Rousseau and Plato on the Legislator and the Limits of Law

by

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A thesis submitted in conformity with the requirements for the degree of Doctor of Philosophy
Graduate Department of Political Science
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Abstract

Both Jean-Jacques Rousseau and Plato offer doctrines of the great legislator, that highly virtuous figure who designs foundational laws for a political community, in order to shed light on the problem of legislation. This problem is that positive law is incapable of achieving the ends in political life that are expected of it, even though it is understood to be the chief tool at the disposal of the lawgiver. Close consideration of Rousseau’s and Plato’s political texts reveals that both philosophers are in agreement about the limited function of positive law, insofar as its exclusive purpose is to forestall the ills of human life. But they also agree that the effectiveness of legislation requires something more: the condition of effective laws is a comprehensive system of civic education, directed primarily at the passions, through which individual human beings are turned into good citizens. Taking into account the extreme difficulty of establishing such educational institutions, both Rousseau and Plato put forward doctrines of the legislator to indicate what sort of figure could possibly accomplish this task with success. The study finds that the two philosophers’ conceptions of the legislator are by and large similar, and finally, that they both express pessimism on the capacity of laws to promote the good life.
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Note on Citations and Translations

In this study, ancient sources are cited according to the conventional book and chapter divisions available in any edition of these texts. So, e.g., Plato, *Laws*, 702c8-e2; Aristotle, *The Politics*, 1253a29-33; Herodotus, I.55; Cicero, *De Legibus*, I.14; etc.

For texts in Latin or ancient Greek, all editions used are listed in the Bibliography. The source of direct translations from these texts is indicated in the footnote, except for that of Plato’s *Laws*. For direct quotations from the *Laws*, I have used the following:


Except for the writings of Montesquieu and Rousseau, texts from the modern period are cited, again, by conventional book, chapter, section, or page number. So, e.g., Niccolò Machiavelli, *The Prince*, Ch. 6; Thomas Hobbes, *Leviathan*, Ch. 19, sec. 14; Benedict Spinoza, *Political Treatise*, Chs. 2-3; etc. If texts not originally in English have been quoted directly, the translation used is specified in the footnote.

Finally, for texts by Montesquieu and Rousseau, I have included references to editions of their work in English translation, as well as to the standard French editions of their writings. These latter are the following, which are listed also in the Bibliography:


Each citation for Montesquieu and Rousseau begins with a shortened version of the book title, then follows with the page number of the English edition, and finally ends by citing, in parentheses, the volume and page number where the passage may be found in the respective Œuvres complètes. So, e.g., Rousseau, Social Contract, p. 69 (III: 383); Rousseau, Second Discourse: Fragments, p. 96 (Meier: 388); and Montesquieu, Persian Letters, pp. 229-230 (I: 322-324).

The following are the English translations to which the shortened book titles refer:

**Montesquieu**

*Persian Letters*


*Spirit of the Laws*


**Rousseau**

*Corsica*


*Corsica: Fragments*

Emile


Geneva Manuscript


Languages


Letter to d’Alembert


Lisbon


Mountain

Poland


Political Economy


Political Fragments


Second Discourse


Second Discourse: Fragments

Social Contract

Chapter 1

Introduction

The following study is an inquiry into the problem of legislation in the political texts of Jean-Jacques Rousseau and Plato. What is the problem of legislation? Stated generally, positive law is incapable of achieving the ends in political life that are expected of it, even though it is understood to be the chief tool at the disposal of the lawgiver. To clarify, what is meant by “positive law” in this study is a system of statutes, or as Black’s Law Dictionary has it, a “system of law promulgated and implemented within a particular political community by political superiors, as distinct from moral law or law existing in an ideal community or in some nonpolitical community.”¹ He who would promulgate and implement positive law, however, necessarily encounters a dilemma, one that may be observed in boldest relief in the case of foundational civil legislation (though it is by no means exclusive to this case). The legislator, in all times and places, makes laws for a particular people, comprised of individuals existing not necessarily as he would like them to be, but rather as they are, possessed of certain social characteristics. In the act of giving laws, moreover, he tends to be confronted by one of two different social conditions. Either the people have a long history of living together under common customs and traditions and will therefore be resistant to new laws, or they are too diffuse to begin with, meaning that they lack the fellow feeling required for them to live and

breathe together as one unified body politic. But positive law is incapable of transcending this problem of the people’s social character, which is what would have to be accomplished for effective legislation. In short, owing to the character of existing social conditions, there are precise limits to the good that statutes can achieve in the political world.

As was suggested above, the political writings of Rousseau and Plato contain the fruits of deep meditation on the problem of legislation. What is more, the two philosophers approach this subject in a similar way. Both Rousseau and Plato put forth doctrines of the legislator—that great character who designs foundational laws for a political community—as a window through which their readers can view the problem of legislation. Indeed, it is the contention of this study that the figure of the legislator is portrayed and analyzed by both philosophers chiefly to shed light on this problem, rather than, say, to specify a blueprint for political reform. The lawgiver of exceptional virtue, as we shall see, is introduced as the figure that would be needed to address the difficulties associated with legislation: he would be the only one capable of cutting the Gordian knot that is the dilemma of the people’s social condition. In other words, both Rousseau and Plato hold that the effort to set up laws, absent the right kind of legislator at the helm, would in all likelihood fail. Accordingly, the principal focus of this study is the legislator as a central feature of the political thought of Rousseau and Plato. It strives to clarify precisely how each philosopher conceives of this figure and to compare their respective conceptions, so as to come to a deeper understanding of their views on the problem of legislation.

To be sure, both philosophers present their clearest and most direct articulations of this problem while discussing the great lawgiver. In the Social Contract, II.7, the chapter devoted to introducing this figure, Rousseau hones in on one of the difficulties of establishing a political community. The legislator perceives the advantage of having each individual submit to common laws—indeed, the fact that he can represents one of the character traits distinguishing the true
lawgiver, as we shall see in Chapter Three. But the individuals themselves who are to submit to common laws do not have such clear vision. Each individual, “appreciating no other aspect of government than the one that relates to his private interest,” finds it difficult to see how continually depriving himself of his own personal advantage could possibly be good for him. Hence, “[i]n order for an emerging people to appreciate (goûter) the healthy maxims of politics, and follow the fundamental rules of statecraft,” Rousseau explains, “the effect would have to become the cause; the social spirit (l’esprit social), which should be the result of the institution, would have to preside over the foundation of the institution itself; and men would have to be prior to laws what they ought to become by means of laws.”

Attempting to give the people a distinctive social character by means of legislation, the lawgiver sees that legislation could be effective only with respect to people already in possession of that social character.

For Rousseau, then, the existing social condition of a particular people stands as a limit to the effectiveness of laws that might be given to them. Rousseau conveys this teaching also in his Letter to d’Alembert on the theater, in the course of explaining why strict laws would be insufficient to restrain the vices engendered by actors in society.

…the force of the laws has its measure, and the force of the vices that they repress has one too. It is only after one has compared these two quantities and found that the former surpasses the latter that the execution of the laws can be depended upon. The knowledge of these relations constitutes the true legislator’s science. For if it had to do only with publishing edict after edict, regulation after regulation, to remedy abuses as they arise, doubtless many fine things would be said, but which, for the most part, would remain without effect and would serve as indications of what would need to be done rather than as means toward executing it. On the whole, the institution of laws is not such a marvelous thing that any man with sense and equity could not easily find those which, well observed, would be the most beneficial for society. Where is the least student of law who cannot erect a moral code as pure as that of Plato’s laws? But this is not the only issue. The problem is to adapt this code to the people for which it is made and to the things about which it decrees to such an extent that its execution follows from the very conjunction of these relations; it is to impose on the people, after the fashion of Solon, less the best laws in themselves than the best of which it admits in a given situation.

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3 Rousseau, Letter to d’Alembert, p. 66 (V: 60-1), emphasis supplied.
Rousseau’s primary intention in this rich passage is to demonstrate that the notion of laws good in themselves is chimerical. The legislator’s concern, therefore, should be to lay down those that fit the people receiving them, not simply to give out what he deems to be good laws simply. Rousseau implies that the better the social conditions of a given people, the more effective its laws can be. Certainly, he does not claim that the social condition is the only factor that a good lawgiver must take into account. For instance, as Rousseau has learned through deep meditation on his predecessor Montesquieu’s thought, the legislator must be aware of the geographical situation of a country, including the climate and how it affects the type of laws available to the people. But the character of the people is the most important consideration. To know it comprehensively is to possess a large part of “the true legislator’s science.”

If, as Rousseau remarks, the least student of law could construct a legal code as “pure” as Plato’s even while ignorant of the relationship between laws and social conditions, then one must take Rousseau to mean (at least) that Plato, being among the greatest students of law, is aware of this relationship. In fact, the Laws shows Plato to be keenly sensitive to social conditions and the problem they pose for effective legislation. In Book IV of this dialogue, Plato’s primary interlocutor, the stranger from Athens, in conversation with the Cretan Clinias and the Spartan Megillus, expresses this dilemma most distinctly. After the Athenian has learned of Clinias’ duty to help establish laws for the new Cretan colony of Magnesia, he agrees to Clinias’ request

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to help assist in building a city in speech with the two Dorians, so that the Cretan can make use of his recommendations.\(^6\) One of the Athenian’s first considerations concerns the people to whom they are giving laws. Depending on where the future citizens of Magnesia have come from and the sort of society in which they have been living, it will be easier or harder “to settle and lay down laws.” For those who have a long history of living under the same laws and habits, however good or wicked,

\[\text{[t]he tribal unity, the similarity of language and of laws, since they imply a sharing of the sacred things and all such matters, create a certain friendship (philian); but then again, they do not easily accept laws and regimes different from their own. Sometimes, even when they have suffered from civil strife as a result of the wickedness of their laws they still prefer, out of habit (dia synētheian), to live with the same habitual customs (ēthesin) that corrupted them before. So they give trouble (chalepon) to the founder and lawgiver and become disobedient. In contrast, the tribe that has been collected from all over would probably be more willing to obey certain new laws; but for it to breathe together and grow to be constantly united—like a team of horses, as they say—would require much time and trouble (panchalepon).}\]^7

The existing social character of a group of individuals is a problem, then, from the standpoint of the legislator, and this suggests that there are limits to what positive law can achieve. The text implies that the good lawgiver must tailor his task according to the circumstances of the people who are to become citizens, as well as, it seems, adapt his expectations of what can be achieved based on these same circumstances. For these reasons, the Athenian asserts, “lawgiving and the founding of cities is the most perfect of all tests of manly virtue (aretēn andrōn).”\(^8\)

It is, to repeat, the great legislator who would be capable of meeting this “most perfect of all tests.” So, where must we look in order to find Rousseau’s and Plato’s reflections on this figure? Precisely where Rousseau, for his own part, treats of the legislator is relatively easy to

\(^6\) Plato, Laws, 702c8-e2.

\(^7\) Plato, Laws, 708c2-d5. Cf. Republic, 540e5-541a7, in which Socrates recommends the banishment of everyone older than ten from his city in speech, so that the guardians can rear the young children “in their own manners and laws.” In this study, all direct quotations from the Republic come from the translation by Allan Bloom: The Republic of Plato, translated with notes and an interpretive essay, 2nd ed. (New York: Basic Books, 1968).

\(^8\) Plato, Laws, 7086-7.
demonstrate. Designated plainly in the French as législateur, this figure inhabits all of
Rousseau’s political writings in one way or another, even if he goes unmentioned in some of
them. Be this as it may, some sources are more relevant than others. The first citation above
comes from the chapter “On the Legislator” from Book II of the Social Contract, and it is
unmistakably the best place to begin looking for Rousseau’s thoughts on this figure. The five
chapters that round out Book II contain other germane passages as well. Beyond the Social
Contract, Rousseau includes in his Considerations on the Government of Poland the chapter
“Spirit of Ancient Institutions,” in which he analyzes the deeds of three great founders of ancient
commonwealths, namely Moses, Lycurgus, and Numa. Finally, the Discourse on Political
Economy, while not discussing the legislator explicitly, contains a multitude of reflections on
politics that are directly related to Rousseau’s teaching on the legislative art. As Clifford Orwin
has noted in interpreting the argument of the Political Economy, “[p]recisely if we take men as
they are, there is no turning back from the conclusion that only in the hands of a Legislator will
they ever become what they might be. This argument, which Rousseau will make explicit in the
Social Contract, is already implicit in the Political Economy.”9 Accordingly, the Social
Contract, the Poland, and the Political Economy will be the texts most often considered in the
present study.

As regards Plato, we have already looked at a lengthy passage from the Laws, and this
dialogue is indeed the one in which Plato puts forth his conception of the good legislator. That
this is the case, however, and that the Laws is the crucial Platonic dialogue on which to
concentrate, is not readily evident. Is it defensible to proceed, as this study does, by interpreting

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politique,” in Educating the Prince: Essays in Honor of Harvey Mansfield, Edited by Mark Blitz and William
the *Laws* exclusively? To answer this question, what is needed is a concise survey of Plato’s political texts.

Nowhere in Plato do we encounter a text entitled “On the Legislator,” as we do in Rousseau’s *Social Contract*. He has, it is true, written a handful of dialogues named after types of individuals, and of these one might surmise that the *Statesman* speaks to the subject of the lawgiver. This dialogue, however, characterizes primarily the *politikos*, the political man, literally the one who belongs to the *polis*, i.e. the city. Is the statesman identical to the legislator? Plato routinely refers to the latter as *nomothetēs*, the one who gives the law, not *politikos*, and the difference in name here suggests the possibility of a difference in identity. A simple reading of the *Statesman* confirms the difference, as this dialogue shows that the *politikos* represents the figure that rules, in the words of M.J. Silverthorne, “by the sole light of his knowledge and without the restraint of law, whose generality and inflexibility would hamper the action of the statesman’s knowledge.”

Rule on the basis of knowledge alone and not by means of legal prescriptions is different from what the legislator does, namely establishing laws and institutions that operate when he cannot apply his political wisdom to particular situations.

In approaching other Platonic texts relevant to the study of politics, however, we find that the search for a clear conception of the legislator remains frustrated. Certainly the *Republic* contains a wealth of political insight. But the major figure that comes to the fore in these pages is the philosopher, i.e. *philosophos*, and specifically the philosopher who is to rule as king.

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11 While “philosopher-king” is the common way to refer to this figure, this term is at home in the English language and not in the ancient Greek. Socrates never speaks in ways that could be rendered by the term “philosopher-king” in the *Republic*. Instead, he uses phrases like “[u]nless philosophers rule as kings (*Ean mē...ē philosophoi basileusōsin: 473c11*)” and others to refer to this character.
Socrates mentions legislators in the *Republic* only in passing, to indicate primarily that he and his interlocutors themselves are lawgivers for their city in speech. In short, the purpose of the *Republic* appears to be to give a detailed consideration of the *philosophos* and a defense of the philosophic way of life, not to speculate on the character of the *nomothetēs*. Finally, one might expect an examination of the lawgiver from the *Minos*, the dialogue named after the legendary founder of Crete and the only Platonic text named after a legislator. But the *Minos* presents a discussion of the nature of law as such as well as Socrates’ praise of the Cretan founder, not a sustained reflection on the lawgiver. As Leo Strauss has noted, “the whole conversation [in the *Minos*] is based on ignorance of the function of the good legislator”.

The *Laws* is indeed the crucial text in which Plato attempts to dissipate this “ignorance of the function of the good legislator” and replace it with knowledge. Throughout the course of the conversation among the three old men on Crete, and particularly in Books I-IV, the Athenian casts light on the figure and function of the lawgiver, speculating on his character, how he understands his activity and his goals, the means by which he accomplishes his political task, in addition to other related matters. That the *Laws* is greatly concerned with the lawgiver is also signaled by its subtitle, “Acts of Lawgiving (*Nomothesiai*),” for the act of legislation necessarily

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12 See, e.g., Plato, *Republic*, 427b1, 458c6, 497d1-2, and 530c5.


14 For a similar view of the *Laws*, arguing that Plato’s intention in this dialogue is specifically to treat lawgiving and the lawgiver, see Elizabeth L’Arrivee, “The Logical Structure of Plato’s *Laws*,” *History of Political Thought*, 29.1 (Spring, 2008), pp. 27-48. L’Arrivee’s study does not, however, offer an account of the precise character of Plato’s legislator.
implies its agent. In short, if the Platonic philosopher (*philosophos*) is at home in the *Republic*, and the statesman (*politikos*) in the dialogue bearing his name, then the home of the *nomothetēs* is indeed the *Laws*. The present study concentrates on this dialogue, and one of its chief purposes is to give a clear and detailed account of Plato’s conception of the good *nomothetēs*, for such an account is generally lacking in the secondary scholarship.16

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In attempting to introduce the problem at issue in this study, the preceding remarks have begged a question of great significance. Why choose to focus on Rousseau and Plato alone? Are not other thinkers from the history of political thought useful for clarifying the problem of legislation? Other political philosophers may be relevant, to be sure. But Rousseau’s and Plato’s texts bring the problem of legislation into particularly sharp focus, and the apparent similarity between their teachings makes them ripe for comparison. The fact that both philosophers offer a comprehensive set of reflections on the legislator chiefly as a way of exploring this problem is one compelling reason to study them side by side. To consider a counter example, Aristotle is sensitive to the need for a good lawgiver as well.17 But his explicit treatment of this figure is less systematic than that of Rousseau or Plato. While Aristotle’s *Politics* seeks to establish the general science of political things, which knowledge a good lawgiver surely must possess, Rousseau and Plato are more direct in their respective analyses. Both raise and answer the following questions: who is the legislator, what is his motivation for

15 Diogenes Laertius has maintained that the second titles to the dialogues were not Platonic in origin but rather additions made by a later editor. See *Lives of Eminent Philosophers*, III.56-62. For an argument challenging this view, see R.G. Hoerber, “Thrasylus’ Platonic Canon and the Double Titles,” *Phronesis*, 2.1 (1957), pp. 10-20.


giving laws, what exactly is his task, and how does he complete it. So the texts of Rousseau and Plato offer richer ground for conducting a study of the legislator than do those of Aristotle.

Niccolò Machiavelli is the one political philosopher who gives, arguably, as much consideration to the figure of the great founder as do Rousseau and Plato. In Chapter 6 of *The Prince*, he introduces the subject of the armed prophet who, through his virtù, takes scattered individuals and forms them into a unified people. The laws given by this great founder, called broadly “new modes and orders,” are legislated with the help of two instruments, i.e. fraud and force. Machiavelli maintains that a founder must deceive the people into believing that his laws are sanctioned by the divine. But since individuals do not remain credulous for long, he must have recourse to impressive violence to persuade them, for “one can make [people] believe by force.”

In other words, the fear inspired by overwhelming violence is a sufficient basis for getting people to conceive of themselves as one people, living under a common set of laws. It is sufficient for getting them to respect new modes and orders in a reliable fashion.

This last claim, however, is the primary reason for choosing to exclude Machiavelli from the present study. In a word, he is more optimistic than either Rousseau or Plato that the use of coercion can mold disparate individuals into a unified whole. Accordingly, Machiavelli is less concerned that a great founder be sensitive to the social condition of the people to whom he is giving laws, save for choosing to work with oppressed individuals in need of new laws in the

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19 Still, this is far from arguing that Rousseau did not have Machiavelli’s armed prophet in mind when devising his conception of the legislator. Indeed, Chapter Three focuses on one way in which Rousseau has been influenced by Machiavelli’s conception of this figure. For reflections on the relation between Machiavelli’s and Rousseau’s notions of the legislator, see generally Roger D. Masters, *The Political Philosophy of Rousseau* (Princeton: Princeton University Press, 1968), pp. 364-368. Cf. Maurizio Viroli, *La théorie de la société bien ordonnée chez Jean-Jacques Rousseau* (Berlin: Walter de Gruyter, 1988), pp. 156-160.
first place. A founder’s great virtù should be the sufficient condition for the success of whatever laws he wishes to give. It appears that Machiavelli’s hopes for what a great founder can achieve through law are in principle unlimited, provided that the right kind of founder is legislating. Hence for him, legislation does not show itself to be a permanent problem. But, as we have seen, both Rousseau and Plato argue that the legislator’s task is necessarily limited by the character of the people, meaning that their texts are better positioned to teach something about the problem of legislation.

For their part the liberal thinkers of the early modern period, in particular Thomas Hobbes, Benedict Spinoza, and John Locke, omit from their writings discussion of that extremely virtuous individual who establishes laws for a people. Instead, they stress that political society is founded by means of a social contract, to which people agree among themselves in order to quit the ills of life suffered outside of civil government. Now Rousseau too claims that political legitimacy is conferred by contract. But he insists that a great legislator must design the foundational laws and institutions of the community: his authority is necessary for a good political founding. What is remarkable about the omission of the great founder from the thought of Hobbes, Spinoza, and Locke is that it relies on their having been deeply influenced by Machiavelli, who himself defends the need for a founder. The liberal philosophers seem to avoid discussing the legislator because they have absorbed Machiavelli’s teaching that

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20 Cf. Machiavelli, The Prince, Ch. 25, for the principle that fortune is conquerable. It would be incorrect to argue that legislation is never a problem in the thought of Machiavelli, for in practice, the fact that men are not impetuous enough means that current lawgivers would be limited by circumstances. The general conservatism of men seems to be a problem. But Machiavelli implies that this problem can be solved by making men more daring. Rousseau and Plato, on the other hand, appear to view the problem of legislation as insuperable.

21 See Thomas Hobbes, Leviathan, Ch. 17; Benedict Spinoza, Theologico-Political Treatise, Ch. 16, and Political Treatise, Chs. 2-3; and John Locke, Second Treatise of Government, Ch. 8.

22 Rousseau, Social Contract, pp. 52-4 and p. 68 (III: 360-2 and 381).
the political problem is susceptible of a solution. For them, the solution is relatively easy, so long as people come to understand the principles of liberal political science as enumerated in their texts. Provided, first, that the correct institutions of government can be formed and, second, that individuals can be shown that disobedience to the civil authority’s laws will result in disastrous, indeed terrifying, consequences for themselves, one can achieve harmony between law and the people such that the problems for which government has been instituted can be eliminated. Hence, Hobbes speaks of the right of succession as being able to guarantee an “artificial eternity of life” to the body politic, and Locke expounds so thoroughly his constitutionalism, explaining in great detail precisely how the liberal institutions of his commonwealth are to look and to operate.\footnote{Hobbes, \textit{Leviathan}, Ch. 19, sec. 14; and Locke, \textit{Second Treatise of Government}, esp. Chs. 9-13.} In short, for the early liberal political philosophers, there is no such thing as a permanent problem of legislation.

It is with Montesquieu, finally, that we arrive at an understanding of legislation appearing conspicuously similar to Rousseau’s. As was asserted above, Rousseau has learned from Montesquieu that not only social but also geographical conditions affect the type of laws available to a people.\footnote{The most thorough, and most convincing, investigation of Montesquieu’s influence on Rousseau is Rahe, \textit{Soft Despotism, Democracy’s Drift}, pp. 63-140. For information on Rousseau’s own first encounters with Montesquieu’s thought, see Maurice Cranston, \textit{Jean-Jacques: The Early Life and Work of Jean-Jacques Rousseau, 1712-1754} (London: Allen Lane, 1983), pp. 213-216; and Alexis François, “Rousseau, Les Dupin, Montesquieu,” \textit{Annales de la société Jean-Jacques Rousseau}, 30 (1943-1945), pp. 47-64.} For instance, he explains in \textit{The Spirit of the Laws} that if “it is true that the character of the spirit and the passions of the heart are extremely different in the various climates, \textit{laws} should be relative to the differences in these passions and to the differences in these characters.”\footnote{Montesquieu, \textit{Spirit of the Laws}, p. 231 (II: 474); emphasis in original. See also \textit{Persian Letters}, pp. 158-159 (I: 252-253); cf. pp. 233-235 (I: 327-329).} This is much the same sentiment as conveyed in Rousseau’s passage from
the *Letter to d’Alembert*, cited above. Montesquieu indicates, moreover, that the “legislator is to follow the spirit of the nation when doing so is not contrary to the principles of the government, for we do nothing better than what we do freely and by following our natural genius.”

Passages such as these suggest that Montesquieu’s position on the legislator is intimately related to Rousseau’s, especially as regards the connection between social conditions and law. Accordingly, the present study will endeavor to consider aspects of Montesquieu’s political thought bearing on Rousseau’s discussion of the legislator and legislation.

However this may be, the present study’s center of gravity is Rousseau and Plato, and so it does not conduct a systematic investigation of Montesquieu, for two related reasons. Despite the fact that Rousseau’s conception of the legislator has been influenced by Montesquieu, the latter does not present as comprehensive a treatment of this character as does Rousseau. Not unlike what we observed with respect to Aristotle’s *Politics*, Montesquieu, with *The Spirit of the Laws*, is more concerned with establishing a thoroughgoing science of the political things, which science the good lawgiver must surely possess. By contrast, in the *Social Contract*, the *Poland*, and the *Political Economy*, Rousseau paints an extraordinarily detailed picture of this figure and his task, more direct in its characterization and also more complete than what can be culled from Montesquieu’s texts. But it is possible to go one step further. Rousseau’s chief emphasis with

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the lawgiver is, like Plato’s, the problem of legislation, a permanent dilemma for political life. But Montesquieu, quite simply, views legislation to be less problematic than does Rousseau. To be sure, he is sensitive to the effect of social conditions on law, and he harbors reservations about the prospects for political reform. In this way, he distinguishes himself from the early modern liberals, as discussed above. Still, he holds out the hope that liberal laws and institutions on the English model would be capable of doing the work of establishing healthy political life in his day. In the words of Paul A. Rahe, “[Montesquieu] does entertain the hope that, in France and in Europe more generally, something like commercial republicanism on the English model will become the norm, and he foresees the possibility that the various peoples of Europe will learn to live alongside one another for the most part in prosperity and peace.” But, as Rahe concludes, “Rousseau is far less sanguine.” In short, then, for a project whose limited goals involve approaching the problem of legislation by examining the lawgiver, Montesquieu’s texts seem to fall outside its immediate purview, whereas Rousseau’s and Plato’s are crucial.

**Rousseau’s Reading of Plato and the Literature on Rousseau’s Platonism**

Even if the foregoing remarks have been successful in justifying this study’s intention to focus on Rousseau and Plato (almost) exclusively, it remains necessary to consider one final reason compelling us to examine these two philosophers on the problem of legislation. In recent years, there has been a rapidly growing body of scholarship in political theory on the relation between the teachings of Rousseau and those of Plato, specifically concerning the extent to

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which Rousseau’s thought exhibits a genuine Platonic influence. This question is significant for several reasons, perhaps the most important being the following. It has been well appreciated that Rousseau is the first thinker expressing deep criticism of the trajectory of modernity and modern life: he is the first to develop, for instance, a systematic position against the wildly successful project of bourgeois liberalism endorsed by Hobbes and Locke. But if Rousseau shows himself to be opposed to the political world ushered in by the architects of modernity, then what is the tenor of his opposition? Could it be that his assessment springs from fundamentally ancient, and specifically Platonic, principles? Answering this question requires a solid grasp of the sources of Rousseau’s political reasoning. The question of Rousseau’s reading of Plato, then, promises to help us understand the spirit of his critique of modernity, and specifically of the liberal order central to it. And while this is doubtless a compelling question for students of the history of political thought, its relevance to political practice should be clear as well. Insofar as the liberal principles of Hobbes and Locke are still generally persuasive to us today, it is necessary to understand as completely as we can the most powerful criticisms of them, so that our adherence to such principles is not unreflective. That Rousseau’s criticism ranks among those most powerful should be evident from a simple reading of his texts.

The recent scholarship on Rousseau’s Platonism, referred to above, reflects a diverse set of judgments on the nature of Rousseau’s reading of his ancient predecessor and his commitment to Platonic principles. One segment of this literature tends to see a deep and lasting Platonic influence on Rousseau. In his article “Rousseau’s Plato,” for instance, M.J. Silverthorne presents a lengthy report on Rousseau’s annotations in the margins of his personal copy of Plato’s corpus,
now residing in the British Museum. Silverthorne asserts that there is a close similarity between Rousseau’s political thought and Plato’s Laws on several points, based on markings Rousseau had made of specific passages of this dialogue. His intention is primarily to match the passages annotated with those from Rousseau’s texts that appear similar, in order to lend evidence to claims that Rousseau’s thought is fundamentally Platonic in character. On Silverthorne’s reading, then, the markings in Rousseau’s copy of Plato do in fact signal a profound influence.

A more systematically developed, and therefore stronger, position on the connection between the two philosophers is carved out by David Lay Williams in his Rousseau’s Platonic Enlightenment. Williams’s text, published in 2007, stands alone as the first book-length study of Plato’s influence on Rousseau in some 70 years, since Charles Hendel’s Jean-Jacques Rousseau: Moralist, published in 1934. Explicitly following the lead of Hendel, Williams contends that there is an unmistakable presence of “Platonism” in Rousseau, and his contention is based primarily on readings of the “Profession of Faith of the Savoyard Vicar” from the Emile, as well as passages concerning the general will from Rousseau’s political texts. While his book defends a complex understanding of Platonism—making reference to Platonic teachings on

metaphysics, ontology, epistemology, politics, and institutions—Williams explains that the term, reduced to its essentials, means “the commitment to transcendent ideas as the ultimate authority for moral and political arguments.” And more than simply arguing that there are perceptible traces of such a commitment in Rousseau, Williams interprets the temper of Rousseau’s thought as being decidedly Platonic. “Rousseau was indeed a Platonist,” he remarks. “His commitment to Platonism animates his entire belief system.” Furthermore, Williams perceives no distinction between Platonism, on the one hand, and those convictions that Plato himself held, on the other, instead taking “Plato at his word when he claims to be endorsing Platonic doctrines.”

Laurence D. Cooper’s *Eros in Plato, Rousseau, and Nietzsche* stands as another recent attempt to assess the grounds for seeing a Platonic influence on Rousseau. It does not, however, make as forceful a claim about this influence as do Silverthorne and Williams. Instead of speculating on the entire system of Rousseau’s thought, Cooper hones in on one particular subject, i.e. erotic longing, and explores it in the texts of Rousseau and Plato (as well as Nietzsche), in order to trace the continuities and discontinuities one finds between the philosophers on this subject. For instance, in his chapter on the *Emile*, Cooper interprets Book V as Rousseau’s attempt to “follow” Plato’s *Republic* in several respects, the two most important being its concern with “both nonphilosophic and philosophic education” and its presentation of

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three “primary teachings” meant to correspond to Socrates’ three waves of the *Republic*. And while Cooper highlights some of the dissimilarities between Rousseau and Plato, his general argument is that “Rousseau is not quite as far from Plato [as regards his teaching in Book V of the *Emile*] as he at first seems.” Ultimately, Cooper argues that the connection between Rousseau and Plato on erotic longing is somewhat ambiguous. On the one hand, he brings to the fore several ways in which the two philosophers share “common ground,” primarily in that both articulate “a coherent political philosophy based on a monistic depth psychology,” that is, a psychology in which erotic longing is identified as the predominant psychic force. On the other hand, Cooper argues that there are deep dissimilarities between Rousseau and Plato, “the deepest [being] those which come to light precisely within…hitherto unrecognized commonalities.”

The scholar whose work appears to express the deepest skepticism about a genuine correspondence between Rousseau and Plato is Clifford Orwin. In his “Rousseau’s Socratism,” Orwin offers an interpretation of the *Discourse on the Sciences and Arts*, the text in which Rousseau recounts a long portion of Socrates’ speech to the Athenian jury, as it is presented in Plato’s *Apology of Socrates*. Orwin indicates, first, that Rousseau is a writer who “strike[s] a Socratic stance,” and that there are, in fact, instances of common ground between Rousseau and Plato. For one, both philosophers agree that “the distinction between the ‘wise few’…capable of

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thought and the many incapable of it is ineradicable,” which is tantamount to saying that both agree that “decisive political progress” is impossible.\textsuperscript{41} But through a close analysis of Socrates’ speech in the \textit{Discourse}, one that underscores the many innovations Rousseau made to Plato’s text, Orwin shows that Rousseau’s Socrates ventures a position very different from that of Plato’s. Most important, Rousseau’s character “defends popular opinion against all pretense to knowledge superior to it,” which defense issues in a teaching on virtue that is “strictly political.”\textsuperscript{42} In other words, virtue for Rousseau’s Socrates turns out to be “an intense patriotism fueled by a passion for the city and its laws.” For Plato’s Socrates, by contrast, virtue is knowledge, or the life of philosophy.\textsuperscript{43} The purpose of Rousseau’s choice to make this shift, however, is in the service of both the people and philosophy. Orwin shows that Rousseau criticizes Plato for being too successful in making Socrates and his way of life acceptable to the people, which led to the popularization of philosophy, a danger to both the people and philosophy. Through his “sweeping reinterpretation of Socrates,” in Orwin’s view, Rousseau stakes out a position that is fundamentally critical of Plato’s.\textsuperscript{44}


\textsuperscript{44} Orwin, “Rousseau’s Socratism,” p. 175.
None of the inquiries into the relation between Rousseau and Plato discussed here—ranging from those identifying an unmistakable Platonism in Rousseau’s thought, to those skeptical of such a claim—focus in a substantial way on the figure of the great legislator. The present study, then, fills a void in this body of scholarship, and the chapters that follow present the fruits of critical engagement with this literature. Indeed, taking into account the wide-ranging body of literature on these two philosophers, one notices that comparative inquiries into Rousseau’s and Plato’s views on the lawgiver are few and far between. That there is a pressing need for such a contribution to political theory has been suggested by David Cohen, who places both philosophers side by side in the final section of his article, “Law, Autonomy, and Political Community in Plato’s Laws.”

Cohen remarks that there appears to be a deep connection between Rousseau and Plato on the necessity of the legislator to shape citizens, especially with respect to what he terms “the subjective dimension of legitimacy.” But he acknowledges that his own analysis of the connection is limited, being a sort of afterthought to his expansive interpretation of the Laws. “A comparison of Rousseau’s ‘great legislator’ with Plato’s depiction of the ideal nomothete of the Laws,” Cohen remarks, “would repay serious examination.”

There is only one extant source, an article by Barbara Silberdick Feinberg, comparing Rousseau’s conception of the legislator with that found in Plato’s Laws, hence only one conducting the “serious examination” recommended by Cohen. Several useful observations are

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made by Feinberg, to be sure, but there are two ways in which the approach of her article can be shown to be inadequate. First, her comparison of Rousseau’s and Plato’s legislators does not bring to light the problem of legislation that this figure is meant to demonstrate. As has been argued, this is the chief reason why the two philosophers portray the lawgiver in their political writings and it is one of the governing assumptions of the present study. Second, Feinberg elects to examine the texts of Rousseau and Plato, as well as those of Machiavelli, through the lens of categories developed by Carl Joachim Friedrich in *Man and His Government*. According to Friedrich, a lawgiver may be either a “hero-founder,” a “constitution-maker,” or a “codifier.”48 And so, Feinberg proceeds to explain how various figures in the political theory of Rousseau, Plato, and Machiavelli wear these different hats. This procedure, however, tends to obscure the phenomena at issue in the philosophers’ texts in the effort to preserve Friedrich’s categories faithfully, which consequently keeps the examination of Rousseau and Plato somewhat dim.

Feinberg’s article is a broad overview of the role of the great founder for all three philosophers. What is now needed, however, is a deeper comparison of the texts viewed in themselves, not through categories foreign to them.

Other scholars have considered Rousseau’s lawgiver in light of the ancient conception of this same figure, yet they have not, at least not explicitly, considered Plato’s *Laws* as the source of the ancient conception. Roger D. Masters, in *The Political Philosophy of Rousseau*, looks exclusively to Plato’s *Statesman* and uses the Platonic figure of the *politikos* to draw his

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comparison with Rousseau’s *législateur*.\(^{49}\) In Chapter Three, we shall take a closer look at Masters’s choice to focus on the *Statesman*. But for now, it is sufficient to mention that the comparison between Rousseau’s lawgiver and the *nomothetēs* of the *Laws* is the more suitable of the two, for reasons that were established above. Leo Strauss, for his part, includes a relevant comment in his *Natural Right and History* on the difference between Rousseau’s and the ancient understanding of the lawgiver. After describing Rousseau’s own position, he explains that

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\text{[the precise reason why [Rousseau] had to abandon the classical notion of the legislator was that that notion is liable to obscure the sovereignty of the people, i.e., to lead, for all practical purposes, to the substitution of the supremacy of the law for the full sovereignty of the people. The classical notion of the legislator is irreconcilable with Rousseau’s notion of freedom which leads to the demand for periodic appeals from the whole established order to the sovereign will of the people or from the will of past generations to the will of the living generation.]}^{50}
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While the present study does not object to the interpretation conveyed in this passage, as will become apparent in Chapter Three, still it is crucial to note that Strauss does not refer to Plato’s *Laws* in his short comparison, nor does he present an account of Plato’s legislator in his text. Indeed, in the passage where Strauss comes closest to explaining what he takes to be “the classical notion of the legislator,” in an earlier chapter of *Natural Right and History*, he neither explicitly discusses Plato’s *nomothetēs* nor cites the *Laws*.\(^{51}\)

To state its conclusions broadly, the present study finds that Rousseau’s and Plato’s respective conceptions of the legislator are extraordinarily similar, notwithstanding a number of important differences that are discussed in the following chapters. If Rousseau has had to “abandon” Plato’s notion of the lawgiver in devising his own conception of this figure, as Strauss suggests, then it is only after having traveled a remarkable distance hand in hand with his ancient

\(^{49}\) Masters, *The Political Philosophy of Rousseau*, pp. 359-64.


\(^{51}\) Strauss, *Natural Right and History*, pp. 133-134.
Chapter Two begins our examination of the two philosophers’ views on the problem of legislation by clarifying their teachings on the purpose of positive law. In their respective corpora, both thinkers tell stories of the birth and growth of political life, Rousseau in the Second Part of the *Discourse on the Origins and Foundations of Inequality among Men*, or the *Second Discourse*, and Plato in *Laws* III. Because both indicate that the purpose of such storytelling is to explain what the original need for law was, the chapter compares the two stories on this question. Its governing presupposition is that clarifying the reasons why positive law was brought into being helps to explain its basic function, since it was originally brought into being to accomplish those ends. Despite some differences that are discussed, we see that Rousseau’s and Plato’s accounts both show that the purpose of positive law is to extenuate the unfortunate aspects of the human situation, particularly violent conflict among men. The benefits of positive
law are limited to order and stability. In other words, while positive law is a necessary condition for good civil government, both Rousseau and Plato teach that there are limits to the good that it can achieve in the political world.

Having shed light on the crucial premise of the problem of legislation in Chapter Two, it becomes necessary to turn our attention to the figure that would constitute its solution. Chapter Three, then, is the study’s first comprehensive look at the lawgiver in Rousseau and Plato. Because both philosophers devote a great deal of space in their political texts to the législateur and the nomothetēs, respectively, this chapter begins by discussing the basic description of each, considering who this figure is, his character, his function or task, and his motivation. For both, the lawgiver is and must be an exceptionally virtuous figure, and Chapter Three looks closely at the nature of the lawgiver’s wisdom, finding that it is fundamentally directed at changing the practical world. More than this, both Rousseau and Plato argue that the legislator must be a master of persuasion; the people cannot be moved by force and must be persuaded to consent to the orders given in the act of legislation. Chapter Three, then, compares Rousseau’s and Plato’s respective conceptions of persuasion as an instrument of the lawgiver and concludes that they share important commonalities.

Chapter Four is the longest of the study and is devoted to what both Rousseau and Plato take to be the most important aspect of the legislator’s task. If the act of giving positive laws fulfills a fundamentally negative goal, then the legislator must also pursue goals that are themselves positive, i.e. constructive. This endeavor involves instilling good civic habits, practices, and opinions in the souls of the citizens. Investigating, first, why both philosophers indicate that good civic habits, etc., are a needed as support for the laws, the chapter moves to consider more broadly what they are—for Rousseau, mœurs; for Plato’s Athenian, unwritten laws—and how they are given to the citizenry. Both are clear that the legislator bestows
unwritten laws on the citizens, primarily by means of the institutions of civic education, and that habits, etc., must properly be understood as a species of law. Having taken into account the respective teachings of Rousseau and Plato, Chapter Four develops the argument that the true source of Rousseau’s science of *mœurs* is, in fact, Book VII of the *Laws*, and it concludes with an examination of an important set of educational institutions whereby the citizenry are to receive unwritten laws, namely public entertainment broadly understood.

If Chapter Four draws to a close by discussing this important set of institutions, then Chapter Five is devoted to illumining the most important institution the legislator must establish: civil religion. Both philosophers indicate that there can be no reliable support for justice in a political society in which atheistic opinions are widespread, and so both argue that the legislator must use religion in his founding to shore up the citizens’ respect for justice. The chapter looks, first, at Rousseau’s and Plato’s views on the general purpose of civil religion, which is, for both, to assist the legislator in persuading the people to accept and to follow the laws. Civil religion provides necessary reinforcement to the positive laws, and therefore can be said to fulfill a negative function in political life. The core of Chapter Five, however, focuses on a difficult matter with respect to Plato’s views on religion. Whereas Rousseau is patently clear in his political texts, particularly the *Social Contract*, that religion is a positive human phenomenon created by the legislator for political purposes, that this is the case for Plato’s Athenian is not readily evident. In the end, however, this chapter’s reading of the *Laws* suggests that there are compelling reasons to believe that the Athenian’s teaching is in accordance with Rousseau’s on the legislator’s role in giving order to the gods. The last part of Chapter Five compares the dogmas of Rousseau’s and Plato’s civil theologies.

Finally, the findings of this study’s examination of Rousseau and Plato are presented in Chapter Six. This short summary gives a clear account of the significant commonalities and
differences between Rousseau’s and Plato’s notions of the legislator, and it explains how these bear on the problem of legislation, the dilemma that the lawgiver is meant to demonstrate.
Chapter II

The Negative Function of Positive Law in Rousseau and Plato

By necessity, any comparative study of Rousseau and Plato on the legislator presupposes at least two related parallels between the teachings of these philosophers. In the first place, and as was noted in Chapter One, both agree that the proper foundation of a constitution requires a legislator. Absent the guidance of an extraordinary individual who sees the way a political community ought to be established, the effort to construct an edifice of laws and institutions will be, at best, hampered by difficulties or, at worst, bound to failure. Though it may seem banal, because obvious, to assert that legislators are needed at the founding moment in politics, this claim is not acknowledged to be true by all political philosophers, as we saw with respect to the early modern liberals. In the next chapter, we shall begin to examine precisely why, according to Rousseau and Plato, the people are in need of a virtuous lawgiver.

The second parallel between these two philosophers’ teachings stands as a premise of the first and, for at least that reason, proves to be more fundamental than the first. To speak favorably of the one who gives laws—to hold, in other words, that the legislative task is necessary and good—is to assume that human beings are in need of law. The need for a legislator implies the need for that which he gives. Neither Rousseau nor Plato is a champion of anarchy: both maintain that written laws are constituted to address some human problem or set of problems that cannot be solved without them, and hence that rule by law is an indispensable ingredient of political health. While there is some disagreement over the need for a legislator in the halls of political philosophy, the question of the need for law appears, by contrast, to be far less susceptible to dispute. Most if not all political thinkers, from all periods, agree that written
laws are indispensable for human beings.\textsuperscript{52} But general concord on this matter does not mean that diverse thinkers, including Rousseau and Plato, always agree on the reasons why men need law. It is possible, to be sure, to arrive at similar conclusions by different routes. And it is often such disagreements between the greatest minds, especially with respect to issues as fundamental as this one, that prove to be the most edifying.\textsuperscript{53}

For those seeking to bring to light Rousseau’s and Plato’s teachings on legislation, then, the obvious question suggested by this second parallel—i.e. why do human beings need law?—is worth exploring. By explaining what the task of promulgating and then implementing laws is meant to accomplish, both Rousseau and Plato demonstrate how legislators understand the purpose of one facet of their task. Clarity on this subject promises to illumine the subject of legislation in general. More important, the question of the need for law is critical for the present inquiry into the problem of legislation. One way to express the problem is to say that the mere institution of positive law, no matter how well designed it is, is unable to satisfy the conditions for the good life. There are, in a word, limits to the function of positive law. But what exactly is this limited function? Asking Rousseau and Plato what need human beings have for law promises to help to shed light on this issue. After all, the reasons for which positive law is instituted indicate something essential about its purpose.

In this chapter, we shall pursue the answers Rousseau and Plato provide to this question and compare them with one another, focusing specifically on the question of the origins of law. Why are civil laws brought into being? What is their most fundamental purpose? Rousseau and Plato approach these questions by similar routes, namely by exploring law’s function when it

\textsuperscript{52} Consider, however, the nineteenth century philosophical movement of anarchism, of which Mikhail Bakunin is the best known exponent.

was first instituted. Their teachings on the purpose of positive law are embedded in their respective stories of the origins of political life, both of which chart the course of humanity from the time when there were no written legal constraints, to the introduction of law and beyond.

Rousseau’s Second Discourse is the relevant text here, especially its Second Part in which Rousseau endeavors “to assemble from a single point of view this slow succession of events and knowledge”\(^54\) leading to property rights, inequality, and consequently the institution of civil law.

Plato for his part has peppered his corpus with several different stories of the origins of human and political life. Yet not all of these are ripe for comparison with Rousseau’s Second Discourse. In Book II of the Republic, on the one hand, Glaucon famously presents the case that the origins of justice lie in “laws and compacts” agreed to among weak individuals for the sake of preventing the stronger from committing wicked deeds against the weaker.\(^55\) But this story is articulated in order to explain what the many think about the origins of justice, and Glaucon brings it up in the hope that Socrates can refute it. The Protagoras, the Timaeus, and the Statesman, on the other hand, all feature stories of human and political origins that are perhaps closer in spirit to Rousseau’s Second Discourse than is Glaucon’s.\(^56\) Each speculates on the character of human affairs in the remote past and traces the subsequent changes, chief among them being political developments, over time. Yet these are also incompatible with Rousseau’s story for one major reason: they all attribute responsibility for the key events of human development to divine agency. The account of the Second Discourse, by contrast, is intended to be a natural history. After briefly paying respect to what Holy Scripture teaches about the

\(^{54}\) Rousseau, Second Discourse, p. 142 (III: 164).

