues are in substantial agreement. In Republic the rulers are said to be fettered by the "spirit" of the legal code; in Statesman they are granted the power of amendment; in Laws Plato has managed to write a constitution which embodies both of these principles. On this issue anyway there is simply no reason to believe that in Laws Plato has abandoned the ideals of Republic and Statesman.

If I have shown that the "sovereignty of law" principle does not compromise the ideal theory of government worked out in Republic, there remain two other instances in which Laws might be thought to abandon the ideals of Republic: (1) in Republic Plato implies that the rulers will be chosen by the wise, whereas in Laws they are to be elected by the Assembly of all citizens; and (2) in Republic there are strict educational qualifications for the rulers, whereas in Laws no such qualifications are in evidence. In order to deal with the latter problem, in order to show that the guardians of the law-state are expert rulers in the tradition of Republic and Statesman, I have had to argue two points: first, and most important, it has been necessary to show that the Nocturnal Council is an integral and efficacious part of Plato's government. Few of Plato's critics have failed to identify the Nocturnal Councillors with the philosopher-kings of Republic, but so far as I know, none of these critics has been able to reconcile the presence of the Council with the saying that government must be subordinate to the law. If this saying means that this Council of Philosophers must

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70 The orthodox interpretation of Plato's political theory holds that the Nocturnal Council is inconsistent with the rest of
obey and never change the law, then it has no real power; it is not truly sovereign over the community's affairs, and the state is subject to the rule of law instead of the rule of philosophy. But I hope that my explanation of the Council's governmental function shows that Plato really has done what he says he will do in his closing speech in *Laws*: he says that he will "hand over the city" to his "divine assembly" — the Nocturnal Council, (969b). The Council really is the "head of the state"; its members really are the rulers; and it really is vested with legal sovereignty: I say these things because it is this Council of philosophers that is ultimately responsible for determining what is "the good, just and profitable" course of action for individual citizens, and for the state as a whole. The Guardians of the Laws may propose legislation, but it is the Council that must give or refuse to these proposals the full force of law. Plato's law-state is ruled by experts because it is ruled by the Nocturnal Council.

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*Laws*. Edward Zeller (*Plato and the Older Academy*, translated by Alleyn and Goodwin, London, 1888, p.539-40) says that: "As the rest of the government is in no way based on this council of the wise, and as the council is not incorporated into the organism of the state by any definite official sphere of action, there is a certain ambiguity and uncertainty about the whole scheme". Sabine (p.65) says that the Council "not only fails to articulate in any way with the other institutions of the state, but (it) also contradicts the purpose in planning a state in which law is supreme". Barker (p.349) says that the Council is to control "in ways that are never explained, a system of political machinery into which (it is) never fitted". Levinson (*In Defence of Plato*, Harvard University Press, 1953, p.517, note 38) thinks that the Council contradicts the whole fabric of Plato's state. Morrow (p.512) disagrees with the orthodox view, but thinks that the Council must provide "wisdom and philosophical guidance without being vested with legal sovereignty".
The second point I must argue in order to show that the state described in *Laws* is ruled by experts, is that the Guardians of the *Laws* are themselves "true kings and statesmen"; that they have themselves received the education that Plato outlines in both *Republic* and *Laws*. This argument is more straightforward: although Plato does not explicitly mention any educational qualifications for membership on the board of Guardians, he does say that the Nocturnal Council must have "received the whole scheme of education proposed by us" (968a). But the ten senior Guardians are automatically seated on the Council; so in order to be eligible to serve as a Guardian, a citizen must also be eligible to eventually serve as a Nocturnal Councillor. In other words, the Guardians must themselves have undergone the fifty years of education that Plato proposes; they are themselves experts in the art of government. Their service as Guardians of the *Laws* is in fact, the final stage in their education. After graduating from Plato's system of higher education at age forty, and after a further ten years of practical experience at government, at age fifty they are qualified to attend to the day-to-day legislative needs of the state, subject to the scrutiny of the Nocturnal Council. After twenty years of experience in this capacity, they are finally qualified to serve on the board which Plato describes as the "mind" of the community - the Nocturnal Council.

As well as their educational qualifications, the rulers in *Laws* must have distinguished themselves as virtuous and law-abiding citizens. At 715d Plato says that we must "entrust the government in your state to... he who is most obedient to the law". A specific example of Plato implementing this rule is to be found (once again) in the law governing
sexual conduct. He who disobeys this law "shall be deprived of all civic honours and privileges" (041e); in other words, a citizen who offends against this law (or against nearly any other law) is disqualified from holding public office. There should be no doubt then that the rulers in *Laws* must have an unblemished character and must be masters of the art of ruling.

The third and final sense in which *Laws* might be thought to abandon the principles and ideals of *Republic* lies in the fact that the Guardians in *Laws* are elected to office by the Assembly of all citizens. In this regard I have shown that Plato considers only members of one of the four property classes as 'citizens', and that there is reason to believe that this would constitute roughly one-third of the total population (848a). Plato restricts the number of citizens in this way because citizenship is itself an art, one which requires a full-time commitment:

He who has to secure and preserve the public order of the state has an art which requires much study and many kinds of knowledge, and does not admit of being made a secondary occupation (846d).

Earlier Plato has described the kind of study that is necessary for acquiring this art; he says that a citizen must have received "that education in virtue from youth upwards, which makes a man eagerly pursue the ideal perfection of citizenship and (which) teaches him rightly how to rule and how to obey" (643e). So those who sit in the Assembly, those who elect the Guardians of the Laws, are, according to Plato anyway, fully qualified to exercise their function as electors. (950c) If one considers the qualifications of the electors, and the qualifications of those nominated as Guardians, it is possible to
appreciate the fact that Plato does not regard these elections as a democratic element in his mixed constitution. Also it is worth recalling here a point made earlier; any citizen who proves to be disobedient to the laws of the state will lose his "civic privileges". He is considered to be a "stranger"; he has forfeited his right to vote in the Assembly.

However, it is still surprising that the Guardians of the Laws do not themselves fill vacancies within their ranks. Even if the members of the Assembly are qualified to choose their rulers wisely, would not the Guardians and the Nocturnal Councillors be even better judges of virtuous character and political expertise? I think that it is characteristic of Plato's philosophical method that this question should arise. On the one hand Plato explicitly gives the responsibility of electing the Guardians to the Assembly, but with the other hand he implicitly gives the power of selection to the Nocturnal Council. I think that Plato wants us to wonder why the Guardians should be elected; because when we look into the question, we find that the Assembly can do little more than ratify the selections made by the Nocturnal Council. Plato's sleight of hand is accomplished in this way: a Guardian must have undergone "the whole scheme of education proposed by us"; this means that, among other things, he must have studied the many laws, constitutions, and theories of government in order that he might "gather" that "one idea" or "principle" which is virtue. It means, in short, that he must have been a junior member of the Nocturnal Council. Since these junior "ministers" are selected by the members of the Council themselves (961b), the Council in effect is able to choose those who will
serve as Guardians upon reaching their fiftieth year. Should there be a surplus of candidates, the Assembly would then choose among them; but the real selection of Guardians is made at an earlier stage by the Council of philosophers. As we would expect from reading Republic, the philosopher-rulers are to choose their own successors.

Once again then, Plato has not compromised the principles of Republic; he has not adapted his early ideal to the vagaries of actual political life; he has not given up hope of realizing the ideal form of government that he first introduced in Republic. Laws is not a "secondary or relative ideal"; nor is Republic an "unattainable ideal". What we find in Laws is a comprehensive set of legal and constitutional proposals which are designed to embody and to implement the political, moral, and educational, principles of Republic and Statesman. Far from giving up hope of realizing his ideal, I think that in Laws Plato shows us exactly how it might be realized. The constitution he proposes is more or less realistic; even the orthodox critics seem to agree with me on this point. What they have failed to recognize however, is that this constitution, if enacted, would establish the government of philosopher-kings.

In conclusion I want to make a passing comment about Plato's idealism. I have argued that the 'sovereignty of law' principle is continuous through Republic, Statesman and Laws, and also that the government Plato proposes in all three dialogues will be a government of philosopher-kings. If this interpretation of Plato's political
theory is sound, then what of the saying in Statesman that "the political ideal is not full authority for laws, but rather full authority for a man who understands the art of kingship and (who) has kingly ability" (Statesman 294a); and what of the saying in both Statesman and Laws that the rule of law is only "second best" to the rule of "the true king and statesman" (Statesman 301c-e; Laws 875d)? To put the question more directly; if Plato always held the view that law should be the highest authority in the state, and if his political ideal was not "full authority for the laws", but rather full authority for the philosopher kings, then what part does the idealism play in Plato's political theory?