\(^{55}\) Plato, Republic, 358e2-359b5.

\(^{56}\) Plato, Protagoras, 320c8-322d5; Timaeus, 21a7-24d6; and Statesman, 267c5-277a2. Cf., with this last passage, Laws, 713c3-e3.
beginnings of human life, he says that he will go on to explain what would have happened “had [humanity] been abandoned to itself.”

In the opening pages of Book III of Plato’s *Laws*, however, we discover a story of human and political origins that looks very much like Rousseau’s. Here the primary interlocutor of the *Laws*, the stranger from Athens, describes the birth and growth of political life from the beginning. Like Rousseau himself, the Athenian presents an account of humanity’s progress into the political regime that ascribes responsibility for change to natural and human causes (*aitian*, 676c7). He imagines a natural catastrophe, in this case a worldwide flood, coming to wipe out the vast majority of the human race and then asks how political life would have grown into its maturity from the few survivors. At no point does the Athenian say that this flood is punishment from the gods; it is simply an accident of nature. And his account of the development of the regime over time, like Rousseau’s set of reflections on the same theme, unfolds in line with what necessarily had to have happened.

But there is, in addition, one particularly salient correspondence between the stories in Rousseau’s *Second Discourse* and Book III of Plato’s *Laws*, a parallel that provides a compelling

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justification for this chapter’s intention to compare them. Both philosophers place special emphasis in their narratives on the moment when laws are first established. Indeed, Rousseau and Plato offer their stories of political beginnings with the intention of explaining what the original need for positive law is. Rousseau announces this intention near the beginning of the *Second Discourse*. “Precisely what, then, is at issue in this Discourse? To indicate in the progress of things the moment when, right taking place of violence, nature was subjected to law; to explain by what sequence of marvels the strong could resolve to serve the weak, and the people to buy imaginary repose at the price of real felicity.”

Plato has the Athenian tell his story abruptly after the interlocutors’ first discussion of musical education has come to a close near the end of Book II. After having raised the issue of the kind of men who would survive the worldwide flood, the Athenian proceeds to sketch out their movement into political communities. In order to explain why he pursues these themes, he remarks that “…what we’ve been saying, and all that is still to follow from it, has been said as a means to our coming to understand what need (*chreia*) the men of that time had for laws, and who was lawgiver for them.”

Given such a close correspondence, it is something of a surprise that Rousseau’s and the Athenian’s stories of the origins of political life have not been systematically compared in the extant scholarship. Some scholars fail to see the connection between the two accounts at all. Jean Morel’s authoritative study of the sources of the *Second Discourse*, for instance, lacks any discussion of Plato’s *Laws*, even though it is clear, from the evidence of his personal copy of Plato, that Rousseau was a careful reader of this dialogue.

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60 Plato, *Laws*, 679e6-680a1; cf. 702a2-b3.
primarily to interpret Plato’s *Laws* in their research, do in fact make the observation that Rousseau’s story is similar to the Athenian’s.⁶² None of their studies, however, pursue the comparison that such an observation might elicit. There is only one piece of scholarship that considers Rousseau’s *Second Discourse* in the light of Plato’s *Laws*, and this is Charles Hendel’s *Jean-Jacques Rousseau: Moralist*. Having run through a brief synopsis of the Athenian’s story, Hendel asserts that there is a great similarity between the two accounts and judges that Rousseau’s position is nothing less than an exposition of Platonism, clear and true. “[T]he motifs sounding in Rousseau’s eloquent *Discourse* …in the year 1754 were not the expression of sheer perversity and opposition to eighteenth-century thought, but Platonic themes that had passed into the soliloquies of a stranger to Paris and there come to life again, in a language of beauty and conviction.”⁶³ Hendel, *contra* Morel, views Plato’s *Laws* as the true source of Rousseau’s reasoning in the *Second Discourse*, even if the French philosopher added “the beauty and conviction” that were distinctively his.

However comparable the two stories may be, Hendel puts forward this claim without conducting a systematic comparison of Rousseau and Plato’s Athenian, as noted above. Instead, his study offers a précis of the Athenian’s complex narrative in *Laws* III and asserts that the ostensible similarities between it and the *Second Discourse* constitute proof of the logical equivalence of Rousseau’s and Plato’s teachings. The present chapter, by contrast, aims to fulfill the task of systematically comparing the stories. What is the exact relation between these two accounts? Is Hendel’s assessment correct, or is the correspondence less perfect than he asserts?

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Do Rousseau and Plato’s Athenian agree with one another on the birth of law and the
development of political society? Taking our bearings from the explicit statements of Rousseau
and Plato’s Athenian, let us begin by asking of them what their stories teach about the original
need for law.

The Rich Man and Rousseau: Lessons on Civil Law from the Second Discourse

One of the pinnacles of Rousseau’s Second Discourse is the speech, which is the only
speech quoted in the text, delivered by a representative of the rich to the poor in order to
persuade them to join together under common laws. Having recognized the usefulness of a set of
regulations of justice, binding on all and enforceable by a supreme power, the rich man explains
to the poor the purpose of instituting civil law. “‘Let us unite,’ he says to them, ‘to protect the
weak from oppression, restrain the ambitious, and secure for everyone the possession of what
belongs to him.’” Law is necessary, according to Rousseau’s hypothetical speaker, in order to
address three problems: the strong tend to oppress the weak, the ambitious are a menace to the
rest of society, and the possession of property is insecure. Men endure these ills in the context of
a widespread war in which both rich and poor are embroiled. In short, life in the absence of civil
law is saturated with violent conflict and pervaded by the problems born of conflict. Law is
brought into being, therefore, to put an end to such an unfortunate state. The rich man’s direct
speech is the clearest expression of the purposes of positive law in the text of the Second
Discourse. But does it also express Rousseau’s own teaching on the matter?

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64 Rousseau, Second Discourse, p. 159 (III: 177). Cf. Masters, The Political Philosophy of Rousseau, p. 182. Masters compares the last part of the rich man’s speech with Rousseau’s own discussion of the mechanisms of civil government in the Social Contract. The present section of this chapter, however, compares the rich man and Rousseau on the question of the need for civil law.
One may justly wonder, of course, whether it is right to accept as Rousseau’s position the view of the original need for law attributed to a representative of the rich. David Lay Williams, for instance, argues that Rousseau’s teaching in the Second Discourse is fundamentally opposed to that of the rich man, whom Williams calls a “diabolical genius” with a talent for speaking deceitful words to the people. To be sure, the Second Discourse reads as a lamentation for the loss of happiness suffered by the human race in its transition from the state of nature to civil society, and there is a decidedly pessimistic tone to Rousseau’s moral teaching in the text. So it might be questionable to claim that Rousseau holds the same position as the one responsible for solidifying conventional inequality, that malignant set of relations of dependence between men. What is more, in this speech Rousseau records what he takes to be “specious reasons” invented by the rich in order to persuade the poor to unite under one set of laws. As Williams emphasizes, the speech appears to be a highly effective piece of rhetoric, crafted more so to “win over crude, easily seduced men” than to express the comprehensive truth of things. Rousseau’s intention is to show that the establishment of civil law is accomplished by means of a fraud. The poor are tricked, as it were, into thinking that it is good for them to quit their natural freedom in order to secure the benefits of civil freedom. In other words, the poor are tricked into thinking that the rich have proposed civil government with a view to their interest. The argument of the Second Discourse, however, is that they have not. It seems clear that the genuine reason why the


67 Arthur Melzer has shown that the notion of personal dependence is central to Rousseau’s critique of social relations. See Arthur M. Melzer, The Natural Goodness of Man: On the System of Rousseau’s Thought (Chicago: University of Chicago Press, 1990), esp. pp. 70-85.
rich man wants to institute law is the third, concerning the protection of his property, and that the first two problems matter only insofar as they make property insecure.

But even if we grant distance between Rousseau and the wealthy advocate of the first social contract, there is also evidence from the text that Rousseau accepts the latter’s claim that civil law is necessary. In the immediate sequel, he affirms that the establishment of government does offer perceptible advantages to men suffering the conditions of violent conflict. The institution of civil law is, in principle, reasonable, because advantageous, and Rousseau holds that this is a fundamental truth about the human condition once social relations have developed. It is true that knowledge of the dangers of political life requires foresight. But even those with the sharpest and strongest foresight, those who are able to see most clearly the disadvantages of civil law, would consent to its formation, according to Rousseau. “[E]ven the wise saw the necessity (qu’il faloit) of resolving to sacrifice one part of their freedom for the preservation (conservation) of the other, just as a wounded man has his arm cut off to save the rest of his body.”

Recognizing that the violent conflict of the period prior to the institution of law is the sort that could spell unmitigated disaster for humanity, the wise understand that government is a necessity. Rousseau teaches that the expedient policy at the inception of civil law is in accord with wisdom.

Still, it is not possible to conclude that Rousseau accepts the speech of his dramatic creation on the need for law until we investigate more closely the roots of the violent conflict preceding the social contract. For, as has been suggested, it is precisely this violent conflict that renders law necessary. And Rousseau indeed agrees that men fight with one another: it is in his own voice that he describes the war preceding the rich man’s speech. He does not, on the other

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hand, think that widespread conflict is the natural condition of the human species. Rather, war comes into being well into humanity’s development, after men have acquired many dangerous factitious traits. Given the teaching of the Second Discourse as a whole, Rousseau himself might offer a slight correction to the formulation above, in paraphrase of the rich man’s view, that life in the absence of civil law is saturated with violent conflict. On the contrary, only at a specific period of history and under specific conditions are human relations so characterized. It is clear that Rousseau’s own teaching is subtler than the view of the rich man, because it is based on a broader view of human history. Let us, then, turn to what Rousseau thinks about the roots of violent conflict, in order to appreciate better his position on the original need for law.

The Second Part of the Second Discourse reveals that human beings fight with one another for two reasons above all. In the first place, they are confronted by the general scarcity of resources necessary for life and are thus driven to fight over control of them. Rousseau has consistently held that the original motivating force of the human being is self-love, amour de soi, i.e. a “natural sentiment which inclines every animal to watch over its own preservation…”69 Driven by amour de soi, man strives to preserve himself. When the resources necessary for preservation are scarce, then, he will be compelled to fight others in competition for them.70

Now to describe the stores of useful goods in nature as scarce may seem inconsistent with the picture of the world painted in the Second Discourse.71 In the First Part of the text, Rousseau


70 See Rousseau, Second Discourse, p. 143 (III: 165), for an instance of this: “[Savage man] learned to…fight for his subsistence even with men….” For the argument that competition over the means to secure well-being is a source of defiance (défier), see pp. 144-145 (III: 166).

portrays savage man as an animal resourceful enough to find all that he needs in nature without having to work very hard to wrest it from her grasp. If he needs food, he takes an apple from the nearest tree; if he wants a quiet and safe place to sleep, he finds a cave. More important, if another man takes any of his goods from him, for whatever reason, his typical response is simply to replace those goods from nature’s storehouse, as it were. And Rousseau implies that he does so with ease. “A man might well seize the fruits another has gathered, the game he has killed, the cave that served as his shelter; but how will he ever succeed in making himself obeyed?…If someone chases me from one tree, I am at liberty to go to another; if someone torments me in one place, who will prevent me from going elsewhere?” Rousseau’s very proof that rule by some men over the rest is not natural, is that men in the state of nature do not require the help of others to provide for their basic needs. And he explains why, in part, by asserting that nature herself has provided plentifully.

But this portrait of bountiful nature turns out to be deceptive, or at least in need of qualification. For, on Rousseau’s account, the goods of nature are bountiful not absolutely, but relative to the needs of human beings in the beginning, which needs are significantly limited in comparison with those of civil men. Indeed, one way of making sense of the development of man from his savage condition into social life is to trace the growth of his needs. Rousseau’s argument is that they proliferate by means of a dialectical process once human beings have left the pure state of nature—or, in other words, once the distinctively human trait of perfectibility begins to operate in conjunction with new circumstances, thereby changing human nature. To illustrate this idea in broad terms, during the course of history men are confronted by accidental

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circumstances (*hazards*) that force them to change the way they live. They become accustomed, over time, to new ways of living, which new ways tend to engender new human needs or intensify those they already had. But the attempt to satisfy these needs, along with ever changing circumstances, tends to produce even newer ways of living, which engender, in turn, newer needs. Given Rousseau’s sketch of human nature as malleable—note the famous description of the statue of Glaucus that opens the Preface to the *Second Discourse* and the emphasis he lends to perfectibility, it is reasonable to suggest that this process of human development will continue, in principle, *ad infinitum*.

So, returning to the story of the *Second Discourse*, Rousseau identifies the period of the establishment of family life as “the epoch of a first revolution,” a distinction attributable, it seems, to the fact that this is the period when bonds of dependence between men are noticeably tightened for the first time. Whereas men in the beginning were independent, in families they find themselves united in small societies, and eventually life in the family becomes the norm for the human race. Consequently, as members of families begin to work together to achieve a sort of common interest, each carrying out a specialized task in service of a higher end, these same individuals begin to need one another. Their bodies, moreover, become weaker than they had been in the pure state of nature, rendering men more dependent on the goods of nature for their nourishment. Finally, the leisure acquired by life lived in families permits the invention of new

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74 See, e.g., Rousseau, *Second Discourse*, pp. 140 (III: 162) and 151 (III: 171). Rousseau comes close to attributing the birth of the polity to accident as well. See p. 162 (III: 180): “Despite the work of the wisest legislators, the political state remained ever imperfect because it was almost the work of chance (*presque l’ouvrage du hazard*)…”


commodities, which over time become “true needs,” true not because natural but because they have a firm purchase on the human soul. 

Describing men in this period, Rousseau notes that “being deprived of [new commodities] became much more cruel than possessing them was sweet; and people were unhappy to lose them without being happy to possess them.”

As the human race develops, and, it is reasonable to add, as the population grows, the useful goods of nature become less plentiful. Men simply need them more—and need more of them—than they did at first.

But this proliferation of human needs is merely one reason why the goods of nature become relatively scarce over time. Another is the establishment of the right to property. Rousseau’s fervent opening to the Second Part of the Second Discourse identifies the founder of property as the true founder of conventional inequality, the establishment of which, in turn, exacerbates the violent conflict necessitating law. Now the new commodities described above, along with other goods of the family such as huts, are called “a sort of property,” and Rousseau avers that they are already a source of “quarrels and fights.” It is, however, only with the establishment of a right to landed property, i.e. fixed estates and the goods produced on them, that Rousseau discovers the roots of widespread and sustained conflict over scarce goods.

How, according to Rousseau, does the right to landed property emerge? As the needs engendered by life in families bring men into closer social contact, human beings acquire a new manner of living, one in which they become unified by “customs (mœurs) and character.” They

77 Cf. Rousseau, Second Discourse, p. 145 (III: 166), on the “passing need (le besoin passager)” that forms ephemeral associations among men in the pure state of nature. This “need” appears to refer only to that of the body.
begin, in other words, to live in nations.\textsuperscript{80} With regular intercourse at this point, individuals realize that projects undertaken with the help of their fellows are manifestly more profitable than those done alone, and soon they learn the arts of metallurgy and agriculture so as to complete larger, more sophisticated projects. But the development of these two arts precipitates a disastrous consequence for the human race, in that it ushers in the division of labor. “As soon as some men were needed to smelt and forge iron, other men were needed to feed them.”\textsuperscript{81} Rousseau has already explained that the first revolution in human affairs comes with the establishment of family life; he indicates here, though, that “the great revolution,” that which is responsible for “civiliz[ing] men and ruin[ing] the human race,” occurs with the emergence of the division of labor. Before this crucial development, men are content to rely on themselves in order to complete relatively small-scale projects; but afterward, they begin to pool their efforts by each working on specialized tasks. As Arthur Melzer has shown, the division of labor functions as the chief cause of personal dependence, “the true source of all man’s injustice and disunity of soul,” because it institutionalizes mutual need and encourages the development of natural inequalities of body and soul.\textsuperscript{82} Most important for our purposes, Rousseau teaches that the division of labor is the wellspring of the foundation of property. “[F]rom the moment one man needed the help of another, as soon as they observed that it was useful for a single person to


\footnotesize{\textsuperscript{81} Rousseau, Second Discourse, p. 154 (III: 173). Rousseau’s own emphasis on the division of labor calls to mind that of Karl Marx, who shares Rousseau’s qualms about bourgeois society while advocating, unlike Rousseau, radical political and social change. For a Marxist interpretation of the role of the division of labor in Rousseau’s thought, see Asher Horowitz, Rousseau, Nature, and History (Toronto: University of Toronto Press, 1987), pp. 96-97 and 109-110.}

\footnotesize{\textsuperscript{82} Melzer, The Natural Goodness of Man, p. 71. See Rousseau, Second Discourse, pp. 154-155 (III: 174).}
have provisions for two, equality disappeared, property was introduced, [and] labor became necessary…”

As the land begins to be worked and is consequently divided, fixed landed property is established once and for all. The institution of property and the informal rules of justice that are meant to regulate it produce dreadful consequences for the human race. Those who put their labor into the land, according to the rules of just possession, may rightly claim it as their own. Yet, because some men are too weak to work, while others do not see the advantage of devoting their labor to working the land, it happens that some men possess land and the resources on it while others have nothing. Once there is no longer any land left in common, the supernumeraries, who need food and shelter to survive, must resort to stealing from those who own the land. The poor, on the one hand, think that they have a right to these goods because they need them to survive. The rich, on the other, think that they rightfully own the goods that they have cultivated with their own labor. And this difference over the question of right is at the heart of the conflict over scarce goods prior to civil law. Having been solidified by formal property lines, the disparity between rich and poor leads to disputes that escalate over time into full-blown war. In the beginning, the goods of nature are able to provide for the needs of men; but in the late stages of the state of nature, the establishment of property right creates a condition in which the poor must plunder the possessions of the rich to survive. The violent conflict

83 Rousseau, Second Discourse, p. 151 (III: 171); cf. pp. 144-145 (III: 166). According to this last passage, men who lived far earlier than those living in nations, and consequently at a much more primitive stage of human development, were also able to work together to achieve common goals. The motive that springs individual men to undertake that sort of common action is the love of well-being (amour du bien-être), which seems synonymous in this passage with amour de soi. Cf. Jean Starobinski’s footnote to this passage in the Œuvres complètes (III: 1341).


85 Rousseau, Second Discourse, pp. 156-157 (III: 175-176); cf. p. 162 (III: 179): “…before the laws a man did not, in fact, have any other means of subjecting his equals than by attacking their goods or by giving them some of his.”
between the rich and the poor over scarce resources—which scarcity, as we have seen, is a result of mushrooming human needs and the establishment of property—stands as the chief reason why human beings need civil law.

At this stage of the argument, Rousseau’s teaching on the purpose of law is in basic agreement with that of Locke, who asserts that the “great and chief end…of Mens uniting into Commonwealths, and putting themselves under Government, is the Preservation of their Property.” For Locke, this is where the story ends: the world is a dangerous place in the absence of civil law due to the necessary tension between the extreme penury of nature and man’s desire to preserve his “property,” whether life, liberty, or estate. Rousseau’s own teaching, however, runs deeper than this, for it is based on a comprehensive account of the nature and development of the human soul, something that has no counterpart in Locke’s Second Treatise of Government. It is in this psychic account that we discover Rousseau’s second answer to the question why men fight with one another and, consequently, the second half of his teaching on the necessity of civil law.

To state it briefly, over the course of time man comes to be driven by dangerous passions that lead him into conflict with others not merely because he strives to preserve himself, but also because he develops an inclination to hurt his fellows. If the first reason for fighting resides mainly in the realm of amour de soi, the natural concern for one’s good leading to conflict over scarce resources, the second is specific to that of amour-propre, the factitious love of one’s own relative to the status of others that “inspires in men all the harm they do to one another.”

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86 Locke, Second Treatise of Government, Ch. 9, sec. 124, emphasis in original.

87 Rousseau, Second Discourse, pp. 221-222 (III: 219-220). The teaching that amour-propre is simply factitious is unique to the Second Discourse. Rousseau modifies this position in the Emile, stating that there can be manifestations of amour-propre consistent with nature. On the ambiguities of amour-propre, see Clifford Orwin,
is not to say that Rousseau’s two answers to the question of the necessity of law are unrelated; on the contrary, they are closely connected. Rousseau’s teaching on the distinction between natural needs and those based on the march of history, for instance, is complemented by his views on the birth and growth of *amour-propre*, for this kind of self-love is the seat of a host of new needs. Furthermore, the inclination to hurt stemming from *amour-propre* arises primarily out of concern for one’s own good. In order to understand this connection better, then, as well as to grasp more securely why certain passions render law necessary, let us examine Rousseau’s position on the development of dangerous passions, all of which are manifestations of *amour-propre*.

In the beginning, man is an animal driven entirely by *amour de soi*. This type of self-love may occasionally lead to conflict over natural resources, as has been shown, but such discord in the earliest times would be limited in intensity and duration. For, in addition to the desire for self-preservation, Rousseau holds that man by nature has an aversion to seeing other beings suffer. He calls this “principle” of soul pity, “a natural sentiment which, moderating in each individual the activity of love of oneself (*amour de soi même*), contributes to the mutual preservation of the entire species.”

If at first competition causes men to fight with one another from time to time, pity functions as a natural check against the escalation of violence. Moreover, Rousseau maintains that man in the state of nature simply does not experience the sort of psychic

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needs that lead civil man, by contrast, to commit violence. He considers romantic love, the strongest such passion. In civil society, it is the moral side of love, based on the activity of imagination, that inspires anger against others over disputes of the heart. Yet human beings in the state of nature are animals that mate with one another in a purely physical act, devoid of the moral sentiments associated with love, like jealousy, that drive civil men into conflict.\footnote{Rousseau, Second Discourse, pp. 134-135 (III: 157-158). Cf. Joel Schwartz, The Sexual Politics of Jean-Jacques Rousseau (Chicago: University of Chicago Press, 1984), esp. pp. 16-20.}

Rousseau’s sketch of the soul of early man portrays a being that has the capacity to fight if necessary but, as usually happens, does not fight, or at least not for long. “With such inactive passions and such a salutary restraint [i.e. pity], men—more untamed than evil, and more attentive to protecting themselves from harm they could receive than tempted to harm others—were not subject to very dangerous quarrels.”\footnote{Rousseau, Second Discourse, p. 133 (III: 157); cf. p. 150 (III: 170).}

As soon as man begins to develop his capacities, a process springing from the attempt to surmount obstacles to his preservation existing in nature, he begins to notice differences among men and other animals with respect to qualities of body. He now compares the stronger being to the weaker, the faster to the slower, etc., and these comparisons engender in him the capacity for reflection, identified by Rousseau as a “new enlightenment (lumieres).” Man perceives the most obvious differences, those between man and other animals, first. And having recognized his superior abilities with respect to the other animals, he begins to feel pride at being so distinguished.\footnote{Rousseau, Second Discourse, p. 144 (III: 165).} Pride at this stage is the esteem of oneself in comparison to other animals, not other men. But Rousseau notes that the path to making comparisons to other men, and the passions that go along with it, is already paved by the new lights he has acquired. The habit of
living in families after the first revolution causes men to pay more attention to each other, which produces new sentiments of the heart rooted in an understanding of oneself as distinct from other individuals. Rousseau is ambiguous as to exactly when in the history of the Second Discourse \textit{amour-propre} is born, but he is clear that it is present during the period of the first families. Both conjugal and paternal love, the “sweetest sentiments known to man” that characterize this epoch, imply the need for approbation in the eyes of others. Still, the first effect of \textit{amour-propre} is not such as to inspire sustained conflict among men. On the contrary, the era of the first families, “this period…maintaining a golden mean between the indolence of the primitive state and the petulant activity of our \textit{amour-propre}, must have been the happiest and most durable epoch,” according to Rousseau. “The more one thinks about it, the more one finds this state was the least subject to revolutions [and] the best for men…”\textsuperscript{92}

Be this as it may, the epoch of the first families is not devoid of violence. While Rousseau concludes that there is no sustained conflict, i.e. no war, during this period, he explains that episodic conflict is already an unfortunate feature of human life. More than this, conflict becomes more regular during this period as men become accustomed to committing acts of violence. If there is one psychic culprit responsible for the increase of violence it is \textit{amour-propre}, which has been transformed and unleashed as time has passed. Having lived in close proximity to each other for some time, individuals become accustomed to making comparisons, and from these reflections are born abstract ideas such as “merit and beauty, which produce sentiments of preference.”\textsuperscript{93} Life during the period of the small familial groups is more public than it had been at first, and now people desire to be esteemed by others for possessing traits that


\textsuperscript{93} Rousseau, \textit{Second Discourse}, p. 148 (III: 169).
would have been worthless to man in the pure state of nature, since he cares only to preserve himself. “The one who sang or danced the best, the handsomest, the strongest, the most adroit, or the most eloquent became the most highly considered….” The sentiment of love, in addition, is no longer always sweet. As lovers begin, for the first time, to feel the pain of being slighted by their beloved, they find themselves driven by the passions of jealousy and anger. “[D]iscord triumphs, and the gentlest of the passions receives sacrifices of human blood.” Finally, once the idea of consideration is firmly planted in the human mind, men begin to claim a right to consideration from others. Whenever any kind of voluntary harm is committed, men become offended not merely by the damage done, but also by the disregard others show them. And it is the disregard that inflicts the sharpest sting. “Thus, everyone punishing the contempt shown him by another in a manner proportionate to the importance he accorded himself, vengeances became terrible, and men bloodthirsty and cruel.”

Most of the potentially dangerous passions known to civil man, such as pride, vanity, jealousy, shame, envy, etc., are emanations of amour-propre, and are in play early in human history, even during the epoch of the first families. It is ambition, specifically, or “the fervor to raise one’s relative fortune less out of true need than in order to place oneself above others,” that does the most damage to the human race. Ambition in this sense appears to be characteristic of the human soul during the period following the division of labor, when property right and vast inequality emerge, and Rousseau underscores its role in triggering the widespread war that renders law necessary. When the flowering of amour-propre is underway, man discovers that his own “fortune”—that is, not only useful goods but also good consideration from other men; in short, anything that helps to satisfy his needs, both natural and factitious—can be augmented

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most surely by means of attacking the fortunes of others. As a distinct individual with an interest usually conflicting with that of his neighbor, he sees that it is only through harming his fellow that he himself is benefited. If *amour de soi* leads man to see that having what he needs is good, *amour-propre* leads him to the conclusion that having much more than he needs is even better. Hence, man comes to see that he has an interest in injuring others and, what is more, in doing so behind a “mask of benevolence,” since he calculates that wickedness is more effective when covered up.

Once the right to property has been established and man has tasted the fruits of possession, his ambition becomes fully ignited and he begins to desire more for the sake of having more, over against the claims of others. He begins to accumulate more property than he needs, which in turn exacerbates the condition of scarcity. The ambition of the rich, in particular, leads them to attack the poor when supernumeraries make designs on their property: always desiring to have more than their neighbors, the rich cannot honor the poor’s claim to their goods. And having been habituated to the process of driving the poor from their property, the rich discover that hurting their fellow men is not merely necessary at times; it is also enjoyable. Rousseau describes the rich as taking pleasure in dominating (*le plaisir de dominer*) his relatively poor fellows, “like those famished wolves which, having once tasted human flesh, refuse all other food and thenceforth want only to devour men.” Notwithstanding Rousseau’s rhetorical flourish here, we may suggest that he means to teach something true about the nature

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95 See Rousseau’s ninth footnote, in which he discusses this aspect of the wickedness of man in civil society: *Second Discourse*, esp. pp. 192-195 (III: 202-204).
of ambition. During the war raging prior to the establishment of civil law, the ambitious men commit violence not only through calculation of interest, but also simply because it tastes good.\(^98\)

Rousseau, to summarize, holds that it is violent conflict that necessitates law, and that such conflict is attributable to two causes: the scarcity of resources and a host of dangerous human passions, most importantly ambition, that have grown over time. The first is rooted in *amour de soi*, the desire to preserve oneself, even if passions based on *amour-propre* contribute to the condition of scarcity. The second is rooted in *amour-propre*, the concern for oneself based on the opinions of others. Both causes taken together confirm that Rousseau does indeed agree with the speech of his dramatic creation, the rich man, on the original reasons for law. While he is able to pierce through the rich man’s rhetorical guise to see that he is not truly concerned with the interest of the poor, still Rousseau sees that his articulated reasons for founding government are sensible.\(^99\) In the absence of civil law, violent conflict among men creates a situation in which the weak suffer oppression, the ambitious threaten the rest of society, and the possession of property is insecure, all in the ways that have been shown above. Civil law, according to Rousseau, is brought into being in order to address these problems characteristic of widespread violent conflict.

\(^{98}\) Another way of making sense of Rousseau’s claim that the rich feel pleasure in dominating the poor, is to say that the sweetness of such punishment derives from the awareness of enforcing a just claim. In this case, the rich believe that their property, having been acquired through labor, is *rightfully* held—even if there is no common power to enforce this claim. From the perspective of the rich, they are not being wicked; rather, they are upholding justice.

From Natural Disaster to the Natural Human Disaster: Plato on the Origins of Civil Law

If Rousseau eschews the authority of books, including especially sacred Scripture, for his history of the human race, instead drawing guidance from “nature, which never lies,” then the Athenian of Plato’s Laws begins his story by calling on the testimony of the most revered texts. Assuming that men, cities, and the other political things have been in existence for “an immense and immeasurable time,” the Athenian takes his first step by appealing to the “ancient sayings (palaioi logoi)” which tell of periodic natural disasters. The texts in which these logoi are to be found are those of the poets: evidence will be cited presently from the poems of both Hesiod and Homer, the sound of which is bound to be particularly inviting for the three old men conversing together in the Laws. Specifically, the Athenian elects to tell the story of a worldwide flood which wipes out all sign of human life and of politics, save for small bands of herdsmen (nomēs) living on the mountain tops, where the flood waters do not reach. By contrast to the stories of the poets, however, this disaster is a natural event, not punishment from the divine, and in making the unspoken assumption that human beings have always existed, the Athenian discards the notion of divine creation taught by the songs of the poets. What is more, the ancient sayings

100 Rousseau, Second Discourse, pp. 103-104 (III: 133).
103 Eric Voegelin interprets the flood as an example of “the god-sent catastrophes” which destroy civilizations. Plato’s text, however, offers no suggestion that the source of the flood is the divine. See Eric Voegelin, Plato (Baton Rouge: Louisiana State University Press, 1966), p. 237.
do not necessarily address the fact of the herdsmen’s survival or their character, while the Athenian emphasizes these themes strongly.\textsuperscript{104}

From the beginning, then, we notice several indications that the Athenian means to modify the ancient sayings to suit his purpose. He has already argued in \textit{Laws} II that the poetry distinguished by its charming effect on old men is not thereby necessarily true or best.\textsuperscript{105} As the Athenian’s account unfolds, he will pick and choose aspects of the poems that are particularly useful for telling his story, in addition to adding ancillary information. In short, while the Athenian begins from the ancient sayings as conveyed by the stories of the poets, he proceeds to assimilate them to what is rational, that is, naturalistic.\textsuperscript{106} Like Rousseau’s, the Athenian’s is meant to be a natural account. Still, it is a subtly constructed natural account, and the Athenian’s artfulness recommends that we take particular care in interpreting the meaning of his story. Near the end of the account, after he has hit upon the origin of legislation, the Athenian blurs the line between \textit{logos} and \textit{mythos}, calling his own story a \textit{mythos}.\textsuperscript{107} Now the difference between \textit{logos} and \textit{mythos} in the ancient Greek language is often ambiguous.\textsuperscript{108} But given that the only prior occurrence of \textit{mythos} in Book III comes in identifying Homer’s story of the Cyclops (\textit{mythologias}, 680d3), we may suspect that Plato wants us to read the Athenian’s story with the same kind of care as the Athenian takes with the ancient sayings. The Athenian himself will not

\textsuperscript{104} Plato, \textit{Laws}, 677a1-b4. For an example of an “ancient saying” about a flood, consider the story of Deucalion, who survived a worldwide deluge brought by Zeus to punish the human race. The fullest account of this story is in Ovid’s \textit{Metamorphoses}, 1.244ff., esp. ll. 313-347. Cf. Plato, \textit{Timaeus}, 21a-24d.

\textsuperscript{105} Plato, \textit{Laws}, 658e7-659a2.

\textsuperscript{106} See, esp., Plato, \textit{Laws}, 682a1-5; cf. 713a9-b4.


piously assume the ancient *logoi* of the poets to be true; rather, he asks his interlocutors whether
they contain “some truth.” Just as the Athenian assumes that unearthing the teaching of the
poetic myths requires careful interpretative legwork, so too we interpreters may assume that the
Athenian’s true teaching will require the same, and that it is not necessarily obvious from the
apparent presentation of it.

What is clear, however, is that Plato’s view on the need for written law grows out of his
portrayal of the character of the first men, the survivors of the great flood. Mountain herdsmen
would spend time tending their flocks, using the herd animals to supply provisions of meat and
milk. 109 The life and daily activity of a herdsman would be simple, certainly compared to that of
a farmer or an artisan, not to mention that of a citizen. The Athenian wastes no time in drawing
attention to the fact that the earliest men would have lost access to the arts (*technai*) of
civilization—which is also to say, the knowledge necessary for progress in the arts—and to the
tools that would have supported arts like farming. 110 All of these would have been buried in the
flood, both literally and figuratively, for even their memory would have been wiped out. The
Athenian explains that early man’s artlessness would have been the basis for a kind of primitive
goodness. “Presumably men such as these, at least, necessarily lack experience in the arts, and
especially in the contrivances that city dwellers use against one another, motivated by the desire
to have more (*pleonexias*), the love of victory (*philonikias*), and all of the other mischief they
think up against each other.” 111 It is only in political life, and with the more sophisticated arts of
the city, that men undertake “much wickedness (*pollē…ponēria*, 678a9-10)” against one


110 Plato, *Laws*, 677c5-d8 and 678d4-8.

The first herdsmen, representative of early man as such, are good according to the Athenian precisely because they are inexperienced in the ways of wickedness.

The passage just cited is significant, for here the Athenian suggests not only that early men would have been more decent than their counterparts in the city. He also identifies two sources of wickedness in cities: the desire to have more, i.e. *pleonexia*, and the love of victory, i.e. *philonikia*. Owing to the former passion, men contrive to acquire more than they need or deserve over against the claims of others, however just or reasonable those claims may be. Owing to the latter, they are driven to compete with one another for preeminence. Both desires encourage excessive self-regard at the expense of others, and the Athenian implies that both are wellsprings of injustice among men. Indeed, as regards *pleonexia* specifically, the Athenian will explain in Book X that this passion “in cities and regimes, having had its name refashioned, is injustice” simply. Most important for our purposes, the Athenian does not suggest that the sources of injustice are unique to life in political regimes, such that the forces of civilization create or develop passions in men that were absent in the beginning. Instead, he lends emphasis to the fact that early men are not “motivated” to act on passions which we may assume exist in the natural constitution of man. Because of the simplicity of their lives and their general lack

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112 See Benardete, *Plato’s Laws: The Discovery of Being*, p. 95.


114 Cf. Plato, *Republic*, 343e7-344a1 and context. Cf., also, Thucydides, 3.82.8, on the dangers of *pleonexia* during the civil war at Corcyra.


of knowledge, they do not know what sorts of ends may be achieved through injustice, and hence they do not suffer their potentially dangerous passions.\textsuperscript{117} The crucial point, though, is that the earliest men do indeed possess the desire to have more and the love of victory—and perhaps other dangerous passions as well, for these are the only two that the Athenian refers to by name. “Inexperienced in the many beautiful things that go with urban life, and inexperienced in the opposite sorts of things as well,” men in the beginning were unable to become perfect in virtue and in vice (\textit{teleous pros aretēn ē kai pros kakian gegonenai}). They were unable, in other words, to bring to completion what was already present in their souls.\textsuperscript{118}

The text of \textit{Laws} III suggests, then, even at this early point, that man by nature possesses desires which, if triggered, would in all likelihood necessitate law. This may be one reason for the Athenian’s seemingly random choice of mountain herdsmen as the first men. He could have chosen, alternatively, to begin with a great fire, which would have destroyed all life on the mountain tops while leaving the communities next to rivers and seas intact, as Plato’s readers gather from the \textit{Timaeus}.\textsuperscript{119} But perhaps the Athenian chooses a flood because he wishes to suggest that the \textit{nomēs}, herdsmen, on the mountain possess the basic need for \textit{nomos}, law, given their natural psychic makeup, even though law as such is absent from the earliest times.\textsuperscript{120}

\textsuperscript{117} Plato, \textit{Laws}, 677c5-7 and 679d3-e1; cf. 653b4 and 672b8-c2.

\textsuperscript{118} Plato, \textit{Laws}, 678b1-4; cf. \textit{Republic}, 358e1ff., and especially 359c3-6 from Glaucon’s famous challenge to Socrates: “We would catch the just man red-handed going the same way as the unjust man out of a desire to get the better (\textit{pleonexian}); this is what any nature naturally pursues as good, while it is law (\textit{nomō}) which by force perverts it to honor equality.” For a short study comparing the \textit{Republic} and the \textit{Laws} on the question of the coming into being of the “State,” see Leo Ferrari, “The Origin of the State According to Plato,” \textit{Laval Théologique et Philosophique}, 12.2 (1956), pp. 145-151.

\textsuperscript{119} Plato, \textit{Timaeus}, 22c7-d3.

\textsuperscript{120} Cf. Benardete, \textit{Plato’s Laws: The Discovery of Being}, p. 93: “\textit{Nómoς} was latent in their way of life, but there was not yet law.” The connection between the words \textit{nomēs} and \textit{nomos} is complicated; for a discussion of this and related issues, see Emmanuel Laroche, \textit{Histoire de la racine NEM — en grec ancien} (Paris: Librairie C. Klincksieck, 1949), esp. chapters IV and VI. It is more likely that the Athenian introduces the word for herdsmen
constraints would be needed to check the excessive expression of dangerous desires when they are expressed and forestall the injustice stemming from them. If this suggestion is accurate, then the basic need for written law is present in even the earliest men, and the fact that the beginning epoch in the Athenian’s story is one of peace and goodwill, in which law seems to be at most latent, is accidental.

But if man needs law by nature, it is perplexing that the Athenian does, in fact, describe the first times as peaceful. For it is not obvious why men who do not suffer conflict would need written laws. And in interpreting the passage at the opening of Laws III, one must concede that the Athenian places heavy emphasis on the reasons why men would have been peaceful and happy in the beginning. He goes so far as to characterize early households as the sort where “neither insolence nor injustice, nor again jealousies and ill will, come into being…” How do human beings arrive, finally, at lawgiving? To answer this question, it is necessary to investigate further the condition of the world and the character of human interaction within it after the flood. We recall that, according to the terms of the Athenian’s story, the most powerful cause of change is the great flood; it is the primary cause of the wholesale reversion from civilization back to the earliest period. Could it be that the reason why the beginning period is so tranquil, even though the men of that time are in possession of potentially dangerous passions, has something to do with the condition of the world immediately following the disaster?

because it permits him to illustrate a fact about human nature, rather than to make a claim about a real etymological association between the two words.

After the flood, the herdsmen would have faced “a vast and frightening (phoberan) desolation” and “a great mass of abundant land.”  The Athenian assumes that the destruction caused by the cataclysm would have been almost total, with the mountain tops being the only parts of the world untouched by water. Presumably the “mass of abundant land” to which the Athenian refers means the land that gradually becomes available as the waters recede. In a world such as this, and after such an awful catastrophe, life as experienced by early man would have been saturated with fear, and the Athenian wastes no time describing this basic fact of human psychology. “For I suppose,” the Athenian remarks, “that the fear (phobos) of descending from the heights into the valleys was ringing in everyone’s ears.” The Athenian’s story subtly implies that there are three sources of primal terror. First, the early men would have remembered the disaster vividly, since it changed their lives to such a great extent and irreversibly. In fact, the Athenian insinuates that memory of the flood would have been virtually the only memory to survive the disaster. One might surmise that this is so because of the intensity of the psychological shock due to the flood: it would have erased, or at least blurred, memory of everything else. Second, the sight of the destruction and scattered debris—that is, the many animals, including men, that were “destroyed,” etc.—would have been in all likelihood terrible. Finally, the awareness of human solitude would have been frightening. And the Athenian intends this solitude to be understood not simply as the absence of other men. On the contrary, having suffered an almost unmitigated catastrophe that came and went without explanation, the

earliest men would have had cause to doubt the existence of a providential source of care looking out for their good. Even if the gods did not cause the flood, it is important to recall that neither nature nor the divine prevented it.

The basic psychic response of men to their place in the world, then, is fear, according to the Athenian’s story. And the effect of pervasive fear during the earliest times would have been to drive men, however gradually, closer together. The Athenian does not hesitate to explain that early men would have been “glad whenever they saw each other, because there were so few of them during that time.”126 This is tantamount to saying that a sort of primitive sociability, stemming from fear, exists in the beginning. Notwithstanding the fact that it would have been difficult “to mix with one another” at first, due to the destruction of the means of transportation, early men would have been driven together in order to assuage their terror. The Athenian goes so far as to claim that the first men would have been “delighted with one another and full of goodwill (ēgapōn kai ephilophronounto allēlous) on account of the desolation.”127 Rather than focusing on the fear they might have felt on encountering other men, the sort that the Cretan Clinias128 and more recently Hobbes have emphasized, he stresses the notion that a different, stronger terror “on account of the desolation” would in all likelihood bring men closer together and provide the ground for a primitive kind of friendship.129 Human society, according to the story in Laws III, satisfies at least one of the basic needs of the soul, in that it helps to comfort men living in a frightening world.

126 Plato, Laws, 678c5-9.
127 Plato, Laws, 678e10-679a1.
128 Plato, Laws, 626d6-10.
But however comforting may have been the first social ties, the Athenian’s story suggests that they proved insufficient in managing fear. For, in addition to these early ties, informal rules of order appear to develop rapidly in the beginning. To understand why, it is necessary to consider the condition of a soul in the throes of terror. Those human beings who suffer greatly from fear will also suffer, it is reasonable to assume, from the disorderliness of soul. Anxiety is neither a great stabilizer nor a great harmonizer. This captures, of course, merely the common sense view of anxiety’s impact on the human soul. But the Athenian himself defends this same position at the beginning of Laws VII, where he indicates that the fundamental passion experienced by all human babies upon entering the world is terror, a passion which produces psychic madness, or a “harsh fluttering of the heart.” The “fear and the mad motion within” the soul, on the Athenian’s telling, are at the very least co-present; most likely, however, fear is the fundamental cause of the madness within the soul. What is most important, the Athenian implies that the disorderliness of soul is neither good nor pleasant. Human beings experience a basic, natural need for calm.

Returning to the story of Laws III, it is with these ideas in mind that we notice that the early men, “whenever they heard something was noble (kala) or shameful (aischra), in their simplicity they considered what had been said to be the very truth, and believed it (epeithonto)...They believed (nomizontes) that what they heard about gods as well as about human beings was true, and lived according to these things.” The goodness of the early period appears to be supported by orderliness, which itself is achieved through rules that regulate

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130 Plato, Laws, 790e8-791b8; cf. 672b3-c6.
131 Cf. Plato, Laws, 791a8-b1: the rocking of newborn babies replaces their “mad dispositions with prudent habits”. This important passage will be discussed in greater detail in Chapter Four.
132 Plato, Laws, 679c4-8.
human life—rules about what is noble and base, and about the divine. The earliest men quickly develop informal moral rules and stories about the gods to guide their lives. In fact, the Athenian’s striking statement that the earliest men are “in every way more just” than contemporary men seems to mean that they are more orderly, i.e. law-abiding, if by “law” we mean moral law. The greater justice of the first period consists in the willingness of men to obey what they have heard about the noble and the shameful, and about the gods.

To summarize the Athenian’s teaching so far: despite the dangerous passions natural to man, the first human beings appear to live in peace because their psychic terror inclines them into social order, with moral rules regulating and upholding it. Society and moral rules are natural because they develop as a response to natural psychic needs. Now we shall return to these themes, in particular the link between fear and the legislator’s role in the development of good civic habits, in Chapter Four. But the social tranquility manufactured as a response to psychic needs is not the whole of the Athenian’s story, and one begins to see this upon addressing a possible objection to the idea that the souls of early men would have been riddled with fear. If the needs of the body had been provided for sufficiently, one might argue, then life would have been more comfortable, and there would have been less reason for men to feel anxious about their place in the world. One scholar whose work would raise such an objection is Eric A. Havelock, who interprets the portrait of the earliest times in Laws III as one of peace and prosperity. “Men,” Havelock says in interpreting this passage, “have lived in a Golden Age of moral equanimity, in completely peaceful co-operation and innocence…To support these moral

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133 If this suggestion is correct, then the Athenian is putting forward a remarkable teaching about the fear of the gods. One kind of fear, i.e. that of the gods, is used in order to manage a different kind of fear, i.e. that primal fear existing in all human beings from birth. Fear is replaced with fear. Cf. 646e2-647b7. Perhaps this is one reason why the Athenian calls “the divine fear to which we gave the name ‘awe’ and ‘shame’”, the noblest or most beautiful (kalliston) sort of fear (671c8-d3).

134 Plato, Laws, 679e2; cf. 680d10-e3.
qualities in man, earth afforded a bountiful sustenance….”

The crucial issue here is that of scarcity. If the world provided abundantly for the bodily needs of early men, would there not have been a sort of natural calm based on the assurance of bodily comfort? Furthermore, would there not have been less reason for men to compete with one another, thereby mitigating one source of conflict that would necessitate law? For if the needs of the body are easily satisfied, then it is less clear why early men would have experienced a need for regulation by law in the first place.

This objection could be rather powerful, for the Athenian appears to characterize the earliest times as plentiful enough to preclude conflict over scarce resources. To be sure, he notes that cattle and other herd animals would have “barely supported the life of the herdsman in the beginning” since so many animals were destroyed by the flood. But in a short period of time, the situation seems to improve markedly. “[F]ood,” the Athenian notes, “was not something [the first men] fought over. At that time most lived from herding, and there was no lack of pasture land—except perhaps for some people at the start. So they didn’t lack milk and meat. Besides, by hunting they provided themselves with food that was neither poor in quality nor scanty in amount.”

The only source of food in the beginning seems to satisfy the needs of early men. Additionally, these men appear able to provide clothing and shelter for themselves with the basic arts of molding and weaving. According to the Athenian, “a god has given these two arts to

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provide [clothing and shelter] for human beings, so that whenever the human race finds itself in such straits it may be able to grow and progress.” As a consequence, the first men “weren’t terribly poor, and weren’t compelled by poverty to differ with one another.” In fact, the Athenian attributes the happy detail that war and civil discord were “destroyed” in the beginning partially to the plentiful collection of resources in the world after the flood.

Clinias, though, does not understand how it is possible for war and civil discord to have been “destroyed” by the flood, for his view is that human beings are in conflict with one another by nature. After deeper reflection on the Athenian’s story, we might be inclined to express skepticism on this matter as well. We have already suggested why one could reasonably suspect the apparent truth of the Athenian’s account, provided that one can show evidence provoking suspicion. In fact, there are several aspects to this story that make one question whether the first times were entirely peaceful. For one, the only source of food at the disposal of the first men is the herd of animals and other game to be hunted. The Athenian indicates that agriculture does not begin until men have moved down from the mountain tops and into the more fertile foothills. And nothing is mentioned about the abundance—or even existence—of edible resources like fruits or vegetables that grow spontaneously from the earth. Moreover, we must wonder if the Athenian’s seemingly cursory qualification regarding pasture land not being scarce “except perhaps for some people at the start,” is not more significant than he makes it sound. Herd animals might be enough to sustain some people, but what about those who have no access

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138 Plato, *Laws*, 679b1-4. This is the only instance in the story at the beginning of *Laws* III in which the Athenian refers to providential acts of the gods, even though readers may have expected more such references. For example, the Athenian indicates that the earliest men possess fire, but there in no mention of Prometheus, here or anywhere in the *Laws*. Cf. *Protagoras*, 321c3-322a2; and see Strauss, *The Argument and the Action of Plato’s Laws*, p. 40.

139 Plato, *Laws*, 678e9; cf. 625d9ff. and 673b6-10.

to pasture land? Hunting would seem to be an uncertain way of ensuring one’s nourishment, especially since the account has assumed that so many animals were destroyed by the flood. And how much goodwill can reasonably be assumed from men who are starving?\footnote{141} Finally, given that useful things such as metal tools are extremely scarce right after the flood, and those that are found would wear out easily, the paucity of these might also be considered another source of conflict among men.

All of these observations lead us to suppose that the human situation after the flood is not as peaceful as the Athenian illustrates it, \textit{contra} Havelock’s claim that the story portrays a golden age of perfect harmony.\footnote{142} This is not to say that the Athenian holds that the condition of the first men is one of widespread violent conflict, like Hobbes’s war of all against all, for instance, or for that matter, like Rousseau’s. The problem of violence appears to be less rampant, perhaps because moral rules really do have some effect on the behavior of early men. Be this as it may, there are indeed powerful motives for men to fight with one another in the beginning, the Athenian implies, and the damage caused by violent conflict would not be insignificant. If this is true, however, then we notice another need for written law in the Athenian’s account: it curbs conflict among early men due to the scarcity of resources, conflict that disrupts the order of early times. It seems reasonable to add that the growth of the human population would intensify the problems associated with scarcity, especially since the Athenian indicates that it takes a long

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\footnote{141} Cf. Plato, \textit{Laws}, 782e2-783a1 and 831d3-e3; cf., also, Aristotle, \textit{The Politics}, 1253a35-37.

\footnote{142} For a searching critique of Havelock’s argument that stresses the lack of wisdom in the beginning, see Leo Strauss, “The Liberalism of Classical Political Philosophy,” \textit{Review of Metaphysics}, 12.3 (March, 1959), esp. pp. 406-9. For a persuasive argument on why the period of earliest human history is made by the Athenian to be more peaceful than it likely would have been, see Pangle, “Interpretive Essay,” p. 428.
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time for men to discover the arts, including especially agriculture, that might help to provide for them.143

Perhaps the clearest suggestion in the account of Laws III that the beginnings are not perfectly harmonious comes slightly later in the story. During the discussion of the first regimes, which the Athenian calls dynasties, the interlocutors consider a passage from Homer’s Odyssey as a representative portrayal of the way of life of this period. Instead of referring to men full of love and goodwill for one another, the text describes the household of the Cyclopes, who in Homer’s story are impious giants with a taste for human flesh. It is surely significant that the Athenian chooses Homer’s depiction of the Cyclopes and not that of Hesiod. Whereas in the latter, Hesiod sings of divine craftsmen who benevolently bestow the thunderbolt on Zeus, in the former, the Cyclopes are portrayed as savage cannibals posing a serious threat to human beings. Moreover, Homer’s passage on the Cyclopes indicates that the land on the mountains where these giants live is extremely barren, offering poor sustenance for human life. This is, of course, yet another piece of evidence that the earth is not originally as bountiful as the Athenian’s story makes it to seem.144 In short, the Athenian suggests, however quietly, that the earliest men are capable of being very much like the brutal Cyclopes,145 in conflict with other men with respect to food and willing to resort to violence to acquire whatever they need or desire. While the Cretan Clinias does not notice the significance of the Athenian’s use of Homer, the Spartan Megillus

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143 Plato, Laws, 678b5-7: “Then as time went on, and as our race multiplied, everything arrived in the state it’s in now?” Cf. 680e6-7 and 682c6-7; and see Pangle, “Interpretive Essay,” p. 427.


does, for he remarks that the poet’s “myth attributes [the Cyclopes’] ancient ways to savagery (*agriotēta*).”

The final indication in the Athenian’s story that the first times are not as peaceful as they are made out to be is found in the discussion of the first cities, the form of community arising after dynasties. The Athenian remarks that cities originate when smaller family groups come together, each bringing with them their “own particular customs.” But there is a crucial distinction among families: “The variety of their different customs pertaining to the gods and to themselves derives from the variety in their parents and in those who reared them; the rather orderly (*kosmiōterōn*) have rather orderly customs and the manly (*andrikōn*) have rather manly customs.” Some clans are orderly, while others are manly, and they are so ultimately because the individuals in these clans are so. But this means, simply, that some human beings are by nature manly, which implies that some of these early men would be inclined to fight with others. The Athenian had said that the arts of war are not known in the beginning, but now we learn that some men are indeed warlike, and this should not be surprising, considering that earlier in the story the Athenian had suggested that man naturally possesses passions threatening to civil harmony. Do men such as these have to know an art to incite the kind of conflict that would make law necessary? It is reasonable to assume not, especially on recalling the Athenian’s claim from *Laws* I that excessive and incorrectly educated courage (*andreia*) engenders savagery and

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148 Cf. Plato, *Statesman*, 308a4-9: “But what of those whose inclination is more toward manliness (*andreian*)? Aren’t they always tensing up their own cities for some war, and on account of their desire—more vehement than it should be—for a life of this sort, they settle into a hatred with many powerful people, and either they altogether destroy them, or in turn they hazard their own fatherlands to be slaves and subjects to their enemies?” The translation is Seth Benardete’s: *Plato’s Statesman*, translated and with commentary (Chicago: University of Chicago Press, 1984).
the kind of disposition leading to civil strife.\textsuperscript{149} Surely the manliness of the first men is nothing if not raw and uneducated. If this interpretation is correct, then of course it would not contradict the Athenian’s notion that the greatest wickedness is found in cities, owing to the knowledge that develops in civilization. But it should demonstrate one more reason why the earliest men need law: to restrain the manly.\textsuperscript{150}

We, along with the interlocutors of the \textit{Laws}, have now “stumbled unawares…upon the origin of legislation.” After the population has grown to the point where the smaller clans wish to unite together, men are chosen from each of the groups to survey all of the extant informal customs in order to choose “the ones they find especially agreeable for the community.” And when the leaders of the people agree on a set of rules, these are given as laws.\textsuperscript{151} After ourselves having surveyed the complicated story of the origins of political life in \textit{Laws} III, we are in a better position to understand what need men of that time had for law. Human beings possess by nature passions that can cause them to commit wicked acts against one another, which in turn cause instability and violence, especially as knowledge of the arts grows over time. These passions include, specifically, the desire to have more (\textit{pleonexia}) and the love of victory (\textit{philonikia}), as well as a general disposition to manliness in some individuals. But the Athenian, furthermore, implies that human beings live from the start in a world that is frightening and does not provide for them bountifully. Resources, many of which nature had wiped out in indifference to the fate of man, are somewhat scarce. And so people fight with each other in competition over these resources. One could even argue that man’s attempt to surmount his


\textsuperscript{151} Plato, \textit{Laws}, 681c4-d5.
originally imperfect condition—i.e. to look for or invent the arts useful for the care of humanity—actually contributes to the condition of violent conflict, since the Athenian has indicated that the development of knowledge and of vice are proportionally related. We conclude, then, that written law is originally needed to check the violence among men stemming from dangerous human passions and scarcity. Written law acts as a bulwark to the order produced by the early informal moral rules.


If the interpretations of the Second Discourse and the Laws in this chapter are accurate, then it should be clear that Rousseau and Plato agree about the fundamental reason for bringing positive law into being. In the view of both, law is needed to address the problem of violent conflict among men. It is intended to forestall the fighting among men due to the harsh condition of life in the world. Law helps to replace chaos with order. And after investigating in detail Rousseau’s and Plato’s respective stories of the origins of civil law, we notice a deeper parallel between their positions, in that both thinkers maintain that human beings fight with one another for similar reasons. Rousseau and Plato agree that the scarcity of resources in nature is one of the causes of violent conflict: competition over goods useful for human life puts men at odds. Similarly, they agree that dangerous passions are another cause of discord: men fight because certain passions incline them to do so.


153 For Andrea Wilson Nightingale, the story of Laws III teaches that human beings need written law in order to harmonize the “different customs and values” that had developed in families. Nightingale does not, however, emphasize the negative consequences of discord in early human affairs, namely the violent conflict among men that written law is intended to forestall. See Andrea W. Nightingale, “Historiography and Cosmology in Plato’s Laws,” Ancient Philosophy, 19 (1999), pp. 308-309.
We may underscore, at this point, a broad similarity in the stories of Rousseau and Plato on the origins of law. Both thinkers contend that written law is brought into being for the purpose of benefiting the body. The violence prior to the establishment of law is harmful primarily to the body and to the goods of the body; the purpose of civil legislation is, hence, to put an end to such harm. In the Second Discourse, Rousseau describes a war that negates all human ends, bringing humanity “itself to the brink of its ruin” precisely because it leads to the destruction of the lives of men themselves. What is more, men outside of civil law hold on to their property only very insecurely. Law is brought into being, therefore, in order to protect the lives and material goods of men. Rousseau puts forth this teaching throughout the Second Part of the Second Discourse, but its clearest articulation comes in the view of the wise men on the foundation of civil law. Whereas it is lamentable, they say, that men must limit their freedom in order to preserve themselves, it is necessary that they do so, “just as a wounded man has his arm cut off to save the rest of his body.” Political society is brought into being for the sake of preserving life.154

For Plato, however, it may not be as readily obvious that written law is brought into being exclusively to satisfy the needs of the body. The Athenian’s reasons for conflict prior to legislation, to be sure, point to the fact that the lives and the material goods of early men would have been threatened by others. But has not the Athenian also identified existential fear as one of the features of early human life? And would not this fact imply that law also addresses problems of the soul? Yet, the Athenian at the beginning of Laws III is careful to distinguish between written laws, on the one hand, and customs, habits, and “ancestral laws,” on the other. While it appears that habits broadly understood are indeed intended to address the problem of

154 Cf. Rousseau, First Discourse, p. 36 (III: 6): “The mind has its needs as does the body. The needs of the body are the foundations of society, those of the mind make it pleasant.” Emphasis supplied.
fear in the souls of men, written laws are established in order to achieve a more modest task, that is, to keep the peace. Positive legislation, for Plato as much as for Rousseau, is for the sake of the body.\textsuperscript{155} This notion serves to explain the Athenian’s apparently obscure placement of his story of the origins of the political regime at the opening of Book III of the \textit{Laws}. At the end of Book II, after the interlocutors have concluded their first discussion of musical education in the dialogue, the Athenian gratifies his Dorian companions by promising to address next gymnastic education, or the training of the body.\textsuperscript{156} And while the opening of Book III appears to show the Athenian breaking his promise—after all, he turns to a discussion of the origins of the regime—it is possible to claim that he is addressing the theme of bodily needs, insofar as he holds that law is brought into being to satisfy just those needs, chief among them being safety.

These observations point to the conclusion that Rousseau and Plato agree on a significant feature of the character of positive law. According to these two philosophers, the reason why law is brought into being is essentially negative. That is to say, it serves the exclusive purpose of extenuating the unsavory aspects of the human condition. Positive laws are given in order to prevent evils from happening. Now this reading of Rousseau’s thought, on the one hand, should not be controversial, for Rousseau expresses with clarity, in the \textit{Second Discourse} as well as in his other political writings, that the end of political life is preservation (\textit{conservation}).\textsuperscript{157} But this reading of Plato, on the other hand, has not been widely appreciated. Indeed, the Athenian’s teaching on written law is often obscured, for the scholarship on Plato’s jurisprudence routinely emphasizes that law has a positive purpose, namely to render citizens as virtuous as possible.

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Christopher Bobonich, for instance, when describing Plato’s theory of law in the *Laws*, has argued that “the lawgiver must aim at a single goal and that is virtue.”\textsuperscript{158} While it would be foolhardy to reject the importance of virtue as a part of Plato’s comprehensive theory of law,\textsuperscript{159} still it is necessary to emphasize that the primary task of the opening section of *Laws III* is to highlight the other side of that coin, to show that wise legislation must also concern itself with lower, because negative, goals.\textsuperscript{160} Plato’s ancient teaching on the origins of written law shows that it specifically comes into being for exclusively these goals. His political thought in this respect is as realistic as Rousseau’s. Sensitivity to this teaching adds vivid color to the Athenian’s pithy statement, at 713e3-6, that “there can be no rest from evils and toils for those cities in which some mortal rules rather than a god,” i.e. the intelligence that is meant to be embodied in law.

Be this as it may, these broad similarities should not blind us to deeper differences between Rousseau and Plato. For instance, if both philosophers hold that conflict renders law necessary, then Rousseau’s depiction of violent conflict in the absence of civil law is the harsher of the two. “Nascent society gave way,” he remarks, “to the most horrible state of war: the human race, debased and desolated...brought itself to the brink of ruin.”\textsuperscript{161} Rousseau appears to


\textsuperscript{159} See, e.g., Plato, *Laws*, 707d1-6.


agree with Hobbes that man, prior to the institution of law, is embroiled in a war with every other man and that human beings themselves, not natural disasters, could spell the destruction of the human race. Plato’s Athenian, for his part, waits to make his first reference to war until after he has identified the origin of legislation. Once cities have been founded on the plains, and once men have generally forgotten about the destructive power of nature, they begin to send military expeditions against each other, as the Achaeans did against Ilium. The Athenian seems to mean that the conflict preceding the institution of common laws is not so great as to be called war, even if it is damaging enough to render laws necessary. By contrast to Rousseau’s depiction of the war as “the most frightful disorder,” the Athenian remarks that some of the first clans are even orderly, and that some of the first men possess a sort of justice in their willingness to follow norms of right conduct and to believe in what they have heard about the gods. While Rousseau is well known for the argument that goodness reigns in the pure state of nature, Plato holds that goodness in the nature of man is more durable over time.

In illustrating the conflict over scarce goods that renders law necessary, Rousseau and Plato begin from conspicuously different places. The state of nature of the Second Discourse represents the world as it would have been in the beginning, untouched by man and generally unaffected by changes caused by natural forces. Rousseau imagines the “earth, abandoned to its natural fertility.” The Athenian’s story in the Laws, by contrast, begins from the supposition that there have been men and cities for an immense amount of time before the great natural disaster wipes out civilization. Rousseau tells of the bounty of the state of nature, while Plato’s

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162 Plato, Laws, 682b2-e6.
Athenian asserts that life would have been “barely supported” in the beginning. For Rousseau, scarcity is a problem that develops over time, whereas for Plato, the resources of the world have always been scarce. Rousseau’s note to his statement concerning the earth’s “natural fertility” disparages those who argue otherwise by calling them bad physical scientists, and he cites the authority of Buffon to bolster his case.165 Plato’s Athenian claims that poets, as long as their songs have been assimilated to what is rational, teach of the barrenness of the earth. This constitutes a fundamental disagreement on the question of the character of external nature in the beginning.

But as has been argued, the problem of scarcity depends not primarily on the absolute quantity of goods. Scarcity is intelligible only relative to the human demand for nature’s resources, and both Rousseau and Plato agree on this point. Whether one wants fruit from an orchard that a neighbor has claimed for himself, or tools that can be discovered buried in the earth, these goods are abundant or scarce based on human demand for them. But Rousseau and Plato differ over how and when the human demand for resources arises. Rousseau emphasizes two factors—i.e. the proliferation and intensification of needs, and the establishment of a right to property as a consequence of the division of labor—that exacerbate the problem of scarcity. These factors are not present in the beginning, and they come into being owing to various accidents throughout history, as man moves from the pure state of nature into civil society. At some point in human history, someone chooses to call a plot of land his own, which is a wholly novel occurrence. But Plato holds that these and other factors contributing to demand for resources are present in the nature of things. They are coeval with human beings themselves and persist as time passes. For instance, the Athenian implies that there is a concept of property in

the beginning. The first herdsmen presumably understand that their animals are their own, while others belong to other herdsmen. What is more, he says that some individuals lack pasture land from the start, implying that others understand the land to be held in their own possession. If, according to Rousseau, the supernumeraries are forced to take from the goods of the rich long after humanity has begun to develop, there is taking, according to Plato’s Athenian, from the beginning.

This difference is representative of a much larger difference between the teachings of Rousseau and Plato. Rousseau, on the one hand, holds that man in the state of nature possesses no need for law of any kind, and even if he quickly transformed into a being that needs it, still in principle he could have lived without law forever. He makes progress eventually to the point where government is necessary because of historical accidents.166 As Heinrich Meier has remarked in referring to “the static character” of Rousseau’s state of nature, “Rousseau lets it be understood…that he expressly regards the continuation of the state of nature in time as possible.”167 Plato, on the other hand, holds that man experiences the need for law based on his nature and on the character of external nature herself. If, in the beginning, there is no law and men are generally peaceful, these facts themselves are accidental; more specifically, they are attributable not to the nature of man, but to the accident of the great cataclysm. For Plato, the nature of man as such renders political life necessary.

We notice something remarkably similar to this as regards the issue of dangerous passions. Rousseau and Plato agree that the human condition immediately prior to the institution

\[\text{166 The distinction between nature and history as a feature of Rousseau’s thought has recently been challenged by Marks in } \textit{Perfection and Disharmony in the Thought of Jean-Jacques Rousseau}. \text{ The present chapter’s reading of the } \textit{Second Discourse} \text{ in light of Plato’s } \textit{Laws}, \text{ however, lends evidence to claims that there is indeed a basis for this distinction in Rousseau.}
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\[\text{167 Meier, “The Discourse on Inequality,” p. 219; cf. p. 227.}\]
of law is in disarray, in part, because the passions of men incline them toward violent conflict. And their respective views on the passions themselves are in some ways parallel. Rousseau’s ambition and Plato’s *pleonexia*, to take the most obviously comparable passions, both refer to the desire to have more than one needs or deserves, relative to the possessions of one’s neighbors.\(^168\) Now in emphasizing so heavily the disastrous effect of establishing a right to property, Rousseau appears to hold that the ambition for tangible goods, such as land and money, is more significant as a source of conflict than is, say, consideration or reputation. Plato’s Athenian, in mentioning *philonikia*, the love of victory, in the same breath as *pleonexia*, implies alternatively that conflict over honor may be more important. Still, both Rousseau and Plato assume that man is able to reflect on and weigh what he owns in comparison to that of other men, and that he prefers to take what is advantageous for himself in the face of demands that the distribution of goods should be equal. From both passions, then, stem the inequality that leads to conflict.\(^169\)

But whereas Rousseau argues that ambition, as well as other passions like envy, jealousy, etc., are created by the forces of history and human society, Plato’s Athenian contends that *pleonexia* and other dangerous passions are part of the natural, i.e. spontaneously arising, psychic constitution of man. Man, it is true, is not “motivated” to act on such passions immediately following the great cataclysm, but these passions are indeed present. What is more, the Athenian

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\(^{169}\) The argument of this chapter departs, then, from Williams when he writes, “…[P]olitical societies are natural for Plato whereas they are in an important respect artificial for Rousseau. The difference between Plato and Rousseau in this regard is very much a product of the times in which they wrote. For Plato and Aristotle, nothing is more obvious than that states are natural…On the other hand, modern political theory typically begins in a state of nature—of individuals existing prior to politics. This changes a good deal, and, for all of Rousseau’s ancient affinities, in this respect he is truly modern” (*Rousseau’s Platonic Enlightenment*, p. 178). The difference between Rousseau and Plato appears to be based less on the times in which they wrote and more on a fundamental disagreement about nature, both external and human. Cf., also, the argument in Hall, “Plato and Rousseau,” pp. 12-19, which is similar to Williams’s.
identifies some individuals as manly by nature, and we suspect, as argued above, that these men act as a destabilizing force in human affairs. Rousseau, for his part, does in fact agree that there are natural inequalities among human beings, such as “differences of ages, health, bodily strength, and qualities of mind or soul.” But differences in the nature of men do not lead them into frequent or sustained conflict at first. Over the course of time, natural inequalities are allowed to develop and the human soul is changed such that it comes to be driven by passions that were not present in the pure state of nature. This is, in a word, Rousseau’s argument about the birth and growth of *amour-propre*.

**Conclusion**

Near the end of the exordium to the *Second Discourse*, Rousseau announces his own conception of the audience he envisages listening to and reflecting on his text. “As my subject concerns man in general,” he remarks, “I shall try to use a language that suits all nations, or rather, forgetting times and places in order to think only of the men to whom I speak, I shall imagine myself in the Lyceum of Athens, repeating the lessons of my masters, with Plato and Xenocrates for judges, and the human race for an audience.” The findings of this chapter suggest that Plato, imagined judge of Jean-Jacques, would register his agreement on Rousseau’s broad teaching about the function of positive law. It is likely, however, that he would disagree about some of the finer points of Rousseau’s treatment of the origins of civil law, all of which

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171 A description of the relationship between Rousseau and Plato that is similar to the one in this chapter can be found in Maurice Cranston, “Rousseau on Equality,” *Social Philosophy & Policy*, 2.1 (Autumn, 1984), p. 115. Cranston’s focus, however, is on the theme of equality, not the themes of human psychology and natural scarcity.

point to the weightier disagreement as regards the status of nature. Contrary to Hendel’s reading of these stories as discussed above, if Rousseau has learned well one aspect of the lesson of his master Plato, then he still shows himself unwilling to follow his master down every path. Indeed, the findings of this chapter suggest an even stronger conclusion: in beginning from the pure state of nature, Rousseau elects to set forth on his path from a radically different starting point than the one Plato chooses in *Laws III*.

That Rousseau emphasizes the forces of history, and Plato those of nature, in their respective stories of the growth of political society, is a distinction well known to students of the history of political thought. What is crucial at this point in the present study, however, is to underscore that both philosophers teach that there are significant limits to positive law, in that its function is only to forestall violent conflict among men. This conclusion doubtless clarifies the way in which a lawgiver would understand one aspect of his task, for establishing civil law is an integral aspect of legislation. Indeed, common sense would seem to consider fundamental positive law to be the primary tool at the disposal of the legislator. But do Rousseau and Plato agree with common sense in this respect? To state the crucial matter more directly, could the mere giving of statutory law possibly be sufficient for establishing healthy politics? Neither Rousseau nor Plato answers this last question in the affirmative. In Chapter Three, we shall begin to explore their respective answers to the question of what, beyond positive law, healthy political life requires.
Chapter III

Wisdom and the Art of Persuasion—The Virtuous Lawgiver

By inquiring into the origins of positive law in the political texts of Rousseau and Plato, as was done in Chapter Two, we have refined our understanding of the reasons why the legislator gives that law, which is to say that we have brought to light the general purposes of positive law. The preceding chapter showed that Rousseau’s and Plato’s views on this matter are in harmony with one another: in the second part of the Second Discourse and in Laws III, respectively, both philosophers demonstrate that statutory law serves exclusively negative ends, particularly the goal of extenuating violence among men. By crafting written laws for the regime, and especially those most important written laws that first constitute the regime, the legislator strives to remove the impediments to peace and stability in human affairs, thereby mitigating damage to the bodies and property of the citizens subject to the laws. This conclusion is nothing less than the first premise of the problem of law, i.e. that positive law is able to accomplish only a limited set of conditions for healthy political life.

Taking a step back, however, it becomes difficult to avoid the conclusion that our discussion so far has neglected a question of great significance. Who is this lawgiver whom this study has asserted to be so important for the political teachings of Rousseau and Plato? The question would be irrelevant, of course, if one were to hold that the legislator can be merely any individual who devises laws for a political community, and that anyone who carries out this undertaking with a modicum of success is as good as any other. But Rousseau and Plato go much farther than this, both sketching the figure of the lawgiver in great detail and arguing that there is, and must be, something exceptional to his character. As was discussed at the beginning
of Chapter Two, one feature common to the political thought of both Rousseau and Plato is the notion that there can be no good legislation, indeed no good politics at all, absent the authority of a virtuous lawgiver. In his Considerations on the Government of Poland, Rousseau carefully discriminates between legislators and the typically modern “makers of laws,” the latter term being a pejorative name for those not truly qualified for the challenge of legislation.173 For his part, Plato speaks of the “good” or “wise” legislator and understands this figure always in contrast with the many others that fall short of the correct paradigm.174 Who exactly is this character holding such a pronounced place in the thought of both philosophers? How do Rousseau and Plato characterize the great lawgiver?

The basic objective of this chapter is to provide an introduction to the legislator as a feature of the political thought of Rousseau and Plato, and ultimately to juxtapose their two portrayals. To this end, we shall pay close attention to the texts cited in Chapter One, namely the Social Contract, II.7, and the Poland, Chapter 2, as well as Laws I-IV. We shall search these texts for a description of the lawgiver’s character—in particular, the status of his virtue—his basic function or task, and his motivation. But as will quickly come to the surface, there is a common thread running through the two presentations at issue here, an affinity worthy of special consideration. Both philosophers agree that persuasion is the most important instrument among the many abilities of the good lawgiver. The legislator is above all a master of the art of persuasion and must be for the following reason. Even though the element of authority must be present in the act of legislation—the exceptionally virtuous lawgiver is this authority—the


174 See, e.g., Plato, Laws, 671c1-2, 688a5 and context, 691d5, 709c7-9, 710e8, 729b5-6, and 742d4. See also Plato, Minos, 318b1-321d10. For an analogue of Rousseau’s distinction between legislators and mere “makers of laws,” consider 690d1-2 and 843e3-844a1.
people must be persuaded to voluntarily agree to the orders given to them. Indeed, consent is a crucial aspect of healthy politics for both Rousseau and Plato, major differences in their teachings on consent and in their conceptions of healthy political life notwithstanding. So Rousseau, on the one hand, indicates that the legislator must be able “to persuade without convincing,” and Plato’s Athenian, on the other hand, recommends that there should be a persuasive element during legislation, in addition to the positive laws, in the form of preludes. The present chapter will also consider, then, Rousseau’s and Plato’s conceptions of persuasion as the chief instrument of the lawgiver, and it will conclude by considering the light that the two notions of persuasion sheds on the problem of law.

**Of Législateurs and Nomothetai**

The legislator makes his entrance in the *Social Contract* at the most dramatic moment of the text. Rousseau’s segue to this juncture, i.e. the conclusion of II.6 concerning the need for a legislator which may have been obscure to his readers, amplifies the authority of this figure and bespeaks the grave nature of his task. So does the well-known opening paragraph of II.7, in which Rousseau portrays the lawgiver in the most august of terms.

The discovery of the best rules of society suited to nations would require a superior intelligence, who saw all of men’s passions yet experienced none of them; who had no relationship at all to our nature yet knew it thoroughly; whose happiness was independent of us, yet who was nevertheless willing to attend to ours; finally one who, preparing for himself a future glory with the passage of time, could work in one century and enjoy the reward in another.176

Rousseau immediately focuses our attention on aspects of the legislator’s character related to the classical cardinal virtues. In the opening sentence, he highlights the presence of versions of three

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175 On the subject of voluntary consent, see Rousseau, *Social Contract*, pp. 52-54 (III: 359-362); and Plato, *Laws*, 684c1-5 and context, and 690b7-c3.

virtues in particular. The legislator is first of all wise. Rousseau describes him as a “superior intelligence,” accentuating the clarity and strength of his vision. Having seen the passions of men, the lawgiver knows the nature of human beings. His superior wisdom embraces both theoretical understanding, namely knowledge of human nature, and prudence directed at the world of practice, for Rousseau makes it patently clear that the legislator works to cultivate the conditions of happiness for the people. Stated more strongly, the legislator’s theoretical understanding of human nature is above all instrumental to his political task; theory, for the lawgiver, exists for the sake of practice. And what is crucial is not simply clarity of vision but specifically foresight, as is revealed in the Social Contract, II.10: “the legislator’s judgment should not be based on what he sees (ce qu’il voit), but what he foresees (ce qu’il prévoit); nor should he give as much consideration to the present state of the population as to the state it should naturally attain.”

Second in the list of virtues is self-control, which the lawgiver possesses to an extreme degree: he understands human passions yet feels none of them. Third, and finally, Rousseau explains that the legislator is just, in the sense of having a willingness to devote himself to the good of others. His happiness is “independent” of that of the people, but he works to increase their own happiness with everything he does. That the lawgiver is eminently qualified to succeed in this undertaking would seem to enhance his justice, since ability, more so than willingness, is the decisive factor in bestowing real benefits on others.

Rousseau’s initial characterization of the virtuous legislator presents a soul elevated to dizzying heights and, thus, raises the question whether any actual human being could fit his

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description. Indeed, the first paragraph of II.7 concludes with rhetorical flourish, with Rousseau
asserting that “Gods would be needed to give laws to men.” The most glaring feature of this
remarkable sentence is Rousseau’s choice of language: the conditional mood (Il faudroit) implies
above all that he is speaking of an improbable event. Rousseau does not expect to see the
conditions for good legislation satisfied in practice, as we have already considered in referring to
the fact that Rousseau views legislation as a permanent problem. The fact that most of us are
acquainted with the sight of mortals drafting laws—with “makers of laws”—lends support to this
pessimistic outlook. Still, is Rousseau describing the legislator as divine here? Some scholars
have regarded this figure as such, and surely there is much in this first paragraph that might lead
us to a similar conclusion.

To say that the lawgiver’s soul does not experience the passions of men is to suggest either that he feels no movement of the passions—and this, either because his
soul is by nature dispassionate or because he has brought his passions to a state of rest—or that
his passions are of an order different than the human sort. In either case his soul is depicted as
something more than human. Moreover, he points to the notion that the lawgiver’s happiness
may be incommensurable with that of human beings. He is capable of happiness, certainly, but it
is a kind that is “independent” of men. And as the chapter draws to a close, we learn of the
“sublime reason” of the legislator and that his soul is nothing less than a “true miracle.”


179 Consider, e.g., Lester Crocker, Rousseau’s Social Contract: An Interpretive Essay (Cleveland: The
Press of Case Western Reserve University, 1968), esp. pp. 76-77; F.C. Green, Jean-Jacques Rousseau: A Critical
Study of His Life and Writings (Cambridge, England: Cambridge University Press, 1955), pp. 292-3; Nannerl O.
Keohane, Philosophy and the State in France: The Renaissance to the Enlightenment (Princeton: Princeton
University Press, 1980), pp. 438 (cf. p. 442); Judith N. Shklar, Men and Citizens: A Study of Rousseau’s Social
Be this as it may, one ought to be chary of claims that the figure of the legislator is simply
divine, hence incompatible with human nature. While it would be exceedingly rare to encounter
someone who fits Rousseau’s paradigm, the text specifies that it would not be impossible.\footnote{180}

Among the named examples of great lawgivers in the chapter, two of whom are ancient figures
to which history has only imperfect access (e.g., Lycurgus and Moses),\footnote{181} Rousseau includes in a
footnote John Calvin, the lawgiver for Geneva who was born only about 200 years prior to
Rousseau and whose history and laws he would have known well. That Calvin was someone
manifestly real implies that Rousseau understands the great lawgiver to be a possibility in human
affairs, his rare prospect notwithstanding.\footnote{182} What is more, while comparatively less is known
about the lives of Lycurgus and Moses, Rousseau credits these men in the \textit{Poland} for their “well
attested” success.\footnote{183} In the \textit{Social Contract}, II.7, Rousseau adds Mohammed to the list of
legislators whose success is well attested: the “law of the son of Ishmael…bear[s] witness today”
to the prophet and founder of Islam, much as the Jewish law does for Moses. It seems, then, that
Rousseau’s depiction of the legislator as divine is best understood as a poeticization serving to
elevate his status in the minds of readers. He means to say that the lawgiver’s virtue is
exceptionally unequal to that of the common person, so much so that it appears divine in contrast

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\item \footnote{181}{For reflections on what we know about Moses, see Eric Voegelin, \textit{Israel and Revelation} (Baton Rouge: Louisiana State University Press, 1956), pp. 380-388. On Lycurgus, see Andrew Szegedy-Maszak, “Legends of the Greek Lawgivers,” \textit{Greek, Roman, and Byzantine Studies}, 19.3 (Autumn, 1978), \textit{passim}.}
\item \footnote{183}{Rousseau, \textit{Poland}, p. 171 (III: 956).}
\end{itemize}
with ordinary human virtue. One might add that a society dominated by the *petit bourgeois*, in which Rousseau lived and of which he was deeply critical, would necessarily be skeptical of such elevation of soul and hence could only have conceived of such virtue as transcendent. Given his assessment of the character of modern society, then, Rousseau’s decision to write in terms of the divine can be understood as a way of conforming to the egalitarian prejudices of his readers.

The need for a lawgiver of exceptional virtue becomes more intelligible as we resume our journey through the chapter, for Rousseau reveals in the sequel to his opening description that the lawgiver’s task itself is extraordinary. Much more than merely giving laws to establish political society, the legislator is expected to institute a people. In using the term “legislation,” Rousseau denotes the deeds that accomplish this goal, in sum the incorporation of a unified people out of individuals possessing only an inchoate sense of community. The core of the legislative task is taking individuals who are loosely associated with one another and tightening that association by giving them distinctive laws, customs, rites, etc. Yet there is much more, according to Rousseau: “[o]ne who dares (ose) to undertake the founding of a people should feel that he is capable of changing human nature (*changer…la nature humaine*), so to speak…” So the lawgiver’s task is exceptional in at least two ways: it involves founding a people, as

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184 After considering Rousseau’s description of the legislator in quasi-divine terms, Bonnie Honig judges that it is better to see this figure not primarily as supremely virtuous but instead as a foreigner: “These characterizations might be found only in a man of perfect virtue. But they—or something enough like them—might just as well attach themselves to a foreigner.” Bonnie Honig, *Democracy and the Foreigner* (Princeton: Princeton University Press, 2001) pp. 20-21. The difficulty with this interpretation, however, is that Rousseau is serious about his claim that good politics would require a legislator of precisely this description, not “something enough like” it. For a reading of the legislator that is similar to Honig’s, see Geoffrey Bennington, *Legislations: The Politics of Deconstruction* (London: Verso, 1994), pp. 218-219.

mentioned, and it calls for the ability to change human nature. In what sense does Rousseau mean that the legislator modifies human nature?

He must...take away man’s own forces in order to give him forces that are foreign to him and that he cannot make use of without the help of others. The more these natural forces are dead and destroyed, and the acquired ones great and lasting, the more the institution as well is solid and perfect. So that if each citizen is nothing, and can do nothing, except with all the others, and if the force acquired by the whole is equal or superior to the sum of the natural forces of all the individuals, it may be said that legislation has reached its highest possible point of perfection.”

In establishing the institutions that direct the wills of individual human beings toward the general will, the lawgiver makes men into citizens, beings that are unintelligible without reference to the larger community to which they belong. The process of transforming men into citizens, on the level of the individual, corresponds to that of transforming individuals living together into a unified people.

We shall investigate in depth what Rousseau means when he writes of “changing” human nature in Chapter Four, this being the most significant aspect of the legislator’s enterprise. For now, however, it will be sufficient to note that the second chapter of the *Poland* confirms that founding a people is at the core of this project. Focusing on Moses, Lycurgus, and Numa—for these three ancient lawgivers are worthy of “particular attention”—Rousseau explains that the principal task of each was to create a people, respectively those of Israel, Sparta, and Rome. Moses “dared (osa) to make out of this wandering and servile troop a body politic, a free people...”. Indeed, the true testimony of his success is that the body of the Israelite people has not yet been dissolved among foreigners. Rousseau expresses confidence that “its morals, its laws, its rites...will endure as long as the world does”—praise that he offers to no other

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legislator in his œuvre—owing to the singular founding legislation of Moses.\textsuperscript{187} Lycurgus, for his own part, “undertook to institute a people already degraded by servitude and by the vices that are its effect” and was highly successful in this regard, Spartan law having been the model for good Hellenic law in general.\textsuperscript{188} Finally, Numa rendered the constitution of Rome “solid and durable by uniting...brigands into an indissoluble body, by transforming them into Citizens...”\textsuperscript{189} All three examples feature the act of taking individuals living under unfortunate conditions and bringing them together into a body politic.

Rousseau’s presentation of the undertaking to found a people brings to light an additional feature of the legislator’s character. We learn in these passages that the good lawgiver possesses a form of the fourth cardinal virtue as well, namely courage. In both the \textit{Social Contract} and the \textit{Poland}, Rousseau uses the verb “to dare (oser)” in order to illustrate this aspect of the lawgiver’s task, suggesting that the attempt to found a people demands the willingness to take risks. In what way is lawgiving risky? First and foremost, as the stakes are so high—the legislator is presented as being responsible for the happiness of the people, i.e. the most comprehensive good for them—so the hopes for success would be comparably high. Evidently only the boldest individuals would take on such an obligation, especially since it involves changing human nature, a job as grave as it would be arduous. Second, because the people will already have had some sense of a life lived together, hence common rules and customs, the lawgiver can expect to


\textsuperscript{189} Rousseau, \textit{Poland}, pp. 171-2 (III: 956-7).
encounter resistance to his legislation. Third, and finally, Rousseau implies that the legislator will be working with dangerous men during the process of giving laws. In Chapter Two of this study, we investigated Rousseau’s thoughts on human wickedness prior to the foundation of political society and concluded that it is the violence precipitated by this wickedness that necessitates civil law. In the *Poland*, Rousseau explains that Moses, Lycurgus, and Numa all gave laws to individuals subject to unfortunate conditions and therefore of dispositions forged by these conditions. The future Israelites began as a “wandering and servile troop” but eventually received the laws, opinions, and customs distinguishing them from other peoples. Lycurgus discovered the future Spartans infected with those “vices” that have their font in servitude. Numa, finally, worked with “brigands” in legislating for Rome. Rousseau’s general suggestion is that only a brave soul could address individuals such as these.

However this may be, there is a complication in the present interpretation of the lawgiver as courageous, at least in relation to the rest of the legislative enterprise as Rousseau understands it. We recall from Chapter Two that Plato teaches in the *Statesman*, for instance, that excessive courage in cities is a threat to political stability, for it breeds excessive violence. And while it would be incorrect to argue that courage always issues in an expression of physical force, it often does and sometimes it must. Insofar as a disposition to face dangers demands also an expression of strength to meet those dangers, courage and force appear to be allies in many cases. But Rousseau discloses in II.7 of the *Social Contract* that the virtuous legislator does not, indeed cannot, employ force for the purposes of legislation. The people’s intractability to new laws notwithstanding, it would be impossible for them to be brought into a unified body politic

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by means of coercion. In the subsequent section of the present chapter, we shall look at
Rousseau’s thoughts on precisely what instruments, if not coercion, are at the legislator’s
disposal. For now, however, we note his view that legislation is “an undertaking beyond human
force,” and that the lawgiver must be able to “win over [the people] without violence…”\(^{191}\)
Furthermore, Rousseau insists that the lawgiver will have no direct power in the society he is
working to establish, the sovereignty of the people being an inviolable principle of political right.

> He who drafts the laws…does not or should not have any legislative right. And the people itself
cannot, even if it wanted to, divest itself of this incommunicable right, because according to the
fundamental compact, only the general will obligates private individuals, and one can never be
assured that a private will is in conformity with the general will until it has been submitted to the
free vote of the people.\(^{192}\)

For this reason, great lawgivers such as Lycurgus have given up any claim to political offices
once the laws have been instituted.\(^{193}\)

Rousseau’s argument for why the legislator must not have power over the laws after they
have been established is a fitting place to conclude our brief initial characterization of this figure
and his task. Above, in the midst of discussing the lawgiver’s exceptional self-control, it was
suggested that his soul may be unmotivated by passions, whether human or other. We now
learn, however, that passion is the precise reason to avoid giving political power to the one who
drafts laws. The lawgiver cannot be expected to remain impartial about the laws he has created.
Much more than this, his laws reflect his passions insofar as they carry out the objectives of his
passions. “[I]f one who has authority over men should not have authority over laws, one who

\(^{191}\) Cf. Christopher Kelly, “‘To persuade without convincing’: The Language of Rousseau’s Legislator,”
Rousseau’s theory of the legislator, Steven Johnston focuses on violence that may be committed against those
individuals falling outside of the purview of the social contract. Steven Johnston, *Encountering Tragedy: Rousseau


\(^{193}\) But consider the case of Numa, who ruled over Rome until the end of his life. See Plutarch, *Numa*,
XX.7-XXII.12.
has authority over laws should not have authority over men. Otherwise his laws, ministers of his passions, would often only perpetuate his injustices, and he could never avoid having private views alter the sanctity of his work." Rousseau fears that even the supremely virtuous individual cannot be counted on to prefer the advantage of the people over his own interest in the long term. The evident solution to this dilemma, then, is abdication of the throne. So that the sovereignty of the people may be preserved, the lawgiver must never rule.

That the lawgiver longs for something recalls a notion from the first paragraph of the Social Contract, II.7, that remains unexamined. According to Rousseau, the great legislator prepares for himself “a future glory with the passage of time,” glory being the “reward” to be enjoyed in return for his legislative effort. Above all he desires to bring glory to his name for posterity; this appears to be the primary factor motivating him to work for the people’s happiness. But this is indeed a significant claim, and it compels us to qualify our assessment of the legislator’s virtue. To be sure, Rousseau’s legislator exhibits a sort of justice in the sense that he devotes himself to the good of others. But he does so not because such devotion is the right thing to do, or with a devotion to others that is selfless, but rather for the chance to win himself a sterling reputation for posterity. Rousseau teaches that this was the motivation of all great legislators, including Moses, Lycurgus, Numa, and the rest. This suggests, however, that virtue for the legislator proves to be choiceworthy for its consequences, the most elevated consequence being glory. Strictly speaking, it would be inaccurate to assert that Rousseau’s lawgiver is a paragon of the classical cardinal virtues. Insofar as the classical position holds that human virtue is the excellent condition of soul disposing men to do virtuous deeds for their own sake, it should

195 Cf. Strauss, Natural Right and History, p. 288.
be evident that Rousseau understands virtue to be something different. To some extent we had reason to suspect this above, when we noted that theoretical understanding, for the legislator, is choice-worthy primarily for the sake of its practical consequences. In this sense, Rousseau’s depiction of the legislator departs from the classical conception of virtue and, instead, borrows a great deal from Machiavelli’s view of the armed founders. Machiavelli, for his part, teaches in *The Prince* that first rate human beings seek to establish “new modes and orders,” i.e. to legislate for a people, in order to make themselves secure and happy. But their happiness consists mainly in the everlasting glory that is bestowed on those who dare to found a people. Machiavellian virtue is any quality that facilitates achieving the prince’s goals, and, in general, virtue is that which conduces to one’s own success.\(^{196}\) Rousseau, it should be clear, accepts Machiavelli’s formal definition of virtue and appropriates it, applying it to his science of the legislator.\(^{197}\)

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Rousseau composed his analysis of the lawgiver in the *Social Contract*, II.7, with Plato’s conception of this same figure in mind. This much is evident from a simple reading of the second paragraph of the chapter. Having just asserted that gods would be necessary to give laws to men, Rousseau continues: “[t]he same reasoning that Caligula used with reference to facts, Plato used with reference to right in order to define the civil or royal man he seeks in his book on


ruling (dans son livre du regne); but if it is true that a great prince is rare, what will be the case for a great legislator?”

This portion of text has proven decisive, but also thorny, in previous scholarly attempts to compare Rousseau’s and Plato’s conceptions of the lawgiver. Roger D. Masters, for instance, points directly to this passage and assumes that Plato’s “book on ruling” is the Statesman, as we saw in Chapter One. Indeed, in translating this passage, he supplies the title of Plato’s dialogue even though Rousseau himself had not referred to the title. Masters looks exclusively to the Statesman and uses the Platonic figure of the politikos, literally he who belongs to the polis, i.e. the city, to draw his comparison with Rousseau’s législateur. The difficulty here is that it is not clear that Rousseau wants his readers to think of the Statesman in the context of his presentation of the lawgiver in II.7. His législateur is, after all, closer in name to the nomothetēs, literally “the giver of the law,” than to the politikos. The Latin translation of Plato that Rousseau owned and read—that by Marsilio Ficino, with corrections by Simon Grynaeus, published in 1550—uses legislator, as well as several other related words and phrases, to translate the Greek nomothetēs, while using civilis to translate politikos. But most of all, in

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200 Both names mean “the giver of law” in their respective languages. The French législateur comes from the Latin legislator, which contains a form of lex (“law”) and lator (“one who proposes a law”). The Greek nomothetēs is made up of the noun nomos (“law”) and a form of the verb tithēmi (“to lay [something] down”).