I think that the answer to this question is that Plato never was a political idealist, though he did concede what is obvious, that the ideal way of governing a state is to grant absolute authority to an all-wise, ever-virtuous, super-human, individual who could provide his subjects with "peace and reverence and order and justice never failing" (Laws 713e). I say that Plato never was an idealist because he never did argue in favour of dictatorship by the best of philosophic minds. In Chapters Two and Three I have tried to show that neither Republic nor Statesman says or implies that the state should be ruled by a benevolent autocrat. I insisted on this point earlier because I now want to claim that Plato never did think that the ideal form of government was possible; that he never did intend to grant "full authority to a man who understands the art of kingship and (who) has kingly ability". I think that Statesman and Laws both contain arguments (most notably the Myth of Cronos) which are designed to eliminate utopian thought
from serious political theory; which are designed to show that omniscient rulers are appropriately studied only by theology. The trouble with political idealism, as Plato points out in all three dialogues, is that political supermen are hard or impossible to find. In their absence we must settle for the "second best" method of government, which is the rule of law and ordinance. If the Age of Cronos were upon us, that is if the Universe were other than it is, 'there would be no need of political constitutions', there would be no need of governments and laws, and there would be no need of settling for the second best method of government. But Plato was not an idealist; he knew that a ruler who "possesses absolute and irresponsible power will never remain firm in his principles, or persist in regarding public good as primary in the state, and the private goods as secondary". (Laws 875c). In Plato's political theory idealism plays the part of the straw-man.
CHAPTER VI

Up to this point I have been mainly concerned with one particular aspect of Plato's political theory; I have examined each of *Republic*, *Statesman*, and *Laws* with an eye to answering one central question: 'What is Plato's view of the relationship between government and the law'? The traditional answer to this question, of course, is that at different stages of his philosophical career Plato viewed the relationship between the ruler and the law in different ways. The preceding chapters of this paper have been largely devoted to a refutation of this claim. In Chapters Two and Three I have argued that in *Republic* and *Statesman* Plato's rulers will not be "unfettered by law" in the sense that the orthodox view maintains; and in Chapters Four and Five I have argued that in *Laws* Plato's government will not be altogether subservient to the law in the manner that Platonic scholars have traditionally supposed.

But if my arguments this far have been mainly directed towards a critique of the orthodox interpretation of Plato's political theory, I have also recommended a different interpretation; if I have been mainly concerned with showing that the rulers in both *Republic* and *Laws* are in substantially the same position with respect to the law, I have also been urging the view that Plato always favoured a constitutional form of government. I have argued that in *Republic* Plato outlined the general features and principles of the constitution that he later works out in some detail in *Laws*. In this chapter I want to abandon my dispute with Zeller, Barker, Sabine, Saunders, etc; I want instead to focus critical attention on the constitution and form of government that Plato has worked out in *Laws*, and which on my interpretation is...
already implicit in both Republic and Statesman.

Now in the course of arguing against the orthodox interpretation, I have necessarily focused my attention on Plato's treatment of the state's legislative power. In particular I have argued two points: (1) that Plato's constitution provides for a system of checks and balances within the legislative branch of government; in other words, that his constitution distributes the legislative power between two institutions; and, (2) that although Plato's legislators will be bound by a constitution and fundamental code of law, they will nevertheless be authorized to amend that constitution and code of law. In this chapter, however, if we are to focus critical attention on Plato's overall theory of government — upon the constitution that he would impose on the state — we must also examine his treatment of the other traditional governmental powers; most importantly, we must examine his treatment of the state's executive and judicial powers.

Now in examining Plato's theory of government in terms of legislative, executive and judicial powers, I am, of course, following a method of classifying governmental powers that has become traditional in political theory ever since the middle of the seventeenth century. There is, however, no evidence to indicate that this tri-power theory of government was at all familiar to Plato. In fact, I shall argue in this chapter, that, although Plato understood and provided for each of these three governmental powers or functions, he nevertheless did not divide his government into three separate branches, rather into two: the teaching power and the magisterial power. I shall argue that Plato's alternative to the legislative-executive-judicial trichotomy raises
some very interesting questions about the philosophical distinctions which underlie the later theory; I shall argue that whereas the separation of powers doctrine first advocated by Montesquieu and Locke identifies three distinct functions of government, Plato quite correctly recognizes only two. Lastly I shall argue that although the separation of powers doctrine, complete with its system of governmental checks and balances, is designed as a safeguard against governmental tyranny, nevertheless Plato's method of distinguishing or separating governmental powers provides the citizen with what may be an even more effective guarantee of freedom. I think that Plato's constitution could be more effective at preventing governmental tyranny because under that constitution governmental powers are distributed on strictly functional grounds. This being the case, it is very unlikely that one branch of government would be in any position to encroach upon or usurp the powers of the other, thus subjecting the state to a greater or lesser degree of tyranny. But all of this is yet to be argued; if I am to make my case we must return to *Laws* and discover exactly to which institutions, and to which officials, Plato would assign the powers that are traditionally exercised by governments. Since the legislative-executive-judicial trichotomy is the most familiar way of analysing the internal structure of government, and since I have already discussed Plato's treatment of the state's legislative power, I now propose to examine Plato's system of government for the location of its executive and judicial powers.

The functional distinction between legislative and executive powers is at first glance straightforward; the legislature is responsible for making the law, while the executive branch is responsible
for the execution of the laws. Locke describes the executive function in this way:

Because the laws that are once, and in a short time made, have a constant and lasting force, and need a perpetual execution, or an attendance thereunto: Therefore it is necessary there should be a power always in being, which should see to the execution of the laws that are made and remain in force. And thus the legislative and executive power come often to be separated.73

So the executive branch of government is supposed to implement or execute the laws passed by the legislative branch; but Locke goes on to say that as well as this magisterial power, the executive department must also enjoy a certain measure of discretionary power:

Many things there are which the law can by no means provide for, and those must necessarily be left to the discretion of him that has the Executive power in his hands, to be ordered by him as the public good and advantage should require: nay, 'tis fit that the laws themselves should in some cases give way to the executive power....

This power to act according to discretion for the public good without the prescription of the law, and sometimes even against it, is that which is called PREROGATIVE. For since in some governments the lawmaking power is not always in being, and is usually too numerous, and so too slow for the dispatch requisite to execution: and because also it is impossible to foresee, and so by laws to provide for, all accidents and necessities that may concern the public, or to make such laws as will do no harm if they are executed with an inflexible rigour on all occasions and upon all persons that may come in their way, therefore there is a latitude left to the executive power, to do many things of choice which the laws do not prescribe.74

Now this explanation of what Locke calls executive "prerogative" is important here because Locke has now authorized the executive branch of government to do much more than execute the law; he has authorized the executive magistrate to act "without the prescription of the law,

73 Locke, SecondTreatise, Chapter XII, Para. 144.
74 Ibid, Para. 159-60.
and sometimes even against it". Although the idea is expressed in different language, much the same sentiment is echoed by Montesquieu, Madison and the other advocates of the 'separation of powers' doctrine. A 1969 report by a U.S. Senate Subcommittee on the separation of powers, for instance, clearly reflects and illustrates Locke's conception of executive prerogative: although this report deals with several different instances of executive discretionary powers, in the interest of brevity, I shall quote only from that section of the report which is entitled

**Legislative Powers of the President:**

Although the Constitution in Article I grants "all" legislative powers of the Federal Government to the Congress, Presidents since Washington have exercised a form of "legislative power" of their own. These powers exist in part because of delegations from Congress authorizing the issuance of regulations which have the force of public law. Federal regulations constitute perhaps the greatest bulk of law produced by the government, exceeding in great measure the number of statutes of general application enacted by Congress each year. Separation of powers issues arise when the delegation by Congress is extremely broad and, in effect, presents few if any standards to guide the executive branch. Broad delegations amount to a conferral of near-plenary legislative power to the particular agency over the subject matter within its jurisdiction...