201 Some of these words and phrases, all used to translate Plato’s nomothetēs, are “leges eis condiderit,” “legum latoribus,” “legum conditori,” and “legumlatoris.” Ficino did not use one word consistently to render nomothetēs into Latin. On this translation, see Silverthorne, “Rousseau’s Plato,” pp. 235-249. For helpful reflections on Marsilio Ficino and the history of his translations of Plato, see Williams, Rousseau’s Platonic Enlightenment, pp. xxiii, 29-30 and 50. See also Josephine L. Burroughs, “Introduction,” in The Renaissance Philosophy of Man, Selections in translation, edited by Ernst Cassirer, Paul Oskar Kristeller, and John Herman Randall, Jr. (Chicago: University of Chicago Press, 1948), pp. 185-192.
distinguishing the “great prince” from the “great legislator,” Rousseau strongly implies that the
characters of these two figures diverge. While the prince would appear to correspond, in this
statement, to Plato’s “book on ruling,” Rousseau compels us to search elsewhere for the Platonic
figure cognate with his legislator.

As we have seen, this text is the *Laws*. According to this dialogue, then, what is the
character of the good lawgiver? It is true that the *Laws* features no discrete or direct treatment of
this figure in the same way as Rousseau’s *Social Contract* or *Poland*. Still, Plato chooses to
begin the text with a question that brings the lawgiver to the center of attention. “Is it a god or
some human being,” the Athenian asks his Dorian companions, “who is given the credit for
laying down your laws (*tōn nomōn diatheseōs*)?” At once the Athenian raises the question of
the divinity, hence the identity, of the legislator. Clinias responds that the Cretans claim it was
Zeus, and the Spartans Apollo, who gave laws to their respective regimes; this would be, at any
rate, the “most just” answer. The conversation of the *Laws* begins from the perspective that the
legislator is a god. But the Athenian moves immediately to question not the justice but the truth
of Clinias’ answer, for in the sequel he refers specifically to Minos as having received laws for
Crete from Zeus. As Thomas Pangle observes, the justice of Clinias’ response had depended on
his omission of the human legislator Minos, in part because the latter’s presence would obscure
that of Zeus, the primary source of Cretan laws according to poetic tradition. The Athenian, in

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204 Pangle, “Interpretive Essay,” p. 380. Minos must be omitted by Clinias also because his deeds, especially those towards Athens to which city Minos was “cruel and tyrannical,” were of questionable justice. Cf. Plato, *Minos*, 318d9-10.
other words, brings to light the notion that divine laws, if they are to have any purchase on human affairs, must be conveyed to men by means of a human intermediary. This is already a subtle criticism of the notion that a divine figure can act as the legislator for a human community, for it demonstrates that the divine cannot legislate without a human agent. Human agency is a necessary precondition for divine law.

The Athenian develops an even more powerful criticism of the claim of divine origins in broaching the subject of the ends of the Cretan regime. Opening up the dialogue’s investigation of laws as such, he asks “[f]or what reason (kata ti) has your law ordained the common meals, and also the gymnastic training and the weapons you employ?”205 This question, ordinary as it may seem for men engaging in a conversation about laws, presupposes that the intentions of the gods in the case of divine legislation are accessible to human intelligence. In the context of the Cretan laws specifically, the Athenian assumes that human reason can discover the intentions of Zeus. Through discussion, men can come to know the purpose of the laws and make judgments about their justice and goodness; they can investigate “whatever in [the laws] constitutes correctness and faultiness according to nature.”206 But this claim, if true, poses a problem for the notion of divine legislation, hence the notion of a divine legislator. If the intentions of the god in the case of the most revered laws are accessible to human reason, then it becomes questionable why men would need a god to legislate for them in the first place. The Athenian’s subtle suggestion is that the deeds of Minos can be understood without reference to Zeus at all, which explains why the Athenian, at this very early point in the Laws, claims that those who arranged the customs for the Cretans and the Spartans were in fact Minos and Lycurgus—in

205 Plato, Laws, 625c6-8.
206 Plato, Laws, 627d2-4, emphasis supplied; cf. 628c6-7 and 634e7-635a2.
other words, not Zeus and Apollo. Despite the fact that these lawgivers for Crete and Sparta enjoy a divine gloss in Dorian opinion, the Athenian puts forward the suggestion that they were in fact human. It is true that the Athenian’s critique of prophecy at the beginning of the \textit{Laws} has proved only that the legislator \textit{could have been} human and not divine, not that he \textit{had to have been} human. Be this as it may, at other places in the text the Athenian is more upfront in drawing a clear distinction between gods, on the one hand, and legislators, on the other. It seems reasonable to conclude that Plato’s \textit{nomothetēs} is a human being, like Rousseau’s, despite the fact that he is held in the sort of reverence typically reserved for the gods.

If the opening speech of the \textit{Laws} draws our attention to the identity of the lawgiver, then the first major conversation of the dialogue teaches us something significant about his task. This conversation is set in motion by the Athenian’s question on the goals of Cretan laws, cited above, to which Clinias replies that “all these practices of ours exist with a view to war, and to me at least it appears that our lawgiver had this in view in everything that he did.” Through his answers to subsequent questions posed by the Athenian, Clinias discloses the view that underlies the need to draft laws with a view to war. He holds, and tacitly praises Minos for holding, that “all are enemies of all in public, and in private each is an enemy of himself.” In short, the fundamental condition of human affairs is war, so much so that even the diverse elements of which individual men are composed are hostile to one another. This is a bold thesis about the

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\footnote{\textit{Plato, Laws}, 630d4-7.}
\footnote{Consider \textit{Plato, Laws}, 630d9-e1, 704d5-6, and 853c3-7. On Lycurgus, see also Herodotus, I.65; and Plutarch, \textit{Lycurgus}, p. V.4-5 (cf. XXIX). For reflections on how the facts about human legislators are converted over time into myth, see Szegedy-Maszak, “Legends of the Greek Lawgivers,” pp. 199-209.}
\footnote{\textit{Plato, Laws}, 662d7-e1 and 873a7.}
\footnote{\textit{Plato, Laws}, 625d7-e2.}
\footnote{\textit{Plato, Laws}, 626d7-9.}
\end{footnotes}
human condition and human nature, to be sure, insofar as it posits war as the very essence of human life. Yet we recall from our discussion in Chapter Two that the Athenian’s views on the human condition are themselves not particularly optimistic: he will contend in Laws III that violent conflict, which stems from dangerous human passions and natural scarcity, is a significant problem in the absence of civil law. Without directly refuting Clinias’ thesis, then, he responds to it by denying that the appropriate reaction to the human condition ought to be legislation with a view only to war. The Athenian does so by focusing on the household. If, he asks, one were faced with the problem of how to adjudicate between brothers in conflict with one another, then

[which judge] would be better: the one who destroyed the wicked among them and set the better to ruling themselves, or the one who made the worthy men rule and allowed the worse to live while making them willing to be ruled? But I suppose we should also mention the judge who is third in respect to virtue—if there should be such a judge—one capable of taking over a single divided family and destroying no one, but rather reconciling them by laying down laws for them (nomous autois theis) for the rest of time and thus securing their friendship (hōste einai philous) for one another.\(^2\)

Clinias answers that this last “judge and lawgiver would be better by far.”

Now the Athenian’s choice to concentrate on the family in this example is susceptible to certain objections, not the least of which concern its arbitrariness and the fact that the familial relationship may be different in kind from the political.\(^3\) Against these objections, however, we note that the Athenian has just spoken of citizens as being “of a common stock (syngeneis) and of the same city,”\(^4\) implying that he views the proper relation between citizens to be an intimate one, akin to that between siblings. And after hearing Clinias’ answer to the question about the three judges, the Athenian indicates that the example will shed light on the individual who

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\(^2\) Plato, Laws, 627d11-628a3.

\(^3\) Cf., e.g., Aristotle, The Politics, Bk. I, Chs. 1-2; and Locke, Second Treatise of Government, Ch. 6.

“brings harmony to the city,” i.e. the lawgiver. Of the three choices—execution of the wicked, subjection of the wicked to the absolute rule of the virtuous, or reconciliation of the two groups by means of law—only the third involves law in any way. The third choice is the one appropriate to legislation and therefore the lawgiver’s art. Most important for our purposes, the Athenian’s formulation suggests that the proper end of laying down laws is to secure “friendship for one another.” The goal of the good lawgiver is not civil peace through forcibly eliminating the wicked, but rather “friendship as well as peace through reconciliation.” Unlike the modern position that tends to emphasize freedom as the principal end of law, the classical position giving pride of place to friendship is articulated by Plato’s Athenian.215 He concludes this section of the argument by asserting that one would “never become a lawgiver in the strict sense, if he didn’t legislate the things of war for the sake of peace rather than the things of peace for the sake of what pertains to war,”216 friendship and civic harmony being the chief “things” of peace at issue here.

This conclusion, it should be clear, is an outright refutation of the goodness of Cretan laws and of the legislator Minos, whom Clinias had recently praised for legislating everything with a view to war. Clinias concedes that the Athenian’s argument seems accurate but is troubled at having to make this concession: he is forced to admit that the legislation of the venerable Minos was in error, a humiliating acknowledgment for a patriotic Cretan to make. The argument that laws looking exclusively to war are unsound would be embarrassing for the Spartan Megillus as well, given the well-known ways of his fatherland. In order to defuse any


216 Plato, Laws, 628d7-e1. On friendship as a goal of the legislative art, see also 663e9-664a8, 693b3-e1, 701d6-8, 738d7-e3 (a passage which Rousseau underlined in his copy of the Laws: see Silverthorne, “Rousseau’s Plato,” p. 242), 862b1-c4, and 880d8-e3.
tension between himself and the interlocutors, then, the Athenian turns to consider evidence from poetry, examining first of all a martial poem by the Spartan Tyrtaeus. The poet indicates that he would not “memorialize nor set down in speech a man” who had all of the good things unless he were always “best in war (peri ton polemon aristos)”\(^{217}\). Taking the liberty to clarify the poet’s intention in accordance with what he assumes it must have been, the Athenian asserts that Tyrtaeus was referring to war against external enemies, not that “harshest” sort of war sometimes fought among fellow citizens, concerning which friendship must surely be the objective. Beyond this, however, the Athenian achieves two distinct goals in turning to examine poetry. First, through the subject matter of Tyrtaeus’ poem he is able to stress the importance of being skilled in warfare, so crucial for gratifying his two Dorian interlocutors. But second, and more important, he introduces the theme of excellence, or virtue, into the conversation about the ends of legislation.

Virtue becomes especially significant in the immediate sequel when the Athenian turns away from Tyrtaeus to Theognis, a Megaran poet who ostensibly sang of the type of man who is best in civil war. The text of Theognis’ verse indicates that “in harsh civil strife a trustworthy / Man (pistos anēr) is equal in value to gold and silver.” The poet, then, asserts that trustworthiness, meaning in this case loyalty or partisanship, is the crucial character trait necessary for ensuring success in civil war, hence the crucial trait of the citizen. But the Athenian follows with his own reading of this verse that is something different entirely, representing his departure from the intention of Theognis. “This man in the harsher war,” he asserts, “is altogether better than that other man, in almost the same degree as justice and moderation and prudence, existing in a man along with courage, are better than courage itself

\(^{217}\) Plato, Laws, 629a4-b3.
alone. For a man would never become trustworthy and sound in the midst of civil wars if he didn’t have the whole of virtue (sumpasēs aretēs).” Of the classical cardinal virtues, courage is required for fighting external wars, but all four virtues together are required for managing internal affairs well. This appears to mean that relations among foreigners may be regulated according to what is most expedient—after all, justice does not arise in connection with the reference to external wars—while relations among citizens must be regulated according to a more stringent criterion, namely justice. More than this, the Athenian claims that the whole of virtue is needed in order to support trustworthiness in civil affairs. But the argument leads the Athenian to reach an even stronger conclusion about virtue. “Isn’t it obvious,” he remarks

that [the argument] wanted to show us that above all others the lawgiver of [Crete], who came from Zeus, as well as any other lawgiver worth much of anything, will never set down laws with a view to anything but the greatest virtue? And this is…trustworthiness in the midst of danger—that quality which someone would call perfect justice (dikaiosunēn…telean).

In the span of a handful of sentences, the Athenian has assimilated Theognis’ trustworthiness (pistos) to “perfect justice,” the highest goal of the lawgiver’s enterprise.

The opening conversation of the Laws has indicated that the legislator strives to take individuals who are in conflict with one another and give them the bond of civic friendship, an objective that is to be achieved by the inculcation of virtue in the citizenry. Precisely how the legislator will do this, as well as the status of citizen virtue in the Laws, are themes of Chapter Four of this study. But the fact that the legislator’s highest task is the promotion of virtue, raises the obvious question of the virtue of the legislator himself. This is a critical question for the present study in particular, considering that Rousseau describes his legislator in terms of versions

218 Plato, Laws, 630a7-b3; Plato cites the text of Theognis’ poem at 630a5-6.

219 Cf. Plato, Republic, 373d7-e7 and 422a4-d7.

220 Plato, Laws, 630c1-6.
of the classical cardinal virtues. It is evident that the good *nomothetēs* of Plato’s *Laws* is, and must be, an impressive figure.\(^{221}\) But what is the status of his own virtue?

While the first full conversation of the *Laws* teaches us about the lawgiver’s identity and his task, passages from the rest of the text, but especially from Books I-IV, shed light on the facets of his character related to virtue. First of all, the legislator is wise. *Laws* I culminates in a major statement by the Athenian on the type of understanding that the legislator must possess. “[T]he knowledge of the natures and the habits of souls (to gnōnai tas phuseis te kai hexeis tōn psuchōn)…is one of the things that is of the greatest use (*chrēsimitatōn*) for the art whose business it is to care for souls. And we assert (I think) that this art is politics.”\(^{222}\) The lawgiver is a knower of human nature in the decisive respect: he knows the contours of the human soul. Indeed, since politics is conceived of here as the care of the soul, it should be clear that the one who establishes the polity must first need to understand the subject of his care. Near the end of *Laws* II, the “good lawgiver” is characterized as “someone who possesses the ability and the knowledge (*dunamenō te kai epistamenō*) required to educate and mold souls,”\(^ {223}\) and it seems likely that this knowledge is subordinate and instrumental to his ability. After all, the Athenian has already described knowledge of the human soul as eminently useful (*chrēsimitatōn*) to politics, the legislator’s highest aim being to produce better conditions of soul for the people subject to his laws. What is more, we learn later in the text that the lawgiver’s knowledge of the cosmos takes as its end what is useful in practice: “[a]ny man who is a lawgiver must understand at least this much about numbers: which number and what kind of number would be the most

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\(^{221}\) See Plato, *Laws*, 964b3-6; cf. 705d3-706a4 and 751b5-6.

\(^{222}\) Plato, *Laws*, 650b6-9; cf. 709c8-9 and 829e6ff.

useful \textit{(chrēsimōtatos)} for all cities.”\textsuperscript{224} According to this quote, what is decisive from the perspective of legislation is that knowledge of numbers be useful. In short, the legislator’s knowledge is fundamentally productive as opposed to speculative, in that he uses it to produce better conditions for men in and through the political world. For this reason the Athenian stresses foresight as crucial to the legislator. One who seeks to have a perceptible effect in the world must be able to envision how he wishes the world to be.\textsuperscript{225}

Now the \textit{Laws} does not feature passages explicitly describing moderation as a defining characteristic of the lawgiver. Nor, for that matter, does it contain passages portraying his justice, though it should be clear that the legislator is just insofar as he devotes his energy to the care of souls, a task that would aim at delivering benefits to others. What the Athenian chooses to underscore, instead, is his courage. In Book IV, he asserts that “lawgiving and the founding of cities is the most perfect of all tests of manly virtue \textit{(aretēn andrōn)},”\textsuperscript{226} this last term being synonymous with the Greek word for courage, i.e. \textit{andreia}. This assertion follows on the heels of the Athenian’s major statement of the problem of legislation in the \textit{Laws}, as was examined in Chapter One. The goal of the lawgiver, in any case of foundational legislation, is to create the conditions so that the people can “breathe together and grow to be constantly united”\textsuperscript{227} in accordance with the new code of laws. They are, in other words, to be brought together in the bond of civic friendship. But the individuals with whom the lawgiver is working will never fail to pose difficulties for him. As Seth Benardete notes in interpreting this passage, “[r]egardless of

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\textsuperscript{224} Plato, \textit{Laws}, 737e7-738a2; cf. 747b1-6.
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\textsuperscript{226} Plato, \textit{Laws}, 708d6-7; cf. 887e7-888a2.
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\textsuperscript{227} Plato, \textit{Laws}, 708d3-5.
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how favorable the geopolitical conditions may be, the legislator has to face a people either too set in its ways to change or too disparate to unite.”

Success in this undertaking—if there could ever be success—requires courage, or the willingness to take risks, to overcome such difficulties. The Athenian indicates, moreover, that it is not just the existing habits of human beings that stand in the way of good legislation, but also chance and “accidents of every sort.” Owing to the adverse effects of diseases, poverty, bad weather, and the like, he goes so far as to assert that “no mortal ever legislates anything, but…almost all human affairs are matters of chance.” The art of the legislator, then, must involve knowing how to prevent the order he brings to the city from being ruined by the effects of bad fortune, to the best of his ability and to the degree that is possible. The daunting nature of this task demands that the lawgiver be equipped with the virtue of courage.

In much the same way it had for Rousseau, the Athenian’s discussion of courage in Book IV leads naturally to a discussion of the question of force. Having considered the various challenges to good legislation, the Athenian turns to ask a hypothetical legislator what would be needed, indeed what would he “pray for,” so that he might be able to “arrange the city” well. What would be required, replies the legislator through the mouthpiece of the Athenian, is a tyrant, someone who is readily able to use coercion if the legislative task calls for it. This tyrant should be “young, possessed of an able memory, a good learner, courageous, and magnificent by nature,” and the hypothetical legislator goes on to say that he must be continent with respect to


229 Plato, *Laws*, 709a7-b2.

pleasures as well. The Athenian assumes, then, that the legislator must have force at his disposal. This may seem a shocking claim, to be sure, underlined by the Athenian’s choice of the term “tyrant” in this passage. After all, there are many other instances in the Laws where tyranny and the tyrant are discussed disapprovingly. Still, it is necessary to resist the reading that the Athenian is not serious about the legislator’s need to use force in this passage, for the principle underlying his discussion of tyranny is the most important aspect of this discussion. Not unlike Socrates in the Republic, the Athenian argues that wisdom, represented by the knowledge of the lawgiver, must be united with power, represented by the tyrant, if good legislation is ever to come to pass. Given the vast challenges to the establishment of good law, coercion is occasionally the only effective option to achieve the goals of the legislator. That the tyrant is characterized as possessing so many virtuous qualities, in particular continence, would indicate that any force used in legislation must not be unbridled but rather governed and limited by wisdom. Unlike a tyrant whose extensive use of violence is stimulated by the violently raging passions of his soul, the Athenian’s lawgiver will be ready and able to use a measured amount of force when necessary, to achieve his political goals.

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231 Plato, *Laws*, 709e6-710b1; cf. 735d2-e3. On these sundry qualities as reflected in other Platonic dialogues, such as the *Republic* and *Meno*, see Marcel Piérart, “Les figures du roi et du tyran dans les *Lois* de Platon,” *Ktima*, 16 (1991), pp. 224-226.

232 Cf. Plato, *Laws*, 692b1-7, 693a3-5, 695e5-696a4, 720b8-d1, 739a5-6, 757d1-5, 831e4-832a2, 859a1-6, and 863e6-864a1.

233 Consider, however, Malcolm Schofield’s discussion of the tyrant as “a deliberate irony, warning us of the extreme unlikelihood of realizing our political hopes by entrusting them to absolute rulers.” Malcolm Schofield, *Saving the City: Philosopher-Kings and other classical paradigms* (London: Routledge, 1999), pp. 44-50.


235 Cf. Strauss, *The Argument and the Action of Plato’s Laws*, p. 57: “The legislator does not absolutely need support by an excellent tyrant for establishing an excellent regime; such a tyrant is merely best for that purpose....”
What is remarkable about Rousseau’s and Plato’s conceptions of the legislator is that they are conspicuously similar as regards the status of the legislator’s virtue. Both philosophers portray the lawgiver as wise and both suggest that wisdom is choiceworthy for him because it is useful in the world of practice. Both lay special emphasis on the courage required for taking on the legislative enterprise and agree on the general reason why courage is necessary, namely that men’s resistance to new orders makes legislation risky. Both Rousseau and Plato maintain that the legislator exhibits a sort of justice in giving of himself to improve political conditions for other people. And notwithstanding the Athenian’s omission of an explicit discussion of moderation, which would have corresponded to Rousseau’s discussion of self-restraint, it is important to note that self-restraint is present in his view of the legislative process, for it is a characteristic of the “tyrant’s” soul. While it would not be surprising to discover that the Athenian’s legislator is himself continent with respect to pleasures, still it is intelligible why the Athenian chooses to discuss self-restraint alongside the tyrant. Continence is most important in the context of the question of force, for it proves to be the quality most useful in restraining the potential abuse of power. It seems natural, then, that Plato would have the Athenian discuss self-restraint in the passage on the tyrant in *Laws* IV.

In terms of their virtue, then, Rousseau’s and Plato’s legislators look very much the same. Now it was argued above that Rousseau’s view of the lawgiver’s virtue borrows heavily from Machiavelli’s characterization of the armed prophet. This statement should not be contentious, considering that both Rousseau and Machiavelli are modern philosophers holding the

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distinctively modern view that virtue, particularly intellectual virtue, ought to be brought to bear on improving the conditions of the external world. For Rousseau, this is the image of virtue that, at the very least, prevails in his description of the legislator. But the most striking fact for our purposes is that Plato’s conception of the legislator turns out to be in basic agreement with that of Rousseau and Machiavelli on the question of his virtue. We consider this fact striking because Machiavelli sketches his image of the highest human type precisely as a rejection of the type held in esteem by Plato and the other classical thinkers, i.e. those who have “imagined” republics and principalities. But especially as regards the virtue of knowledge, the Platonic nomothetēs demonstrates what might be called—anachronistically, of course—a modern view on the relationship between theory and practice, hence a modern view of reason. To be sure, Plato’s legislator is wise, having obviously undertaken to learn a great deal about human nature and the cosmos. But there is no suggestion that the nomothetēs participates in the quest for knowledge for the sake of better and more complete understanding, which is precisely what the philosophos does. In contradistinction to this figure, best typified by Socrates, the nomothetēs uses his knowledge productively in establishing institutions in the world for a wide range of other people. He works to improve conditions in the world for others, which means that he aims to change the world with this knowledge. And while it is true that Plato’s Athenian never intends for the nomothetēs to change the world to the degree that, say, Machiavelli’s armed prophet is expected to, considering that Machiavelli promotes the wholesale human mastery over nature, still the principle that theory should be for the sake of practice is the same in both cases. In short, the nomothetēs produces what may be called, generally, conventions or institutions, i.e. laws, whereas the philosophos contemplates nature. This distinction, and the fact that Plato intends the

Laws, in part, to portray the figure of the good legislator, is one reason to urge caution in claiming that the Athenian Stranger is simply a stand-in for Socrates. Socrates, the prime exemplar of the life of the philosopher, is conspicuously missing from the dialogue in which Plato intends to put the legislator on display. Indeed, the Laws is the only Platonic dialogue from which Socrates is absent.

The preceding discussion, if accurate, could go to some lengths in clarifying an unresolved issue in the Athenian’s teaching on the legislator. Unlike in Rousseau, who considers the everlasting glory desired by the lawgiver at the beginning of the Social Contract, II.7, it is not evident in Plato why the nomothetēs would endeavor to make laws establishing a political community. In other words, what is his motivation for taking part in legislation, certainly an onerous task? The Athenian is silent on this question throughout the Laws, but it is possible that his teaching on the legislator’s virtue points the way toward a persuasive answer. As we have discussed, and as has become particularly clear with respect to wisdom, virtue for the legislator shows itself to be choiceworthy not for its own sake, but rather for its consequences, because it is a means to some further end. Virtue with respect to the process of legislation is essentially instrumental, or productive. Would this not imply, however, that the nomothetēs, the agent of

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the process of legislation, is just in relation to the community he is establishing, not for the sake of justice itself, but for the sake of some reward to be won from being just? And what, after all, would be a greater reward for the lawgiver’s dedication to the political community than a reputation celebrated by posterity? The basic motivation for the Platonic nomothētes could very well be the glory that he expects to receive in time because of his efforts to found the political community. If this is so, then Rousseau and Plato would be in agreement on the question of motivation as well.\textsuperscript{240}

One further piece of evidence for this interpretation is the Athenian’s reference to the figures of Minos and Lycurgus at the beginning of the conversation. The founders of Crete and Sparta are both revered in the highest degree by the citizens of these regimes, and by others as well. One could say the same in describing Solon, the Athenian lawgiver whom the Athenian mentions much later in the \textit{Laws}.\textsuperscript{241} These examples of real legislators demonstrate that glory is the reward for the legislative task, and it is hard to avoid the conclusion that it could be any different for the good legislator of the \textit{Laws}. To be sure, the Athenian’s criticism of Minos indicates that he takes the founder of Cretan laws to have been honored for the wrong reasons, meaning that the Athenian’s conception of the good lawgiver would strive to be honored for the right reasons, namely because his laws are good. But regardless of this distinction, what is critical is that honor seems to be the primary motive for the lawgiver. That the Athenian would choose to be silent about this conclusion is not surprising, for to conceive of justice as mercenary in character for a figure as revered as the legislator could have the undesirable effect of tarnishing justice in the eyes of men. That Rousseau, by contrast, would choose to announce the


\textsuperscript{241} Plato, \textit{Laws}, 858e1-859a1.
fact that the lawgiver desires eternal glory is also not surprising, for he is writing in the wake of Machiavelli’s powerful teaching on virtue and in the midst of political opinion that has been influenced by this teaching. In some respects, the public tarnishing of virtue that the Athenian would have feared had already been accomplished by Machiavelli.

One must notice, however, that there is an evident distinction between Rousseau’s and Plato’s conceptions of the legislator. While Plato affirms that coercion is occasionally necessary to surmount the obstacles to bringing laws to a community of men, Rousseau argues that violence cannot be a part of the lawgiver’s arsenal. This difference in the way in which the legislator is portrayed illuminates what is perhaps the fundamental difference between their respective teachings on legislation. For Plato, good legislation requires the wisdom embodied in the legislator to be transferred to law and then brought to the community through legislation. Because virtue is the highest end of law, the rule of laws such as are designed by a wise legislator must be the highest authority in a polity. Plato therefore accepts the notion that coercion may be necessary to ensure that these laws indeed rule. Rousseau, for his part, places far more emphasis on the sovereignty of the people than does Plato, assuming in fact that the sovereign people, not wise law, is the highest authority in a body politic. He fears that coercion in the process of legislation would be destructive to the notion of consent, consent being the necessary factor rendering the laws legitimate. Stated another way, Rousseau’s teaching on legislation is colored by his views on the origins of political life. Having presupposed that people come together freely as individuals and agree to create civil society, Rousseau would have no place for coercion in his theory of legislation. Plato accepts no such premise, and so his views on the use of force are different.

But, as was argued above, by no means does the Athenian’s legislator enjoy the unbridled power to coerce, nor does the Athenian envision a lawgiver conducting the task of legislation
with an iron fist. On the contrary, these methods would be antithetical to the spirit of Plato’s teaching on the legislator. For the legal theory of the Laws contains an entirely different, and novel, teaching on the relation between force and law. In Laws IV, the Athenian suggests that persuasive preambles ought to be attached to the laws proper, and in making this suggestion, he implies that there is a more effective way of achieving the objectives of law than by using violence. Indeed, persuasion is nothing more than the ability to get others to do what one wants by means that fall short of violence. This is remarkably similar to Rousseau’s teaching, for Rousseau argues that the most important tool at the legislator’s disposal is a peculiar kind of persuasion. The lawgiver is a master of persuasion and is able, by means of this art, to get the people willingly to accept the laws that he has proposed. What is the function of persuasion in the legislative task, according to Rousseau and Plato’s Athenian? Do they understand the same thing by “persuasion”? Exploring these questions is the burden of the next section of this chapter.

**Passion and the Art of Persuasion**

The preface to Rousseau’s discussion of the legislator in the Social Contract concerns the question of the necessity of such a figure. Following on the heels of his claim that the “people...subject to the laws ought to be their author,” Rousseau discloses that it is precisely the nature of the people that renders a legislator necessary. He refers to the people as a “blind multitude”: collectively it “often does not know what it wants because it rarely knows what is good for it.” The problem cited here is a deficiency of vision, or more broadly, a deficiency of

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242 But cf. Plato, Laws, 718b2-3: “Sometimes the law will persuade, and sometimes—when dispositions are recalcitrant—it will persuade by punishing, with violence and justice.”

understanding. The people vaguely sense that there is a good for itself as a group but they remain unable to make an accurate judgment about what it is. Rousseau suggests furthermore that some private individuals are capable of seeing what is good for the group but that these men tend to reject it in favor of more parochial interests. The problem of blindness, then, is twofold: the collectivity of men cannot see the good for themselves as a whole, and individual men resist seeing that they should prefer the good of the group to their own. Hence, the people need “guides” to show them what they cannot see. Individuals need a wise legislator to show them that it would be advantageous for them to unite together and live in accordance with the general will, and the group needs to be shown what the general will is. Rousseau teaches that the people need a legislator, in a word, to instruct them in the proper way of coming together to establish a political community.

The lawgiver’s instruction clearly must be a form of communication between himself and the people. But, according to Rousseau, this fact represents a further complication to proper legislation. The lawgiver cannot simply communicate to the people what is truly in their interest because the two parties speak in different languages.

Wise men who want to use their own language rather than that of the common people cannot be understood by the people. Now there are a thousand kinds of ideas that are impossible to translate into the language of the people. Overly general views and overly remote objects are equally beyond its grasp. Each individual, appreciating no other aspect of government than the one that relates to his private interest, has difficulty perceiving the advantages he should obtain from the continual deprivations imposed by good laws.244

Because the principles of political right are either too abstract or too remote from the immediate concerns of common individuals, such principles cannot be grasped by them. True political wisdom is, for Rousseau, the province of a few. His formulation, in particular the passage of text

244 Rousseau, *Social Contract*, p. 69 (III: 383); emphasis supplied.
italicized above, implies a grave truth about the relationship between wisdom and society.\textsuperscript{245} If, for example, one is translating from one spoken language to another, say French to English, then one must find the word signifying approximately the same idea in the new language as it had signified in the old. The assumption here is that the various languages are simply different ways of expressing ideas common to humanity. By contrast, Rousseau implies that knowledge of the true principles of political right does not lend itself to translation into the people’s language at all. There is no vocabulary in the common language capable of capturing the content of the lawgiver’s political wisdom: “there are a thousand kinds of ideas that are impossible to translate into the language of the people.” Regardless of how virtuous the legislator finds a particular people, he will not be able to reason with them, as one cannot reason with the commonality of men.\textsuperscript{246}

Be this as it may, because the lawgiver must be a guide or instructor, he is still charged with the task of communicating with the people. Rousseau explains that he does so by means of a peculiar sort of persuasion: the legislator must “persuade without convincing (persuader sans convaincre).”\textsuperscript{247} It would seem that he must get the people to accept legislation not because they are convinced that they should, but for different reasons. Hence, the decisive question for our purposes concerns the nature of this persuasion. What does Rousseau mean by the term “to persuade without convincing”?


\textsuperscript{246} For a reading of Rousseau on language that views him as more sanguine about the possibility of “popular enlightenment,” see J. Patrick Dobel, “The Role of Language in Rousseau’s Political Thought,” Polity, 18.4 (Summer, 1986), p. 650ff.

\textsuperscript{247} Rousseau, Social Contract, p. 69 (III: 383).
The answer to this question is not entirely clear from the *Social Contract* itself. Instead of defining what it means to persuade in this manner, Rousseau moves immediately to give an example of such communication, by expounding on the lawgiver’s use of the gods as a mouthpiece during the act of legislation. Still, Rousseau does not neglect to define this term in other sections of his corpus. Christopher Kelly has written the richest treatment of this peculiar type of persuasion in Rousseau, and he explains that the text containing the most comprehensive discussion of it is the *Essay on the Origin of Languages*. The *Essay* is the chief text of Rousseau’s that investigates the nature of communication as such, speculating on the origins of non-verbal communication, speech and language, writing, and music. But, remarkably, when discussing the character of the first language, Rousseau uses the same terminology as he does when describing the legislator’s persuasion.

Instead of arguments [the first language] would have aphorisms; it would persuade without convincing, and depict without reasoning (*au lieu d’argumens elle auroit des sentences, elle persuaderoit sans convaincre et peindroit sans raisoner*). It would resemble Chinese in certain respects, Greek in others, and Arabic in others. Develop these ideas in all their ramifications, and you will find Plato’s *Cratylus* is not as ridiculous as it seems to be. In order to understand what Rousseau means by “to persuade without convincing,” then, it is necessary to investigate his conceptualization of the character of the first language.

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249 Rousseau, *Languages*, p. 296 (V: 383). That Rousseau refers to Plato’s *Cratylus* in the context of the persuasion used by the legislator, is significant for the present study. This dialogue, in which Socrates and his interlocutors investigate the relation between language and nature, features a god whose task is to assign names to the various objects. The word Plato himself uses to name this god is *nomothetēs*. The most common translation of the *Cratylus*, that by C.D.C. Reeve, renders this word “rule-setter” to specify the intellectual distance between this word’s meaning in the *Cratylus* and the usual notion of political lawgiving. But the most immediate meaning of *nomothetēs* is, of course, “lawgiver.” Though it is not possible to develop this theme here, one might suggest that Plato, through the *Cratylus*, teaches that legislation at its highest level involves dividing nature and giving definition to the things of nature by means of names. See, e.g., Plato, *Cratylus*, 389a2-3. Cf. Genesis, Ch. 1.
The central thesis of the *Essay on the Origins of Languages* is that spoken languages originated in the moral passions, not in a specific faculty of speech with which all men are endowed and not because speech was instrumental in satisfying physical needs. For human beings living in the state of nature and experiencing nothing other than purely physical needs, all communication would have been conducted by non-verbal means, such as physical gestures and signs. The test of visible signs is accuracy, and because expediency is most important when one is looking to satisfy practical needs, the use of signs would have been the most efficient way of accomplishing this goal. But as soon as human beings developed factitious needs or desires and the habit of living together in larger numbers—a process that was sketched in detail in Chapter Two—they began to communicate in spoken languages. “From where,” Rousseau asks, “could [the origin of languages] derive? From the moral needs, the passions. The passions all bring men together, but the necessity of seeking their livelihood makes them flee one another. Neither hunger nor thirst, but love, hatred, pity, anger wrested the first voices from them.”

Rousseau is clear that the simple passions of hunger and thirst, i.e. those related to *amour de soi*, are themselves alone incapable of bringing human beings to develop languages, but that the passions related to *amour-propre* are. Satisfaction of the sophisticated moral passions demands a more sophisticated manner of expression than merely physical gestures. And it is not simply that spoken languages originate in the *amour-propre* in the speaker: according to Rousseau, speech is meant to appeal to the passions of *amour-propre* in the audience as well. Discourse is necessary “when it is a question of moving the heart and enflaming the passions”.

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Rousseau claims that the first language would have expressed generally figurative rather than literal meaning. Metaphor would have been, in all likelihood, the way by which early men described the objects in the world, because their first sensory experience in encountering other objects would have been the “illusory image offered by the passions” of amour-propre. The fear of seeing another man in nature would lead one to call him a “giant”; only when the fear eventually subsides can one see another man as he is and therefore refer to him as he is. Furthermore, Rousseau calls the first language that developed “tuneful (chantantes) and passionate.” That it was melodious depends decisively on its passionate character. Early men confronted with the need to communicate passions to the hearts of others would do so in the appropriate medium: they would tend to sing rather than speak. For Rousseau, the medium of feeling is song. The first language would “neglect grammatical analogy to stick to the euphony, number, harmony, and beauty of sounds.” The first human beings would have expressed themselves in music. It is for this reason that Kelly, as well as John T. Scott, have maintained that the language of Rousseau’s legislator would itself be musical. “The first stories, the first harangues, and the first laws were in verse,” Rousseau explains in the chapter on “The Origin of Music” in the Essay on the Origins of Languages; “poetry was discovered before prose; this had to be so, since the passions spoke before reason.”

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252 Rousseau, Languages, p. 295 (V: 382)


254 Rousseau, Languages, p. 296 (V: 383).


256 Rousseau, Languages, p. 318 (V: 410), emphasis supplied. Cf. Plutarch, Lycurgus, IV.1-3, on Thales of Crete, a lyrical poet who “in reality” was “one of the ablest lawgivers in the world.” Translations of Plutarch are
Rousseau provides a vivid example of the moving power of this first language when discussing the character of oriental languages, such as Arabic or Persian. In contrast with the Northern European languages, for instance—languages “of men who help one another, who coolly reason with one another, or of quick-tempered people who get angry”—the oriental languages express their meaning through musical accent and aim chiefly at moving the heart. Moreover, Rousseau indicates that they represent the type of communication with which “the wise giv[e] laws to peoples.” They represent the sort of language used by the great legislator in his communication with the people. But merely to understand a language like Arabic, for example, would not be enough to qualify one for the legislative task. Rousseau’s true lawgiver is one who knows how to use this way of speaking effectively. He is a master of the art of persuasion.

Someone who can read a little Arabic smiles when leafing through the Koran; had he heard Mohammed in person proclaim it in that eloquent and rhythmic language, with that sonorous and persuasive voice which seduced the ear before the heart, and constantly animating his aphorisms with the accent of enthusiasm, he would have prostrated himself on the earth while crying out: great Prophet, Messenger of God, lead us to glory, to martyrdom; we want to conquer or to die for you. According to Rousseau, then, Mohammed’s persuasiveness was supported by the rhythmic and accented character of his speech and the resonant nature of his voice. Mohammed was capable of moving his followers by means of these instruments because they took direct aim at the principal motivating forces in human beings, i.e. the passions.

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The example of Mohammed is significant, in that the founder of the Muslim faith is one of the few legislators to whom Rousseau refers in the *Social Contract*, II.7. The “law of the son of Ishmael,” he remarks, as well as the Jewish law, “still bear witness today to the great men who formulated them.” In short, the description of Mohammed’s method of communication is also a description of Rousseau’s legislator’s, and as such it is a clear indication of what it means to persuade without convincing. So, what does this term mean? Our brief discussion has shown that to persuade without convincing involves a sharp distinction between communication with the passions and communication with reason, and that it prefers to employ the former. To communicate with reason would be to make an attempt to convince: in the *Essay on Languages*, Rousseau compares persuasion without convincing to using aphorisms instead of arguments, on the one hand, and depicting without reasoning, on the other. Now it would be a mistake to claim that reason is entirely excluded from the legislator’s art, for the use of verbal communication implies that reason is functioning to some extent. Still, the people are not moved to accept the legislator’s work by rational argument. As was demonstrated above, they cannot be so moved because true political wisdom cannot be translated into the language of the people. The legislator’s language and method of persuasion is therefore decisively sub-rational in character, in two ways. It speaks directly to the heart or the passions of its audience, avoiding any sort of direct appeal to the reasoning faculty, and it speaks with the language of the heart, especially with music in its melodious accents and rhythms.


In his *Discourse on Political Economy*, Rousseau calls attention to an aspect of Platonic jurisprudence that reflects, in Rousseau’s view, his ancient predecessor’s extraordinary understanding of the legislative art. Because he knows that “the power of the laws depends even more on their own wisdom than on the severity of their ministers…Plato considers it a very important precaution always to place at the head of edicts a sensible preamble (*un préambule raisonné*) which shows (*montre*) their justice and utility.”

In the midst of his general discussion of civil law and the legislator’s task to establish this law, then, Rousseau bestows high praise on Plato for his teaching on these same themes.

The particular legal institution to which Rousseau refers in this passage is the prelude (*prooimion*), which the Athenian calls a wholly innovative aspect of his understanding of law. What is a Platonic prelude? The Athenian introduces the subject in *Laws* IV by indicating that there are things the lawgiver ought to say that cannot be presented “in the shape of law” yet must be given as “an example…for himself and for those he will give laws to.” Such an “example” is intended to explain the law in more detail than can be found in the legal prescription alone. The legislator must, therefore, either give a speech or compose a written text containing these

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things and attach it to the beginning of the law so as to herald the expression of the law proper. This is, in short, the formal definition of the legal prelude.  

But what makes this institution important in the context of our present inquiry is that the prelude is intended to be the embodiment of persuasion in the legislative act. The Athenian remarks that it is crucial from the perspective of the lawgiver that the people “be as persuadable as possible (eupeithestatous) with regard to virtue,” which, as we saw above, is the highest goal of legislation in the Laws. But making the people persuadable—or, indeed, simply persuading them—cannot be the task of the law itself. “Is [the legislator],” the Athenian asks, “just going to explain straightaway what must and must not be done, add the threat of a penalty, and turn to another law, without adding a single encouragement or bit of persuasion to his legislative edicts (paramuthias de kai peithous tois nomotheoumenois mēde en prosdidō)?”  

As the framing of this question clearly implies, the answer is no. The wise lawgiver must instead establish laws in a double form: what the legislator gives will express the law proper and the penalty, which the Athenian likens to a “tyrannical command,” in addition to the prelude, which itself represents “persuasion.”  

Rousseau’s own brief assessment of the preludes in his Political Economy raises an important question as regards the nature of Platonic persuasion. Rousseau has described the preambles of the Laws as being raisonné, which we have rendered above as “sensible” but which is the adjective related to the past participle of raisonner, to reason. What is the relationship of the Platonic preludes to reason? Recently, the scholarly literature on Plato’s political thought has

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264 Cf. the interesting uses of “prelude (prooimion)” in the Republic: e.g., 357a1-2, 432e8, and 531d7-8.
266 Plato, Laws, 719e8-720a2.
267 Plato, Laws, 722e7-723a4.
been augmented by several studies devoted to interpreting the preludes, many of which take the strong position that they represent rational persuasion. Chief among these is *Plato’s Utopia Recast* by Christopher Bobonich, in which Plato is interpreted to have become more sanguine about the prospects for general public enlightenment in his late dialogues, the latest being the *Laws*. Bobonich contends that the primary task of the preludes is to educate the citizens by means of “good epistemic reasons for thinking that the principles lying behind the legislation are true.” If this is the case, then it should be clear that Bobonich understands the preludes to be of a rational character. “The preludes are thus designed to be instances of rational persuasion,” he argues, “that is, attempts to influence the citizens’ beliefs through appealing to rational considerations. They are not intended to inculcate false but useful beliefs or to effect persuasion through non-rational means.”

Several other studies are in agreement with Bobonich’s general assessment of the preludes. Explaining that rational understanding is the foundational basis of citizen consent in the city of Magnesia, Josiah Ober argues that “[o]bedience [is]…predicated on assent rather than coercion: the persuasive power of reason allow[s] Plato’s legislators to avoid Solon’s embrace of coercive force.”

John R. Wallach, for his part, puts forward a view that is, in its essentials, in accord with Ober’s. Finally, Thanassis Samaras holds that rational

\[\text{\footnotesize\textsuperscript{268}}\text{\footnotesize\cite{Bobonich2001, Nightingale1991, Yunes1990}}\]

\[\text{\footnotesize\textsuperscript{269}}\text{\footnotesize\cite{Ober2005, Cohen2005}}\]

\[\text{\footnotesize\textsuperscript{270}}\text{\footnotesize\cite{Wallach2001}}\]
persuasion is the ideal standard of the preludes, even if some of the Athenian’s examples in the text do not meet that standard.\footnote{271}

These readings of the \textit{Laws} draw heavily on the Athenian’s discussion of the practice of the art of medicine at the end of Book IV, in which he distinguishes between two types of doctor. On the one hand, there are doctors who understand the nature of the human body and therefore treat patients in light of this knowledge. The Athenian refers to these as “free doctors,” for they tend to treat free citizens. On the other hand, there are doctor’s servants who have nothing more than the experience of observing what sorts of methods their masters use. These servants are called “slave doctors,” for they go around treating sick slaves. The slave doctor cannot give or receive “an account of each malady”; nonetheless, “[c]laiming to know with precision, he gives his commands just like a headstrong tyrant and hurries off to some other sick domestic slave.”

The method of the free doctor, however, is radically different.

The free doctor mostly cares for and looks after the maladies of free men. He investigates these from their beginning and according to nature (\textit{ap’ archēs kai kata phusin}), communing with the patient himself and his friends, and he both learns (\textit{manthanei}) something himself from the invalids and, as much as he can, teaches (\textit{didaskei}) the one who is sick. He doesn’t give orders until he has in some sense persuaded (\textit{ou proteron epetaxen prin an tē sumpeisē}); when he has on each occasion tamed the sick person with persuasion (\textit{meta peithous hēmeroumenon}), he attempts to succeed in leading him back to health.\footnote{272}

The Athenian’s intention in describing these two kinds of doctors is to clarify the general purpose of the preludes. Whereas a simple law and its penalty for disobedience would correspond to the activity of the slave doctor, a law with its penalty and prelude would be similar to the activity of the free doctor. And it is this latter method, of course, that the Athenian prefers.

\footnote{271}{Thanassis Samaras, \textit{Plato on Democracy} (New York: Peter Lang, 2002), pp. 310-318.}

This passage sheds light on the reason why the interpreters discussed above contend that the preludes are designed to undertake the rational persuasion of citizens. The free doctor, after all, appears to engage primarily in the education of his patients. But there are several other reasons why we should be cautious about interpreting the preludes as appealing primarily to reason. First of all, it is possible to teach by means that fall short of rational argument—the sense of didaskō in the passage on the free doctor seems to encompass this broader sort of teaching—and it is possible for education to aim at instructing the affections rather than reason. There is, in other words, a distinction between civic and philosophic education, and in the subsequent chapter of this study, we shall consider the ways in which the legislator educates, as it were, the sub-rational elements of the citizen’s soul. Returning to the text cited above, however, we notice also that the Athenian qualifies the notion that the free doctor teaches his patient, by claiming that he tries to do so as “as much as he can”. Furthermore, the goal of “communing” with the patient is to tame (hēmeroumenon) him by means of persuasion so that the doctor can attempt to lead him to health. Language such as this implies that the objective of the free doctor is to govern and shape the disposition of the patient: that an individual has been “tamed” implies that his passions have been calmed, which calming represents a new disposition of soul. Having been made gentle, the sick individual is in a better position to be brought to health by the doctor. Earlier in the text of the Laws, the Athenian had described the conversation between doctor and patient by saying that it “would contribute something to making the hearer listen in a more tame and agreeable mood (hēmerōteron...kai eumenesteron) to the advice,” the change in mood being the most important reason for the conversation. But finally, when the

273 See Liddell and Scott’s Greek Lexicon, s.v., didaskō. While the primary sense of this verb is “to instruct (a person) or teach (a thing),” it is the second sense that is “to show by argument” or “to prove”.

274 Plato, Laws, 718d.
Athenian is concluding his theoretical elaboration of the preludes, he summarizes what has been said and states their chief purpose.

For it became clear to me that this whole speech, which the speaker gives in order to persuade, is delivered with just this end in view: so that he who receives the law uttered by the legislator might receive the command—that is, the law—in a frame of mind more favorably disposed and therefore more apt to learn something (eumenōs, kai dia tēn eumeneian eumathesteron). That’s why, according to my argument at least, this would correctly be called a “prelude” (prooimion) rather than an “argument” (logos) of the law.275

To be sure, the text here indicates that the goodwill or favor (eumeneia) brought about by the prelude might lead the hearer to learn something: the prelude will clearly contain an explanatory justification of the law, to be taken into consideration by the individual citizens.276 Still, the immediate aim of the prelude is to alter the “frame of mind” of the citizen, or, in other words, to alter his disposition. For this very reason, according to the Athenian, the prelude cannot be viewed as an instance of rational argument (logos).

The persuasion embodied in the preludes, then, appears to be directed at the sub-rational elements of the citizen’s soul.277 With respect to its ability to convey the reasons behind the law, at best we might say that the prelude strives to inculcate good civic opinion and not knowledge, contra Bobonich et al. This position has been defended by scholars such as M.J. Silverthorne

275 Plato, Laws, 723a2-7.


and Eduard Zeller, but analysis of two examples of preludes from the *Laws* may serve to illustrate this point further. The first explicit example of a legal prelude, presented in *Laws IV*, concerns the law making marriage mandatory for everyone between the ages of thirty and thirty-five. Now the prelude to this law notwithstanding, it is clear that the city would have an interest in seeing its citizens marry and produce children in stable family life: childbirth is a condition of the city’s continuation. The prelude, however, focuses instead on the selfish desire that all human beings have for immortality and fame after death, and explains that we best satisfy this desire by giving birth to children. But the relation between marriage and children, on the one hand, and the natural desire for immortality, on the other, is susceptible to serious questions. Though the prelude indicates that everyone desires immortality, it is not clear whether everyone, in particular the highest human types, will seek satisfaction of this desire in the family. As Thomas Pangle indicates, referring to Plato’s own decision not to marry, “[s]urely in the case of the author, Plato, the family was not the way he chose to express his desire for immortality.”

This observation suggests, of course, that it might not be simply true that the family is a necessary condition for human flourishing. Surely it tends to gainsay the notion that the imperative to marry is categorical, as the prelude implies.

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279 Cf. Plutarch, *Lycurgus*, XV.1-2, on the official Spartan practice that “those who continued bachelors were in a degree disenfranchised by the law”; and *Solon*, pp. VI-VII, on Thales’ of Miletus views on marriage, as well as Plutarch’s criticism of the same.

An additional example demonstrating that Platonic persuasion in the *Laws* is not fully rational in character is the prelude to the law against impiety, in Book X.\textsuperscript{281} The Athenian’s proof of the existence of the gods as well as their providence begins in his claim that human beings need “persuasion” about these matters “so as to make them as tame”\textsuperscript{282} as the legislator can, and Clinias quickly indicates his agreement. After having begun to discuss the nature of soul with his Cretan interlocutor, however, the Athenian suddenly breaks off their conversation in order to continue it alone. He claims that the career of the argument will be too difficult for Clinias to follow.

Now the argument coming up is rather swift and perhaps almost unfordable for your strength. Lest it create in you a dizziness and whirling (*skotodinian ilingon*), sweep you away by asking unfamiliar questions, and engender an unpleasant unsightliness and unseemliness, it seems to me that I ought now to proceed thus: first I should question myself, while you listen in safety, and then after this I again should answer myself, and go through the entire argument this way until what pertains to soul is completed and it has been demonstrated that soul is prior to body.\textsuperscript{283}

Now Plato gives us several indications in the *Laws* that Clinias is not a mean sort of human being, and that he has distinguished himself as an intelligent man among the Cretans. After all, we learn at the end of Book III that he has been chosen by the city of the Knossians to be one of the lawgivers for the new city of Magnesia. Yet, despite his virtue, he is incapable of following the Athenian’s argument in the prelude to the law on impiety, in particular that on the most important of subjects, the nature of the human soul.\textsuperscript{284} Clinias himself indicates that he is unable to follow the reasoning. This could only imply, however, that ordinary citizens would be unable to follow the argument as well, and that the prelude could not educate by means of sound rational

\textsuperscript{281} The Athenian calls the argument of Book X a prelude at 907d4-5.

\textsuperscript{282} Plato, *Laws*, 890c6-8.

\textsuperscript{283} Plato, *Laws*, 892e5-893a7; cf. 896e4-5 and 897d5-6. For further evidence that the Athenian must condescend to the capabilities of Clinias and Megillus, consider 804b7-c1 and context.

\textsuperscript{284} Cf. Morrow, *Plato’s Cretan City*, p. 483: “[T]hese mathematical curves involved are difficult to grasp and they would be beyond the powers of the Athenian’s two companions.”
argument. Indeed, the Athenian’s image of the unpleasant “dizziness and whirling” that would accompany his argument in \textit{Laws} X calls to mind the painful bedazzlement experienced by the individual going through philosophic education in the \textit{Republic}’s allegory of the cave.\textsuperscript{285} The drama of Clinias, who is spared the shock attending an education in philosophy, shows that the legislator cannot persuade by rational means.

For these reasons, Glenn R. Morrow has referred to the preludes of the \textit{Laws} as “a species of enchantment” and has argued that this enchantment is “a training of the sentiments.”\textsuperscript{286} But although the prelude is the most recognizable form of persuasion at the disposal of the legislator, it is not the only form of enchantment (\textit{epōdē}) in the \textit{Laws}, and the Athenian suggests strongly that the legislator will use other forms as well in his persuasive art. This is one of the themes of Book II in particular.\textsuperscript{287} As this subject will be treated in more detail in the subsequent chapter, we shall confine ourselves to a few brief comments here, in order simply to specify the connection between enchantments and persuasion. The Athenian contends that the lawgiver must establish public festivals for the citizens that feature choruses in singing and dancing. But the songs and dances are not simply a matter of entertainment: they are established so that those participating in the choruses, as well as those watching the performances, will undergo an education of the affections, which education leads individual human beings to possess the proper qualities of citizenship. The Athenian maintains that young children watching the choruses will have their souls accustomed in the proper ways of the regime, while the older citizens will keep

\textsuperscript{285} Cf. Plato, \textit{Republic}, 515c4-d7.


\textsuperscript{287} Consider, in \textit{Laws} II, 659e9-e2, 664b3-c2, 665c2-7, 666c6, and 671a1. Cf. 812b9-c7.
their habituation in the same ways preserved. In short, the songs and dances represent the persuasive enchantment by which the lawgiver conducts the work of legislation. And precisely as enchantments, they aim at the affections of the citizenry.

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Having separately considered Rousseau’s and Plato’s positions on persuasion, we are led to ask a question about Rousseau’s reading of Plato. As indicated above, Rousseau describes the legal preludes of the Laws as being raisonné, yet the discussion of crucial passages from the Laws in the previous section has shown that the primary aim of the preludes is to influence not reason, but rather the sentiments. Is Rousseau’s description of the preludes, and hence his understanding of Platonic persuasion, simply unreliable? For this might be one way of interpreting Rousseau’s description. Or, is it possible to offer a different explanation of what he intends in this statement from the Political Economy?

The context of Rousseau’s characterization of preludes is his elaboration on what he calls the first maxim of legitimate government, i.e. “to follow the general will in all matters.” Rousseau concludes that the legislator, in order to meet the demands of this maxim, must make the laws conform to the general will and see to it that the citizens respect the laws. So, Rousseau asks, how does one promote such respect? One certainly cannot do so by means of force or severity of punishments: overwhelming force provokes the citizen body to feel only terror, which is an ineffectual source of attachment to the civil law. There must be other methods, and these turn out to be the province of the supremely wise legislator; the art of persuasion, as we have seen, is the most important tool at the legislator’s disposal. When Rousseau cites Plato, then, he

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does so in support of his argument that healthy political life can be established only by non-coercive, persuasive means. In context, the chief purpose of calling the legal prelude *raisonné* is to indicate that it achieves its goal by means other than force. Rousseau means to say that the intention of each prelude is to convey, i.e. to “show (*montre*),” the wisdom embodied in the law to the people living under it, as we have seen that it is for Plato. But this is not to make a strong claim on how the wisdom is to be conveyed. In other words, it is not to make a strong claim that the persuasion of Plato’s preludes is fundamentally rational in character. Taking into account the fruits of this chapter’s examination of Rousseau’s teaching on communication, it is evident that he is well acquainted with methods of conveying wisdom that do not appeal primarily to reason or to rational argumentation.

In the end, it appears that Rousseau and Plato are quite similar as regards their understanding of persuasion. Hence, R.W. Hall remarks, in a discussion of Rousseauan persuasion, that “Rousseau surely has in mind the innovation Plato introduced in the *Laws* of prefacing his important laws by preambles which were to add to the rational content of the laws persuasion to obedience based on their appeal to sentiment or feeling.” Though it would be possible to demonstrate that Plato wishes for persuasion to become institutionalized in the form of preludes, whereas Rousseau, with his teaching on persuading without convincing, does not, this is less of a disagreement than it might seem at first. In the next two chapters of this inquiry,

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289 Support for this reading is found in *The Oxford-Hachette French Dictionary*, s.v., *raisonné*. “Rationnel” is the fourth meaning of the adjective, and the first three, namely “prudent,” “contrôlé,” and “sensé,” all fall short of indicating “well-reasoned” or “rational.”

290 Cf. Garsten, *Saving Persuasion*, pp. 59-62. For Garsten, Rousseauan persuasion is very different from the classical conception of persuasion. But by the classical conception, Garsten means Ciceronian eloquence. His treatment of Rousseau does not, at any rate, compare persuasion “without convincing” to Platonic persuasion.

we shall consider ways in which Rousseau suggests that the persuasive powers of the legislator are to become institutionalized. But the point that bears more directly on the immediate discussion is that both Rousseau and Plato take persuasion to be an indispensable ingredient to good and effective legislation. And they seem to be in agreement on the nature of legislative persuasion as well. Both argue that its primary objective is to govern and shape the citizens’ affections. And both show that it will not take the form of rational argument. Indeed, for both Rousseau and Plato, the basic language of persuasion is music. Whether it is the melody and rhythm of a sonorous voice, or singing and dancing occurring in a chorus, the good lawgiver must employ these forms of music in establishing a political community.

**Conclusion**

In the present chapter, we have considered two separate but related themes in an attempt to introduce Rousseau’s and Plato’s respective conceptions of the legislator. First, focusing mostly on wisdom or knowledge, we have looked at the status of the legislator’s virtue and related his virtue to the basic legislative endeavor. For both Rousseau and Plato, the challenging nature of the task of giving laws to a people demands that the legislator be in possession of great virtue. Second, we have investigated Rousseau’s and Plato’s respective views on persuasion, arguing that the lawgiver is, and must be, a master of the art of persuasion. One can say that it is through his persuasive skill that the legislator exhibits his supreme virtue. After all, knowledge of the art of persuasion is certainly among the highest sorts of practical knowledge that the legislator can possess.

That the lawgiver is described by these two philosophers in such highly elevated terms is a direct indication of the problem of legislation. That a legislator of this character would be necessary for good legislation implies that the mere crafting of statutory law cannot alone satisfy
the conditions for healthy political life. Moreover, that the legislator is portrayed as supremely virtuous—surely an extreme rarity in human life, so much so that he would likely appear to be divine in the view of common opinion—points to the fact that the extra-legal undertaking needed to supplement civil law is extraordinarily complicated, if not impossible in most times and places. We do not encounter individuals like Lycurgus, Minos, Moses, Mohammed, or even Calvin very often.

Still, assuming that a people were to come across a legislator such as this, what would this extra-legal undertaking entail? We have already seen that the legislator’s art of persuasion is useful for shaping the sub-rational elements of the citizen’s soul, and so it is reasonable to assume that such extra-legal measures will be directed at the affections. Is this the case? And if so, why exactly does the project of establishing laws require the legislator to shape the affections? What is the relationship between the proper ordering of the sub-rational part of the soul and the qualities of good citizenship? Notwithstanding important differences in the details of their answers to these questions, both Rousseau and Plato are in agreement on the need for sub-rational support of the law. Chapter Four begins our comprehensive investigation of this theme.
Chapter IV
Engraving Unwritten Laws in the Citizens’ Hearts

In Chapter Two, we considered the legislator’s task in respect to positive laws by clarifying their origin. In drafting written legislation, it was shown, the lawgiver aims solely at the goal of extenuating the unsavory aspects of the human condition, chiefly violent conflict among men. Yet bearing in mind Rousseau’s and Plato’s respective depictions of the legislator that have come into focus in Chapter Three, there seems to be some dissonance between the low or limited goals of positive legislation, on the one hand, and the elevated character defining the true legislator, on the other. After all, both philosophers describe the lawgiver in the most extraordinary of terms, venturing to suggest that there is something to his great soul that seems almost divine. Would it be fitting for the legislator to be concerned with the gritty matters of law and order? Apparently so, inasmuch as he undertakes the task of giving written laws to a people. But why, then, do Rousseau and Plato stress the necessity of the lawgiver’s exceptional virtue? It seems that even mean individuals could devise simple rules for ensuring civil peace, provided that the community they are setting up is invested with enough power to enforce them. Hobbes’s Sovereign, for instance, who establishes civil laws in accordance with laws of nature that are both accessible to ordinary human reason and easy to follow, looks little like that inspiring master of the art of persuasion whose soul is nothing less than a “miracle,” to borrow Rousseau’s formulation. Why do Rousseau and Plato characterize the legislator as they do?

292 Hobbes, Leviathan, Ch. 14, sec. 3; Ch. 15, sec. 39; and Ch. 18, sec. 10. Stephen Holmes argues, however, that Hobbes’s Behemoth provides more intellectual space for the Sovereign’s intellectual virtue. See, e.g., Behemoth, Dialogues I-II; and Stephen Holmes, “Introduction,” in Thomas Hobbes, Behemoth, or The Long Parliament, edited by Ferdinand Tönnies (Chicago: University of Chicago Press, 1990), pp. xxxviii-xliviii.
The short answer to this question is that the lawgiver’s great soul is in fact appropriate to the task that these philosophers expect of him. This is because the legislator’s enterprise goes far beyond the act of giving written laws to a people, and it must if one wishes to see the cultivation of healthy political life. Throughout this study, we have been exploring the problem of legislation, namely that statutory law—what seems to be the primary tool at the legislator’s disposal—is insufficient, if still necessary, for establishing good government. It is insufficient, in other words, for accomplishing the objectives that one expects from legislation. Accordingly, if the ends of written law are negative, then the great legislator must also work to accomplish goals that are themselves positive, i.e. constructive. Rousseau and Plato understand the lawgiver to be nothing less than the founder of a regime’s way of life. In short, he must work to instill good civic habits, practices, and opinions in the people, the elements that constitute a common sense of peoplehood.  

Now it might be tempting to describe the lawgiver as founding and shaping a regime’s political culture by means of this project. And, in fact, this description seems to capture something accurate about his task, insofar as habits, practices, and opinions tend to be what one frequently means by the term. Some commentators, especially those interpreting Rousseau, have emphasized the fact that the legislator endeavors to shape culture. Zev Trachtenberg, for example, has argued in *Making Citizens* that “for Rousseau a society’s culture determines its

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prospects for political success,” and so the great legislator must attend to the elements comprising it. Be this as it may, one must proceed with caution in using the term “culture” to describe aspects of the political thought of Rousseau, not to mention those of Plato. Neither philosopher employs this word in its modern sense, which is ultimately traceable to Kant and, more specifically, to Kant’s reading of Rousseau. Culture in this sense refers to the realm in which human beings seek happiness or fullness as autonomous individuals, and is distinguished sharply from “civilization,” the political order regulating external human affairs. Culture is, moreover, a phenomenon that has developed through the process of history independent of human agency, expressing the specific traditions and practices of a people that evolve over time. In other words, it is apolitical, in terms of the conception of politics shared by Rousseau and Plato, because it is not legislated into being. Kant sees a distinction between the institutions of the state which are constructed by human beings for the sake of ameliorating the conditions of life, on the one hand, and the realm of culture, on the other. Indeed, individuals should seek to live a rich cultural life precisely because “civilization” offers so little of what is required to develop their potential as free individuals. What will become apparent in the present chapter, however, is that the phenomenon to which Rousseau and Plato refer is different from this. Both


philosophers hold that the civic habits, practices, and opinions referred to above are founded and shaped by the lawgiver—as Trachtenberg himself contends. They are accordingly inseparable from politics. More precisely, they are themselves laws, i.e. canons guiding behavior, and as such are critical for a flourishing political life.

The main purpose of this chapter is to provide the long answer to the question articulated above—why the lofty characterization of the legislator?—by focusing closely on the lawgiver’s task of giving unwritten laws to the citizens. Both Rousseau and Plato maintain that the legislator gives laws that are never to be found in a book of statutes; that they are laws just the same as their written counterparts; and that establishing them is the most important facet of the lawgiver’s enterprise. The success of founding legislation and the prospects for healthy political life turn on how well a legislator is able to “engrave,” to use Rousseau’s word (i.e. graver), the right set of unwritten laws in the hearts of citizens. In other words, success in this regard would be necessary for solving the problem of legislation, if it is ever to be solved. This chapter will examine the nature of these unwritten laws, as well as Rousseau’s and Plato’s respective views on how the legislator conducts the work of inculcating civic habits and practices.

What is remarkable about both philosophers’ teachings on unwritten law, however, is that good civic habits and practices appear to be indispensable for reasons lying primarily on the level of the individual citizen. The very title of Trachtenberg’s book illustrates this fact: while his text investigates Rousseau’s thoughts on “culture,” the decisive factor for political success is that good individual citizens be cultivated.297 In an essay bearing a similar title, Making Patriots, Walter Berns identifies the tension at the heart of citizenship underlying the need for citizens to

297 For the relation between culture and individual citizens, see Trachtenberg, Making Citizens, pp. 230-232.
be produced. All citizens are necessarily human beings, but, as Berns observes, human beings
do not spontaneously turn into citizens.

[ Citizens] have to be cultivated because no one is born loving his country; such love is not natural, but has to be somehow taught or acquired. A person may not even be born loving himself—the authorities differ on this—but he soon enough learns to do so, and, unless something is done about it, he will continue to do so, and in a manner that makes a concern for country and fellow countrymen—or anyone other than himself—difficult if not impossible to have. The problem is as old as politics and no country is exempt from dealing with it… 298

The problem “as old as politics” itself is articulated, and thoroughly investigated, by Rousseau and Plato, the investigation of which constitutes a major part of each thinker’s teaching on legislation. Both Rousseau and Plato approach the theme of unwritten law by first considering the nature of the individual citizen’s attachment to justice. Following their lead, then, this is where we shall begin.

**Introducing the Problem: The Citizen’s Attachment to Justice and the Effectiveness of Law**

Central to the concerns of any legislator is the question of the effectiveness of legislation, for reasons that should be evident. A law that is consistently disobeyed and thus has no effect on the behavior of citizens would be undeserving of its name, evoking contempt rather than reverence. All legislators, then, are confronted by a challenge as regards this question of effectiveness. How is it possible to ensure that the laws they have established are respected at all times and places? Or, if it is impractical to expect from the citizens absolute obedience to every law, then what is the best way to secure the most respect for the laws possible?

Rousseau pinpoints this problem at several places in his corpus. Indeed, as he indicates famously near the beginning of his *Considerations on the Government of Poland*, the question of the effectiveness of law is nothing less than the whole of the political problem. “To put law over

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man is a problem in politics which I compare to that of squaring the circle in geometry. Solve this problem well, and the government based on this solution will be good and without abuses.” If the legislator can find a way to persuade citizens to accept the law and follow it consistently, then he has accomplished his job well. But the great difficulty of such an undertaking emerges in the subsequent paragraph, as Rousseau explains precisely what “squaring the circle” in politics would entail. “There will never be any good and solid constitution except the one in which the law rules over the hearts of the citizens. As long as the legislative force does not reach that point, the laws will always be evaded.” The problem is, in short, to find a way to inspire respect for the regime such that the citizens’ law-abidingness springs, as if naturally, from their own dispositions. When the threat of law enforcement is immediately present, individuals tend to demonstrate an easy willingness to obey the rules. What happens, however, when citizens are outside of the immediate purview of law enforcement? What must the legislator do to forestall injustices when citizens are capable of getting away with them undetected?

Rousseau, of course, is unambiguous that human beings do in fact exhibit the tendency to disobey the law when they can do so with impunity, notwithstanding his conception of the goodness of man’s nature. As has been discussed in Chapter Two, the Second Discourse teaches that men have acquired the penchant for committing injustices against one another. In the chapter “On Law” from Book II of the Social Contract, however, Rousseau adds force to this teaching by assessing the natural effectiveness of justice. “All justice comes from God,” he explains; “He alone is its source.” Yet justice is exceedingly difficult, if not impossible, to attain in human affairs:

299 Rousseau, Poland, p. 170-171 (III: 955). Cf., with this formulation, Corsica, p. 123 (III: 901): “There are peoples who, however one sets about it, cannot be well governed because the law lacks any hold over them and because a government without law cannot be a good government.” Cf., also, Mountain, p. 234 (III: 811).
…if we knew how to receive it from on high, we would need neither government nor laws. There is without doubt a universal justice emanating from reason alone; but to be acknowledged among us, this justice must be reciprocal. Considering things from a human point of view, the laws of justice are ineffectual among men for want of a natural sanction. They merely benefit the wicked man and harm the just, when the latter observes them toward everyone while no one observes them toward him.\textsuperscript{300}

Despite Rousseau’s affirmation that there is doubtless “a universal justice emanating from reason alone,” this passage suggests that the question of the transcendent existence of justice is actually a secondary one for politics, and hence for the lawgiver.\textsuperscript{301} On Rousseau’s account, the primary question from the standpoint of human affairs is that of the effectiveness of such rules. Yet because the rules of justice stemming from God have no “natural sanction,” one cannot reasonably expect human beings in society to restrain themselves from taking advantage of others when they can do so. The absence of this sanction implies, in the essentials, the same point that Glaucon articulates in Book II of Plato’s \textit{Republic} with his story of Gyges’ ring, namely that men naturally lack an effective internal check against committing injustice.\textsuperscript{302} Given Rousseau’s claim that the wicked, in the absence of effective civil laws, are manifestly benefited by being unjust, he appears to be asserting that they would be foolish not to be unjust under those

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conditions. Despite what their moral compass may or may not tell them, the wicked tend to be wicked because they find it clearly disadvantageous to be just.\(^{303}\)

Individuals in society regularly seek to take advantage of others when they can for a simple reason: they prefer their own good to that of others. Rousseau asserts in his *Political Economy* that “personal interest is always found in inverse ratio to duty,”\(^{304}\) or in inverse ratio to justice, the concern for the common. Whether in the state of nature or in civil society, human beings are driven first and foremost to seek their own interest, which diverts their attention from the interest of those surrounding them. Now as long as *amour de soi* is the primary passion governing the actions of men, as it was in the state of nature, individuals seek their personal good while interfering with that of others only minimally. Once *amour-propre* has taken deep root in the soul, however, men see that their interest is improved most effectively by attacking that of others.\(^{305}\) Rousseau reminds readers of the *Letter to d’Alembert* that the crucial motivating factor here is the “heart,” i.e. the passions. After all, man, like the other animals, is a being fundamentally motivated by sentiment. “The heart of man is always right concerning that which has no personal relation to himself,” Rousseau explains. “But when our interest is involved, our sentiments are soon corrupted. And it is only then that we prefer the evil which is useful to us to the good that nature makes us love. Is it not a necessary effect of the constitution of things that the vicious man profits doubly, from his injustice and the probity of others?”\(^{306}\) Rational

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calculation of interest, goaded on by *amour-propre*, tends to corrupt an individual’s sub-rational temper, influencing him to do wicked deeds when he can. As Rousseau’s *Poland* indicates, the lawgiver’s most urgent task is to extend the force of legislation to the hearts of the citizenry, and now we see the reason for the urgency: the heart of man in society is susceptible to such corruption. Yet the problem, as we have also considered, is that by nature “the heart closes itself [from the concerns of the rest of society] for fear of being touched at [its] expense.”

Implicit in Rousseau’s claim that the legislator must endeavor to reach the citizens’ hearts is that positive law itself and the force to back it up are ineffective means to secure respect for the law. The clearest expression of this idea is found in *Political Economy*, in the context of Rousseau’s first “maxim” of legitimate government, i.e. that the general will ought to be followed in all matters. Having just raised the question of the source of the laws’ power, Rousseau embarks on his answer by remarking that “the first of the laws is to respect the laws. Severity of punishments is merely a vain expedient thought up by small minds in order to substitute terror for the respect they can’t obtain.” Indeed, many harsh penalties signal nothing more than the existence of many “lawbreakers.” But “the talent of reigning,” by contrast, consists in “being [the law’s] guarantor and disposing of a thousand ways of making it beloved (*la faire aimer*),” a clear reference, again, to the necessity of inspiring an inclination to follow the law in the citizens’ hearts. Rousseau finishes his thought with rhetorical flourish: “An imbecile who is obeyed can, like anyone else, punish crimes. The true statesman (*homme d’état*) knows how to prevent them. He extends his respectable dominion over wills even more than

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over actions.” The true statesman does not face the need to regulate the citizens’ actions by means of positive law precisely because his “respectable dominion” over their wills accomplishes this necessary task for him.

The notion that the force of law is insufficient, if still necessary, for good government represents one of the chief prongs of Rousseau’s critique of Hobbesean political science. Hobbes had presented his recommendations for political society as a way of ending the vast war raging in the state of nature, and in this, at least, he offers a teaching embraced by Rousseau. Political life is necessary for Hobbes because men act in ways disrespectful of the common goods of peace and order, due primarily to vainglory, or their natural over-estimation of their own worth. But Rousseau’s critique of his English predecessor emerges forcefully in his views on the most effective way to solve this problem. Hobbes had proposed that the civil authority be vested with enough power to render citizens fearful of the punitive consequences of violating the law. If this can be accomplished, citizens can be expected consistently to follow the rules of the commonwealth, for their reason will tell them that they have an interest in acquiring the benefits of civil peace and, especially, in avoiding punishment from the civil authority. Provided that the terror of the Sovereign is great enough, citizens will listen to their reason when it advises them not to attempt an injustice, because of the high risk of getting caught.

Furthermore, whatever disposition citizens come to possess and whatever they choose to do in

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308 Rousseau, Political Economy, p. 215 (III: 249-250); cf. Poland, p. 175 (III: 961): “They will obey the laws and will not evade them, because the laws will suit them, and they will have the internal assent of their will.”


their private lives should be tolerated in the eyes of the Sovereign, so long as their activity does not subvert the fundamental political laws.\textsuperscript{311} But Rousseau, as we have seen, is far less sanguine that citizens will reason that they should obey the law at all times and places, even when the civil authority is strong. He believes that the position articulated by “the fool” in Chapter 15 of the \textit{Leviathan}—namely that successful injustice sometimes stands “with that reason which dictateth to every man his own good”\textsuperscript{312}—is likely to be generally persuasive to men in civil society. By that same token, Rousseau rejects Hobbes’s own refutation of “the fool.” Rousseau’s position, by contrast to Hobbesean political science, is that the legislator must shape the hearts of citizens to love and respect the community, as a way of supplying the necessary reinforcement to rational obedience to the law, even in times when the organs of the law are not looking.

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As we saw in Chapter Three, Rousseau’s discussion of the futility of severe punishments in \textit{Political Economy} is accompanied by high praise of Plato, specifically of the notion from the \textit{Laws} that persuasive preludes must be attached to legal prescriptions. Rousseau borrows an idea from Platonic jurisprudence, then, for his teaching that obedience to the law requires something more than statutory sanctions. But what is remarkable about Rousseau’s connection to Plato in this regard is how similar his introduction to the problem of law’s effectiveness is to that of the ancient philosopher’s. \textit{Laws} VII is the Book in which Plato broaches this problem. At the beginning, he has the Athenian bring his interlocutors back to the discussion of “the upbringing

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\textsuperscript{312} Hobbes, \textit{Leviathan}, Ch. 15, sec. 4.
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and education” of the children of Magnesia. In the first speech of *Laws* VII, our attention is immediately drawn to a grave problem facing the legislator: citizens of a regime may conduct their private lives in ways contrary to the spirit of the regime and hence destructive of civic harmony. Such concealed activity, which can foster “diverse and dissimilar” dispositions (ēthē) among the citizens, is attributed by the Athenian to “each person’s pain, pleasure, and desire”.313 In the speech that opens *Laws* VII, then, the Athenian establishes the problem to be explored in this Book. If positive laws, along with those who enforce them, cannot possibly extend into every corner of the citizens’ lives—and in particular to the times when individual citizens are “not visible to everyone (ouk emphanē pasi, 788a6)”—then what can the legislator do to ensure that citizens behave in accordance with the spirit of the laws? Like Rousseau, the Athenian indicates that the problem he has pinpointed is serious. “[T]o have human beings become accustomed (ethisthentōn) to act against the law in petty, frequent ways” would risk the corruption of the written law and the consequent evils accompanying its breakdown.314 The legislator, therefore, must find an effective way to regulate behavior taking place at all times and places. Citizens must sense the effect of legislation even behind closed doors, for “unless private homes within cities are correctly regulated,” as the Athenian remarks, “it is vain for someone to suppose the common things will stand on a firm legal footing.”315

It should be clear from this passage that Plato has voiced concerns about the effectiveness of written law comparable to those of Rousseau; more pointedly, Plato’s concerns seem to have been echoed by the French philosopher. According to Plato’s Athenian, the legislator must aim

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315 Plato, *Laws*, 790a11-b8; cf. 780a1-7 and 807b3-c1.
to mold the pleasures, pains, and desires of individuals, for these are the forces that lead citizens
to undermine the law “in private and in the home.” As we saw in Chapter Two, the Athenian has
already indicated that human beings possess the tendency to commit “mischief (kakourgēmata,
677b8)” against one another due to natural passions, in particular the desire to have more
(pleonexia) and the love of victory (philonikia). These passions, we recall, constitute one of the
reasons why the establishment of civil law is necessary. But now, in Laws VII, the Athenian
makes it abundantly clear that such passions threaten to continue to govern human behavior even
in the midst of civil society, especially in the case when positive law is not looking.

Perhaps the most significant aspect of the opening discussion of Laws VII, however, is
that the Athenian prefers to treat the problem of private behavior by means of “a kind of
instruction and admonition rather than laws.” With this statement, the Athenian signals his
clear disagreement with the position we have attributed above to Hobbes, specifically with the
latter’s view that the overwhelming force of law is sufficient for keeping private behavior in line
with the ends of law. This notion is also, at bottom, a Platonic indication that there are limits to
the good that positive law can achieve for human beings. Why exactly are written laws
undesirable for regulating private behavior? The reason specified in the Laws is the relative
pettiness and frequency of private practices that “go against the advice of the lawgiver,” which
“render[s] it unfitting and unseemly to make laws imposing penalties”. It would be beneath
the legislator, that extraordinary figure responsible for the overall happiness of the city, to be too

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316 Plato, Laws, 788a4-6.
318 Plato, Laws, 788b4-c1; cf. 807e2-5 and Plato, Republic, 425b1-427a7.
concerned with enacting laws against such practices. This idea may seem paradoxical, to be sure, since the Athenian has underscored the threat to the regime posed by these practices in the home that can lead to illegalities. Still, the good legislator will prefer to avoid giving many small laws about private matters. The frequency with which acts contrary to the spirit of the laws are likely to occur in private renders an attempt to deal with them by means of written law impractical. The Athenian is suggesting that there simply is no feasible way of enforcing laws concerning private behavior, or at least no way to circumvent the high cost of doing so.

Be this as it may, some interpreters of Plato’s *Laws* have argued that the written text of the lawcode is indeed the chief tool by which the legislator regulates private behavior. Andrea Wilson Nightingale, for example, has contended that “Plato opts in [the *Laws*] to harness the power of written law for the project of social control.” Instead of consisting simply of legal rules and penalties for violating those rules, the lawcode of Magnesia will be filled with many other writings, including but not limited to “the exhortations and explanations” comprising the preludes that we examined in Chapter Three. These writings may not look like laws as such, according to Nightingale, yet are intended to serve the same function as law, in that they explain what should and should not be done in all facets of life and are backed up by the threat of punishment for disobedience. She holds, then, that a “wide range of what we think of as unwritten rules…will be incorporated into the written lawcode” of Magnesia, making for an extraordinarily long set of statutes. A similar approach to interpreting the jurisprudence of the

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Laws seems to have been taken by Marcel Piérart. In conducting his expansive study of the structure of Magnesia, Piéart confines his discussion of the legislator to the role played by the so-called Guardians of the Laws (*nomophulakes*) in the affairs of the city. Assuming that Plato intends for legislative responsibility to rest solely with these Guardians, he suggests that their task in this respect is to devise and then enact written laws, both those that first constitute the city and those subsequently passed.\(^{321}\) Like Nightingale, Piéart points to the written lawcode to explain how private behavior is to be regulated in Magnesia.

The text of *Laws* VII, however, raises questions about this sort of interpretation, showing Plato’s position to be in accord with Rousseauan wisdom on the futility of positive laws. As already shown, the Athenian maintains that the problem of private behavior cannot be solved by written laws and their attendant penalties, and he reinforces this notion by repeating it twice in Book VII.\(^{322}\) Moreover, in directing the conversation to “the upbringing and education” of Magnesia’s children, and in indicating his preference for addressing the problem of private behavior with “instruction,” the Athenian implies that the solution to the dilemma of law’s effectiveness is to be sought in precisely this area, i.e. a proper education to citizenship. Because the pleasures, pains, and desires of individual citizens can lead them to undermine the advice of the legislator, this figure must design a comprehensive program of civic education to aim, at least

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\(^{322}\) Plato, *Laws*, 793b2-4 and 822d4-e8.
in part, at shaping the sub-rational elements of their souls, with a view to molding a citizenry of civic-minded individuals.

In sum, there is a common thread running through Rousseau’s and Plato’s respective introductions to the question of the effectiveness of law, and it is the need for a proper ordering of the individual’s affections so as to support obedience to the law. For the simple reason that written law cannot be in all places at all times, both philosophers hold that citizens must experience its enforcement internally. Even when they could conceivably get away with satisfying their own advantage at the expense of others, citizens should be capable of checking themselves from doing so. What is more, ideally they should be inspired to devote themselves to the good of the community and to exhibit acts of public spiritedness. Citizens must feel, in a word, a strong attachment to justice as part of their constellation of passions. But the problem for political life, as we have seen, is that human beings by nature do not experience an effective internal check against doing what is wrong, or, for that matter, the impulse to be publicly spirited. Because of this grave political problem, Rousseau and Plato argue that the legislator is responsible for inspiring an attachment to justice in the citizenry. He must, in Rousseau’s formulation, “take away man’s own forces in order to give him forces that are foreign to him and that he cannot make use of without the help of others.” And, in the pithy words of Plato’s Athenian, “the good lawgiver” is “someone who possesses the ability and the knowledge required to educate and mold (plattein) souls.” Both philosophers, then, envision the legislator as a craftsman of soul: he undertakes to shape public-spirited forces in the souls of the citizens, forces that are missing absent his influence.

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To be sure, the scholarship on Rousseau has generally appreciated the fact that the legislator undertakes a kind of craftsmanship of soul. After all, the radical task of removing natural forces from and giving new forces to the souls of citizens could be viewed as nothing else than soul-craft. But the scholarship on Plato has been comparatively less appreciative of Plato’s similar characterization of the good lawgiver. Glenn Morrow, for his part, has devoted great effort to arguing that Plato’s legislator is a craftsman with affinities to the cosmic demiurge of the *Timaeus*, the god who ordered the universe in accordance with intellect, as described by the title character of this dialogue. And while it is beyond the scope of this study to assess Morrow’s argument fully, his suggestion that the *nomothetēs* is a craftsman is sound. Several passages of the *Laws* bear out this suggestion, as the Athenian himself indicates that the lawgiver is a demiurge. This basic characterization should not be controversial: doubtless legislation is a species of making, the most obvious creation of the lawgiver being the written laws and institutions framing the regime. But Plato’s Athenian—in much the same way as Rousseau—understands the legislator’s molding to operate not merely on the level of positive statutes, but

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328 See, e.g., Plato, *Laws*, 656d5-657a4, 671d5-7, 746b3-d2, 903c1-d1, and 965b7-10. Jacob Howland has persuasively shown that “the very notion of dēmiourgos is political.” On this issue, see Jacob Howland, “Partisanship and the Work of Philosophy in Plato’s *Timaeus*,” *Review of Politics*, 69 (2007), p. 12. For a different approach to characterizing the legislator, one that compares his craftsmanship to that of a doctor, see Jouanna, “Le médecin modèle du législateur dans les *Lois* de Platon,” pp. 77-91.
also on the deeper level of individual souls. Building the case for this interpretation is the burden of the next section of this chapter.

Legislation of a Different Sort: Modern *Mœurs* and Ancient Unwritten Laws

It is surely one thing, and important as far as it goes, to identify that both Rousseau and Plato agree that the legislator molds the forces of the sub-rational part of the soul, or what Rousseau calls the “heart”: it is a corrupted heart that leads men to subvert the laws when they are able, so it is the heart that the legislator aims to strengthen in order to prevent such dangerous behavior. 329 It is another thing, however, to specify how exactly the legislator goes about achieving this goal and, in particular, what sort of fortifications he gives to the citizen’s heart. What exactly are these psychic “forces,” to use Rousseau’s language, given to men so as to make them citizens? To ask the same question of Plato’s Athenian, what in the soul is “molded” by the lawgiver?

For his part, Rousseau explains in the *Social Contract* that the forces given by the legislator represent generally the citizens’ firm attachment to justice. Specifically, they are a sort of law which is “the most important of all, which is not engraved on marble or bronze, but in the hearts of the citizens.” According to Rousseau, this sort of law is

…the true constitution of the State, which gains fresh force each day; which, when other laws age or die out, revives or replaces them, preserves a people in the spirit of its institution, and imperceptibly substitutes the force of habit (la force de l’habitude) for that of authority. I am speaking of mores (*mœurs*), customs (*coutumes*), and especially of opinion (*sur-tout de l’opinion*)—a part of the laws unknown to our political theorists, but on which the success of all the others depends; a part to which the great legislator attends in secret while appearing to limit

329 As for Rousseau, cf. *Social Contract*, pp. 55-56 (III: 364): “This passage from the state of nature to the civil state produces a remarkable change in man, by substituting justice for instinct in his behavior and giving his actions the morality they previously lacked. Only then, when the voice of duty replaces physical impulse and right replaces appetite, does man, who until that time considered only himself, find himself forced to act upon other principles and consult his reason before heeding his inclinations.” In short, the argument of the present chapter is that the “reason” referred to here has its roots in the heart, or the forces of the sub-rational part of the soul.
himself to the particular regulations that are merely the sides of the arch of which mores (mœurs), slower to arise, form at last the unshakeable keystone.\textsuperscript{330}

In this passage, Rousseau refers to several different things: the force of habit (in contradistinction to that of “authority”), mœurs, customs, and “especially” opinion. Yet, the distinctness of these terms notwithstanding, they are related to one another as instances of a single type of law. And the final sentence of this passage reveals that Rousseau understands the term mœurs as signifying the general classification of this law. What are mœurs? The precise definition of this French word is difficult to pin down and notoriously hard to render into English,\textsuperscript{331} and so this study will preserve the French. Rousseau appears, however, to understand mœurs as a general class that includes the manners, customs, practices, opinions, and habits of a people, and together it signifies the sum of a people’s moral way of life. This reading is supported also by the Letter to d’Alembert, in which Rousseau treats of mœurs as the general category encompassing such other notions.\textsuperscript{332} According to Allan Bloom, “[m]œurs are morals as they express themselves in the way of life or the customs of men and nations; they are akin to what we would call character.”\textsuperscript{333}

Now, as Bloom’s commentary indicates, there are two ways in which one can understand the term mœurs. It can refer to the character of the whole community, and in this sense it is related to the concept of nationalism, or a shared common identity.\textsuperscript{334} But the term can also specify the

\textsuperscript{330} Rousseau, Social Contract, p. 77 (III: 394).


\textsuperscript{332} See, e.g., Rousseau, Letter to d’Alembert, pp. 17-22 (V: 16-21).


\textsuperscript{334} See Cohler, Rousseau and Nationalism, pp. 39-82; Christopher Kelly, “Rousseau on the Foundation of National Cultures,” History of European Ideas, 16.4-6 (1993), pp. 521-525; Melzer, “Rousseau, Nationalism, and
habits, manners, etc., of individuals, and this latter is the sense in which the term mœurs refers to the individual citizen’s own attachment to justice.

As we have seen, the legislator cannot found a citizen’s devotion to justice on reason. Human beings are motivated to act fundamentally by sentiment, not reason. And it is precisely the machinations of the rational faculty that lead to the corruption of sentiment in the first place. So if the legislator is going to find an effective way to inspire devotion to the community and reduce the temptation to commit injustice, then he must aim his legislative activity at the heart. This is where mœurs are located; more specifically, Rousseau is suggesting that mœurs is a term synonymous with the habits of the heart. When citizens are in possession of a set of good civic habits, they tend to act in accordance with what is right even when the force of authority is withdrawn. When citizens ardently love their homeland, they tend to exhibit a concern for the community’s interest that is, at the same time, a distraction from their own selfish advantage. A set of good civic mœurs engraved in the citizens’ hearts assists the legislator in putting the law over man by radically diminishing the possibility that the law will be evaded. “[P]ublic mœurs replace the genius of leaders”335 through a process that Bryan Garsten has characterized as a “deep, psychological transformation” resulting in “the internalization of sovereignty.”336

335 Rousseau, Political Economy, p. 218 (III: 254).
short, good civic *mœurs* stand in for the missing “natural sanction” for the laws of justice, rendering such laws effective.\(^{337}\)

Rousseau’s comment in the *Social Contract* that *mœurs* are “a part of the laws unknown to our political theorists” seems slightly disingenuous, for he had acquired his knowledge of this class of law from his predecessor Montesquieu.\(^{338}\) In *The Spirit of the Laws*, Montesquieu claims to have discovered the truth that a society’s laws are merely one factor explaining its character. Instead, a general spirit (*esprit*) that “governs men” is formed by diverse causes like “climate, religion, laws, the maxims of the government, examples of past things, *mœurs*, and manners.”\(^{339}\) In identifying such factors that help to influence government, Montesquieu also signals his divergence from Hobbesian political science, which maintains that clearly articulated laws and the power to enforce them represent both the necessary and sufficient conditions of good government at all times and places. Montesquieu’s break from Hobbes has paved the way for Rousseau’s similar break, then, as discussed above. More important to our purposes, he distinguishes between laws, on the one hand, and “*mœurs* and manners,” on the other. With this distinction, he sets positive law in opposition to other unwritten “usages” that guide human behavior, the former being the “particular and precise institutions of the legislator,” the latter being the “institutions of the nation in general.”\(^{340}\) Montesquieu holds generally that a given political society is unintelligible absent a clear understanding of the sub-rational habits and

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\(^{337}\) For a solid general treatment of the place of *mœurs* in Rousseau’s political thought, see Richard Fralin, “Rousseau and Community: The Role of *Mœurs* in Social Change,” *History of Political Thought*, VII.1 (Spring, 1986), pp. 131-150.


customs of its citizens. And there is an additional distinction: “[t]he difference between laws and \textit{mœurs} is that, while laws regulate the actions of the citizen, \textit{mœurs} regulate the actions of the man. The difference between \textit{mœurs} and manners is that the first are more concerned with internal, and the latter external, conduct.”\textsuperscript{341} Yet these sub-rational habits and customs are related to positive laws in that a political society’s “\textit{mœurs} and manners” determine the way it functions because they determine how its laws function. “When a people have good \textit{mœurs}, laws become simple.”\textsuperscript{342} Fewer laws are needed when \textit{mœurs} are good, and more than this, laws under such conditions tend to work more effectively.\textsuperscript{343}

But if Rousseau had learned from the teaching of Montesquieu, then he still supplements this teaching with a subtle one of his own. For, in answering the question of the origin of \textit{mœurs}, Rousseau makes it much clearer than his predecessor had done that they spring from the activity of the great legislator.\textsuperscript{344} According to the quotation from the \textit{Social Contract} cited above, the birth (\textit{naitre}) of \textit{mœurs} requires the attention of the legislator, even though he appears to his people to be occupied merely with the task of giving written law. Furthermore, in the context of his discussion of censorship in the \textit{Social Contract}, Rousseau explains that “[a] people’s opinions arise (\textit{naissent}) from its constitution. Although the law does not regulate \textit{mœurs}, it is legislation that gives rise (\textit{fait naitre}) to them. When legislation weakens, \textit{mœurs} degrade…”\textsuperscript{345} The \textit{Poland} advances much the same principle. As one of three ancient

\begin{footnotesize}
\begin{enumerate}
\item Montesquieu, \textit{Spirit of the Laws}, p. 317 (II: 566).
\item Montesquieu, \textit{Spirit of the Laws}, p. 322 (II: 571).
\item Cf. Plato, \textit{Republic}, 425a8-c2 on Socrates’ critique of the litigious regime.
\item This is far from saying that Montesquieu would have disagreed with Rousseau on the crucial influence of political causes. See Pangle, \textit{Montesquieu’s Philosophy of Liberalism}, pp. 184-193.
\end{enumerate}
\end{footnotesize}
legislators “who deserve particular attention,” Moses is praised by Rousseau for giving the people of Israel a distinctive stamp: “In order to keep his people from dissolving among foreign peoples, he gave it (il lui donna) mœurs and practices (usages) incompatible with those of other nations”. 346 What is significant about Rousseau’s formulation here for the present argument is the notion of bestowal. Moses gave mœurs to the people of Israel; these unwritten laws arose as they did because of the influence of the great legislator.347

Now in referring to the notion that mœurs are an effect of legislation, Rousseau means to say that they are given to the citizens’ hearts by instruments at the legislator’s disposal. And the most important instrument is the set of institutions of civic education. Correct civic education is, then, a kind of legislation, insofar as it gives unwritten yet eminently effectual laws to the citizenry.348 “Simplicity in mœurs and in adornment is less the fruit of the law than of education,” Rousseau explains, by which he means that it is less an effect of positive law than of education. “It is education that must give the national form to souls, and direct their opinions and their tastes so that they will be patriots by inclination, by passion, by necessity.”349 What is more, Rousseau makes clear in both the Poland and the Political Economy that this program of civic education must begin when children are very young, in principle from birth. In the latter


349 Rousseau, Poland, p. 179 (III: 966), emphasis supplied.
text, he asserts that “[i]t is from the first moment of life that one must learn to deserve to live; and since one shares the rights of citizens at birth, the instant of our birth should be the beginning of the performance of our duties.” Precisely because the legislator’s task is to “denature” citizens, i.e. to purge them of their natural or “original dispositions,” as Rousseau calls them in the *Emile* and implant civic ones within their souls, it is necessary for his work to begin at this early stage.