In addition to delegated legislative authority, the President exercises a form of legislative power through the issuance of Executive Orders. Between 1907, when Executive Orders were first numbered, until Dec. 31, 1968, a total of 11,442 have been issued. In addition it is estimated that perhaps 15,000 Executive Orders were issued prior to 1907. Executive Orders, when relating to "housekeeping" requirements of the executive branch raise no constitutional problem. They amount to no more than directions by the President to his subordinates as to how they are to carry out their statutory and constitutional functions. As such they rest on the constitutional authority of Article II. However an Executive Order may amount to an exercise of legislative power, which the Constitution grants exclusively to Congress. Executive Orders have been issued on occasion to bypass the ordinary legislative process when the President wishes not to share the decision making with the Congress.75

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The Subcommittee Chairman, Sen. Sam Ervin, goes on to give examples of Executive Orders that have been clear exercises of the legislative power. He cites the "steel mills" case of 1952; Executive Order 11387 of Jan. 1, 1968, which "subjected foreign investments to strict limitations and controls"; and Executive Order 11246 which "inaugurated an equal employment programme for businesses doing government contract work which duplicated the jurisdiction given to the Equal Employment Opportunity Commission by the Civil Rights Act of 1964, and which imposed different standards and different sanctions than those contained in the prior legislative act".

What the Ervin Committee Report illustrates rather nicely, I think, is the necessity and extent of executive discretionary power. Locke said that "there are many things which the laws can by no means provide for"; Congress in the United States has in many instances seen fit to delegate "near-plenary legislative power" to particular agencies within the executive branch; the U.S. Constitution under Article II authorizes the Executive magistrate to issue "Executive Orders". Under the British constitutional system the executive branch may issue what are termed "Orders-in-Council". Most political theorists since Locke have sanctioned the issuance of executive orders or directives; and the history of governments in the western world ever since Locke's time makes it abundantly clear that political practice, in this instance anyway, has been true to the spirit of prevailing political theory. If the Executive branch of government is primarily responsible for executing the law, it is also responsible in many instances for making the law.

76 Youngstown Sheet and Tube Co. vs Sawyer, 343 U.S. 579, 72 S. Ct. 863, 96 L. Ed. 1153 (1952).
Now I have explained the bifunctional nature of the executive branch of government in order that I might be able to show that Plato distinguishes these two different executive functions, and that he assigns each to a different branch of his government. I shall try to show that Plato assigns the 'execution' or 'implementory' function to his auxiliary officials, and that he assigns all of the state's important discretionary powers to his rulers, that is, to the Guardians of the law and the Nocturnal Councillors. Let us begin by examining the nature of the powers that are given to the auxiliary magistrates.

First, the astynomoi (city wardens), agoranomoi (market wardens), and the agronomoi (country wardens). The authority of the agoranomoi covers the city's markets, including the temples and fountains located in the markets. They must see that the streets are kept clean, that no damage is done to the buildings and fountains, and that whatever damage might be done is promptly repaired (759a, 764b). They are also to look after the water supply in the markets and fountains; there will be aqueducts or conduits to bring water from the surrounding mountains, and the agronomoi along with the astynomoi must see that there is ample clean water available at all times (763d, 764b). The astynomoi will also have responsibility for the city's sewage system (779c).

The astynomoi are also responsible for maintaining order in the public streets and buildings; they must see that "no injury is done by men or other animals" (759a). This means that they have authority to fine persons who violate the building and sanitary codes, or who damage public property (764c). They may deport beggars (936c), punish cases of public slander (935b), punish acts of violence in the streets, and punish
someone who fails to come to the aid of a victim of such violence (§79c, §61c); they help the officers in charge of children maintain order on the playgrounds (§94b); they must assist in the search for stolen property (§54b); and they judge cases involving minor claims of damage by one person against another (§44c, §45c).

The agoranomoi are also responsible for enforcing a rather intricate set of market regulations. They are to allot stalls for the sale of various wares (§49c); they must enforce the laws requiring all citizens to bring a certain portion of their produce to market for sale to non-citizens (§49a-c); they must prevent the sale of adulterated or spurious goods (§17a); they must see that a vendor does not charge different prices for his wares on a given day (§17b-c); and they must enforce the regulations dealing with a fair profit margin (§20b-d).

A particular duty that Plato assigns his astynomoi is to supervise the alien craftsmen in the city, ensuring that they abide by the 'one man to one craft' principle (§47a). They may also adjudge disputes regarding wages, quality of workmanship, and any other grievances of citizens up to the amount of fifty drachmae (§47b). They may also hear cases involving larger amounts when a foreign visitor is involved (§53b). They and the agoranomoi must meet casual foreign traders, ensuring that they do not import any "innovations" into the city (§53a); and they would certainly be involved in the application by an immigrant for metic status (§50b).

The agronomoi have similar duties in the country. They must supervise the building of moats and fortifications to guard the rural population against foreign invasion (§60e); they must look after roads (§61a); take measures to control the flow of rainwater down the mountain
slopes, making sure that the fields are not eroded, and that there is
an ample supply of water available for agricultural purposes (761 a-b).
They will also be in charge of the building and maintaining of fountain
houses, gymasia, and rural shrines.

And naturally the agronomoi are responsible for maintaining
order in the countryside. They must enforce the agricultural laws in
general; for income tax purposes they must make reports to the Guardians
concerning the amount harvested (955a); they supervise the non-citizen
craftsmen, determining how many tradesmen are needed, and where these
craftsmen will be situated so as to best serve local needs (946e).
Lastly they may hear civil disputes up to the amount of three minae
(761e); and they must apprehend exiles who return without authorization
(881d-e).

Now it is obvious that these officials, astynomoi, agoranomoi,
and agronomoi, serve the state in many different capacities; they are
at least police officials, immigration officers, supervisors of public
works, and supervisors of certain areas of the state’s economic life.
It is also evident that their duties are executive in nature; they are
responsible for implementing, enforcing, and supervising the laws and
regulations made by the government. But it is also evident that the
range of their discretionary power is limited. In no instance in Laws
does Plato even come close to suggesting that these officials will be
authorized to set policy or make regulations that cannot for various
reasons be embodied in the state’s legal code. Perhaps the greatest
discretionary power that Plato allows these officials is in determining
whether or not foreign traders will be allowed to sell their goods in
the city's markets. They also enjoy discretionary powers in their
capacity as supervisors of artisans, and in their capacity as judges of
minor civil disputes. But in all of these instances it is clear that
they will be guided by quite specific laws and regulations which are
written by the Guardians of the Law. In fact Plato makes it perfectly
clear that whenever there is any need for policy decisions — for
supplementing the legal code with regulations and directions of a
detailed or transitory nature — the state's 'wardens' must consult
the Guardians, who will then issue the necessary orders. Perhaps Plato's
clearer statement of this principle occurs in the context of regula-
ting retail trade:

And therefore, in respect of the multifarious occupations of
retail trade, that is to say, in respect of such of them
as are allowed to remain, because they are quite necessary to
the state, about these the Guardians of the law shall meet
and take counsel with those who have experience of the several
kinds of retail trade, as we before commanded concerning adul-
teration (which is a matter akin to this), and when they meet
they shall consider what amount of receipts after deducting
expenses, will produce a moderate gain to the retail trades,
and they shall fix in writing and strictly maintain what they
find to be the right percentage of profit; this shall be seen
to by the wardens of the agora and by the wardens of the city,
and by the wardens of the country. (920 a-c)

Now the principle which underlies this passage is important. Obviously
the legal code cannot specify exactly what is fair profit on the sale
of every different commodity and service. Not only is the task too
detailed for the law, but there will also be significant fluctuations
of supply and demand, which will necessitate nearly constant adjustments
in the determination of fair profit margins. So the legal code cannot
supply the wardens with the necessary direction; but those who exercise
the state's legislative power will also be responsible for issuing the
direction that the law cannot supply. If the wardens are responsible for executing the state's retail trade policies, it is the Guardians of the Laws who enjoy discretionary power over the determination of that policy.

The same principle is evident in the area of public works. Plato says that the astynomoi shall supervise the construction and maintenance of public buildings; they should ensure that the city is kept clean, that no one trespasses, that no one neglects the care of public buildings, that rain water is drained adequately, etc. The astynomoi must take care of "matters which may have to be administered either within or without the city", but "the Guardians of the Law shall pass any further enactments which their experience may show to be necessary, and supply any other points in which the law may be deficient" (779d). Once again the Guardians are responsible for setting policy, while the astynomoi are responsible for "administering" those policies.

There are, of course, many other instances in Laws where Plato makes it clear that only the Guardians are authorized to determine state policy — whether that policy is specified in the form of written law, or whether it is a matter requiring the exercise of what Locke calls executive prerogative. Jurisdiction over the state's fiscal policy — over the raising of revenues, and the expenditure of public funds — is probably one of the clearest examples of the Guardian's executive powers. They shall have possession of the registers in which each citizen must report the worth of his property, the amount of revenue from the sale of his crops, his expenses, etc. (745a-d; 850a; 855b;). The Guardians must ensure that no citizen accumulates more wealth than the law permits; and they must ensure that no estate fails for the
want of financing. As well they must oversee the care and construction of public buildings (779c-d); they are in charge of foreign trade, determining what products may be imported and exported (847c-d); and they must, in association with the market wardens, supervise and regulate the conduct of retail trade (849a; 917a; 918a; 920a-c). With respect to the raising of taxes, Plato's text is somewhat ambiguous. We are told that all citizens and metics must report their annual profits and expenses to the country wardens in order that the "public officers" might levy the appropriate taxes (955d-e). We are nowhere explicitly told that the "officers" Plato has in mind are the Guardians, but if taxes are to be levied by some officials other than the Guardians, there is no doubt that they would have to do so in accordance with the laws and regulations issued by the Guardians. The Guardians have supervisory powers over virtually every other part of the public purse - retail and foreign trade, expenditures, collection of fines, seizure of excess capital, etc. I think it is reasonable to conclude that the Guardians have executive powers over fiscal matters in general; I think it is the Guardians who are responsible for the preparation of expenditure and revenue estimates, and for the determination of annual economic priorities.

Another example of the Guardians' executive powers is in the area of state education. Plato's constitution provides for the appointment of a single "Director of Education"; but this official will be chosen from among the Guardians, and there are numerous passages in Laws which indicate that he must work in close consultation with the board from which he is chosen (801d; 829d; 835a). Under the supervision of the
Guardians the Educator must appoint and supervise numerous minor officials (613c), issue instructions to teachers (611d), select appropriate literary materials for the schools (611e), censor music and poetry intended for public audiences (936b), and in general supervise the whole system of state education (765d; 936a).

There are also other examples of matters over which the Guardians enjoy executive powers. The state's family law is of special concern to Plato; in this area the Guardians have numerous specific duties, and they are also instructed to advise the supervisors of marriage, the supervisors of children, etc. (748c; 794b; 929e; 932b). We have already seen that the Guardians are responsible for overseeing the department of public works, the military, and the police department; in addition they must make the regulations necessary to the conduct of religious festivals and sacrifices, athletic contests, and all state ceremonies and holidays.

 Concerning the most dramatic of executive powers - the war power - Plato is surprisingly and unfortunately silent. He remarks at 955b that no "faction of the state" should declare war upon, or establish an alliance with, any parties "without the authority of the state"; but besides this reference Plato simply does not say to whom he will entrust the responsibility for national security. From Statesman however we learn that the power to declare war, and to form alliances, is the province of the statesman, as opposed to the general, who merely "takes decisions on military strategy once war has been declared" (Statesman 304a). Plato makes his point with a question: 

Which is the art which possesses the knowledge and capacity to form a reasoned decision whether to fight or settle a dispute on friendly terms? (304a)
The answer, naturally, is that this is the province of the art of statemanship. Although Plato does not consider the question in *Laws*, it is, I think, impossible to form any conclusion except that the war power resides either with the Guardians of the Law or the Nocturnal Council. Although it is only a guess, I suspect that this function would in fact be assigned to the Nocturnal Council. Such a grave decision as whether or not to commit the state to war, is a responsibility that I think Plato would assign to the state's wisest and most senior statesman - the Nocturnal Councillors. This assembly is called the "mind" of the state; it is responsible for the "salvation" and "preservation" of the whole community. Although I do not want to read too much into Plato's metaphorical language here, I think that providing for national security is the duty of the state's "mind"; I think that executive control of the states armed forces is necessary to that institution which must provide for the "salvation" of the state. In the absence of any definite word from Plato, perhaps another reason for thinking that the war power would be vested in the Council, as opposed to the Guardians, is that Plato has gone into great detail concerning the Guardians' duties - and he does not mention the war power - whereas he is notoriously inexplicit about the exact duties of the Council. Had Plato intended this function for the Guardians, presumably he would have declared his intention when discussing the areas in which the Guardians would be associated with the Generals, such as the importing of materials necessary for military purposes. In any case the point is not crucial; whether the Council, the Guardians, or both, are to be 'commanders-in-chief' of the armed forces, it is virtually certain that the government - not the military
or the Assembly of all citizens - will exercise executive responsibility for national security.

Now in the preceding paragraphs I have been arguing that the Auxiliary officials in Plato's state - the country wardens, city wardens, market wardens, judges, generals, supervisors of marriage, etc., - while these officials are responsible for the enforcement, implementation, and execution of the state's laws, they do not enjoy all of the powers that have come to be traditionally associated with the executive branch of government. Specifically I have argued that Plato's Auxiliaries take no share in the determination of state policy; that they enjoy only lower-level discretionary powers; that they are not authorized to formulate that very wide range of regulations and directives which cannot for various reasons be embodied in legislation, but which nevertheless constitute an integral part of the state's regulatory power. So while the Auxiliary officials in Plato's state are undoubtedly responsible for the execution of the state's legal code, they do not enjoy executive powers in the modern sense of that term. If under executive powers we include such governmental functions as the power to regulate the state's economy, the power to direct and maintain a system of state education, the power to form alliances with other states, - in fact, if by executive powers we mean those powers that under the British and American constitutional systems are held by the head of state and his cabinet ministers, - then under Plato's form of constitutional government, executive powers in this modern sense have been distributed between the Guardians of the Law and the Nocturnal Council.

Now what is immediately interesting about this method of arranging or distributing governmental power is that Plato has placed a
very significant portion of what we nowadays term 'executive power' in
the hands of the same institutions and officials that already yield
the state's legislative power. All of the powers that are today associ­
ated with the standard cabinet portfolios - defence, finance, external
affairs, justice, education, public works, etc., - all of these powers
Plato gives to the Guardians and the Nocturnal Councillors. And with
one exception - the Minister of Education - all of these executive
powers will be borne by the whole assembly of Guardians, or else by
the whole Nocturnal Council. Time and time again in Laws, when Plato
is assigning specific areas of executive responsibility to the Guard­
ians, he gives the appropriate power to the whole board of thirty-seven
members (748b-c; 794b; 799b; 649e; 917e; 920a-c; 929e are some examples).

By making collegial responsibility the rule, and ministerial respon­
sibility the exception, Plato has placed all executive powers of a
regulatory nature in precisely the same hands as those which hold the
legislative power. In succeeding pages I shall have occasion to discuss
the justification behind, and the implications of, this provision of
Plato's constitution. Specifically I shall argue that Plato has dis­
tributed governmental power along strict and appropriate functional
lines; that his partial merger of the state's legislative and executive
powers rests on sound philosophical and political principles; and that
Plato's constitution does not neglect the freedom of the governed in
the interest of creating a strong and efficacious government. But
before I can introduce these arguments we must first examine Plato's
treatment of the state's judicial power; in doing so we shall find that
just as Plato has given some of the state's important executive powers
over to the legislative branch of government, so he has given some of its important judicial powers over to the legislative branch. With respect to Plato's treatment of the state's executive powers however, let me, for the present, only repeat the point I have already made. The Auxiliary officials in Plato's state are responsible for the execution, implementation, and enforcement, of the state's legal code; in this sense the Auxiliary branch of Plato's government is certainly the forerunner of the executive branch of modern governments. Nevertheless Plato's Auxiliaries do not enjoy all of the powers that have been traditionally associated with the executive department. They have virtually no regulatory power; they are responsible only for carrying out the commands of the rulers, whether these commands be in the form of legislation, or whether they be in the form of executive ordinance. We might say that Plato's constitution provides for a comparatively weak executive branch; or else we might say that Plato distinguishes two categories or types of executive powers, giving the one to his Auxiliary officials, and the other to his rulers. But more on this point after we have considered Plato's constitutional provisions for the state's judicial power.

Plato's law provides for three different grades of courts; there are to be courts of original jurisdiction, and two levels of appeal courts. The courts of the first instance are to be presided over by "neighbors" of the disputing parties; the parties to the litigation are allowed to choose from among their "neighbors and friends" (766e) a panel of "arbitrators" who will serve as judges. The purpose of this court is to attempt to bring about a reconciliation between the disputants; if the decision of the judges is accepted by both parties, the
case is ended. But if either party is dissatisfied with the decision, all relevant documents, together with a written statement of the "arbitrators'" findings, are transmitted to a higher court.