While we shall look more closely at educational institutions later in this chapter and in the next, for now it is sufficient to draw attention to the primary aim of civic education. What the legislator seeks to inspire with his program is civic virtue. This is, indeed, Rousseau’s second “maxim” of legitimate government, as outlined in *Political Economy*: if one wants private wills to be in line with the general will, i.e. justice, then one must “make virtue reign.” Rousseau explains that virtue is the “conformity of the private will to the general” will. In other words, a citizen is virtuous if his behavior and actions are consistent with the interest of the community and vicious when he wants and acts otherwise. Most important for our purposes, virtue and good civic *mœurs* appear to be one and the same thing: “…the greatest wellspring of public authority lies in the hearts of the citizens, and…for the maintenance of good government, nothing can replaces good *mœurs*. Not only is it worthy men alone who know how to administer...

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laws, but basically it is only honorable men who know how to obey them." Here, again, Rousseau offers hard-headed reasons, pointing exclusively to obedience, for the necessity of an education to civic virtue. It is the honorable citizen who knows how to obey the law. If a legislator is seeking to find a way to prevent citizens from evading the law when they are able—that is, if he is looking for a way to solve the problem of law’s effectiveness—then he will do what is necessary to inspire virtue.

Rousseau’s great legislator aims to shape the passion of *amour-propre* in his attempt to reach the hearts of the citizenry with legislation, thereby molding men into virtuous citizens. As was seen in Chapter Two, civil man is distinguished by this type of self-love based on the opinions of others. And so, because Rousseau maintains that it is impossible to do away with *amour-propre*, he argues that the legislator must work with it in forming citizens. One could say that it would also be undesirable to do away with *amour-propre* if one could, for this passion is the source of patriotism, the fervent love of the homeland that is the best way to inculcate civic virtue. “Do we want peoples to be virtuous? Let us then start by making them love their homeland.” Rousseau explains in bold detail:

…a man who had no passions would certainly be a very bad citizen. But it must also be agreed that although men cannot be taught to love nothing, it is not impossible to teach them to love one thing rather than another, and what is truly beautiful rather than what is deformed. If, for example, they are trained early enough never to consider their persons except as related to the body of the State, and not to perceive their own existence, so to speak, except as part of the State’s, they will eventually come to identify themselves in some way with this larger whole; to feel themselves to be members of the homeland; to love it with that delicate sentiment that any isolated man feels only for himself; to elevate their soul perpetually toward this great object; and thereby to transform into a sublime virtue this dangerous disposition from which all our vices arise.

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The “dangerous disposition” to which Rousseau refers in the final clause is that which is
governed by raw, uneducated *amour-propre*. While the reflective form of self-love can lead men
to commit injustices when they are able, it can also be the basis of the citizen’s attachment to one
another, provided that it is educated correctly and converted into “a sublime virtue.” Patriotism
demands that citizens view themselves as part of the whole political community and,
furthermore, that they try never to allow the concern for their own selfish good to damage the
community’s interest. Ultimately, however, what is crucial for present purposes is Rousseau’s
teaching on the necessary tenor of a citizen’s disposition, or his condition of soul. The habits
and practices of the virtuous citizen are best supported by a patriotic disposition, which, again, is
the fruit of properly educated *amour-propre*: “…without these precautions [i.e. a proper civic
education] expect nothing from your laws. However wise, however farsighted they might be,
they will be evaded and vain, and you will have corrected some abuses that wound you, only in
order to introduce others that you will not have foreseen.”

On Rousseau’s telling, then, the inculcation of an attachment to justice in individuals
living together in political society is a primary effect of legislation, and it is accomplished on the
level of the heart. As we have already noted, Rousseau learned from his predecessor
Montesquieu about *mœurs* and the determinative influence of sub-rational psychic forces on the
functioning of government. Such a relation between these two French philosophers has been

356 Gerald Mara makes a similar point about Rousseau’s injunction to base citizenship on *amour-propre*,
but his analysis in this specific respect draws more from *Emile* and less from the political writings. See Gerald
Mara, “Rousseau’s Two Models of Political Obligation,” *Western Political Quarterly*, 33.4 (Dec., 1980), pp. 539-
540. See also Mira Morgenstern, “Amour de soi, amour-propre et formation de citoyen,” in Jean-Jacques Rousseau,

well examined in the scholarship. But to say that Rousseau learned about the science of mœurs from Montesquieu is to express merely half of the story. For both Rousseau and Montesquieu learned of the necessity of good civic habits, practices, and opinions from ancient sources, and above all from Plato in his Laws. Surprisingly few secondary sources comment on this particular connection between Rousseau and Montesquieu, on the one hand, and Plato, on the other. Those that do, such as well-known studies by Ernest Barker and David Cohen, briefly note the similarity on the matter of mœurs without conducting a thorough investigation of the connection. By contrast, the present study aims to do the work of this comparison beginning in the subsequent part of this section.

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Those attempting to answer the question about Plato’s Laws posed above—what in the soul is “molded” by the lawgiver?—are confronted by an interpretative challenge. While we readers, in studying Laws VII, may have expected to discover the Athenian’s thoughts on the best way to treat the problem of private behavior, the Athenian seems to depart from his discussion of the effectiveness of law by turning instead to consider a bizarre educational case. Everyone, and particularly the Cretan Clinias with whom the Athenian is conversing, would agree that the proper cultivation of body and soul must begin at an early age, for “the first sprouting of every animal involves by far the greatest and most substantial growth.” But in

358 In addition to the other sources cited above, see Cohler, Rousseau and Nationalism, pp. 33-34; Melzer, The Natural Goodness of Man, p. 234; and Shklar, Men and Citizens, pp. 65-66.

359 As is the case with Williams’s Rousseau’s Platonic Enlightenment. It is also generally true of the text in whose footsteps Williams’s professes to follow, Hendel’s Jean-Jacques Rousseau: Moralist. But consider Hendel, Jean-Jacques Rousseau: Moralist, Vol. 1, pp. 11-12.


361 Plato, Laws, 788d4-5.
maintaining that exercise for young children is important, the Athenian goes beyond what Clinias
and, likely, we readers expect, by recommending that the legislator draft rules mandating that
babies in the womb are to be “exercised” as well. Because motion aids in the digestion of food
and drink, helping the body to make use of sustenance for its own health and strength, it would
benefit the future citizenry of Magnesia if pregnant women took frequent walks and if children
were carried around by mothers and nurses until they themselves can walk.362

While the Athenian concedes that such a policy would generate laughter,363 since
common opinion views as ridiculous the notion that children in utero need this sort of discipline,
he goes on to explain his reasoning in sharp detail. The legislator’s chief goal in subjecting the
youngest children to continual motion is not to benefit the body, as he had just implied, but
rather to promote the health of the soul. Continual motion is needed to counteract the
fundamental terror suffered by all human beings upon entering the world. Such fear is a
universal passion “due to some poor habit (hexin) of the soul.” According to the Athenian, even
the youngest children have already become accustomed to a particular psychic condition,
because they too have developed a response to the pains and fears common to all human beings.
Their original condition (hexin), however, is an unfortunate one, and the Athenian holds that the
best way of improving it is to assuage the child’s painful psychic terror. To do this effectively,
one must impose on the soul motion from a source external to it, much like what happens in


363 See, e.g., Plato, Laws, 789e1, 790a5-6, and 792e2-3. The Athenian’s proposal has provoked more than
mere laughter. Hegel, for example, chides Plato for meddling “with things for which philosophy is unsuited” in
these passages of the Laws. See Hegel’s Philosophy of Right, Translated with notes by T. M. Knox (Oxford: Oxford
146-147.
principle to participants in the Corybantic mystery-rites. Seth Benardete, in elucidating this difficult passage, has suggested that psychic madness stems from the awareness of the lack of any distinction between one’s own soul and the external world. A soul in this condition is unsure whether it exists as a particular entity or is, in fact, nothing at all. But the feeling of being rocked persuades the soul that there is indeed motion external to, and hence different from, itself. What is more, it persuades the soul that it is shielded from the terrifying motion outside. According to the Athenian, a policy of continual motion for the youngest children would aim, in short, at replacing their “mad dispositions with prudent habits (hexeis emphronas)”.

Calm and orderly habits are prudent for a second reason to which the Athenian immediately turns. They help to accustom the souls of the future citizenry to the practice of virtue, which is nothing less than the loftiest goal of legislation in a good regime.

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365 Plato, Laws, 790e8-791b1. On the fear characteristic of the beginnings, see 677e2-5 and 678c2-3.


367 See, e.g., Plato, Laws, 705e1-706a4 and 707d1-6.
of fear over time serves to vitiate an individual’s character, for the soul that becomes “accustomed to feeling fear (dia phobōn ethizaito)” tends to turn out cowardly.\footnote{Cf. Plato, \textit{Laws}, 647c10-d1 and context, 870c8, and 934a4. The Athenian is arguing that a constant sense of fear paves the way for the vice of cowardice, not necessarily that the chief characteristic of a coward is a constant and debilitating sense of fear: see 699c1-6, and cf., with this passage, 646e3-647c1.} Conversely, since “the practice in courage (andreias) from earliest youth onward consists in triumphing over the terrors and fears that come upon us,” children who grow up having had their painful psychic fears allayed are more likely to become virtuous. Such children are more likely to possess, in this case, stoutness of soul (\textit{eupsychia}).\footnote{Plato, \textit{Laws}, 791b4-c10; cf. 815e7-816a3 and 830e2-831a3. On the meaning of \textit{eupsychia} as a virtue, see also 795d6-8 and context. Cf., finally, Aristotle, \textit{Nicomachean Ethics}, 1103b9-25.} More important to our purpose is the process by which virtue develops. The Athenian conspicuously underscores the dimension of time in these passages because he is suggesting, generally, that civic education must begin with habituation, a process that takes place over time and requires the benefit of time to be effective. Habituation is an elemental part of the education to virtue in that the correct set of habits, it appears, is a precondition for virtue. It is the continual practice in a particular habit “from earliest youth onward” that makes it adhere tightly to the soul and renders the soul better disposed to possess mature virtue, as illustrated by the example of courage. The legislator, then, should mandate that the caretakers of the youngest children actively help them to overcome the pain of existential terror, no matter how bizarre the means of doing it might look. That a policy of continual motion for babies would provoke ridicule is simply a sign that common opinion can be a powerful enemy to the good.

The Athenian’s conclusion that citizens should become accustomed from early youth to living a life free from the greatest pains triggers an interesting response from Clinias. Certainly it would be good to avoid suffering and pain from birth, the old Cretan allows; but it would be
better, and more advantageous to the development of good citizens, if children are exposed also to “many pleasures.” That Clinias is a character predisposed to identifying the good life as that which savors the greatest pleasures is evident from the earliest Books of the Laws, and here he betrays the firm purchase that this conviction holds on his soul.\textsuperscript{370} The Athenian, however, roundly rejects Clinias’ view, arguing that “the correct way of life should neither pursue pleasures nor entirely flee pains. Instead, it enjoys the middle course (to meson).” This way of life deserves the epithet “gracious” and it is likened to that of a god. “[O]ne should not allow oneself to pursue pleasures headlong,” the Athenian clarifies, “thinking one can in this way avoid the experience of pain, nor allow anyone else among us—old or young, male or female—to suffer this. Least of all the newborn, if one can help it, for that is the age when, through habituation (dia ethos), the most decisive growth in the entire character occurs for everyone.”\textsuperscript{371} After this assertion about the capital importance of early habituation to the education of citizens, Clinias registers his agreement, indicating that one should not live a life of “unrestricted pain and pleasure,” but rather “always cut it somewhere in the middle.”\textsuperscript{372}

Taking stock of these observations on the strange conversation that opens Laws VII, we discover that we have learned a great deal about the Athenian’s views on the proper foundation of civic education. As the one responsible for designing the rules of education,\textsuperscript{373} the legislator must have even the youngest children in his purview, for the earliest years are the most


\textsuperscript{371} Plato, \textit{Laws}, 792c8-e2.

\textsuperscript{372} Plato, \textit{Laws}, 793a2-6.

These years are the period when future citizens develop habits most rapidly and most decisively: when very young, individuals become used to behaving in ways that set a pattern for their lives, and the habits thus established can turn out to be either salutary or harmful to the polity. More specifically, the legislator must take steps to influence the development of the plastic souls of young children. His task to this end includes accustoming souls to the arrangement best able to deal with pleasures and pains. Since the soul can be subject to pleasant or painful passions, it is the legislator’s responsibility to prevent it from experiencing the extremes of these for long periods of time. Instead, he must establish institutions that guide the soul along a middling course between pleasures and pains, until the citizen is accustomed to living a moderate life. Finally, as we have seen, there are two objectives of habituation. First, if citizens grow from birth with civic-minded habits, they are then more likely to respect the laws at all times and places. Good habits are a safeguard against activity that subverts the advice of the legislator, which behavior, we recall, stems from the affections of individual citizens. In this way, the Athenian contends that civic education, rather than written law, is his preferred choice for regulating private behavior. But second, correct habituation lays the groundwork for mature virtue, as we have also seen above.

Now one may object to this schematic statement of the principles of civic education in the *Laws* since it is based on a small piece of text, while the dialogue as a whole is devoted to the subject of education. Is the proem to *Laws* VII on the importance of habituation consistent with the teaching of the rest of the text? One of the most puzzling aspects of the *Laws*, and one that is

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well-known to scholars of Plato, is that the Athenian volunteers several different descriptions of education in the dialogue, all of which differ from one another in subtle ways. Remarkably, however, all of the major statements on education—consider, e.g., those at 643c9-11, 653b1-c4, and 659d1-e4—appear to cohere with the summary in the previous paragraph, at least in the essentials. Each stresses the need for young children to practice continually activities that habituate their souls correctly with respect to pleasure and pain, to the end of developing good civic habits. Take, for instance, the Athenian’s statement at the opening of Book II:

Education is the virtue that first comes into being in children. Pleasure and liking, pain and hatred, become correctly arranged in the souls of those who are not yet able to reason, and then, when the souls do become capable of reasoning, these passions can in consonance with reason affirm that they have been correctly habituated in the appropriate habits (orthōs eithisthai hypo tōn prosēkontōn ethōn). This consonance in its entirety is virtue; that part of virtue which consists in being correctly trained as regards pleasures and pains so as to hate what one should hate from the very beginning until the end, and also to love what one should love—if you separate this off in speech and assert that this is education, you will, in my view, be making a correct assertion.

The primary goal of civic education, in this statement, is to shape the passions into good civic habits. As for the correct arrangement of the passions, the Athenian has already asserted in Laws I that happiness, in cities and in private individuals, requires a measured amount of pleasures and pains, not the extreme of either but a middling balance of the two. Of the two “springs” of pleasure and pain, “he who draws from the right one, at the right time, and in the right amount, is happy (eudaimonei)…But he who does so without knowledge and at the wrong time lives a life that is just the opposite.”

Reading this passage in the light of Laws VII, it appears that knowledge of the “right” way of balancing pleasures and pains derives from the habit of living in this way from earliest youth. This sort of “knowledge,” in other words, grows out of habits

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377 Plato, Laws, 653b1-6; cf. 644c6-645c6 and Barker, Greek Political Theory, p. 430.

378 Plato, Laws, 636d7-e3.
developed over time and subsequently rests upon the foundation of the properly habituated affections.

So Plato has demonstrated, through the speeches at the opening of *Laws VII*, why the inculcation of good civic habits is an important component of civic education, and, furthermore, what the process of habituation entails. Having taken the Athenian’s answers to these questions into account, we see more clearly what sort of task the good legislator will undertake. He must begin with the material of human nature, in particular the affections common to all human beings, and then seek to shape it into a form favorable to healthy political life. This means, though, that the legislator is a craftsman of the soul, insofar as he aims to turn human beings into citizens. His creation is not *ex nihilo*, for his task is necessarily limited by the universal material of human nature available to him. Rather, his making is essentially a configuration of these sub-rational psychic forces. Knowing that some arrangements of soul make for better citizens than do others, the legislator will strive to order the passions through the long-term process of habituation in a way consistent with the demands of good citizenship.

In the next speech of *Laws VII*, the Athenian describes the legislator’s project of shaping the soul in even bolder detail. As if responding to some protest that his discussion of habituation has been nebulous or too brief, he ventures to put a sharper point on the subject.

[A]ll these things we’re now going through are what the many call “unwritten customs (*agrapha nomima)*.” Indeed, what they name “ancestral laws (*patrious nomous)*” are nothing other than all such things as these. What is more, the argument that has been poured over us now, to the effect that one shouldn’t ordain these in law, and yet also shouldn’t leave them unmentioned, has been nobly put. For these are the bonds (*desmoi*) of every regime, linking all the things established in writing, and laid down, with the things that will be set forth in the future, exactly like ancestral and in every way ancient customs; if nobly established (*kalös…tethenta*) and made habitual

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379 Glenn Morrow, in *Plato’s Cretan City* (p. 328), does not go so far in characterizing the legislator’s project: “These proposals [for habituation]...are not strictly part of a legislator’s task...The legislator can only hope that the adult citizens, when properly trained, will adopt these principles and enforce them, each in his own household (790b).” The argument of this chapter departs from Morrow in claiming that the program of proper training, as it were, is something to which Plato’s lawgiver must be actively devoted. The text of *Laws VII* suggests that the proposals for habituation constitute a major part of his task.
(ethisthenta), they provide a cloak of complete safety for the later written laws (pasē sōtēria perikalupsanta echei tous tote graphentas nomous), but when they perversely stray from the noble they are like props of the walls of houses which buckle in the middle and cause the whole edifice to fall, one part under another, the parts that were later constructed in a fine way collapsing after the props themselves, the ancient things, have collapsed. Keeping these things in mind, Clinias, we must bind (sundein) your new city together in every way, neglecting, so far as is in our power, neither the great nor small aspects of what are called “laws (nomous),” “habits (ethē),” or “practices (epitheudeumata).” For a city is bound together (sundeitai) by all such things, and in the absence of either of them the other ceases to be stable. So it should not be surprising to find that the laws are made lengthier by an overflow of customs (nomima) or even habits (ethismata) that seem numerous and minor to us.380

Through this rich speech, the Athenian teaches several important things about the aims of habitation. What the legislator seeks to produce are similar to what the majority of people call “unwritten customs” or “ancestral laws,” yet they are not these specifically. As the Athenian has explained in Book III in the midst of his discussion of the growth of political life, the ancestral laws claim an ancient and divine origin shrouded in mystery.381 By contrast, because Clinias’ “city is new,”382 the habits and customs that the legislator seeks to bring into being will be new. Yet they are comparable to the ancient laws in at least two ways. First, civic habits guide the behavior of individuals perceptibly and surely, even if they are not codified in writing. This is in fact the crucial insight contained in the Athenian’s long speech: there is a distinction between written laws, on the one hand, and these unwritten habits and customs, on the other, the chief difference being that some laws are published in writing while others are not. Even though they are not promulgated in any lawcode, habits are canons that guide behavior, and they serve the same function as statutory law in prescribing certain deeds and forbidding others. This is perhaps one reason why the meaning of the Greek word nomos, law, encompasses also habit or

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380 Plato, Laws, 793a9-d5.
381 Plato, Laws, 680a3-7; cf. 838a9-b5. See also Sophocles, Antigone, ll. 446-470.
382 Strauss, The Argument and the Action of Plato’s Laws, p. 101. For a longer explanation of the difference between the “ancestral and in every way ancient customs” and the new habits and customs that the Athenian has in mind—an explanation that is consistent with Strauss’s pithy statement—see Jacqueline de Romilly, La loi dans la pensée grecque (Paris: Les Belles Lettres, 2001 [1971]), pp. 25-49.
custom. Laws, habits, and customs, whether written or unwritten, are all rules that place limits on behavior in order to control or direct it to a specified end. The second way in which civic habits are similar to ancestral laws is that they require the benefit of time to work effectively. Habits become anchored in the soul by the weight of time and tradition. Accordingly, the legislator’s goal in constructing the institutions of education must be to plant civic habits and customs deeply in the soil of the regime, which is to say, deeply in the souls of the citizenry.

What is really at issue in these passages of the *Laws*, then, is the theme of unwritten law, or in other words, the habits, customs, and practices of the good citizen. However invisible they may be, civic habits and customs provide necessary support for the written statutes. One cannot expect the latter to be effective in the absence of the former, for unwritten laws are “the bonds of every regime” and they “provide a cloak of complete safety” for the written laws. The Athenian’s argument is couched exclusively in terms of security: good unwritten laws contribute to the preservation and stability of the polity and are, for this reason, a necessary condition of good political life. Unwritten laws regulate the behavior of individual citizens such that they remain devoted to the common things even when there are no immediate punitive consequences for relaxing their devotion. In a word, these unwritten laws constitute the citizen’s steady attachment to justice. The Athenian’s use of the term “bonds” and the verb “to bind” in this passage implies that habits, customs, and practices are those things that bring together the constitutive elements of the regime—i.e. the positive laws, institutions, rulers, citizens, and so


384 On the connection between unwritten law and tradition, see Romilly, *La loi dans la pensée grecque*, pp. 44-45.
forth—into a coherent whole. They connect citizens to each other, on the one hand, and to the regime governing them, on the other.

Still, there is a difficulty remaining in the Athenian’s presentation. What does it mean to say that unwritten laws are “established (tethenta, 793b7)”385? As Martin Ostwald has remarked, “[w]hat strikes us as peculiar is that Plato could have thought of unwritten ancestral customs as being capable of being ‘enacted’ by the person of a lawgiver.”385 Divine ancestral customs, we recall, are characterized by their mysterious origins; they appear to have become what they are by developing over an immense period of time. So how is it possible that these invisible habits and customs can be established through an effort of human agency? Our perplexity notwithstanding, Plato indicates with clarity, here in the Laws386 and elsewhere in his corpus, that the legislator’s task includes giving unwritten laws to the citizens. The Eleatic Stranger of the Statesman, for instance, expresses just such a thought in the midst of his discussion of the limitations of law. Despite the fact that it is impossible for a lawgiver to give advice for each and every circumstance occurring in life, still he will “prescribe, in his writings and without writings (agrammatois)—when he legislated by way of ancestral usages (patriois...ethesi nomothetōn)—that which is for the many and for the most part, and it’s in just this way that he’ll set down the law for individuals in a somewhat coarser way.”387 The Eleatic Stranger takes it for granted that legal prescriptions may be given outside of the medium of written text. This teaching seems to have been expressed with sufficient intellectual force to have found its way into the thought of Aristotle, Plato’s greatest student. For Aristotle holds, both in The Politics

386 Cf. Plato, Laws, 841b2-5.
387 Plato, Statesman, 295a4-7.
and in the *Nicomachean Ethics*, that the legislator’s enterprise includes the establishment of unwritten laws.  

One way to reduce our perplexity over how unwritten laws are enacted is to consider precisely what it means to refer to the lawgiver’s project as “soul-craft.” The Athenian is indicating that the soul-craft at issue at the beginning of *Laws* VII is, in fact, legislation. The lawgiver lays down unwritten laws in the souls of the citizens, doing so by means of a scheme of civic education that instills good civic habits and customs in the citizenry. Expressing the same thought in another way, civic education is legislation, insofar as the object of education is to establish laws in the souls of citizens. But if the soul-craft that results from civic education is, in fact, legislation, then the necessary corollary is that positive legislation that is not supplemented by civic education fails to accomplish what legislation is supposed to accomplish. This corollary is, to be sure, an unmistakable expression of the problem of legislation, as we have been considering in this inquiry. Plato is putting forth, at bottom, the notion that the psychology of the citizen may be expressed in legal terms, in that the habits created by the legislator’s program of education are the same as unwritten laws engraved in the soul. They are canons that direct the movement of psychic forces in a way beneficial for political life because this psychic movement reliably determines the behavior of citizens.

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388 Aristotle, *The Politics*, 1319b37-1320a2; and *Nicomachean Ethics*, 1180a34-b3.


Sources of Rousseauan Political Wisdom? Mœurs and Unwritten Laws in Comparison

In the *Emile*, Rousseau the tutor remarks that the “necessary relations between *mœurs* and government have been so well expounded (*si bien exposés*) in the book *The Spirit of the Laws* that one can do no better than have recourse to this work to study these relations.”³⁹¹ There is no doubt that Montesquieu’s thoughts on the subject of *mœurs* had been highly influential on Rousseau. But the passage from the *Emile* shows, of course, Rousseau the tutor giving advice to his pupil about one work of political philosophy that should inform the latter’s appreciation of the world of politics. In it, Rousseau makes no claims as to whether *The Spirit of the Laws* was the only source of his own appreciation of the science of *mœurs*, or even the most important. It was suggested above that Rousseau’s, and for that matter Montesquieu’s,³⁹² opinion of the importance of good *mœurs* is an echo of the ancient Platonic teaching. Having now considered the Athenian’s views on the capital importance of unwritten laws, it is possible to understand more completely the parallels between the ancient philosopher and his two modern counterparts, especially Rousseau, on this question. Unwritten laws and *mœurs* refer to roughly the same phenomenon: these terms from two different periods of political thought similarly signify the habits, customs, manners, etc. that constitute the moral way of life of a community. With respect to the individual citizen, they refer to the proper arrangement of the passions in accordance with which the citizen feels a strong attachment to justice. For Plato, as for Rousseau, such habits serve as reinforcement to the written laws. In fact, it is striking to notice that both Rousseau and Plato’s Athenian use architectural language in their descriptions, even if their respective


metaphors are not perfectly equivalent. While the former claims that *mœurs* are the “unshakeable keystone” of the polity, the positive laws being the “sides of the arch,” the latter suggests that unwritten laws are related to the regime “like the props of the walls of houses” are related to the whole edifice. A good set of unwritten laws or *mœurs* stabilizes the body of written statutes and the regime; a weak one jeopardizes the stability of the entire regime.

There is further reason to speculate that Rousseau, specifically, derived his understanding of the importance of good civic *mœurs* from the passages of *Laws* VII discussed in this chapter. As one would expect, the Latin edition of Plato’s corpus that Rousseau owned and read (i.e. Marsilio Ficino’s translation) uses a form of the Latin word *mos, moris* to translate the Greek word for habits (*ethē*) from the major passage at *Laws* 793a9-d5 and throughout the dialogue. The French *mœurs* is, of course, derived from this Latin word. And while this etymological fact is insufficient to demonstrate that the *Laws* is the definitive source of Rousseau’s science of *mœurs*, it does suggest that his conception of the political phenomenon of habits, customs, etc. is related to the Athenian’s teaching on *ethē*. Stronger evidence for a Platonic influence consists in the fact that Rousseau cites Plato as an authority in both the *Social Contract* and the *Political Economy*, specifically in the context of the passages on *mœurs* we have considered above. While neither reference cites the *Laws* by name, Rousseau offers his readers enough information to show that it was the text on his mind in each case. Because we know that Rousseau was a careful reader of the *Laws*, it seems reasonable to suggest that Plato, and in particular Book VII of the *Laws*, informed his understanding of the science of *mœurs*.

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393 On Rousseau’s legislator as architect, see Viroli, *La théorie de la societé bien ordonnée chez Jean-Jacques Rousseau*, pp. 146-147.

The association between Rousseau and Plato runs deeper than this, however, for both philosophers share similar opinions about the means by which mœurs or unwritten laws are given. Both teach that the legislator owns the chief responsibility for designing the program whereby the inculcation of these laws occurs; both suggest that the institutions of civic education do the work of writing them in the hearts of the citizens; both insist that civic education must aim primarily at shaping the passions; and both maintain that civic education cannot work effectively if it does not begin at the first possible moment of life. Generally, these observations suggest one reason why Rousseau’s science of mœurs should be said to derive primarily from Plato and not from Machiavelli, who may be seen to be Plato’s chief rival in this respect. To be sure, the Florentine teaches that the ways and manners of a people affect the function of government, and that good “modes and orders” enhance the prospects for the long-term success of the polity. Machiavelli argues, further, that the lawgiver, or “armed prophet,” is the one responsible for giving new modes and orders to a people. Yet he indicates that the great founder conducts his legislation in part by means of force, maintaining that the impressive example of violence well-used can be an effective way to shape the soul of individual citizens. Rousseau’s teaching diverges from Machiavelli’s in this respect. As was examined in Chapter Three, “the legislator is…unable to use either force or reasoning.” Rousseau holds instead that the inculcation of mœurs can occur only through a long-term process of civic education, and in this he is closer to Plato’s teaching in the Laws. One could even say that Machiavelli’s view on the expediency of

395 Viroli, for his part, identifies Machiavelli as “l’inspirateur principal de la conception de Rousseau à propos de la relation entre lois et mœurs.” Viroli, La théorie de la société bien ordonnée chez Jean-Jacques Rousseau, p. 156.

396 See, e.g., Machiavelli, The Prince, Ch. 6, and The Discourses, Bk. 1, Ch. 9.

force is an opinion that Hobbes absorbed thoroughly and used in constructing his own political science, for it appears to be the origin of the position that the overwhelming force of the Sovereign is sufficient for good government. After all, both Machiavelli and Hobbes point to the fear inspired by the threat of overwhelming force as the key factor guaranteeing obedience to law. This tenet of Hobbesean political science, we recall, is decisively rejected by Rousseau.

But if it is clearer now that Rousseau’s science of mœurs should be said to derive from Plato rather than Machiavelli, then there is yet another objection to consider when tracing Rousseau’s influences on this theme. As a political philosopher deeply interested in Rome, both in Roman theory and in Rome’s political life, is it not likely that Rousseau began to think seriously about mœurs because of the Roman emphasis on mos, moris? Stated more broadly, why does Rousseau’s teaching come from Plato specifically, and not from classical political thought in general? This objection might be made by scholars working on the history of republican political thought, such as Maurizio Viroli, for example, who argues that the classic source of Rousseau’s, and other modern republican thinkers’, understanding of the disposition of the good citizen derives from “the works of Roman political authors and historians written when the res publica was nothing more than a memory”. Doubtless, it would be inaccurate to argue that the example of Rome had no influence on Rousseau, whether generally or in respect to

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Still, there are two reasons to prefer the argument that Plato is the chief influence. First, as noted above, Plato is the only classical author cited by Rousseau in the context of his discussion of *mœurs*, which is to say that there is no citation of a Roman author, whether Cicero, Livy, Sallust, or any other that might be relevant. Second, several recent scholars, such as Eric Nelson and Paul Rahe, have persuasively argued that the roots of classical republican thinking on the character of the good citizen go back *through* Rome, to the political theory and practice of ancient Hellas.

While neither Nelson nor Rahe treat of the connection between Rousseau and Plato at issue in this chapter, their findings show that the primary exponents of Roman political thought were themselves deeply influenced by Hellenic authors. Plato’s *Laws* appears to be the earliest source of thinking in political philosophy on the theme of unwritten law, and as we have seen, Rousseau knew it exceptionally well.

However this may be, there appears to be a difference between Rousseau and Plato on unwritten law that must be considered. Whereas both philosophers suggest that a legislator’s success in inculcating civic habits and practices is important for the development of citizen virtue, they seem to disagree over the nature of virtue. Rousseau, for his part, argues in his political texts that virtue is indistinguishable from a set of good *mœurs*. A virtuous citizen is one in possession of civic *mœurs*, or the habits of the good citizen’s heart. Virtue for Rousseau is habit. Beyond the passages we have already considered in this chapter, this position is advanced also in the *First Discourse*. Rousseau’s text presents an investigation of the question whether

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400 Consider in this regard Rousseau, *Second Discourse*, pp. 80 (III: 113), and *Social Contract*, pp. 113-120 and 121-123 (III: 444-453 and 455-458).

401 Nelson, *The Greek Tradition in Republican Thought*, pp. 1-2; Paul A. Rahe, *Republics Ancient and Modern*, Vol. 1 (Chapel Hill: University of North Carolina Press, 1994), esp. pp. xxiii: “It was in Hellas that the first republics known to the West appeared and flourished. There is reason to suppose that it was their example that inspired the subsequent appearance of republicanism in ancient Italy…”
“the restoration of the sciences and the arts [has] tended to purify or corrupt mœurs,”⁴⁰² and his answer famously centers on a discussion of virtue. Marc Plattner has gone so far as to call virtue the “key word” of the First Discourse.⁴⁰³ That a text devoted to a discussion of mœurs presents primarily a discussion of civic virtue suggests that Rousseau understands the latter to be synonymous with a good set of the former.

The concluding paragraph of the First Discourse lends support to this interpretation as well. “O virtue!” Rousseau writes, “Sublime science of simple souls, are so many difficulties and preparations needed to know you? Are not your principles engraved in all hearts (gravés dans tous les cœurs), and is it not enough in order to learn your laws to commune with oneself and listen to the voice of one’s conscience in the silence of the passions?”⁴⁰⁴ The well-known rhetorical flourish here may be illuminated by Rousseau’s deeper teaching on the origins of the citizen’s attachment to justice. Virtue in this passage represents laws of the heart, which Rousseau describes generally as mœurs. But if the principles of virtue are “engraved” on the citizens’ hearts—this is the same language that Rousseau uses in the passage on mœurs from the Social Contract, II.12—then it is clearly the legislator who undertakes the task to engrave, for it is legislation that creates mœurs.⁴⁰⁵ And while Rousseau enjoins citizens to listen to “conscience in the silence of the passions,” we have seen that the birth of that which Rousseau refers to here

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⁴⁰² Rousseau, First Discourse, p. 34 (III: 5).


⁴⁰⁴ Rousseau, First Discourse, p. 64 (III: 30); cf. p. 37 (III: 8): “Ornamentation is no less foreign to virtue, which is the strength and vigor of the soul.”

as “conscience” involves not excising the passions, but rather educating the chief social passion, *amour-propre*. One cannot even say that civic education involves soothing this passion, for patriotism requires the legislator to inflame the love of the homeland. It would be more accurate to say that the legislator undertakes to direct *amour-propre* toward patriotic ends.  

If Rousseau maintains that virtue and *mœurs* are the same, or that virtue is essentially habit, then Plato presents a different teaching, in that the Athenian argues to the effect that unwritten laws are a necessary *precondition* for mature virtue. Of course, it has been shown that unwritten laws are important in their own right. But as regards the question of virtue, the Athenian’s argument seems to be that habits do not themselves comprise it. Much as Aristotle will indicate in his *Nicomachean Ethics*, the education to virtue must begin with habituation in the correct sorts of activities, but true virtue itself is something different. Far from being blind or passive habit, virtue is a condition of soul that operates actively in accordance with the independent faculty of reason (*logos*). The Athenian puts forth this teaching in the passage on education from Book II that has been considered above. While it is necessary that an individual’s soul be habituated correctly in respect to pleasures and pains from birth, what is


407 That Rousseau’s model of civic virtue is deeply influenced by Montesquieu’s has been demonstrated by Orwin, “Rousseau’s Socratism,” p. 180.

most important is that “these passions can in consonance with reason (symphōnēsōi tō logō) affirm that they have been correctly habituated in the appropriate habits. This consonance in its entirety is virtue…” In other words, while for Rousseau virtue is habit, for Plato virtue is the harmony of the correct habit and active reasoning about that habit and about the external target at which it is characteristically directed.

This teaching on the nature of virtue is expressed also in the well-known passage from *Laws* I concerning the myth of the puppets. After having asserted that the law is the accepted opinion of the city about the proper attitude toward pleasures and pains, the Athenian proceeds to describe human beings as divine puppets. As such, “we” experience the “passions work[ing] within us like tendons or cords, drawing us and pulling against one another in opposing directions toward opposing deeds”. There is, however, a special cord in this model of the human soul, the “golden and sacred pull of calculation” which is “called the common law of the city”. But while human beings should always live in accordance with the golden cord, it is difficult to do so because of the violence of the passions. What the law needs, in addition to itself, is support from the passions: “It is necessary always to assist this most noble pull of law because calculation, while noble, is gentle rather than violent, and its pull is in need of helpers if the race of gold is to be victorious for us over the other races.” The Athenian holds that the behavior of citizens cannot be regulated by law alone, because the passions are effective in diverting a citizen away from the guidance of the law. What is needed is the correct education of the passions, the sort of education based on habituation spelled out in great detail in *Laws* VII.


411 Cf. Rousseau, *Poland*, p. 170 (III: 955): “It may be easy…to make better laws. It is impossible to make any that men’s passions do not abuse, as they have abused the first ones.”
But the myth of the puppets, it seems, has been at one and the same time “the myth of virtue,” since the correct consonance between reason and passion turns out to be virtue herself.

As regards a city and a private individual, it’ll be clearer that the latter should acquire within himself true reasoning about these cords and live according to it, while a city should take over a reasoning either from one of the gods or from this knower of these things, and then set up the reasoning as the law for itself and for its relations with other cities. Thus, certainly, vice and virtue would be more clearly distinguished for us.\footnote{Plato, \textit{Laws}, 645b3-c1.}

The most important aspect of this passage for immediate purposes is the assumption that virtue is not simply the correct habituation of the pleasures and pains. Plato maintains that virtue begins with the development of good habits and is crowned by a correct reasoning about them, which is provided chiefly by the lawgiver, “this knower of these things.” Virtue is, as such, a correct, rational, and active disposition toward the passions, especially insofar as they involve pleasures and pains.

This difference between Rousseau and Plato is emblematic of the difference between modern and ancient political philosophy on the question of virtue. While it is true that the ancient Plato views unwritten laws as being important in their own right, he sees them also as the means to achieving virtue, the goal of flourishing human life. But the modern Rousseau, for his part, views that which would have been seen by Plato as the means, i.e. \textit{mœurs}, as the very substance of virtue. In this, Rousseau consistently follows the trail blazed by Machiavelli in his reinterpretation of virtue as an instrument useful chiefly for getting people what they desire.\footnote{Machiavelli, \textit{The Prince}, Ch. 6 and Ch. 15.}

For Rousseau, virtue secures obedience to the law; for Plato, virtue is active obedience to the law. Indeed, for Rousseau, “obedience to the law one has prescribed for oneself is freedom
(liberté)", not virtue. According to the modern Rousseau, then, civic virtue is the means to human freedom, not the crown of a happy human life.

Be this as it may, there is a complication in this reading of Plato’s model of virtue in the Laws that must be considered. The complication is related to the previous chapter’s argument about the difficulties of rational persuasion of the citizenry. In Plato’s model, virtue is the consonance of right reason and the correctly habituated passions. But as we have already seen, the Athenian is nothing if not pessimistic about the accessibility of true rational considerations to the common run of citizens; we shall see this, furthermore, in a different way in Chapter Five’s discussion of the character of civil religion. There seems to be, then, some jarring dissonance between the Athenian’s teaching on virtue in the Laws and his thoughts about the intellectual abilities of ordinary people. Does Plato’s model of human virtue apply to the typical citizen of Magnesia? Or does it apply, rather, only to those relatively few exceptional cases, such as the members of the nocturnal council who have distinguished themselves as regards intellectual ability?

This is, to be sure, a nettlesome question, and considering the length of the Laws and Plato’s extraordinarily complex argument contained therein, it is difficult to come to a clear answer. But there is persuasive evidence from the text to suspect that the Athenian’s model of human virtue is not intended to apply to the ordinary citizen of Magnesia. When inspected more closely, the status of citizen virtue in the Laws seems to be more of a problem than the Athenian’s formal presentation would have it be. The image of the puppets is itself riddled with problems, not the least of which concerns the fact that the Athenian calls it the “myth” of virtue


\[415\] On the nocturnal council, see Plato, Laws, 908a2-5, 909a2-8, 962c8-d5, 968a4-c7, and 969b2-c3. On the theme of exceptional human virtue, see 951b4-c4.
(mythos aretēs) rather than an account (logos). In defining virtue, the myth applies to both a city and a private individual, and while the Athenian says that the latter ought to live in accordance with “true reasoning (logon alēthē)” about law and the passions, the former ought to take over “a reasoning (logon)” about these things from either the gods or the legislator. For the city’s sense of virtue, then, the qualification of the truth drops out; the Athenian’s speech makes a distinction between reasoning that is true that that which has been provided by the lawgiver. The implicit suggestion, however, is that the ordinary citizen will not be capable of understanding for himself the truth underlying the legislator’s reasoning about law and the passions. As Leo Strauss has argued in interpreting the myth of the puppets, “[i]t would be wrong but not entirely misleading to say that the reasonable individual is autonomous and the city is not. Those who are guided merely by law, however reasonable, without knowing (knowing through themselves) that it is reasonable, are as much puppets as those who are dragged only by their passions, although they are of course superior to the latter.”

Further evidence for skepticism on this matter comes from Book VII. While the division of the dialogue is not Plato’s own but rather a later redactor’s, it seems clear that the basic theme of Book VII is habituation and its relation to a proper education to citizenship. Remarkably, however, after the Athenian’s major statement on unwritten law at 793a9-d5, the discussion of virtue in the remainder of the Book is minimal, while the emphasis on habit and habituation is heavy. Words signifying habit (hexis, ethos) occur in a ratio of almost three to one to the word for virtue (aretē). And the Athenian consistently lays emphasis on the central role of habituation throughout his discussion of educational institutions. But the most compelling evidence that

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417 See, e.g., Plato, Laws, 797d9-e1, 807d1-3, and 808c2; cf. 818e3-819a6. For discussions of habit in the surrounding Books of the Laws, consider 706a4-d2, 708b8-d5, and 841b2-c2.
ordinary citizen virtue, for Plato, does not necessarily involve right reason in addition to habit is found in the closing section of Laws VII. Upon declaring that “the legal customs regarding the subjects of learning that pertain to education have reached their end,” the Athenian returns to the theme of legal preludes that he had first broached in Book IV. This additional discussion of preludes will provide the capstone to the discussion of civic education. In reiterating the argument that the citizen will need exhortations and admonitions that cannot be expressed in written statutes, the Athenian offers what is perhaps the clearest formulation of what it means to be a good citizen in the Laws.

Indeed, even when the laws and the whole political regime have been thus written down, the praise accorded to the citizen distinguished as regards virtue (ho tou diapherontos politou pros aretēn gignetai epainos) is not complete when someone declares that he serves the laws best and is especially obedient (peithomenon malista) to them, and that this constitutes a good man. A more perfect sort of praise is that which speaks of a man who has passed his life in unbroken obedience (diexelthē ton bion akraton) to those writings in which the lawgiver legislates, praises, and blames. This is the speech that is most correct as regards praise of a citizen. And what is really required of a lawgiver is that he write not only laws, but, in addition to laws, things interwoven with the laws, writings that reveal what seems noble and ignoble to him. The highest citizen (akron politēn) is limited by these things no less than by the things sanctioned by legal penalties.

The decisive factor distinguishing a virtuous citizen, according to this passage, is not that he can make a true rational judgment about his behavior based on a good set of habits. Rather, it is that he lives his life in “unbroken obedience (ton bion akraton)” to not just the positive laws given by the legislator, but also to the persuasive exhortations and explanations given in addition to the law. We recall, from the analysis in Chapter Three, that the persuasion embodied in the preludes is fundamentally sub-rational in character. Much the same as in the case of the myth of the puppets, what is critical is that the citizens go through their lives in unbroken obedience to the justification for the law that the legislator has provided, regardless of its truth.

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418 Plato, Laws, 822d2-3.
419 Plato, Laws, 822e4-823a6.
If these reflections are on target, then it is likely that the status of citizen virtue in the *Laws* is not very different from the status of Rousseau’s version. If the feature of true rational calculation drops out for the ordinary citizen, then what remains as the core of citizen virtue is the correct habit, as it is for Rousseau. As E.R. Dodds explains, “[i]n the *Laws*, the virtue of the common man is evidently not based on knowledge, or even on true opinion as such, but on a process of conditioning or habituation…by which he is induced to accept and act on certain ‘salutary’ beliefs.” This is, of course, far from arguing that Plato’s formal model of virtue, as discussed above, is untrue; rather, it is to suggest that the model likely applies only to exceptional individuals in the city, not to the common run of citizens. This is also far from denying that Rousseau’s political thought contains other treatments of virtue—in Chapter Three, for instance, we considered virtue as it is related to the figure of the lawgiver. It may even be the case that Rousseau understands true human virtue in ways comparable to the formal understanding of Plato’s *Laws*. To explore the complete array of Rousseau’s thoughts on virtue is, however, beyond the scope of this study.