The first court of appeal Plato calls the "common courts" (762b; 846b; 847b). About the constitution of these courts, we are told very little, yet it is clear that they are to be popular courts, the judges being chosen by lot (768b). Perhaps the most important thing about these "common courts" is that they do not enjoy the power of final jurisdiction.

If anyone wishes to fight his case a third time in court, "let him bring his suit before the select judges" (956c-d). This is evidently Plato's answer to the need for special judicial competence. These high court judges are to be elected by "all the officers of the state"; one judge shall be chosen "from each magistracy" (767c). Although the exact number of judges is not specified, there is reason to believe that the court would have some fifteen or sixteen members. It is easy to understand why Plato should select his Supreme Court Judges from among the city's magistrates; in the absence of a class of professional lawyers and jurists, the only experts in the law would be those civic officials who have become familiar with the ways in which the various laws have been applied and interpreted by previous courts.

77 Although they are also called "tribal courts" (for example at 768b), I prefer the designation "common courts" because, as Morrow shows (p.257-60), these courts are not intended to exercise jurisdiction only within the various tribes.

78 Morrow, p.262.
Now Plato's tri-level system of courts is designed to deal with the great bulk of cases - both criminal and civil - that are bound to arise in the ordinary course of civic life. But there are also a significant number of special courts which have jurisdiction over specialized matters. Thus "offences against the state" will be judged by the Assembly of all citizens (767e); cases involving the death penalty will be heard by a court consisting of the Guardians of the Law and the Select Judges (855c);\(^79\) cases of desertion and other military offences will be heard by a military tribunal (943a-b); a family court will hear cases where a father wishes to disinherit his son (929a-d); there is also mention of divorce courts (929e - 930a); and finally, we have already seen that the astynomoi, agronomoi, and agoranomoi have judicial powers over minor disputes.

As well as a more or less complete and coherent system of courts, Plato also concerns himself with many of the important details of legal procedure. Although he more than once remarks that his regulations in this area are incomplete, he nevertheless does write a significant amount of procedural law. He makes regulations concerning the filing of suits, the conduct of preliminary hearings, the taking of oaths (which is necessary for the judges as well as for the witnesses), the powers of the court over the propriety and relevance of evidence, the competence of witnesses, the filing of suits for false testimony, and the amount of discretion given to the courts over the fixing of penalties.

\(^79\) This court has jurisdiction over temple robbing (854d-e), sedition (856b-c), treason (856e), premeditated homicide (871d), attempted homicide (877b), and probably certain cases of impiety (910c-d).
Although many aspects of Plato's judicial system are interesting in their own right, an overall evaluation of that system is obviously beyond the competence of this Chapter. In fact my interest in Plato's judicial system is confined to establishing two points: first, that Plato's constitution does provide for a judicial branch of government which is clearly distinct from and independent of both the legislative and executive branches; and second, that like the British constitutional system, yet unlike the American system, Plato does not give the power to interpret, enforce, and apply the state's constitutional law unto the judicial branch of government. We have seen that Plato does provide his state with a comprehensive system of lower and higher courts; it is certain however that none of these courts is authorized to hear cases which involve constitutional questions. We saw in the last Chapter that Plato did understand and provide for this governmental function; he creates an institution - the Nocturnal Council - which is instructed to interpret, preserve, and give expression to the "aims" of the constitution; which is authorized to render null and void any statute which is repugnant to the spirit of the constitution.

However Plato has a problem which he has not anticipated. The courts are not intended to hear cases which raise constitutional issues; however, as the history of the U.S. Supreme Court shows, both criminal and civil cases - which Plato's courts are to hear -often raise constitutional problems. Although Plato mentions no such procedure, it is obvious that he must provide some mechanism for elevating such cases for consideration by the Nocturnal Council.
Now there is certainly nothing unusual about Plato locating this governmental power - we might call it the power of 'constitutional review' - within the legislative branch of government. Rather it is the American constitution - which gives this power to the courts - that is radical in this respect. Nevertheless the fact that Plato does give this power to the legislative branch rather than the judicial branch is significant. For by giving the power of 'constitutional review' unto the legislator, Plato leaves his judges to serve only an auxiliary governmental function; and the fact that the judge is only an auxiliary to the ruler is crucial for an appreciation of Plato's method of distributing governmental power. In the preceding pages we have seen that Plato's constitution provides for a network of executive officials and institutions (a civil service); and also that it provides for a judicial system which is independent of both the legislative and executive departments. Thus Plato's constitution does provide for what have since become the three traditional branches of government - legislative, executive and judicial. However Plato's method of distributing governmental power among these three branches is quite different from the later tradition of Locke, Montesquieu, and Madison. In fact, although Plato does create independent legislative, executive, and judicial institutions, he would not recognize three distinct branches of government, because he would not share Madison's belief that there are three distinguishable functions - one to be served by each department. Plato considers both executive and

\[\text{It is clear throughout Plato's political writings that the judge is the auxiliary of the ruler. The point is made most straightforwardly at Statesman 305b-c.}\]
judicial magistrates to be the auxiliaries of the ruler; the judge - like the generals, the wardens, etc. - is only to enforce and implement the laws and commands which are issued by the legislature. So notwithstanding the fact that Plato does create legislative, executive and judicial institutions, he does not divide his government into three branches - rather into two: the rulers and the auxiliaries. I now want to suggest that in order to fully appreciate Plato's method of dividing and classifying governmental power, we must understand this ruler-auxiliary distinction - which also appears in both Republic and Statesman - in a particular way; I suggest that it should be understood as a distinction between the teaching power and the police power.

The reason I think that the powers which are held by the rulers in Plato's state should be classified or described as the teaching power is that the sole purpose for which these powers are to be used is the teaching of virtue. This is a point that Plato repeats again and again in Laws, and it is a point that is also stressed in both Republic and Statesman. The "absorbing preoccupation" of Plato's rulers is the business of establishing "a true opinion concerning what is good, just and profitable" in the soul of every citizen (Statesman 309c). It is also evident that Plato understands virtually every particular power that is exercised by the Guardians and/or the Councillors as necessary to the teaching of virtue - as part of the teaching power. There are numerous obvious examples of this point. The Nocturnal Council is in part a teaching institution; it is responsible for the very important function of teaching philosophy and the art of government to those who will one day become rulers. Also the Director of Education is chosen
from among the Guardians, and becomes a Nocturnal Councillor. Presumably he is responsible to both assemblies; presumably both the Guardians and the Councillors will have supervisory powers over the execution of his duties. If so, both institutions will have at least indirect supervision of the whole system of state education. Also the Guardians have executive responsibility for all state ceremonies and dances, musical and poetic performances, athletic contests, and religious festivals and sacrifices. All of these state occasions are designed to serve educational purposes. Musical performances encourage citizens in the love of temperance, justice, and virtue generally; athletic contests encourage an admiration of courage, endurance, and sportsmanship; religious festivals and sacrifices produce humility and piety. Plato regards all of these as virtues which it is the duty of government to teach.

Although they are less obvious examples, the Guardians' special powers with respect to family law and the registers of property are also necessary parts of the teaching power. Control of the registers of property - and of economic matters in general - is a teaching function, because the extremes of property and wealth make the teaching of virtue impossible. And much the same can be said about family law. Those who are responsible for implanting a "true opinion concerning what is good, just and profitable" must have special supervisory powers over family life, because children must be raised in quite precisely determined ways, marriages between certain types of citizens must be encouraged (and others discouraged), families must be made to observe proper limits when they are grieving the loss of loved ones, or when
they are celebrating births and marriages, etc. The exercise of all these powers is a part of the process of teaching virtue because the family is one of the state's most important teaching institutions. Plato believes that "the most important part of right training occurs in the nursery"; he believes that children are apt to mature into much the same sort of persons as their parents. So control of family life is indispensable to those who would teach virtue.

For Plato however the most important part of the state's teaching power is its legislative power. Plato sees the writing of legislation as a teaching function because the aim or purpose of law must be the production of virtue in the souls of the citizens; because the legal code must instruct the ordinary citizen in the wise, just, temperate and courageous courses of action in every circumstance. But the laws must do even more than instruct; they must also persuade. Plato makes this point with the help of an example; he uses the law of marriage to illustrate the difference between a law which only threatens and one which persuades as well as threatens.

Then let me give the first law of marriage in a simple form; it may run as follows: A man shall marry between the ages of thirty and thirty-five, or, if he does not, he shall pay such and such a fine, or shall suffer the loss of such and such privileges. This would be the simple law about marriage. The double law would run thus: A man shall marry between the ages of thirty and thirty-five, considering that in a manner the human race naturally partakes of immortality, which every man is by nature inclined to desire to the utmost; ... (men) are immortal, because they leave children's children behind them, and partake of immortality in the unity of generation. And for a man voluntarily to deprive himself of this gift, as he deliberately does who will not have a wife or children, is impiety. He who obeys the law shall be free and shall pay no fine; but he who is disobedient and does not marry, when he has arrived at the age of thirty-five, shall pay a yearly fine of a certain amount, in order that he may not imagine his celibacy to bring ease and profit to him; and he shall not
Having shown us the two different laws, Plato draws his conclusion:

Comparing now the two forms of law, you will be able to arrive at a judgement about any other laws - whether they should be double in length even when shortest, because they have to persuade as well as threaten, or whether they shall only threaten and be of half the length. (721e)

Having said that the law must persuade - or teach - as well as threaten, Plato goes on to say that this and every law in the state should be prefaced with a preamble.

I imagine that all this language of conciliation which the legislator has been uttering in the preface to the law, was intended to create goodwill in the person whom he addressed, in order that, by reason of this goodwill, he might more intelligently receive his command, that is to say, the law. And therefore, in my way of speaking, this is more rightly described as the preamble, than as the matter of law. And I must further proceed to observe, that to all his laws, and to each separately, the legislator should prefix a preamble; he should remember how great will be the difference between them, according as they have, or have not, such preambles, as in the case already given. (723a-b)

So every one of Plato's laws will have a preamble. In this preamble the legislator must explain the reasons behind his command; that is, he must attempt to persuade his citizens to obey his law. Thus the legislator is responsible for instructing the citizens in the proper course of action, and he is also responsible, to the best of his abilities, for persuading them to "intelligently receive his command". For these reasons his function is primarily educational; for these reasons Plato sees the legislator as a teacher of virtue; and for these reasons I have said that the state's legislative power is a part of its teaching power.

I have now argued in this Chapter that Plato does not distribute the state's sovereign or regulatory powers between legislative, executive
and judicial departments; that instead he recognizes only two distinct governmental functions, the ruling element and the auxiliary element. I have indicated that Plato includes the judicial function in the auxiliary branch, and that he merges legislative powers with executive powers of a regulatory nature, placing both in the hands of the same officials - the Guardians of the Law and the Nocturnal Councillors. I have also suggested that the two governmental functions that Plato does recognize might aptly be termed the teaching power and the police power. My main reason for saying that the powers exercised by Plato's rulers are best described as teaching powers is Plato's much repeated principle that the sole end for which the rulers may exercise their sovereignty is the teaching of virtue. Also when we examine the specific powers that Plato distributes between the Guardians and the Council, we see that each of them is understandably a part of the state's teaching function.

In saying that the auxiliary branch of Plato's government exercises the state's police power, I am well aware that this term is sometimes used synonymously with the term 'executive power'. There is however an important functional difference between the executive power and the police power. With reference to Plato's constitution, for instance, under the category of police powers, we would want to include the powers held by military officers, judges, religious officials, city, country and market wardens, etc. The function of all of these officials is the enforcement and administration of the law. They must carry out and implement the commands of the rulers, whether those commands be in the form of legislation or in the form of executive ordinance. On the
other hand, executive officials - at least in the modern sense of the term - do much more than implement or execute the law; they are also responsible for issuing that very wide range of commands that cannot for various reasons be embodied in the legal code. Thus the executive power serves in part a ruling function; the police power serves only an implementory function. In recognition of this distinction (at least the spirit of which is decidedly Platonic) I have argued that Plato's auxiliary officials do not exercise executive powers in the modern sense of the term; and I have described the powers they do exercise as police powers.

In this Chapter then I have so far argued that Plato does not divide the state's sovereign powers among the legislative, executive and judicial departments of government; and that instead he recognizes only two distinct governmental functions - the teaching power and the police power. In saying that the rulers exercise the teaching power, I am not, of course, saying that they exercise the teaching power in addition to their legislative, executive and judicial powers; I am not saying that the teaching power is a fourth power of government in a category with the other three. Rather I am suggesting that both the legislative and executive departments exercise a part of the teaching power; and that in giving his rulers full legislative powers and some executive powers, Plato has combined the different elements of the teaching power within a single branch of government. But this categorization and centralization of governmental power invites an obvious question: 'does Plato's merger of legislative and executive powers into the teaching power mean that he has after all given his
philosopher-governors so much power that the freedom of the governed has been sacrificed for the sake of a powerful and efficacious government?'

This, of course, is just the question that would be raised by the advocates of the separation of powers doctrine. It is probably Madison who speaks most persuasively on behalf of this doctrine: "the accumulation of all powers, legislative, executive and judicial, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny". Madison goes on to explain however that the separation of powers doctrine "does not require that the legislative, executive, and judicial departments should be wholly unconnected with each other. (In fact)... unless these departments be so far connected and blended as to give to each a constitutional control over the others, the degree of separation which the maxim requires, as essential to a free government, can never in practice be duly maintained". Madison sums up his conception in the following paragraph:

The great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others. The provisions for defence must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place...

This policy of supplying, by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs, private as well as public. We see it particularly displayed in all the subordinate distributions of power, where the constant aim is to divide and arrange the several offices in such a manner that each may be a check on

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82 Federalist #47, p. 336.
83 Ibid #48, p. 343.
the other - that the private interest of every individual may be a sentinel over the public rights. These inventions of prudence cannot be less requisite in the distribution of the supreme powers of the state. 84

Obviously Madison's concern in these paragraphs is with preventing each branch of the government from encroaching on the powers of the other two. In order to accomplish this end, each department must be given a "constitutional control over the others"; in this way, "ambition must be made to counteract ambition".

Certainly Plato's constitution provides for no such system of checks and balances upon governmental power. Nevertheless I shall argue that Plato's constitution should not "be pronounced the very definition of tyranny"; that Plato has not centralized governmental power at the expense of liberty; that he has not jeopardized the freedom of the governed in the interest of placing all governmental power in the hands of expert rulers.

In order to support these statements, it is first of all necessary to point out that the separation of powers doctrine as outlined by Madison - and before him by Montesquieu, Locke, et al. - actually makes two distinguishable claims about the nature of free government. It claims in the first place that a merger of - or even an inadequate separation of - legislative, executive, and judicial powers is the very definition of tyrannical government; and it claims in the second place, that in order to preserve the desired separation of powers, each of the three branches must be given the constitutional means and powers necessary for resisting encroachments by the other two.

84 Federalist #51, p. 356.
Montesquieu explains the reasoning behind the first claim — that the three governmental powers must be exercised by different agencies — in this way:

When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.

Again there is no liberty if the judicial power be not separated from the legislative and executive. Were it joined with the legislative the life and liberty of the subject would be exposed to arbitrary control; for the judge would then be the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.

Now the complexities of Montesquieu's arguments are numerous. Obviously citizens will be subjected to different kinds and degrees of tyranny, depending on which of the three departments is merged with which of the other two. Yet I think there is a common objection against each of the three ways in which governmental powers might be merged. If either the legislative or executive powers is joined with the judicial, or if the legislative and executive powers are themselves merged, then "the life and liberty of the subject would be exposed to arbitrary control". The control would be arbitrary because in each of these three circumstances the citizen is subject to the will of men, as opposed to the rule of law. For instance if the executive magistrate has also the legislative power, then he may enact tyrannical laws, and arbitrarily exempt himself from their application; or he may execute ordinary laws in an arbitrary fashion, because he need impose no legislative restrictions upon the exercise of his executive powers. Alternatively, if the judge has also the legislative power, then he may write legislation giving his court arbitrary powers.

85 Montesquieu, L'Esprit des Lois, Book X1, Chapt. 6.
over accused or disputing parties; but in fact, he needn't bother doing 
so, because he may also interpret and apply existing laws in any manner 
that he chooses. The last possibility is that the executive and judicial 
powers be merged; and in this, as in the other cases, the result is 
arbitrary power over the citizens. If the executive magistrate has also 
the judicial power, then he may exercise his coercive powers against any 
citizen that he wishes to accuse without first ascertaining the defend­ 
ant's guilt through impartial judicial procedures. In such an instance 
judicial judgement would not likely conform to the letter of the law, 
but to the arbitrary will of the persons having both executive and 
judicial powers.