But it is important, finally and in summary, to underscore that both Rousseau and Plato agree on the most fundamental theme at issue in this chapter. Whether one is considering modern *mœurs* or ancient unwritten laws, both philosophers hold that these habits of the sub-rational part of the soul are indeed laws. They are such in that they are canons guiding the behavior of citizens, like positive laws, even if they are never to be found in a book of statutes. Finally, they are given to the citizenry by the activity of the great legislator. These are

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420 Dodds, *The Ancient Concept of Progress*, p. 110.

compelling reasons to believe that Plato’s *Laws*, and specifically the teaching in Book VII, is the source of Rousseau’s science of *mœurs*.

**Public Entertainment, Play, and the Problem of Legislation**

Near the beginning of this chapter, we considered Rousseau’s well-known statement of the political problem in his *Poland*, namely the need to generate the conditions so that “the law rules over the hearts of the citizens.” We have seen, furthermore, that the lawcode itself is unable to achieve this end. Positive law, the primary tool we tend to think is at the disposal of the lawmakers during the process of founding legislation, is insufficient for good political life. What would be the sufficient condition for good government, then? Rousseau’s answer to this question is a system of civic education whereby the passions, and especially the passion of *amour-propre*, are shaped with a view to creating good citizens firmly attached to justice.

Rousseau, however, is much more specific as to how such a system of civic education is intended to operate, and what the institutions of education are to look like. For, as is expressed in the *Poland*, he reveals a surprising truth about the character of a proper education to citizenship.

“How then to move hearts, and make the fatherland and laws loved? Shall I dare to say *(L’oserai-je dire)*? With children’s games; with institutions that are idle in the eyes of superficial men, but which form cherished habits and invincible attachments.” It is chiefly by means of play that the legislator engraves *mœurs* in the hearts of the citizens.

The link between play and education emerges in the second chapter of the *Poland*. Here Rousseau discusses Moses, Lycurgus, and Numa as prime exemplars of the lawgiving art. The crucial element that this discussion adds to the *Social Contract*’s teaching on the legislator,

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however, is the notion that all great founders use rites, games, festivals, etc. to give *mœurs* to the citizens. This is also the thread connecting the three legislators discussed therein. Generally, the institutions of public entertainment, broadly understood, comprise a powerful tool useful in facilitating the lawgiver’s work.

The same spirit guided all the ancient Legislators in their institutions. All looked for bonds which attached the Citizens to the fatherland and each to each other, and they found them in distinctive practices (*usages*), in religious ceremonies which were always exclusive and national by their nature, …, in games which kept the citizens assembled very much, in exercises which increased their pride and self-esteem along with their vigor and strength, in spectacles which, recalling to them the history of their ancestors, their misfortunes, their virtues, their victories, gained the interest of their hearts (*interessoient leurs cœurs*), inflamed them with a lively emulation, and strongly attached them to that fatherland with which they were kept ceaselessly occupied.

The most effective way to impress citizens with salutary habits and practices, to inspire them to love the homeland, is to establish forms of public entertainment in which all citizens are expected to take part. Through games and rites, citizens practice activities that accustom them to habits salutary for the political community. Through participation in festivals celebrating the republic, they come to experience ardent sentiments of patriotism. In the subsequent chapter of the *Poland*, Rousseau explains in more detail why the institutions of public entertainment are so important for flourishing political life. First, it is necessary that those who are to “command” are able to distinguish themselves as worthy of their office in the public eye. Second, the co-mingling of leaders and people in a festive atmosphere serves to cultivate “affection” for the political leaders and feelings of friendship among all citizens. Third and finally, public games represent an opportunity for citizens to engage in bodily exercise, which distracts them from idle and “effeminate” pleasures and “luxury of mind.” In a clear echo of the Athenian’s strange

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discussion that opens *Laws* VII, Rousseau concludes that it is “above all because of the soul that
the body must be exercised…” ⁴²⁴

This teaching on the value of public entertainment surfaces also in Rousseau’s *Letter to
d’Alembert*, as the final part of his critique of d’Alembert’s suggestion that the theater would be
well suited to the citizens of Geneva. Rousseau’s letter is famous for its blunt rejection of this
idea, arguing instead that the establishment of a theater would be disastrous to the *mœurs*, and
consequently to the political life, of his native city. Yet, as the ultimate chapter of the text
reveals, Rousseau is not arguing that the citizens of republics should be without diversions.

“Ought there to be no entertainments in a republic? On the contrary, there ought to be many.” ⁴²⁵

Inveighing against the theater and actors on the French model in particular, Rousseau avows that
festivals bringing citizens together “in the open air,” i.e. in public, are beneficial to a people’s
longevity and happiness. To be sure, such festivals ought to be simple, omitting all pomp and
luxurious adornment that would be pointlessly excessive for free citizens. As such, these
festivals are comparable to the public rites and games of ancient Lacedaemon, ⁴²⁶ the same that
Rousseau had drawn attention to by considering Lycurgus in his *Poland*. Rousseau teaches that
citizens of a republic must experience joy in their lives in order to be consistent in carrying out
their duties. “It does not suffice that the people have bread and live in their stations. They must
live in them pleasantly, in order that they fulfill their duties better, that they torment themselves

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⁴²⁵ Rousseau, *Letter to d’Alembert*, p. 125 (V: 114). For an argument that the *Letter to d’Alembert* is not
(1986), pp. 84-114. Marshall (p. 84) is sensitive to the fact that Rousseau shares some of Plato’s concerns about the
theater.

less over changing their stations, that public order be better established. Good *mœurs* depend
more than is thought on each man’s being satisfied in his estate.”

The lion’s share of the last chapter of the *Letter to d’Alembert* is devoted to a discussion
of an institution peculiar to Europe of Rousseau’s time: public balls “for young marriageable
persons.” Generally, Rousseau challenges the opinion that such balls should be seen as
scandalous because they give the youth an opportunity to participate in inappropriate activities.
On the contrary, dancing and singing at parties such as this ought to be embraced in a republic,
for it would assist in regulating the process leading to marriage, “certainly the first and holiest of
all the bonds of society”. It is better from the standpoint of good politics to regulate the coming
together of the sexes than to risk the practice of “private meetings.” However this may be, the
crucial aspect of Rousseau’s discussion of balls is the implication that public entertainments
touch and shape the level of *amour-propre*. It is precisely because the youth are encouraged to
act in socially acceptable ways that festivals such as these are useful. “[W]here [will] young
marriageable persons…have occasion to get a taste for one another and to see one another with
more propriety and circumspection than in a gathering where the eyes of the public are
constantly open and upon them, forcing them to be reserved, modest, and to watch themselves
most carefully?”

The crucial reason why public entertainments are so much more preferable
than those private, is that they force the youth to tailor their behavior and opinion of themselves
on the opinions of others, those of the greater citizenry. In the quote from the *Poland* above,
Rousseau explains that ancient legislators established public exercises that, among other things,


transparence et l’obstacle*, pp. 117-121; and Laurence Viglieno, “La fête et l’esprit national selon Jean-Jacques
Rousseau,” in *Jean-Jacques Rousseau, Politique et Nation*, Présentation générale de Robert Thiéry (Paris: Honoré
“increased their pride and self-esteem,” a clear indication that those legislators were aiming to shape *amour-propre*. In sum, public festivals such as those described in these texts comprise an institution of civic education, insofar as they are effective in helping the legislator stamp civic *maeurs* on the hearts of citizens.

It is remarkable to note, then, that Plato gives much the same advice as Rousseau as regards the way by which educational institutions conduct the work of giving unwritten laws. The Athenian explains in *Laws* VII that the best way to cultivate good habits in the citizenry and make them stick is through the judicious use of play (*paidia*). The lawgiver cannot simply proclaim that this or that habit is good and expect for those habits to take root. Instead, education for the young to the very serious end of good civic habits consists in a kind of amusement: children are instructed about their future duties through games, toys, and songs. “In all the cities,” according to the Athenian, “everyone is unaware that the character of the games played is decisive for the establishment of the laws (*peri theseōs nomōn*), since it determines whether or not the established laws will persist.” As we have seen, that which makes the “established laws…persist” is chiefly good unwritten law. When participating in games and play, the Athenian contends, the young citizen possesses a temper of soul more open to developing salutary habits than when engaging in serious pursuits. So the crucial institutions of education crafted by the legislator will be games, rites, ceremonies, public contests, festivals, and so forth; anything, in general, that trains the child through enjoyable discipline to devote


430 Plato, *Laws*, 797a7-9; cf. 643b4-d4.
themselves to the common good. 431 The institutions of play are so important that the regime should be wary of any kind of change to them. Innovation in the games leads to innovation in the citizens’ dispositions away from the paradigm that the legislator intended. This is, according to the Athenian, “the greatest evil for cities”, 432 a judgment in consonance with the opening speech of Book VII, in which the Athenian had underscored the danger posed by the problem of private behavior.

But the Laws teaches that play is good and necessary not only for young children. On the contrary, even older citizens are benefited by festivals. This theme seems to be one of the subjects of Book II, and it demonstrates that the legislator’s institutions of education are supposed to affect all age groups in the city, to some degree. Because the citizens’ “education, which consists in correctly trained pleasures and pains, tends to slacken in human beings, and in the course of a lifetime becomes corrupted to a great extent,” 433 the legislator must establish regular holidays for the citizenry. These holidays are not vacations during which the citizens are expected to relax however they see fit. 434 They are instead festivals of public entertainment—including dancing, singing, choral performances, and public contests over poetry—for the purpose of bringing souls back to the correct civic habits to which they had been educated in the first place. Dance and song, the constituent elements of the chorus, are useful for creating or re-establishing order in the citizens’ souls, for rhythm and harmony refer to order in movement and in voice, respectively. In other words, the Athenian claims that the order inherent in singing and

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432 Plato, Laws, 797a9-798d5.

433 Plato, Laws, 653c7-9.

dancing assists in bringing the forces of soul into the proper arrangement.\textsuperscript{435} As a primary component of a musical education, singing is particularly beneficial to the development of good citizens. “[T]o prevent the child’s soul from becoming habituated (\textit{ethizētai}) to feeling delight and pain in a way opposed to the law and to those who are persuaded by the law, to make the child’s soul follow and feel the same joys and pains as an old man, the things we call songs, but which are really incantations for souls (\textit{epōdai tais psychais}), have now come into being.”\textsuperscript{436} Book II of the \textit{Laws} teaches that the child who sings the right songs prepares his soul for good civic habits, whereas the older citizen who does so reinforces those same civic habits that have already been put there.

\textbf{Conclusion}

This emphasis on play as the effective means by which \textit{mœurs} or unwritten laws are given to the citizenry, helps to clarify the notion that behavior falling outside the purview of law enforcement should be regulated through the legislator’s system of education, not the written lawcode, according to Rousseau and Plato’s Athenian. Statutory law simply cannot be infused with the same spirit of play as are these educational institutions. So while positive law does indeed serve an important function in healthy political life, the proper cultivation of good citizens cannot occur through it.\textsuperscript{437} The habituation necessary for developing citizens who

\begin{itemize}
  \item \textsuperscript{435} Plato, \textit{Laws}, 664e8-665a3.
  \item \textsuperscript{436} Plato, \textit{Laws}, 659d4-e1.
  \item \textsuperscript{437} As for Plato, consider Socrates’ public criticism of Meletus, who claims that the laws (\textit{hoi nomoi}) are responsible for educating the young: Plato, \textit{Apology of Socrates}, 24c4-26a7. Jacqueline de Romilly has shown that the reliance on written law, as evinced here by Meletus, a representative of democratic Athens, is characteristic of democracies, while the reliance on unwritten tradition is characteristic of aristocracies. See Romilly, \textit{La loi dans la pensée grecque}, p. 45. The Athenian’s teaching on unwritten law appears to point to elements of Magnesia’s regime that are aristocratic in spirit.
\end{itemize}
respect the established laws in their daily lives depends fundamentally on games, songs, festivals, and so forth. Play is, in a word, an instrument of legislation. And to say that positive law is unable to achieve the end of cultivation is merely to express the problem of legislation in its essentials.

One of the more memorable lines of Plato’s *Laws* is located at the heart of Book VII: “Of course, the affairs of human beings are not worthy of great seriousness,” remarks the Athenian, “yet it is necessary to be serious about them.” This statement is, to be sure, an assertion about man’s station in the cosmos, especially considering his relation to the divine. Still, perhaps this chapter’s investigation of the legislator’s plan of education—placed alongside Rousseau’s similar discussion of the same topic—has helped, in a small way, to shed additional light on this line of text. If human affairs are not worthy of seriousness, then perhaps it is reasonable to hold that they are worthy of play. Taking this as his assumption, Plato’s *nomothetēs*—that figure with the very serious responsibility for the overall health of the regime; that demiurge who crafts good citizens by giving unwritten laws to their souls—uses the play appropriate for human affairs to mold human beings into citizens. In other words, he uses play (*paidia*) for the sake of education (*paideia*). This is a teaching that Rousseau, it appears, has absorbed well.

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Chapter V

God and the Good Citizen—Civil Religion as Legal Institution

As we saw in the foregoing chapter, the most important task to be accomplished by the great legislator is craftsmanship of soul. Yet, as was also observed through the course of the argument, this assertion becomes intelligible only with reference to institutions and their function in the legislative enterprise. To adduce a contrasting example of the process of soul formation, an example that might well be viewed as a foil to the legislator, the God of the Bible is depicted as crafting souls *ex nihilo* by means of an act of Divine fiat: the “LORD God fashioned the human, humus from the soil, and blew into his nostrils the breath of life, and the human became a living creature.”439 But the great lawgiver is himself a human, after all, not God or a god, and can accomplish only so much with his human powers. For his part, this figure creates institutions in and through which the souls of men are shaped into those of citizens. This is as true for Plato’s conception of the lawgiver as it is for Rousseau’s, despite certain differences that we have considered, and it remains crucial for understanding the meaning of legislative craftsmanship. At the close of Chapter Four, we examined one important set of institutions that the legislator would have to develop, namely those concerning public entertainment, broadly understood.

But the institutions of public entertainment are not the only ones that the lawgiver must make use of in his legislation, and in all likelihood they are not the most important. Rousseau

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and Plato tread on common ground in arguing that the institutions of civil religion are a necessary support for the established laws and, therefore, a necessary condition of healthy political life. What is more, both philosophers maintain that the institutions of civil religion are in fact used by the lawgiver in the act of legislation. Rousseau brings his main depiction of the legislator in the *Social Contract* to an end by discussing his use of religion, arguing that one “must not conclude from [the preceding reflections]…that politics and religion have a common object for us, but rather that at the origins of nations, one serves as an instrument of the other.”

Religion, in Rousseau’s text, is instrumental to political ends. Plato’s Athenian maintains that the lawgiver’s responsibility is to clarify and to defend the role of the gods in the polity being established, and that the citizenry’s belief in the civil theology figures crucially in the success of the polity. After the Athenian has demonstrated the pressing need for him and his interlocutors to investigate the subject of the gods, Clinias adds that “if there happens to be even some small bit of persuasion as regards [religion], the lawgiver of even slight merit should in no way grow faint, but should lend his whole voice, as they say, in assistance to the ancient law’s argument (tō *palaiō nomō…logō*) to the effect that there are gods…” The Athenian has been concerned, of course, to portray the good or wise lawgiver throughout the *Laws*. It seems, however, that the need to defend institutions of civil religion is so great that a lawgiver of any stripe would need to engage himself in this project.

To understand the full extent of Rousseau’s and Plato’s teachings on legislation, then, it is essential to explore their views on civil religion as an aspect of the legislator’s task. The purpose of the present chapter is to examine these views in comparative perspective. But there is

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441 Plato, *Laws*, 890d1-5.
a surprising fact about this subject deserving mention at the outset. The body of secondary scholarship—whether on the political philosophy of Rousseau or Plato specifically, on Rousseau’s Platonism, or on civil religion generally—is almost entirely lacking in any such comparison. There is only one study that considers Rousseau’s and Plato’s views on civil religion together, and this is a short piece on the theological teaching of the *Laws* by Thomas Pangle. Pangle affirms the worthiness of investigating the two teachings jointly by noting a simple fact. “The Athenian’s account of the beliefs the best city should have is the only account available to us in complete form from the ancient philosophers. The only other such account in the tradition of political philosophy is that given by Rousseau.”

It is true, of course, that the annals of political philosophy record other treatments of the need for civil religion, for instance those by Niccolò Machiavelli and Thomas Hobbes. But those others do not clearly articulate the religious dogmas that the best regime ought to have, whereas Rousseau’s and Plato’s do. On Pangle’s reading, the respective accounts of civil religion in Rousseau and Plato are remarkably, though not unqualifiedly, similar. But his analysis is condensed, its express purpose being to cast Plato’s teaching on religion in the *Laws* into bold relief, for it had gone generally unnoticed by political scientists up to the time of his article.

The present chapter strives to build on this existing scholarship in two ways. First, it seeks to consider the possible connection between Rousseau and Plato on civil religion more

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comprehensively than has been done before. And second, it aims at exploring the role of religion within the framework of Rousseau’s and Plato’s respective teachings on the art of the legislator. As for Rousseau, the most important text in which civil religion is discussed is the *Social Contract*, specifically in the closing paragraphs of II.7, “On the Legislator,” and in the penultimate chapter of the entire work, IV.8, “On Civil Religion.” This last is Rousseau’s definitive treatment of the subject, but as will become clear, only a portion of it is directly relevant to our study of religion as a facet of the legislative art. As for Plato, and despite the fact that reflections on the gods permeate the entire text of the *Laws*, the two most important passages are the hypothetical first speech of the legislator to the assembled multitude of colonists in Book IV, and Book X, which presents an extended discussion of the gods and the Athenian’s prelude to the law against impiety. In this chapter, then, we shall investigate these texts with a view to clarifying the following four subjects: the need for religion in political society, the question of the source of the divine law, the specific dogmas to be established by the legislator, and Rousseau’s and Plato’s views on toleration of unorthodox religious opinions.

Before setting out to explore these themes, however, it is necessary to address a possible objection to this proposed treatment of Rousseau and Plato. Can it be right to concentrate exclusively on the *Social Contract* and the *Laws*, when other of Rousseau’s and Plato’s texts on religion seem relevant as well? Of course, the works at issue here are the most relevant for the present inquiry for one reason above all: they present the two philosophers’ treatments of religion from the standpoint of the legislator and legislation. Still, what are we to make of those

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other texts? With the *Letters Written from the Mountain*, for instance, Rousseau discusses religion in the context of citizenship and presents a summary of his complete teaching in the *Social Contract*, which includes a reference to the chapter on civil religion.\(^{446}\) But the *Letters* is first and foremost Rousseau’s defense of himself against charges, levied anonymously by the Genevan Procurator General in a writing called *Letters Written from the Country*,\(^{447}\) that his system is contrary to the Christian religion. It is not, in other words, a direct discussion of the way in which civil religion is employed by the lawgiver.\(^{448}\) In “The Profession of Faith of the Savoyard Vicar” from Book IV of the *Emile*, additionally, Rousseau the tutor offers his pupil a lengthy discourse on the principles of religion through the mouthpiece of the Vicar.\(^{449}\) But rather than outlining the dogmas of religion necessary for the maintenance of a good political society, the “Profession of Faith” presents a teaching on the individual’s attachment in conscience to the true maxims of faith. From the perspective of the principles of political right, by contrast, the consideration of civil religion in the *Social Contract* seems to be the more important of the two. Book V of the *Emile* contains a summary of the *Social Contract*’s teaching as well, but it is missing two subjects that are crucial elements of Rousseau’s original argument, namely the legislator and civil religion.\(^{450}\) While Rousseau’s two treatments of religion may very well be


\(^{449}\) Rousseau, *Emile*, pp. 266-313 (IV: 565-635). The secondary literature on the “Profession of Faith” is voluminous. For a reading of this text that sees it as an unmistakable expression of Rousseau’s Platonism, see Williams, *Rousseau’s Platonic Enlightenment*, pp. 61-92.

compatible, it seems that the discussion of religion in the *Social Contract* is, in his own view, not suitable to his theme in the *Emile*, and vice-versa.\textsuperscript{451}

Turning to Plato, it should be noted that Socrates, in Book II of the *Republic*, famously endeavors to reformulate Hellenic theology in ways that would support the ends of the best city in speech. Going so far as to accept Adeimantus’ characterization of his speeches on the gods as theological “laws,” Socrates maintains that the gods are only ever capable of doing good, never evil; that they are unchanging and eternal; and that they never lie.\textsuperscript{452} The difficulty with Socrates’ treatment of religion for the present study, however, is that its ultimate effect is to divorce theology from what we mean by the term civil religion, namely the citizen’s belief in gods that defend the city, support justice, and punish acts of wickedness.\textsuperscript{453} The perfected gods of the *Republic* appear to have little or nothing to do with human beings at all, and one wonders whether Socrates introduces them simply to pave the way for introducing the eternal forms later in the text. Indeed, aside from a short speech on laws about sacrifices, burials, “and whatever else belongs to the care of gods, demons, and heroes”\textsuperscript{454}—which speech seems nothing if not merely perfunctory—it is difficult to understand how the gods figure into the best regime of the


\textsuperscript{452} Plato, *Republic*, 377b5-383c7. Adeimantus calls Socrates’ speeches about the gods “laws (nomo\textit{is})” at 383c7. He uses the word *theologias* in referring to “speeches about the gods” at 379a5-6.


\textsuperscript{454} Plato, *Republic*, 427b6-c4.
Plato’s Laws, on the other hand, presents a teaching on civil religion that is much closer in character to the way in which citizens experience the divine.

Religion as Useful: The Complications of Persuading and the Dangers of Atheism

Rousseau’s introduction of religion as a topic of inquiry in the Social Contract is something of an oddity. Having elected to devote the opening chapters of Book I to the question whether nature bestows any social ties on man, Rousseau concentrates especially on the question whether the political dominion of some over others is natural. He answers this last in the negative, of course, contending that all political authority, and almost all authority simply, is grounded on human convention. Yet, in his refutation of claims that political right is not simply conventional—which refutation is critically important to the central argument of his text, i.e. that the only legitimate basis of political right is a legitimate social contract—Rousseau gives short shrift to the claim that political rule has been authorized by God. Unlike John Locke, for instance, who had devoted his entire First Treatise of Government to refuting Sir Robert Filmer’s Patriarcha, Rousseau disposes of the claims of Divine right in one short paragraph of I.2, “On the First Societies,” the tone of which is nothing if not flippant. He implies that his brevity is justified by the ease with which such arguments may be discarded. Furthermore, Rousseau treats of the Christian dispensation in the same breath as paganism: he concedes that he has little to say about “king Adam or emperor Noah, father of three great monarchs who divided up the universe


Cf. Rousseau, Social Contract, p. 47 (III: 352): “The most ancient of all societies, and the only natural one, is that of the family.”
among themselves, as did the children of Saturn who have been identified with them.”

From the perspective of political right, Rousseau suggests that Christianity’s authorization of rule is no different from that of the pagan gods, and most importantly that the two authorizations are equally illegitimate. The only other reference to God in the chapters preceding the presentation of the social contract is found within Rousseau’s discussion of the question whether might makes right and it abstracts from His justice, treating God exclusively as the source of power.

These peculiar first comments about religion are important for our purposes, for they foreshadow Rousseau’s final position in the Social Contract on the status of religion in political life. We have noticed that theological claims over political right are introduced in order to be considered, but then are discarded quickly and with little argument. Furthermore, God here appears to be significant for Rousseau chiefly, if not exclusively, in the context of His power. In other words, Rousseau’s discussion of religion in the first portion of the book serves to nullify its status as a transcendent source of right, even if Rousseau avers that it is a source of power. Religion does not prescribe an independent standard of justice bearing on the political world.

It is true, of course, that Rousseau goes on to remark, in II.6, that “All justice comes from God; He alone is its source.” But, as was demonstrated in Chapter Four, he also holds that any such rules of justice coming from God are ineffectual in human society, hence meaningless with respect to political right. There are good reasons from the text of the Social Contract, in fact, to be skeptical about Rousseau’s claim that God is the sole source of justice. The citation from II.6 is the only statement of its kind in the book, and even taking into account the discussion of true religion in IV.8, it remains the only unqualified expression of conventional piety in the text. Be

this as it may, it ought to be clear that the fundamental source of justice in political society is, for Rousseau, the social contract. Resting on the “total alienation” of each individual to the whole, this agreement brings men together into a collective body with a common interest, i.e. a general will determining what is just and what is not. As there is no general will until a body of individuals has been collectivized, there is no real standard of justice until political society has been formed by means of a contract. As Rousseau declares in II.4 of the *Geneva Manuscript* version of the *Social Contract*, the very same chapter in which he had drafted his statement to the effect that all justice comes from God, “…law comes before justice and not justice before law”.

Rousseau’s demotion of religion in favor of politics or law, as sketched here, prepares the way for the reemergence of religion in the *Social Contract*, occurring in II.7, the chapter on the legislator. Whereas the first paragraph of this chapter concludes with a conditional statement about what gods would have to do during legislation (i.e. “Gods would be needed to give laws to men.”), the final three paragraphs explain, by contrast, what role the gods in fact do play in this process. Here the gods emerge from their relative obscurity as one of the instruments by which the legislator persuades the people to accept and to follow the law, this art of persuasion being, again, “to persuade without convincing.” In other words, while in the first books of the *Social Contract*, Rousseau had demoted religion in favor of politics or law, in this chapter, he


460 Rousseau, *Geneva Manuscript*, p. 191 (III: 329). One possible reading of this statement could be that law and, therefore, the deeds of the legislator come before both religion and justice. In general, these reflections point to the reasons why I remain skeptical of the argument, best expressed by Williams, that justice is prior to the general will, and that “Rousseau believes in a transcendent idea of justice…that…is the very fountain of his constructive political thought.” Williams, *Rousseau’s Platonic Enlightenment*, p. 95.
subordinates the former to the latter. That the lawgiver may use neither force nor reasoning with the people, Rousseau explains,

has always forced (força) the fathers of nations to have recourse to the intervention of heaven and to attribute their own wisdom to the Gods; so that the peoples, subjected to the laws of the State as to those of nature, and recognizing (reconnoissant) the same power in the formation of man and of the City, might obey with freedom and bear with docility the yoke of public felicity.\footnote{Rousseau, \textit{Social Contract}, p. 69 (III: 383).}

Reviewing an aspect of Rousseau’s political thought discussed in Chapter Three, the people tend to be not only resistant to the change in their ways affected by legislation, but also incapable of grasping the reasons why uniting together is good for them. These obstacles, however, can be surmounted if the legislator attributes his “own wisdom to the Gods,” and the fact that good legislators have always had to do so indicates that the use of religion is a necessary facet of legislation.\footnote{Cf. Garrard, \textit{Rousseau’s Counter-Enlightenment}, pp. 69-82. This chapter’s reading—not to mention that of Garrard’s—of the legislator’s function with respect to civil religion is opposed to that of Mark Cladis, who holds that the “legislator belongs to the Enlightenment tradition”. Cladis, \textit{Public Vision, Private Lives}, pp. 207-208.} While people tend to show themselves as resistant to the will of another human being, they tend to feel obliged to follow the will of the divine, even if they fail to comprehend the reasons for doing so.

Rousseau implies that the gods make up for what is lacking in the formula “to persuade without convincing,” which is that rational persuasion of which the people is incapable. The wisdom of the legislator, called by Rousseau “sublime,” is placed “in the mouths of the immortals in order to lead by divine authority (entraîner par l’autorité divine) those who cannot be moved by human prudence.”\footnote{Rousseau, \textit{Social Contract}, pp. 69-70 (III: 384); my modification of Masters’s translation. The translation of Victor Gourevitch renders \textit{entraîner} as “to rally.”} The gods act as a bridge between the exceptionally virtuous legislator, on the one hand, and the people, on the other. Now the sense of \textit{entraîner} in this context could be “to convince,” as Roger Masters renders it. But it is surely significant that
Rousseau avoids using the word *convaincre* here. He does so, it would seem, so that the legislator’s persuasion by means of the divine is not misunderstood to be rational in character. Far from being soundly convinced through rational considerations, the people must be led by the divine authority to be full citizens of the commonwealth that the legislator is establishing.

More than this, the lawgiver makes use of religion to counteract the potentially jarring impact of legislative craftsmanship, thereby facilitating such a task. As we have seen, the demands of citizenship are so discordant with natural human dispositions that the legislator must be capable of nothing less than *making* citizens out of men, primarily by transforming human nature through civic education. He explains famously that the “forces” of human nature must be nullified and that forces “foreign to [man]” must be cultivated in his soul. One says nothing controversial in claiming that this process of denaturalization, which is intended by the term “soul-craft” in this study, would be difficult to achieve. Rousseau implies as much when he indicates that the legislator would have to be a daring, i.e. courageous, soul. But he also teaches that civil religion is an effective way of assisting this process of soul-craft along, for it deceives the people into believing that the demands of citizenship are in full accordance with who they are as individual men. As Karl Löwith has explained, Rousseau’s overall intention with his treatment of civil religion is to find a way to “harmonize” man (*homme*) and citizen (*citoyen*), to which Löwith refers as the “two archetypes of a nonbourgeois mankind” in Rousseau’s thought.⁴⁶⁴ But if the lawgiver has used religion well in his founding, then the citizen himself, from his own point of view, will see no such harmonization; indeed, he will sense no such

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distinction between man and citizen. For the citizen will be persuaded into “recognizing,” as Rousseau says, “the same power in the formation of man and of the City.” In sum, obedience to the law that the legislator has created would be easier to secure if people believe that such obedience is an aspect of heavenly design.

These reflections demonstrate that the fundamental purpose of Rousseau’s civil religion is to assist the legislator in his task to persuade the people to accept and follow the law. As Rousseau asserts in the Social Contract, IV.8, the civil religion “combines the divine cult and love of the law, and by making the homeland the object of the citizens’ prayers, it teaches them that to serve the State is to serve its tutelary God.” Provided that the lawgiver makes good use of the gods, he may be reasonably assured of the long-term stability of the regime he is founding. Rousseau brings to light this aspect of the discussion, i.e. stability in the long-term, by the context in which he places his systematic analysis of civil religion in the Social Contract. The long chapter on religion is placed near the end of Book IV, in which Rousseau delineates the institutions contributing to the preservation of the commonwealth. The opening chapter of this Book, “That the General Will is Indestructible,” serves as a foreword to the whole argument and shows that the decisive matter on which the commonwealth’s preservation turns is whether or

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465 Cf. Rousseau, Emile, p. 85 (IV: 311); and Corsica: Fragments, pp. 162-163 (III: 948): “I shall not preach morality to [the Corsicans], I shall not order them to have virtues, but I shall put them in a position so that they will have virtues without knowing the word; and so that they will be good and just without knowing very well what justice and goodness are.” Cf. Plutarch, Numa, XIV.11-12.

466 Rousseau’s thoughts on the use of civil religion here are reminiscent of the purpose of the first half of Socrates’ noble lie in Book II of the Republic. In attempting “to persuade first the rulers and the soldiers, then the rest of the city, that the rearing and education we gave them were like dreams,” Socrates seeks to deaden the extraordinary impact of the education in music and gymnastic, outlined in Books II-III. It seems that an education to citizenship such as has been outlined in these books would be so demanding as to run counter to natural, i.e. spontaneous, human tendencies. The idea is to trick people into thinking that they actually came into being in this way, in other words, that their souls after the education are natural. Such a trick on the part of the founder would be necessary for good citizenship, according to Socrates. Cf. Plato, Republic, 414d1-e6; and also Cell, “The Civil Religion Incarnate,” p. 41.

not the general will is fulfilled. Provided that “several men together consider themselves to be a single body,” there will be a general will tending to “their common preservation and the general welfare.” In other words, the fact that a group of individuals have a general will at all is conditional on whether they see themselves as a collective whole; it is conditional on the artful work of the legislator in bringing them together under a common sense of people-hood. Rousseau proceeds to describe in detail the great benefits of a citizenry that can be trusted to follow the general will reliably: if the citizenry is of such character, then “all the mechanisms of the State are vigorous and simple, its maxims are clear and luminous, it has no tangled, contradictory interests: the common good is clearly apparent everywhere, and requires only good sense to be perceived.” So long as citizens sense the general will and have been persuaded to fulfill it, the society needs relatively few civil laws to keep their behavior in accordance with the common good. Instead of requiring a form of legal compulsion to make the general will reign, the people will tend to act in accordance with it spontaneously.\footnote{Rousseau’s teaching in IV.1, and indeed throughout his political texts, is that this state of affairs obtains when the legislator has conducted his work well. However this may be, all political societies are threatened by a problem endemic to the commonwealth as such, in that all political societies, including even the best constituted ones, contain within them the seeds of their own destruction. Each one, according to Rousseau in III.1, requires a government of ministers comprised of men who are members of the sovereign people but who, in this ministerial function, execute the civil laws that the sovereign has made.\footnote{Rousseau, \textit{Social Contract}, pp. 78-81 (III: 395-400).}}\footnote{All quotations in this paragraph are from Rousseau, \textit{Social Contract}, p. 108 (III: 437); cf. \textit{Political Economy}, pp. 214-217 (III: 247-252).}
people would both create and execute the law. But Rousseau indicates that such a government has never existed and can never exist in human affairs, the political conditions necessary for perfect democracy being so rare as to be virtually non-existent.\textsuperscript{470} So every commonwealth must create within itself the particular society of the government, the unfortunate effect of which is always to enervate the strength of the general will.

Just as the private will acts incessantly against the general will, so the government makes a continual effort against sovereignty. The greater this effort becomes, the more the constitution changes, and as there is here no other corporate will which, by resisting the will of the prince, would balance it, sooner or later the prince must finally oppress the sovereign and break the social treaty. This is the inherent and inevitable vice which, from the emergence of the body politic, tends without respite to destroy it (le détruisent), just as old age and death destroy the body of a man.\textsuperscript{471}

In brief, because the existence of a commonwealth requires within it the presence of a particular society, there must always remain a tension between private will and the general will. Rousseau indicates that the general will can never be the exclusive motivation for all citizens, and what follows from this is that there can be no condition of perfect harmony between the government and the sovereign. Various individual wills and small societies can be expected to develop over time, meaning that the citizenry’s attachment to the general will, or justice, can be expected to slacken over time. As the state comes to the end of its natural course of degeneration, the typical citizen tends to show himself to have no real concern for the common good.\textsuperscript{472} “Finally, when the State, close to its ruin, continues to subsist only in an illusory and ineffectual form; when the social bond is broken in all hearts (les cœurs); when the basest interest brazenly adopts the sacred

\textsuperscript{470} Rousseau, \textit{Social Contract}, p. 85 (III: 404): “If there were a people of Gods, it would govern itself democratically. Such a perfect government is not suited to men.”

\textsuperscript{471} Rousseau, \textit{Social Contract}, p. 96 (III: 421).

name of public good, then the general will becomes mute”. It is not necessary to rehearse Rousseau’s full views on the disorder and wickedness plaguing a society that has no sense of the common good, as this matter has been considered already. In short, as the general will becomes inaudible in the hearts of citizens, the citizens’ attachment to justice loosens.

Rousseau’s story of inevitable political decay is, to be sure, pessimistic—if Sparta and Rome perished, as he says, then what hope can there be for other constitutions? But it is not as if the legislator lacks recourse for ensuring the stability and longevity of the regime. Indeed, in the Social Contract, III.11, “On the Death of the Body Politic,” Rousseau discloses that the quality of a commonwealth’s foundation is the cardinal factor governing its durability. “The constitution of man is the work of nature; that of the State is the work of art. It is not within the power of men to prolong their life; it is within their power to prolong that of the State as far as possible, by giving it the best possible constitution it can have.”

Excepting the destructive influence of chance accidents, which, according to Rousseau, can never be prevented entirely, the best constituted society will perish later than the others. So the lawgiver is uniquely positioned to control the factors governing the long-term preservation of the regime. And one of these factors, it appears, is the impression of longevity itself. “Why,” Rousseau asks, “is so much respect accorded to ancient laws?”

Because of their very age. People must believe (On doit croire) that only the excellence of these ancient expressions of will could have preserved them for so long. If the sovereign had not constantly recognized them as salutary, it would have revoked them a thousand times over. That is why laws, far from weakening, continually acquire new force in every well-constituted State; the prejudice favoring antiquity (le préjugé de l’antiquité) renders them more venerable each day. In contrast, wherever the laws weaken as they grow older, it is proof that there is no longer any legislative power and that the State is no longer alive.

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475 Rousseau, Social Contract, p. 99 (III: 424-425). Cf. The Federalist, 49 (James Madison): “If it be true that all governments rest on opinion, it is no less true that the strength of opinion in each individual, and its practical
Well-constituted laws remarkably achieve a sort of self-perpetuation, insofar as citizens tend to discover new respect for laws they see as being ancient. The citizens’ belief in the antiquity of the regime serves to insulate its laws from the impact of questioning or harsh criticism and disposes citizens to respect the laws in a reliable fashion.

Taking into account these reflections, it seems clear that the institutions of civil religion would provide useful support for the legislator as he establishes the conditions of the regime’s longevity. What, after all, could be more ancient than the gods that have given their sanction to the laws of the regime? By persuading the citizenry that the wellspring of both the laws and of justice itself is the gods, and that his own role has been merely to serve as a conduit of the divine plan, the legislator persuades the citizenry to persist in venerating the laws. To state Rousseau’s subtle point more clearly, the legislator conducts his work prior to the existence of laws, justice, and the gods. Moreover, that the lawgiver is forced always to turn to the gods in legislating implies that civil religion is a necessary condition for the citizen’s respect for the law. Atheism and respect for the law are incompatible, meaning that atheism and good politics are incompatible. In summary, Rousseau teaches that civil religion is useful to the legislator primarily for the purpose of stability. Religion is one of the most effective ways by which to persuade citizens to accept and to follow the law. Like the other institutions discussed in Book

influence on his conduct, depend much on the number which he supposes to have entertained the same opinion. The reason of man, like man himself, is timid and cautious when left alone, and acquires firmness and confidence in proportion to the number with which it is associated. When the examples which fortify opinion are ancient as well as numerous, they are known to have a double effect. In a nation of philosophers, this consideration ought to be disregarded. A reverence for the laws would be sufficiently inculcated by the voice of an enlightened reason. But a nation of philosophers is as little to be expected as the philosophical race of kings wished for by Plato.” Emphasis in original.

IV of the *Social Contract*, it contributes to the long-term preservation of the commonwealth by keeping the citizens firmly attached to justice.

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With the closing lines of *Laws* III, Plato crafts what is perhaps the most dramatic moment of the dialogue, the pivot of the conversation as a whole. At this point Clinias discloses that he has been chosen to be one of ten founders of a Cretan colony, and this fact of a practical political founding initiates the construction of a city in speech that covers the remainder of the *Laws*. After having learned what sort of people the Cretan colonists will be, the Athenian demonstrates to his interlocutors the lawgiver’s method of conducting his work by means of an image, or of the imaginative faculty. Visualizing the colonists gathered together in one common place, he suggests that the legislator’s first deed will be to address them: “‘Sirs…the god, just as the ancient saying has it, holding the beginning and the end and the middle of all the beings, completes his straight course by revolving, according to nature. Following him always is Justice (*dikē*), avenger of those who forsake the divine law (*tou theiou nomou*). He who is going to become happy (*eudaimonēsein*) follows Her, in humility and orderliness (*tapeinos kai kekosmēmenos*).”

In the span of what is merely a segment of one sentence in the original Greek, the Athenian articulates the core elements of the good citizen’s view of the world. At the beginning of everything, including especially the regime, is an unnamed god who goes accompanied by Justice, a goddess in this case. And the Athenian expresses the good citizen’s proper disposition with respect to these gods as well. While the necessary condition of human happiness is obedience to Justice in a humble and orderly life, the goddess can be expected to mete out punishment to those who violate “the divine law.”

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Considering the very first words of the lawgiver’s persuasive oration, then, it is evident that the divine holds an eminent place in the city of the *Laws*, and therefore in the life of the citizen. Far from it being an afterthought, the notion that justice is supported by the gods must be at the forefront of the citizen’s outlook. The immediate purpose of the opening lines of the hypothetical lawgiver’s speech is to impart to the citizens of Magnesia the basic, bare-bones understanding of civil religion, which runs as follows: the just are happy and the wicked miserable, precisely because the gods support justice in the city and can be counted on to enforce its rules reliably, whether in this life or after death.\(^{478}\)

As the oration proceeds, however, the legislator, through the mouthpiece of the Athenian, sheds light on a slightly different topic, namely the reasons why a political society cannot do without religion.

‘But anyone who is puffed up with boastfulness, or who feels exalted because of riches or honors or good bodily form accompanied by youth and mindlessness, anyone whose soul burns with insolence (*hybreōs*) and hence regards himself as needing neither ruler nor any leader but rather considers himself capable of leading others, is left behind, abandoned by the god. Once left behind, he takes up with others like himself and leaps around overturning everything (*tarattōn panta*); to many, he seems to be somebody, but after no long while he undergoes the blameless vengeance of Justice, bringing complete ruin to himself and his household and city as well.’\(^{479}\)

What is most noticeable in this passage is the Athenian’s characterization of the man who deserves and receives the gods’ censure. He is boastful and hubristic, youthful and foolhardy. He fancies himself to be free from the need for any sort of law yet suited to be the lawgiver for others. Stating this last point differently, he feels no moral scruples in using others, in whichever way he sees fit, for his own ambitions or desires, whatever they may be. Perhaps most significant, this young man who contemns the gods eventually “leaps around overturning

\(^{478}\) For a further expression of this “principle” of civil religion, see also Plato, *Laws*, 716d4-717a3.

\(^{479}\) Plato, *Laws*, 716a4-b5.
everything”. The Athenian’s verb here, *tarattō*, can imply political agitation in Plato,\(^{480}\) and the context of this passage confirms that it does here. The Athenian’s specific implication appears to be that the young man is a source of civil instability and faction. The non-believer shows himself to be a dangerous man for the city.

So the opening lines of the legislator’s hypothetical speech point also to the reasons for his tacit claim that religion must be brought to bear on a political founding.\(^{481}\) The atheist tends to be a force of destabilization in the political world. Now the notion that human nature is inclined to cause disorder and mischief absent the countervailing effect of law is a theme echoed throughout the *Laws*. In Book V, for instance, the Athenian argues that excessive self-regard or self-love, a passion that “grows naturally in the soul,” leads men to the injustices they commit. “The truth is that the excessive friendship for oneself is the cause of all of each man’s wrongdoings (*pantōn hamartēmatōn*) on every occasion.”\(^{482}\) By nature, all human beings tend to prefer their own over what is common, i.e. the just, and they show themselves naturally unwilling to relax this preference in response to the claims of others. We encounter a stronger and more detailed statement to this effect, however, in Book IX, in the context of the discussion of the penal code for the Athenian’s city in speech. The Athenian intends here to establish the universal human need for the rule of law, and to do so, he explains that “mortal human nature will always urge [man] toward getting more than his share and toward private business

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\(^{480}\) For instances of this verb implying political agitation, see Plato, *Republic*, 564b9 and 567a8 (in describing the deeds of the tyrant); cf. Liddell and Scott’s Greek Lexicon, s.v., *tarassō*, sense 5. More often, the verb in Plato refers to psychic agitation. See, e.g., *Laws*, 797e4, 865e4, 900a2; *Republic*, 445a9; *Phaedo*, 79c7; *Philebus*, 63d6; *Sophist*, 254c3; and *Theaetetus*, 206a7. Occasionally it refers to agitation in argument: *Laws*, 812e5; *Hippias Minor*, 373b4; *Phaedo*, 100d3; and *Protagoras*, 361c3.


\(^{482}\) Plato, *Laws*, 731e3-5.
(pleonexian kai idiopragian), irrationally fleeing pain and pursuing pleasure, and putting both of these before what is just and better. Creating a darkness within himself, it will completely fill both itself and the whole city with everything bad (pantōn kakōn).”

In addition to concern for the private, then, the passion to acquire more than one’s share, i.e. pleonexia, is part of the human constitution. Pleonexia appears in this passage to be the source of the human inability to respect the claims of others that encroach on what we possess, or might possess. It would seem that this drive is propped up by a natural hedonism in human beings, leading men to attain that which is pleasurable and causing them to drift away from justice. According to the Athenian, these elements in mortal human nature represent the source of the city’s evils (kakōn).

However natural these springs of injustice may be, the Athenian teaches that the problem of injustice is exacerbated by the presence of atheists in political society and the opinions they espouse. The fundamental purpose of Laws X, the precise location of this teaching, is to focus on the penalties for insolence against the gods and to express the long prelude to the law against impiety. But the Athenian leads his interlocutors into such a conversation by considering first the “illness (noson, 888b8)” of atheism that tends to fall on the souls of the young, as well as the source of the dangerous opinions of the atheists. There are many different means, he remarks, through which young citizens are educated about the gods and about human obligations toward the divine, such as stories told by their parents and nurses, public religious festivals and their attendant prayers and sacrifices, and the ancient writings about “the first nature of heaven” and

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484 For statements to the effect that Book X is a prelude, see Plato, Laws, 887a1-3, 887b8-c2, and 907d4-5.
“how the gods came into being.” But the findings of those who investigate the nature of things, including especially the type of philosopher conducting what we could call pre-Socratic natural science, weaken the hold that these conventional theological accounts have on the souls of the young. While nature, in its “beautiful orderliness,” appears to bear witness to the existence of the gods—this opinion is expressed by Clinias himself—certain scientists argue instead that the natural world is merely the product of chance interactions between primary elements, arising out of necessity and hence totally unrelated to divine will. “[I]n this way and according to these means, the whole heaven and all things in heaven, and also the animals and all the plants have come into being, once all the seasons had come into being out of these things: not through intelligence, they claim, nor through some god, nor through art, but, as we’re saying, by nature and chance.”