So the fundamental philosophical objection against a merger of any 
two of the three branches of government is that such a merger necessarily 
subjects the citizen to the arbitrary will of those officials who exercise 
two of the three governmental powers. Instead of being subject to the 
rule of law, the state is subject to the arbitrary will of "human masters". 
This view of, and objection against, tyrannical government is of course 
a familiar one; it was first formulated by Plato. Although Plato did 
not name the three branches of government, and insist that each be 
separated from the others, he did warn against giving too much power to 
a single official, or to a single assembly of officials; he did warn 
that "no soul of man will be able to sustain the temptations of arbitrary 
power" (691e); he did warn that "the state in which law is the subject 
and has no authority" is on "the highway to ruin"; he did believe that 
"the state in which the law is above the rulers and the rulers are the 
inferiors of the law has salvation and every blessing that the Gods can 
confer" (715d); and he also believed that in order to provide for the
sovereignty of law, the state must contain no "great and unmixed powers", and that the "kingly office" must be divided into "distinct elements". (691e-693b). Now, once again, Plato did not name what have become the three traditional branches of government; and I am certainly not claiming that Plato was the first philosopher to formulate some version of the separation of powers doctrine. But it is true that Plato was concerned to structure his government in such a way that no "element" of the government could exercise arbitrary powers over the citizen. And what is even more important, it is also true that Plato did not place legislative and executive, or executive and judicial, or legislative and judicial, powers in the hands of the same officials. The Guardians and the Councillors share the legislative power, but they are not responsible for executing, enforcing or implementing their laws and ordinances; the country, city, and market wardens, and a host of other auxiliary officials, are instructed to implement and execute the state's laws and regulations, but they have no legislative or regulatory powers, and they have judicial powers over only very minor matters. (And at that their decisions may be appealed to the courts.) Finally, Plato's courts are empowered to make binding judicial decisions, but they have no share in the execution of their decisions, or in writing the legislation according to which they must make their decisions. So if Plato did not actually formulate the separation of powers doctrine, he certainly did abide by the meaning and spirit of the first principle on which that doctrine is based; namely, that the legislative, executive and judicial functions should be exercised by different governmental agencies.

Now I argued above that the separation of powers doctrine makes two distinguishable claims about the nature and internal structure of
free government. The first claim is that if the state is to be free, then the legislative, executive, and judicial powers must be placed in different hands; the second is that if the desired separation of powers is to be maintained and preserved in practice, then each of the three branches of government must be given the constitutional means and power necessary for resisting encroachments by the other two. Plato's constitution cannot be said to satisfy this second requirement for two reasons. First he divides the government into two branches rather than three; and second, if the ruling element in Plato's state has obvious ways of checking the powers of the auxiliary element, there is simply no sense in which the auxiliary element - the police power - is able to check and limit the powers of the ruling branch - the teaching power. So Plato's constitution obviously does not satisfy Montesquieu's and Madison's second requirement for free government; I shall argue however that Plato devises an alternative means of achieving the same end - which is to prevent one part of the government from encroaching on the powers that are reserved for the other(s). I will also at least suggest that Plato's constitutional alternative may be even better designed for guarding against the various forms of governmental tyranny.

The relevant difference between Plato's and Madison's constitutional theories then is that Plato would not have his executive and judicial institutions serve as a check upon the powers of the legislative branch. The Guardians and the Council are undoubtedly in a position to check the powers of the auxiliary branch; however it must be admitted that the state's executive and judicial officials are in no position to check the regulatory or teaching powers exercised by the Guardians and the Nocturnal Councillors. And certainly this would be precisely the objection that Montesquieu, Locke, and Madison would raise against Plato's constitution.
but if Plato has not provided for executive and judicial checks on the state's legislative power, nevertheless his constitution does not leave this power unchecked. Indeed we saw in the last Chapter how the Guardians and the Council were intended to - and probably would - serve as an effective check upon each other's legislative powers. However in this Chapter we have noticed that as well as their legislative powers the Guardians and Councillors also enjoy what Locke called the power of executive prerogative, or what I have called executive powers of a regulatory nature. Now I think that the spirit or idea behind Plato's constitution leaves no doubt that each of these institutions would also serve as a check upon the other's executive powers. We have already seen how this might be accomplished with respect to the legislative power; there would be no special difficulty in establishing governmental procedures that would ensure that the same degree of "moderation" was observed with respect to executive powers. In fact the overlap in membership between the Guardians and the Council would be particularly useful for the purpose of checking, "mixing", or "moderating" executive powers. Because each institution has ten of its members sitting in the other assembly, each will be fully cognizant of the executive decisions, policies and regulations made by the other institution. Plato does not explicitly say that both the Guardians and the Council are authorized to rescind any executive decrees issued by the other institution; nor does he explicitly say that either assembly may effectively veto any legislative proposals made by its opposite number. But, once again, the spirit of Plato's constitution requires just these methods of checking and balancing governmental powers. The law will have authority over the rulers only in
the event that the state's constitutional law guards against the creation of any "great and unmixed powers"; only in the event that it provides for checks on executive as well as on legislative powers.

So Plato does not attempt to limit the powers of government, or to secure the freedom of the governed, by giving to each of the legislative, executive and judicial departments a constitutional control over the other two. Nevertheless the state's constitution does limit governmental power; there will be effective controls set upon every agency of government, upon every governmental power. In lieu of a system of inter-departmental checks and balances, Plato has distributed governmental power along strictly functional lines; instead of distributing the state's sovereign power among legislative, executive, and judicial institutions, such that each department might be in a position to check the powers of the other two, Plato has denied the executive and judicial departments any important share of the state's regulatory power. Instead he has concentrated this power within a single branch of the government, within which he as installed a system of checks and balances; within which he has provided for a further distribution of governmental powers. Now it is very important to notice that within this regulatory or ruling branch of government - within the teaching power - Plato has once again distributed power along functional lines. In other words, Plato has distributed the teaching power between the Guardians and the Councillors because these two institutions are designed to serve different governmental functions. If the Guardians are supposed to "set in motion the great enterprises of state", if they are supposed to provide the energy and initiative necessary to the management of state affairs, the Council,
on the other hand, is supposed to ensure that the affairs of state are managed according to the meaning and purposes of the state's constitution. To oversimplify the point somewhat, we might say that the Guardians are in fact the state's managers and rulers, whereas the Nocturnal Council — as the guardian of the constitution — serves primarily a checking function.

Now I have claimed that Plato's constitution distributes governmental power among legislative, executive, and judicial institutions, and again between the Guardians and the Council, on purely functional grounds. I have also argued that the Nocturnal Council serves as a check on both the executive and legislative powers of the Guardians; if this is true then in the Nocturnal Council we have an institution which provides exactly the same kind of checks, upon exactly the same governmental powers, as does the judicial branch of government under Madison's constitutional system. So in this respect Plato's constitution is remarkably similar to the American constitution. In fact with respect to the presence of checks and balances upon governmental powers, the only important difference between Plato's and Madison's constitutions is that Plato does not provide for an executive check upon legislative powers. I have above tried to show that Plato systematically distributes governmental power on strictly functional grounds, in order that I might now be able to show why he has not divided the state's regulatory or teaching power between legislative and executive institutions; in other words, why he has not divided the state's sovereign powers between two institutions similar in nature to a parliament and a president in counsel with his cabinet ministers. The reason I think is simply that Plato does not see a functional distinction between the powers that are exercised by what
we recognize as the legislative and executive branches; he does not see
a functional distinction between the powers of a contemporary parliament
and the powers of a contemporary head of state in counsel with his cabinet.

The traditional distinction between the legislative and executive
departments was probably first formulated by Locke, who basically cites
two reasons for separating legislative and executive powers. First "the
law making power is not always in being, and is usually too numerous, and
so too slow" to successfully manage and direct every aspect of the community's affairs (this is especially true with respect to national security
and economic matters); and second, "it is impossible to see, and so by
laws to provide for, all accidents and necessities that concern the
public". But Locke has certainly not based his legislative-executive
distinction, (or more accurately, his 'powers of parliament-powers of the
president' distinction), upon any functional differences between these
two governmental institutions. He says first that the legislature is
"usually too numerous" to manage every aspect of the state's business;
but this difference between the legislative and executive branches is
certainly not a functional difference, and of course the problem that
Locke brings up might easily be solved in the obvious way - by creating
a small and continuous legislature. Secondly Locke says that the legis­
lature cannot possibly anticipate "all (of the) accidents and necessities
that may concern the public"; but in saying this, Locke quite rightly
points out that the legislature must foresee and "by laws provide for",
many such "accidents and necessities". He points out, in other words,

\[86\] For the whole passage from which these quotes are selected, see
\textit{supra}. p. 172.
that the function of the chief executive magistrate is not different from the legislative function, except perhaps, that the executive magistrate must provide for public "accidents and necessities" through flexible and often transitory regulations, as opposed to the more rigid and enduring forms of legislation. But this is to point to a difference between how the executive magistrate and the legislature provide for the community's needs; it is not to point to a difference between what the legislative and executive departments must do; it is not to draw any functional distinction between the two branches of government. In so far as the executive branch is responsible for executing, enforcing, and implementing the state's laws or rules, it serves a different function than does the legislative branch, which must make the rules. But to the extent that the executive branch is itself empowered to make the rules, it serves the same function as does the legislative branch, though sometimes it will serve this function in ways that are different from the legislature's.

So Plato gives all the state's regulatory or rule-making power to the Guardians and the Council - to the legislative branch - because he does not see any functional distinction between the writing of legislation and the writing of more flexible and discretionary regulations or directives. He says that the purpose of legislation is to 'instruct the citizen in the proper course of action'; but the executive regulations necessary for conducting the economy, providing for national security, and maintaining internal peace and order, serve exactly the same purpose. Whether the policies and rules of government are embodied in legislation, or whether they are issued in the form of executive ordinance, their purpose or function is one and the same - they instruct us in the "good, just and
Now I have said that Plato does not divide the state's sovereign power between two distinct legislative and executive institutions because he does not see any functional difference between the powers that are now exercised by these institutions. In fact, had Plato lived after Locke and Madison, I think it is very probable that he would have strongly disapproved of their method of dividing governmental powers between the legislative and executive departments. I think Plato would have disapproved on the grounds that such a division is likely to produce different factions and interests within the government itself. To distribute the state's sovereign powers between different institutions and officials, such that each has those powers which are commensurate with the function he/it is designed to serve, is most certainly necessary if the state is to enjoy any measure of political liberty. The alternative is to place all or nearly all governmental powers in the hands of the same officials; or, to put the point another way, the alternative is to give government arbitrary power over the citizen. But to divide the same governmental function between different institutions - to distribute governmental power on non-functional grounds - is to invite rivalry and factionalism into the councils of government. I think, in fact, that Madison comes very close to admitting as much in *The Federalist*. In order to prevent one branch of the government from encroaching upon the powers of its sister branches, Madison says that each department must be given the constitutional means of limiting the powers of the other two. But he also acknowledges that "the provisions for defence must...be made commensurate with the dangers of attack". ¹⁷

¹⁷ *Federalist* #51, p. 356.
"in republican government the legislative authority necessarily predominates". Madison also at least suggests that the judiciary is the least to be feared, and is the least "in danger of attack". Thus Madison's main constitutional problem was to find a way of preventing legislative encroachments upon executive powers, and his second most difficult constitutional problem was to prevent executive encroachments upon legislative powers. Thus it is with respect to the division of powers between parliament and the president that it is most important to give "to those who administer each department the necessary constitutional means and personal motives to resist encroachments by the other"; it is in this constitutional area that it is most important to ensure that "the interests of the man" are "connected to the rights of the place"; it is here that it is most important to supply "by opposite and rival interests the defect of better motives"; it is here that "the private interests of every individual" must act as an effective "sentinel over the public rights".

Now I think that there is a certain danger inherent in Madison's proposals; I think the danger is that governmental officials will make the preservation (and if possible the extension) of their respective powers the first and principle object of their governmental programmes and initiatives. If the "interests of the man" are "connected" to interests of the office, then what is to prevent the man from putting the interests of his office ahead of the interests of the state as a whole? And what is even worse, what is to prevent the official from masking

88 Ibid.
89 Ibid., #48, p. 344.
90 Ibid., #51, p. 356.
his personal political interests in the rhetoric of high constitutional principles? Madison's programme is to structure the government such that it contains "rival and opposite interests", each of which is to act as a check upon the selfish nature of the others. Madison is, in fact, very much the pluralist; he believes that opposite, but equally powerful, selfish interests will check or cancel one another. But will a government of rival, selfish interests secure the predominance of the public or common interest? Or will it only serve to impede the achievement of public as well as private interests? May not the executive interest - the President - for example, veto a piece of legislation which, though it serves a recognizable public good, is nevertheless, sincerely or insincerely, said to be a legislative encroachment on executive jurisdictions? And may not the legislature, through its control of the public purse, refuse to finance some beneficial executive initiative, just because that initiative is seen to be an encroachment upon legislative powers?

Now I have posed here what I hope is an interesting series of questions; but I shall not attempt to really argue on behalf of what I think are the most probable answers to these questions. Instead I shall content myself with the observation that if Madison's government of "opposite and rival (and "private") interests" is apt to encourage factionalism and unnecessary division within the government, then the problem results directly from Madison's non-functional distribution of governmental power. I would also suggest that if the 'rival interest' form of government is not apt to encourage governmental officials to put the public interest ahead of their "connected" private and official interests, then it is not apt to be an adequate guarantee of political liberty, because when the state's laws and policies are formulated with an eye on the con-
flicting interests of the governors, then the citizen has become a slave to self-seeking masters.

I do not want to exaggerate the extent to which the division of powers between legislative and executive institutions poses a threat to the public good and to the liberty of the governed; the American constitution has now endured through two centuries, and the United States remains an exemplar of free government. Yet I think that Plato's constitutional system might suggest some ways in which the American constitution might be improved; and a critical comparison between the American constitution, and the British constitution (under which the executive magistrates are also members of parliament) might help in settling the disagreement between Plato—who would merge the powers of parliament with the powers of the executive magistrate—and Madison—who would separate the two powers, giving to each a check over the other. Does the division of powers between the President and Congress help to prevent the legislative and executive departments from encroaching on each other's powers? Or does it actually serve to encourage such encroachments by blurring the functional distinction between the two departments; by dividing the one governmental power between two governmental agencies along no very clear or definite lines? Does this division of governmental power help to secure the liberty of the governed? Or does it only serve to encourage factionalism, and to divide the government when it might otherwise act in concert for the achievement of positive public goods?

We saw in Chapter Four that Plato would give his state a mixed form of constitution. We saw that Plato was concerned about giving his government too much power; that he was also concerned about giving his citizens too much freedom; and that he would therefore write a constitution which
would combine the best elements of democracy with the best elements of monarchy. In this Chapter I have tried to show in specific terms how Plato's constitution does limit the powers of government, and how it thereby guarantees some measure of freedom for the governed. To this end I have argued that Plato does not give arbitrary powers to any governmental institutions or officials; that he has separated the power to make the laws, from the power to execute and enforce the laws, and that he has separated both of these powers from the power to settle disputes according to the laws. I have also argued that Plato's constitution imposes a system of checks and balances which covers every governmental power. In the Nocturnal Council we find an institution which serves as the guardian of the state's constitution, and which therefore provides precisely the same check upon executive and legislative powers as is provided in the American constitutional system by the judicial branch of government. Plato does not provide for an executive check on legislative power, but I have suggested that in failing to provide for this check, Plato may have done more to guarantee, than to threaten, the liberty of the governed. In either case however, Plato's constitution cannot "justly be pronounced the very definition of tyranny"; Plato has not neglected the freedom of the governed in the interest of placing all governmental power in the hands of a few experts. Even if the division of power between legislative and executive institutions is thought to be an effective and necessary check against governmental self-seeking, in the Nocturnal Council we find an institution which is instructed to review every piece of legislation, and every executive order that is issued by the government. Thus the Nocturnal Council is
given an even greater checking power than is the judicial branch of
government under Madison's constitutional system. Thus whatever is to
be said about the absence of an executive check on the legislative power
under Plato's system, his constitution has not ignored the liberty of the
governed. Plato's distribution of power between legislative, executive,
and judicial institutions, and his distribution of power within the
legislative or teaching branch of government, are both designed as
safeguards of political liberty. And I think that history may have shown
us that it is precisely these checks on governmental power that really
are effective in securing freedom for the governed.
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