By means of their investigations, the natural scientists have come to see a line of opposition between nature and chance, on the one hand, and art, on the other. Some things are natural, that is, they grow spontaneously, while others are the creation of human beings themselves. Art, “being itself mortal and from mortals,” acts as the source of such things as music, painting, medicine, farming and gymnastics, even politics and “the whole of legislation,” according to the Athenian’s description of this view. But the scientists, having concluded that the natural world has developed in accordance with the rules of necessity, conclude further that the gods must be a product of human art. Men living together and believing in a particular set of

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485 See Plato, Laws, 886b10-c8 and 887c5-e7.
487 Plato, Laws, 886a2-5.
488 Plato, Laws, 889c2-6.
489 Plato, Laws, 889d4-e1.
gods have come to this condition by means of agreement, “not by nature but by certain legal conventions,” and this is the fundamental reason why the gods differ from place to place. In short, the scientists assert that there are no gods by nature, but rather they are merely creations of the regime. It is this line of argument that is so dangerously persuasive to the young.

All these things...are put forward by men considered wise by young people, private men who write in prose and poets, who explain that what is most just is whatever allows someone to triumph by force. This is the source of the impieties the young people contract, to the effect that the gods are not such as the law commands they must be conceived; by means of these things civil strife (staseis) is instigated, by those who draw people toward the way of life that is correct according to nature—which is, in truth, to live dominating the rest and not to be a slave to others according to legal convention.

Having been persuaded by natural science that there are no gods and that the fundamental law of nature is reducible to strength, the boastful youth tend to act in ways most likely to sow political discord. In the opening conversation of Laws X, then, the Athenian has clarified why the insolent man from the hypothetical first speech to the colonists has come to act in the way that he does. And he has shown the particular connection between atheistic opinions and stasis.

It is near the end of Book X, however, where the Athenian treats of the dangers of impiety in light of pleonexia. He has already indicated that the need for civil religion does not derive exclusively from the fact that some men doubt the existence of the gods. Some men do indeed believe that there are gods, but not in the way necessary for the reliable divine support for justice the city requires. For these also believe that the unjust can bribe the gods into forbearing from punishing them for wicked deeds. Those who are most able to pay off the gods are those who have acquired the greatest gains, and it appears that the human tendency to acquire gains unjustly will be the factor governing the behavior of these individuals.
Now there dwell on earth certain souls which have acquired unjust gain (adikon lēmma) and are obviously beastly in form; they fawn upon the souls of the guards—the dogs, shepherds, or those who are in every way the highest masters [i.e. the gods, in this metaphor]—persuading them, with speeches of flattery or through certain prayerful incantations (en euktaiais tisin epōdais), of what the claims of the bad men assert, that it is possible for them to get more than their share (pleonektousin) among human beings and suffer no harshness. But we presumably assert that the fault just now named getting more than one’s share (pleonexian), is the thing called “disease (nosēma)” in the flesh of bodies, “plague” in seasons and years, and, in cities and regimes, having had its name refashioned, is injustice (adikian).\textsuperscript{492}

This passage is, for one thing, the clearest articulation in the \textit{Laws} that pleonexia is a significant source of injustice in human affairs, if not the source simply.\textsuperscript{493} Much more than this, though, the Athenian shows how this passion is directed in the souls of those who hold politically dangerous opinions about the gods. Because, as these men assert, the gods are receptive to being bribed, it becomes reasonable for them to devote energy toward the acquisition of however much they can gain. The question of the justice of the acquisition is, from this perspective, irrelevant; indeed, since pleonexia shows itself always to be taking more than one’s share, these men will be drawn to commit greater and greater acts of unjust gain. And because they believe that their ability to bribe the gods ensures their escape from any form of cosmic punishment, these men would be apt to commit all sorts of injustices against one another, provided that they can manage to avoid being caught by the civil authority.\textsuperscript{494} The Athenian implies that removing the reliable divine support for justice would liberate men to pursue whatever injustices they can get away with. In short, impious opinions and respect for the law are incompatible.

\textsuperscript{492} Plato, \textit{Laws}, 906b3-c6.


\textsuperscript{494} Cf. Plato, \textit{Republic}, 359b6-360d7.
**Rousseau and Plato on the Negative Orientation of Civil Religion**

In each of the passages from the *Laws* reviewed above, ranging from the Athenian’s persuasive hypothetical speech to the colonists to statements made in his own name about the association between atheism and injustice, we see that the greatest danger posed by impious opinions concerns the stability of the regime. Failure to believe in the gods, or believing that the gods do not reliably uphold justice, leads men to commit injustices by subverting the laws, the consequence of which is the destabilization of the city. Civic faction (*stasis*) is the necessary result of the attempt to undermine the role of the gods in the citizens’ affairs.\(^{495}\)

This is, however, the same argument as Rousseau’s reason underlying the need for the legislator to employ religion in his founding. Civil religion proves useful for ensuring the preservation of the commonwealth. While the citizen’s attachment to justice will naturally tend to weaken over time, the institutions of civil religion counteract this tendency and promote a more durable sense of devotion to the law in the citizenry. For both Rousseau and Plato, then, civil religion serves what must be called a negative function in the regime, in that it assists in preventing the instability that can plague political life. Stating this teaching from the viewpoint of the legislator, religion supplements the civil authority by providing an additional source of enforcement for the positive laws.\(^{496}\) Both philosophers contend that men have a tendency to commit injustice when they can do so with impunity. Employing the gods on the side of the civil authority would be useful for addressing this problem, and its utility for the benefit of political life is specifically twofold. First, civil religion would provide a wider scope for detecting

\(^{495}\) On the link between the legislator’s use of civil religion, on the one hand, and the objectives of public law and order, on the other, see Morrow, *Plato’s Cretan City*, pp. 401 and 410.

\(^{496}\) One study that brings to the fore the punitive aspects of Rousseau’s civil religion is Felicity Baker, “La peine de mort dans le *Contrat social,*” in *Rousseau & the eighteenth century: Essays in Memory of R.A. Leigh*, edited by Marian Hobson, J.T.A. Leigh, and Robert Wokler (Oxford: The Voltaire Foundation, 1992), pp. 163-188.
violations of the law, for no citizen could expect to avoid the purview of the gods. And second, it would guarantee that violations of the law are followed necessarily by punishment, even if the penalty must be levied post-mortem.

With these reflections in mind, then, we notice that both Rousseau and Plato elect to situate their thoughts on the need for civil religion at places in their respective corpora that reflect this negative orientation. To be sure, we have already considered the significance of Rousseau’s placing the chapter “On Civil Religion” in Book IV of the Social Contract: this is the book devoted to discussing institutions contributing to the preservation of the regime, the greatest threat to the regime being the tendency of citizens to deviate from the general will when it seems advantageous to do so. But Rousseau puts forth a similar teaching about civil religion as a legal institution in the Second Discourse as well. It is relatively late in his account of man’s journey from the state of nature into civil society when Rousseau first mentions the divine. Having arrived at his explanation of the origins of property, and therefore of justice, Rousseau indicates that the presence of a fixed conception of ownership at this point in history contributed to conflict among men. “[A]s men began to look to the future and as they all saw themselves with some goods (quelques biens) to lose,” he remarks, “there was not one of them who did not have to fear reprisals against himself for wrongs (torts) he might to do another.”

On the heels of this discussion of the origins of property and of right and wrong, however, Rousseau makes reference to the Roman goddess of the harvest, Ceres, and to her epithet “legislatrix (legislatrice)”. The implication is that Ceres was understood by the Roman people as founder of these laws and defender of this “new kind of right.” Because the citizen’s hold on his private property can be tenuous owing to threats made by other men, a particular god must be brought to

bear in support of the property laws. Rousseau explains in the Second Discourse, however subtly, that one purpose of civil religion is to fortify the prohibitions against damage to or theft of those possessions which individual men own. In this sense, his teaching on the function of religion is liberal, insofar as its purpose is to bolster property right.

This argument about the purpose of civil religion emerges in a different way in fragments of the Second Discourse which Rousseau chose to withhold from publication in the final version. In two lengthy passages, Rousseau discloses some of his thoughts on the genealogy of religion and offers a severe condemnation of the authority of priests, “a species of singular men who—presenting themselves as Interpreters of incomprehensible things—claimed to subject all other people to their decisions.”498 Rousseau is clear in his genealogy that the class of priests had subjected the people to their government, as it were, with only their own interests in view. In acting from these motives, the priests play a role in these fragments similar to that of the rich man who proposes the first social contract, as we saw in Chapter Two. But the authority of the priests had a different effect as well.

Mortal enemies of the Laws and their ministers, always ready to authorize the unjust usurpations of the supreme magistrate in order to usurp legitimate authority more easily themselves, by always speaking about purely spiritual rights, they acted so well (ils faisaient si bien) that the goods, the life, and the liberty of the citizens (les biens la vie et la liberté des citoyens) were in safety (sûreté) only as long as they put themselves at their discretion…499

Notwithstanding Rousseau’s harsh moral judgment against the class of priests, he indicates that they “acted so well” so as to ensure the “safety” of the goods, lives, and liberty of the citizens—those same things that Locke calls, simply, property.500 While it is not entirely evident whether

498 On these fragments, see Meier, “The Discourse on Inequality,” p. 216, fn. 12. For an illuminating argument as to why Rousseau elected to keep them unpublished, see Rahe, Soft Despotism, Democracy’s Drift, pp. 91-92.


500 Locke, Second Treatise of Government, Ch. 9, sec. 123.
Rousseau’s conception of the lawgiver makes an appearance in the *Second Discourse* and, hence, whether Rousseau would have wanted readers to think of the lawgiver in the context of these fragments, what is clear is that his great lawgiver is described as using religion for the same political objectives as had the priests. The chief effect of religion in civil society, in Rousseau’s view, is to ensure the safety of property.

For his part, Plato guides the Athenian into discussing the laws against impiety immediately after his treatment of the penal code, the theme of *Laws IX*. The conversation of this latter book has focused on the theoretical foundation of Magnesia’s system of punishment and has sketched out penalties for the particular crimes in the city. Having elaborated the penalties for assault at the close of Book IX, the Athenian turns to consider violence in general and indicates that “no one is to carry or drive away anything belonging to a neighbor, if he hasn’t persuaded the owner. For such behavior has been, is, and will be a source of all the evils (*panta…kaka*) that have been mentioned.” It is immediately following the statement of this regulation that the Athenian launches into his treatment of the gods, culminating in the law against impiety and its prelude. We notice, then, that the civil religion is introduced in the *Laws* amidst the regulations against the violation of property right. The threat posed by individuals stealing or damaging the possessions of others is so significant from the viewpoint of political life that the Athenian refers to it as “a source of all the evils that have been mentioned.” The theological discussion of Book X appears to function as a part of the comprehensive expression of the penal code, which is itself useful for the sake of stability and order. It relates to Book

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IX as presenting the particular system of sanctions against the violation of property laws, which is precisely the point that Rousseau wishes to make about the negative orientation of civil religion in the *Second Discourse*. In short, to indicate, as the Athenian does, that the function of civil religion is to ensure law and order, ultimately protecting property right, is to show that this purpose is similar in spirit to the teaching of Rousseau.

**Plato and the Question of the Source of Divine Law**

Taking into account our discussion of Rousseau above, we are compelled to ask a deeper, and yet unexamined, question about Plato and his views on civil religion. Rousseau, as we saw, contends that religion is useful for assisting the legislator in persuading the citizens to follow the laws. The legislator, thus, must deceive the citizens into believing that the gods have sanctioned the laws, which means that the gods and their place in Rousseau’s commonwealth are, precisely speaking, useful fictions stemming from the lawgiver himself. The legislator and law are both prior to religion: divine legislation is, for Rousseau, a species of legislation as such, and the great lawgiver is, of course, the agent of this type of legislation. Now it should be patently clear that the dimension of utility is not missing from Plato’s own teaching. After all, one of the bedrock teachings of the *Laws* is that civil religion is necessary for ensuring that people remain obedient to the law. But is Plato’s teaching also in accordance with Rousseau’s with respect to the legislator’s role in *creating* the institutions of religion? It could be the case, of course, that the Athenian understands the lawgiver as the conduit of the true divine will. But, on the other

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hand, could it be that the civil religion is a useful falsehood crafted by the lawgiver for political ends? This is, to say the least, a difficult question. Unlike Rousseau, who is forthright in the *Social Contract* that the great legislator attributes his “own wisdom to the Gods (emphasis supplied),” the Athenian makes no such direct statement. Indeed, as we have observed, he seems deeply critical of the notion, put forward by the natural scientists, that there are no gods and that the “gods” are just a creation of the regime. What, then, can be gathered from the text of the *Laws* to help in answering this question?

We recall, first, that the Athenian’s speeches from the opening of the dialogue demonstrate that the principles underlying the divine laws of Crete and Sparta are accessible to unaided human reason. Because the Dorian laws, whose source was understood to be Zeus and Apollo, were the most highly regarded legal systems in the Hellenic world, it is reasonable to assume that the Athenian holds that the principles of any system of legislation claiming divine authorship can be perfectly intelligible to human beings. This means that a wise legislator, someone who can understand the principles of the best laws for himself, does not require the gods to instruct or advise him regarding those principles. But the Athenian’s position throughout the *Laws* is that the legislator will not do without the gods, indeed he *cannot* do without them, for reasons set forth in the previous two sections of this chapter. One suspects that the gods are important during legislation not for their wisdom but exclusively for their power, so as to add to the enforcement of the laws promulgated and then implemented by the wise legislator. After all, the wisdom underlying divine legislation is not beyond the ken of extraordinary human intellect. And if wisdom is indeed the standard of justice of a particular law, and it is for the Athenian,

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then there is no reason to hold that the gods, independent of how they are used by the legislator, constitute the true source of right. In short, the opening conversation of the *Laws*, in its function as a critique of prophecy, implies that the good legislator can make use of the gods in whichever way he judges to be most expedient for achieving his objectives. If expediency is the decisive factor in bringing the gods to bear on legislation, then the truth of their revelation is not.

There is a second, and somewhat longer, way of addressing the question whether the institutions of civil religion are, for Plato, a positive human phenomenon created by the legislator. In *Laws* X, in his prelude to the law against impiety, the Athenian presents a set of his own thoughts on theology in the form of three proofs on the nature of the cosmos. He attempts to demonstrate that the gods exist, that they exhibit supervisory care for human beings, and that their support for justice is reliable. In developing these proofs, the Athenian investigates the nature of the whole, reflecting on such themes as the first principles of the cosmos, the nature of the gods, the nature of soul, and soul’s place within the cosmos. Now the theological discussion of *Laws* X is lengthy and complex, and, as Pangle has noted, it is “profoundly ambiguous,” because susceptible to a number of powerful objections. It would be difficult to say that the Athenian offers in this Book a candid, straightforward, and perfectly coherent teaching on the cosmos.\(^{507}\) Be this as it may, for present purposes it is sufficient to note that Book X is the place in the dialogue where the Athenian comes closest to describing his own views on theology, or the character of the whole. It should not be controversial to claim that the Athenian, through his speeches in this Book, intends to point the way to an understanding of the true nature of the divine, at least for those capable of coming to this understanding.

\(^{507}\) Pangle, “The Political Psychology of Religion in Plato’s *Laws,*,” pp. 1077. For a discussion of many of these objections, see pp. 1073-1077.
This raises the question whether the reflections on cosmology and on the soul’s place within the cosmos from *Laws* X are intended as the basis of the ordinary citizen’s religious outlook. This is a significant question for our inquiry into the Athenian’s views on the source of divine legislation, for the following reason. If they are, then it would seem that the Athenian would endeavor to bring the citizen’s understanding of the gods into a more perfect harmony with the Athenian’s teaching about the nature of the gods. In other words, if knowledge of the true divine nature, as pointed to in *Laws* X, is supposed to be the core of the ordinary citizen’s religious outlook, then the legislator’s task with respect to civil religion would be less a matter of using the gods as fictions in the process of founding, *à la* Rousseau, and more a matter of educating the citizenry in the truth about the cosmos. The gods of the Athenian’s civil religion would be something like the immutable laws of nature, not instrumentally useful falsehoods.

Much of the scholarship on *Laws* X has, in fact, pursued this line of argument. Trevor Saunders, for example, characterizes the Athenian’s “eschatology” as a system that “function[s] mechanically, without intervention from any personal agency.” The theology of the *Laws*, in Saunders view, retains the notion that the just prosper while the wicked meet with eventual disaster. But it attempts to prove that this relationship between justice and happiness is not a consequence of providential gods, but rather of the natural order of things: even though the character of the cosmos is impersonal, still the order governing nature renders justice in the individual soul necessarily rewarding. “There is no need for a Minos or a Rhadamanthus to (as it were) tot up one’s crimes and good deeds to determine what penalty or reward one deserves. All that is in question is the state of the soul; and the state of the soul automatically, mechanically, by itself, determines where the soul is to go, so that post-mortem psychoscopy becomes
unnecessary." Edward Halper defends something similar to this position while emphasizing that the Athenian’s argument about the soul is meant to enlighten the citizenry, or at least a large portion of it. The most important aspect of the conversation of Laws X for the citizens of Magnesia, he remarks, is not any “doctrines about the gods” it might put forward, but rather its teaching about the “dignity” of the human soul, which teaching “the Athenian really holds to be true” and is to serve as a new “standard” for virtue. Citizens are, in other words, to be led to a life of virtue not by means of stories about divine reward and punishment, but by a true teaching about the goodness of virtue in the soul. “What is really new in the Laws,” Halper argues, “is the idea that this dignity of soul doctrine must be taught to all citizens…,” the Athenian’s hope being that “many thinking citizens will see in its arguments a doctrine of soul where virtue is its own reward and, thus, not motivated by fear of inescapable divine sanction.”

Urging some caution against such views is Glenn Morrow, who argues that “[i]t is not a new religion that Plato proposes for his state, but the old religion, purified of its unwitting errors, and illuminated by a more penetrating conception of the meaning of religious worship.” He interprets the Athenian as faithfully retaining the “form” of traditional Hellenic religion for the city of Magnesia while making minor alterations to the “spirit” of religious worship, changes conducive to his political goals in the conversation of the Laws. To be sure, Morrow’s emphasis


510 Halper, “Soul, soul’s motions, and virtue,” pp. 258 and 263-267. One study that is in accord with this position is Bobonich, Plato’s Utopia Recast, pp. 93-96 and 108-109. See also the thoughts on “natural law” in Plato in Solmsen, Plato’s Theology, pp. 161-174.

511 Morrow, Plato’s Cretan City, pp. 399, 401, and 403.
on stamping out the errors of conventional religion and infusing worship with a new, truer spirit seems, on first glance, to point the way to the views of Saunders or Halper. This appears, also, to be the position of Pangle, who indicates that the “Athenian...tries to bring civil religion closer and closer to the religion of man” by means of his willingness to address thoughtful objections to the civil religion. Still, Morrow, for his own part, is clear that the Athenian in no way wishes to remove from the city a pantheon of gods who are personal in character, beings who support justice as in the conventional understanding of civil religion. “It is clearly misguided,” he advises, “to suppose that Plato hoped to replace the traditional worship of the Olympians by a rational worship of the stars”, i.e. a kind of religion taking its cue from rational insight into the nature of the cosmos. The Laws, on this reading, teaches that the traditional, though strictly speaking irrational, worship of the Olympians is necessary for political life, because ordinary citizens cannot be brought to understand the grounds of rational worship.

Taking into account Morrow’s cogent reading, and recalling the arguments in Chapter Three about the Athenian’s views on the capacity of ordinary citizens to comprehend nature, it seems difficult to sustain positions like those of Saunders and Halper. The cosmological inquiries on display in Laws X are, to be sure, seriously intended by Plato as an investigation into the nature of the whole for his most capable readers. Furthermore, the particular theological dogmas that may be culled from the Athenian’s inquiries are related to the dogmas of

Magnesia’s civil religion, as we shall see in the next section. Still, Laws X does not present a civil theology that eliminates the need for the gods as conventionally understood, and the drama of the book intends to show this. After having stated the prelude to the law against impiety, comprising most of Book X and embracing the teaching about the cosmos at issue here, the Athenian declares that it is not sufficient; it is not the legislator’s final say before giving the law.515 “After the prelude,” the Athenian remarks, “it would be correct for us to have a speech that is like an interpreter of the laws (tōn nomōn hermēneus), proclaiming to all the impious that they should change their ways into pious ones,”516 and then he proceeds to state the law. Why, though, is there need for such a speech? This “interpretation” of the laws appears to be a simple and conventional exhortation to piety, with no detailed explanation about soul and the nature of the gods that was characteristic of the prelude. Like all persuasive exhortations, as we have already seen, this speech makes its primary appeal to the affections, not the rational faculty.517 Is the exhortation required in the city because the Athenian knows that his demonstration concerning the nature of the cosmos will be inappropriate for ordinary citizens? Indeed, the fact that the Athenian must condescend to the characters of Clinias and Megillus during the argument of Laws X suggests that ordinary citizens will fail to grasp it as well.518 But if so, then can the Athenian’s proof of the nature of the gods be effective as a reliable check against injustice? The

515 Cf. Morrow, Plato’s Cretan City, pp. 477-478: “Despite the pretense that this is a prelude to a legal enactment, it is probably not seriously intended that these arguments refuting the various forms of atheism and establishing what has been called Plato’s three articles of theology shall be published in the unresponsive language of a legal document (891a); or if this is his intention, Plato cannot have thought that publication is the best way of making these arguments effective.”

516 Plato, Laws, 907d4-7.


suggestion here is no. Remarkably, Seth Benardete calls the exhortatory speech between the prelude and the law against impiety “the real prelude to the law.”

Considering the argument and the dramatic action of the *Laws* as a whole, however, one must conclude that the Athenian, in his recommendation for civil religion, is referring to the gods in the conventional way in which they are understood. The gods of the city are beings who defend the community from threats, listen to and answer the prayers of individual citizens, and ensure that the just are happy and the wicked are punished. Part of what will be so difficult for the lawgiver, “whether [he] is making a new city from the beginning or refounding an old city that has become corrupted,” is that he must artfully endeavor to retain—perhaps even to shore up—the deities, rites, and ceremonies of the citizens as they already understand them. One of the hallmarks of the religious teaching of the *Laws*, as Morrow has shown in detail, is that it remains tightly connected with the traditional Hellenic conception of the gods and of divine reward and punishment. Moreover, as the drama of *Laws* IV suggests, the gods of civil religion are conceived of as having personal agency. After the interlocutors have examined the geopolitical conditions for the founding of Magnesia and have discussed the possible uses of a moderate tyrant, the Athenian invokes “a god (theon) in the setting up of the city” and explicates the objectives of his petition to the divine. “Let him hear us, and having heard, graciously and

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519 Benardete, *Plato’s Laws: The Discovery of Being*, p. 288, fn. 3. Cf. Plato, *Laws*, 903a10 ff., on the need to persuade even the young atheist through “mythic incantations (epōdōn...mythōn),” as rational argument is bound to fail.

520 This reading of civil religion in the *Laws* shares common ground with that of Strauss, *The Argument and the Action of Plato’s Laws*, pp. 140-141: “[A]lmost [the Athenian’s] whole teaching seems to stand or fall by the belief in gods. Almost his whole teaching is colored by piety as commonly understood, as understood, for instance, by Megillos or Kleinias, not to say by old women living in the most remote corners of Crete.” See Mark Blitz, “Strauss’s Laws,” *The Political Science Reviewer*, XX (Spring 1991), pp. 211-212.


522 As Morrow has shown in great detail: *Plato’s Cretan City*, pp. 434-470.
propitiously come to us and take part with us in the ordering of the city and the laws.” The Athenian’s invocation accomplishes two purposes. First, through it the Athenian presents an unmistakable demonstration of the good lawgiver’s method, which involves placing the divine at the beginning of the laws in order to sanction them. But second, it shows that the gods he intends as patrons of the city are personal in character: they are conceived of as willing to listen to prayers and to intervene in human affairs.

Further evidence that the Athenian, in his teaching on civil religion, means religion as it is conventionally understood may be found in the hypothetical oration of the lawgiver to the colonists. In this speech, which is, we recall, the lawgiver’s first address to the citizens, the Athenian explains which gods deserve the most honor.

First, we assert, one would most correctly hit the target of pious reverence if one honored the gods of the underworld after the Olympians and the gods who possess the city (met’ Olympious te kai tous tēn polin echontas theous), assigning to them the even-numbered, the second place, and the left side. The higher things—the odd-numbered and the other opposites—should be assigned to those just now mentioned. After these gods, the prudent man at least would worship the demons, and then next after these, the heroes. Following close upon them would be the private shrines of ancestral gods, worshipped as the law directs (kata nomon orgiazomena), and then after these the honors that are due to living parents.

This speech establishes the orderly hierarchy of gods for the city of Magnesia and points to the core of the Athenian’s teaching on the character of civil religion. The Olympian gods and those “possessing” the city are of the highest importance in the citizens’ piety and are to receive, therefore, the highest veneration. It should be clear that these are the gods of the poets and not, say, those discovered by the rational investigation of nature. Moreover, the Athenian here indicates that the good legislator directs religion in the way most salutary for the political community. The law prescribes a particular kind of worship as regards the private shrines of

ancestral gods, a sign that the ends of law, in the view of the legislator, cannot be attained unless citizens worship in the particular way that he will set. And while it is true that the statement to the effect of worshipping “as the law directs” refers immediately to the honor due to private shrines, it is reasonable to see the entire conception of civil religion expressed here as being established by, and therefore subordinate to, the law.\footnote{526} After all, it is the legislator, in the Athenian’s hypothetical oration, who establishes the order in which gods or the sacred things are worthy of pious reverence. Bringing order to the divine things for the purposes of civic piety appears to be a species of the lawgiver’s general task of bringing order simply.

All taken together, these reflections lead one to suspect that the gods of the Athenian’s civil theology are, strictly speaking, fictions useful for accomplishing political goals, much as it is for Rousseau’s legislator. Part of the task of giving laws turns out to be bringing order to the divine things. This is tantamount to saying that the civil gods in the \textit{Laws} are to be based on the lawgiver’s art. If this argument is sensible, then we see that Plato’s position is in accord with Rousseau’s also in respect to the gods’ function in the art of persuasion. This section’s discussion of Plato’s views on the sources of religion grew out of the observation that the gods, for Rousseau, help the legislator persuade the citizens to follow the laws he will give them. We can now say that the Athenian contends that civil religion is a powerful tool of persuasion as well, necessary for conditioning the soul toward the disposition best able to support the qualities of good citizenship. For both philosophers, the art of persuasion, of which the legislator is master, cannot be undertaken without the aid of the gods.

In a small way, we have already begun to make this argument. At the end of the preceding chapter, we focused on the institutions of public entertainment, broadly understood, as

\footnote{526} Cf. Plato, \textit{Laws}, 885b4-5 and 887a1.
a means by which the legislator conducts his work of inculcating the citizenry with good civic habits. The Athenian refers to these habits as unwritten laws and treats of the institutions of public entertainment most directly in Books II and VII. But to say that the rites, ceremonies, games, and holidays, all for the sake of developing civic habits in the citizens’ souls, are religious in character, would be to understate the point. The public festivals in which the citizens are expected to participate are religious gatherings first and foremost, their express purpose being intertwined with the notion of currying favor with the gods. “One should live out one’s days,” the Athenian advises, “playing at certain games—sacrificing, singing, and dancing—with the result that one can make the gods propitious to oneself and can defend oneself against enemies and be victorious over them in battle.” From a very young age, citizens must learn that active participation in the festivals is a requirement of civic life. Furthermore, while it is clear from the text that the legislator is meant to establish the festivals, citizens must be told that the “demon and god” have prescribed the laws regarding sacrifices and choral performances and that they have also indicated those gods to whom the citizens should “offer games and propitiate”. If the lawgiver has ordered these festivals well, then the citizens will understand that public play is the means by which they can “live out their lives in accordance with the way of nature”.

Precisely how the use of religious festivals is beneficial to political life is spelled out in more detail in Laws V. The Athenian has just maintained that “a lawgiver should not change any” of the gods, temples, or other sacred things in the locale of his legislation “in the least.”

528 Plato, Laws, 803e1-4.
529 Plato, Laws, 804a4-b4.
But, in line with his task as one who gives order to the divine for the goals of civic piety, the Athenian remarks that

> he should give to each group a god or demon or some hero, and before he makes any other land distribution he should set aside choice places for sanctuaries and everything that goes with them. In this way, when the various parts of the population gather together at the regularly established intervals, they’ll be amply supplied with whatever they need; they’ll become more friendly to one another (*philophronōntai te allēlous*), at the sacrifices, will feel they belong together (*oikeiōntai*), and will get to know (*gnōrizōsin*) one another.  

Taking part in the sacrifices and the other religious ceremonies, the citizens engage in fellowship with one another. It is not simple intercourse among citizens that seems important here; rather, it is the fact that they spend time with one another taking part in the most important activities.

Having been told that the gods have sanctioned the festivals, the citizens would see gatherings of this nature as the most significant for their lives, in this world and in the next. Most important from the standpoint of legislation, though, these religious festivals foster a sense of friendship in the citizenry, establish that sense of fellow-feeling so necessary for converting a disparate set of individuals into a common people, and provide an opportunity for the citizens to become well acquainted. “There is no greater good for a city,” according to the Athenian, “than that its inhabitants be well known to one another.” Acquaintance with one another keeps the citizens honest and true, counteracts the tendency for some to deceive others, and ensures that honors are correctly allocated.

It should come as little surprise to students of Rousseau that the passage from Plato’s *Laws* just considered is highlighted in Rousseau’s personal copy of the Platonic corpus. As M.J. Silverthorne, commenting on this very connection, argues, “when [Rousseau] was looking for means to maintain a people at a high level of patriotism and virtue, he found many ideas in Plato,

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and particularly in the *Laws.*” The sentiment in Silverthorne’s argument is accurate, though what is not stressed is the similarity between Rousseau and Plato here on the uses of civil religion. Both philosophers teach that the best way of encouraging a strong attachment to the community in a group of individuals is through religion. And, generally speaking, it is not entirely a matter of maintaining “a people at a high level of patriotism and virtue”. It is also a matter of the legislator inculcating, by means of religion, these conditions for devotion to the law in the first place.

The Dogmas of Civil Theology and the Question of Toleration

Returning to the beginning of our inquiry, we recall Thomas Pangle’s observation linking Rousseau and Plato on the subject of civil religion, namely that the *Social Contract* and the *Laws* present the only accounts of the dogmas that the best city should have. In the interim, we have explored the teaching, advanced in the texts of these two philosophers, that the civil theology is an invention of the legislator. This is, however, in a sense a matter of purely functional correspondence: both Rousseau and Plato suggest that religion take the form of a useful instrument for a political founder. What, however, are we to make of the content of the respective civil theologies at issue in this chapter? Do Rousseau and Plato agree also on the dogmas that the citizenry must follow?

Now whether Rousseau’s treatment of civil religion even issues in a set of dogmas is already a tough question. Having delineated three types of religion in the *Social Contract*, IV.8—that of the citizen; the “sublime, true” religion of man, i.e. Christianity; and that of the priest—and having specified why the first is the only one salutary for politics, Rousseau refers to

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the core teachings of the civil theology as something slightly different than dogma. “There is,” he remarks, “a purely civil profession of faith, the articles of which are for the sovereign to establish, not exactly as religious dogmas, but as sentiments of sociability without which it is impossible to be a good citizen or faithful subject.”

To speak in terms of “sentiments of sociability” reflects Rousseau’s assimilation of religion to the legislator’s political task. And as his preferred objectives for political life involve, first and foremost, preserving and expanding the sphere of human freedom, one could add that the rigid language of official religious dogma would likely be stultifying to the spirit of freedom.

Certainly it might seem a tension in Rousseau’s account to suppose that citizens who freely consent to join the social contract would be forced to accept exact, and exacting, religious doctrines as a condition of their membership in the community.

These reflections on the reason why Rousseau distances himself from the notion of theological dogma become clearer, however, in the immediate sequel, when Rousseau actually elects to speak in terms of “the dogmas of civil religion.” The decisive matter concerning such tenets is that they be “simple, few in number, stated with precision, [and] without explanations or commentaries.” What is most noticeable about Rousseau’s presentation of the core beliefs of his civil theology is their generality. It is more important that the civil religion broadly guide and regulate the sentiments of the citizens than it is to articulate precise, officially codified religious doctrines.

Along these lines, then, Rousseau indicates that there must, first, be a Divinity that

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535 Note Ronald Beiner’s trenchant criticism of Rousseau’s civil religion in the Social Contract, IV.8. The generality of the dogmas, taking into account also Rousseau’s “negative” dogma against intolerance (which we shall consider presently), makes them unable to do the work of “build[ing] republican citizenship,” so important for
is powerful, intelligent, beneficent, foresighted, and providential. Second, the soul must continue to live after the death of the body. Third, the Divinity must be a reliable guarantor that the just prosper and the unjust are punished. And finally, fourth, the laws of society must be understood to have been authorized by the Divinity.\(^{536}\)

Plato’s Athenian, for his part, discloses his views on what the dogmas of civil religion ought to be as a response to the claims of the imagined young atheist in *Laws* X. Having affirmed that the phenomenon of impiety is widespread, the Athenian asserts that its cause is twofold.\(^{537}\) Most decent men, including Clinias, would agree that those who behave insolently with respect to the gods do so because of an uncontrollable hedonism, or “a lack of self-restraint (*akrateia*) in the face of pleasures and desires.”\(^{538}\) The Athenian, however, corrects this view by adding that the cause of insolence is primarily foolishness, or “a very harsh lack of learning, that seems to be the greatest prudence.”\(^{539}\) Such foolishness has led the young non-believers into accepting three different heretical positions, which the Athenian describes in the form of an “exhortation (*paramythion*)” paving the way for the law against impiety.

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\(^{538}\) Plato, *Laws*, 886a9-b2.

\(^{539}\) Plato, *Laws*, 886b7-8. One might object, at this point: was it not argued above that sub-rational elements in human nature—e.g. the natural tendency to prefer one’s own, *pleonexia*—were the true cause of the dangers of atheism? This is true. But judged against the standard of reason, both foolishness and these sub-rational elements seem to be as one, at least one respect. They are both less than rational. As for the Athenian’s initiating here the cosmological discussion of *Laws* X, the decisive question seems to be whether or not the ordinary citizen is capable of replacing his “very harsh lack of learning” with true understanding. Given what we have seen from the *Laws*, the Athenian’s answer appears to be no.
No one who believes in gods according to the laws (kata nomous) has ever voluntarily done an impious deed or let slip an illegal utterance unless he is suffering one of three things: either this, which I just said, he doesn’t believe; or second, he believes they exist but that they do not think about human beings; or, third, he believes they are easily persuaded (euparamythētous) if they are brought sacrifices and prayers.540

Because insolence against the gods is here a matter of ignorance, it is in the spirit of correcting the various errors of the atheists that the Athenian presents his theological and cosmological proofs in Book X. But to underscore what is perhaps an obvious point—but which is, at any rate, crucial for our purposes—the Athenian’s exhortation encapsulates the core beliefs necessary to his conception of civil religion. Citizens must believe, first, that the gods exist “according to the laws.” Second, they must understand the gods as exercising providential care for human beings, meaning that they help the just and punish the wicked. And, third, they must see the gods’ care as reliable, not susceptible to being affected by the gifts or prayers of the unjust.

It is evident, then, that the opinions of the civil religion in the Athenian’s formulation are, in their essentials, the same as those in Rousseau’s Social Contract.541 To the extent that Rousseau includes dogmas that are not found explicitly in Laws X, as in the necessity of divine sanction for the laws, for example, we have seen that the Athenian articulates positions similar to these in other places in the text. Be this as it may, Rousseau’s treatment of civil religion contains a further distinction that we have not yet considered. The dogmas discussed above are all “positive,” in that they are intended to specify the beliefs to which the law enjoins its citizens. In addition to these, though, Rousseau includes one “negative” dogma, namely intolerance.542

Because the power that the sovereign holds over the subjects can go no further than what is necessary for the public good, Rousseau is concerned only that the behavior of citizens is wisely

540 Plato, Laws, 885b4-9.

541 As Pangle has noted: “Politics and Religion in Plato’s Laws,” p. 23.

regulated by religion, not that citizens are compelled to believe in particular doctrines or in particular gods. 543 “[I]t matters,” he explains, “greatly to the State that each citizen have a religion that causes him to love his duties; but the dogmas of that religion are of no interest either to the State or to its members; except insofar as these dogmas relate to morality, and to the duties that anyone who professes it is obliged to fulfill toward others.”544 Above, we considered one way in which Rousseau acts as an exponent of the liberal political tradition, in that the purpose of religion as a legislative instrument is, for Rousseau, the protection of property rights. In addition to this, it seems that Rousseau here expresses a doctrine of religious toleration similar to the liberal positions of Spinoza and Locke. 545

The Athenian’s position on the question of toleration appears to be, however, in sharp contrast with Rousseau’s. Indeed, while Rousseau’s position would seem to allow for a plurality of religions, provided that they all obey the fundamental law of political society, the Athenian’s is not so permissive. In order to illustrate this, we merely have to recall the hierarchy of worship expressed in the hypothetical lawgiver’s oration in Laws IV. It is necessary that the citizens give reverence, first and foremost, to the Olympian gods and the particular gods of the city. In other words, a city must be associated with a specific set of gods enjoining the citizens to a common set of customs, rites, and ceremonies, not a plurality of religions each with its own traditions. The difference between Rousseau and the Athenian here is explicable in terms of their respective

543 Lester G. Crocker’s interpretation of Rousseau as encouraging punishment for “wrong thinking” suffers from insensitivity to the fact that it is always behavior, in Rousseau’s argument, that deserves punishment, not impious thinking. See Crocker, Rousseau’s Social Contract, pp. 99-101.


views on the objectives of politics. For Rousseau, the most important political end is freedom, while for Plato’s Athenian, it is friendship. The Athenian, then, presupposes that the toleration of different religions within the city would be detrimental to the objective of fellowship, and he is not as concerned with the protection of the type of freedom Rousseau seeks.

However accurate the preceding remarks might be, and despite the fact that it would be incorrect to argue that there is a doctrine of toleration in Plato’s *Laws*, there are ways in which the spirit of the Athenian’s teaching on civil religion may be closer to Rousseau’s than we have just indicated. As we notice at the beginning of Book X, what the Athenian is truly concerned with as regards impiety is “the ways by which someone may in speech (*logō*) and in deed (*ergō*) be insolent toward the gods either by speaking (*legōn*) or by acting (*prattōn*)”\(^{546}\) In making reference to speech and deed here, the Athenian is silent about thought. What matters most from the perspective of the city’s laws is the external expression, in speech or in deed, of impiety, not so much what the citizens actually believe. It is true, to be sure, that the argument of *Laws* X teaches that insolent behavior is caused by incorrect or foolish opinion. But as regards the legal punishment of impiety, the Athenian’s emphasis, like that of Rousseau’s, is always on external behavior. Rousseau himself never indicates that the expression of atheistic opinions, i.e. those rejecting the dogmas of civil religion, is to be protected under his doctrine of toleration; the principles of his theory would never allow the publication of grossly impious views. Rousseau says only that different religions are to be tolerated, provided that they accept the basic positive dogmas of civil religion as well as its sole negative one.

The Athenian’s chief concern with external behavior is reflected, finally, in the law against impiety in *Laws* X.

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If someone should be impious in words (logoi) or deeds (ergoi), the one who comes across such behavior is to help defend by reporting the occurrence to the magistrates, and the first magistrates that learn of it are to bring the accused before the judicial court designated to judge these matters according to the laws (kata tous nomous).\textsuperscript{547}

What is decisive, again, is whether a citizen has been impious in words or in deeds. If he has, according to the law, then he is to be punished with imprisonment, the conditions and terms of which will be based on two factors: first, which of the three dogmas he denies, and second, whether he has an evil nature and is, therefore, likely to cause harm to society. Those who are impious and evil are to be kept away from society, but those with good natures are to be imprisoned in a place called the Moderation-Tank (sōphonistērion) for five years, during which time they are to receive theological “admonishment” from members of the nocturnal council. But “[w]hen the time of their imprisonment is up, if someone among them should seem to be moderate, he is to dwell among the moderate (ean men dokē tis sōphronein autōn, oikeitō meta tōn sōphronōn), but if not, and he should be convicted at such a trial again, let him be punished with death.”\textsuperscript{548} Just as, for Rousseau, if “someone who has publicly acknowledged these…dogmas behaves as though he does not believe them, [then] he should be punished with death,”\textsuperscript{549} so will, for the Athenian, the atheist who has received admonition but fails to “seem (dokē)” to be moderate in society be executed. The standard by which the citizen accused of atheism is to be judged worthy of participation in the city is, from the perspective of the law, moderation, not genuine belief in the city’s theological doctrine.

\textsuperscript{547} Plato, \textit{Laws}, 907d7-e6.
\textsuperscript{548} Plato, \textit{Laws}, 909a5-8.
\textsuperscript{549} Rousseau, \textit{Social Contract}, p. 131 (III: 469).
Conclusion

Over the past five years the intellectual landscape in the Western world has been flooded with a spate of fervently argued books—many of which are intended to make a splash in public—devoted to criticizing religion, both in terms of its plausibility and in terms of its practical effect on the world. Perhaps the most conspicuous of these is *The God Delusion* by Richard Dawkins, the enormous best seller through which Dawkins hopes that “religious readers who open it will be atheists when they put it down.”550 Underlying this ambitious project is an assumption about the social good, for, in addition to assuming that converting believers into atheists will be good for the individuals themselves (good because conducive to their freedom), Dawkins presupposes that society would be benefited. At the very least, he contends that undermining religious opinions will not have an adverse effect on morals. The position taken by Dawkins and other likeminded commentators, such as André Comte-Sponville, Daniel Dennett, Sam Harris, and Christopher Hitchens, is that there is no sound reason in defense of the argument that morality requires the support of religion.551 To be sure, in arguing that humanity would be better off without religion, these authors focus on the pernicious influence that religions have had on the world; the driving animus of both Harris and Hitchens, for example, is against the damage and suffering caused by Islamist terrorism.552 But in suggesting that the extirpation of religion from the world would be beneficial to humankind, they all contend that doing so would pose no


552 See Harris, *The End of Faith*, pp. 108-152; and Hitchens, *God is Not Great*, pp. 28-36.
threat to society’s moral code. In a word, these authors deny the fundamental premise of civil religion.

As we have seen throughout this chapter, Rousseau and Plato both take precisely the opposite position to that of Dawkins, etc., and therefore stand as implicit, if anachronistic, critics of recent public promoters of atheism. 553 Both philosophers maintain that a healthy civil society requires a set of beliefs about God and humankind’s relationship with God, beliefs that are by and large respected by the particular individuals in society. Both agree that civil religion serves the function of preventing, in general, injustices in society and, in particular, violation of the laws meant to protect property rights. This is, as we have described it, fundamentally a negative function. Certainly, in clarifying Rousseau’s and Plato’s respective positions on civil religion as they relate to the legislator, we have seen that both philosophers, in all likelihood, share some ground with Dawkins, etc. In teaching that the legislator is the founder of the institutions of religion, which founding he accomplishes with a view to its political benefit, both philosophers exhibit skepticism regarding the truth of these institutions. Be this as it may, based on robust teachings on the nature of the human attachment to justice, Rousseau and Plato maintain that there cannot be respect for the laws, whether positive or moral, without the legislator having attributed their origins to the divine and without the widespread belief that the divine can be counted on to enforce them.

Finally, and taking a small step back, it is necessary to underscore just how difficult this job of the legislator can be expected to be. As Rousseau himself remarks,

…[I]t is not every man who can make the Gods speak or be believed when he declares himself their interpreter. The legislator’s great soul is the true miracle that should prove his mission. Any man (Tout homme) can engrave stone tablets, buy an oracle, pretend to have a secret relationship

with some divinity, train a bird to talk in his ear, or find other crude ways to impress the people. One who knows only that much might even assemble, by chance, a crowd of madmen, but he will never found an empire, and his extravagant work will soon die along with him. False tricks can form a fleeting bond; wisdom (sagesse) alone can make it durable.  

If it is true that the great lawgiver will be able to legislate a particular religion into being, then it is also true that the rarity of such a figure proves that a solution to the problem of religion and politics is virtually unavailable.  

This line of argument, however, is much the same as the chief one of this inquiry, that the figure of the legislator represents not a recommendation for political reform, but an articulation of the problem of legislation. The fact that civil religion turns out to be, fundamentally, a legal institution for Rousseau and Plato helps to clarify this problem. In our investigation of these two philosophers’ treatments of civil religion, we have observed that one of the conditions of a good political founding requires nothing less than a religious founding. Nothing less will ensure that the citizens remain devoted to the laws the legislator has given them.

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Chapter VI

Conclusion: The Legislator and the Limits of Law

More than just serving as the capstone to our analysis of civil religion in Rousseau and Plato, the rich passage from the *Social Contract* cited at the end of Chapter Five is a fitting place from which to begin this study’s concluding remarks. In this passage, and as we have had ample opportunity to see elsewhere, Rousseau draws a razor-sharp line of distinction between the true legislator and the rest of humanity, including in this last category those grossly ineffective prophets who attempt to “impress the people” with “crude” methods and “false tricks.” There is, in a word, breathtaking distance separating the character of soul of the true legislator from that of the souls of other men. Indeed, for Rousseau, the “legislator’s soul is the true miracle (*le vrai miracle*) that should prove his mission.” Given what we have seen in Chapter Three, it should be evident that the Athenian’s own assessment of the extraordinary soul of the legislator is in agreement with Rousseau’s, especially as regards the vast difference between it and that of the common run of humanity. This distance is, of course, an indication of the extreme rarity of the good legislator. But if the condition of good legislation is the good legislator, the appearance of whom is something that cannot reasonably be expected, then the figure of the legislator points necessarily to the problems inherent in the legislative enterprise. We recall from Chapter One that the fundamental problem is that of the people’s social character: the lawgiver always and everywhere encounters individuals as they are, not necessarily as he needs them to be. In setting forth doctrines of the legislator, both Rousseau and Plato aim to teach us something about this basic and permanent dilemma in political life.
Having come this far, then, we are in a better position to give a clear and complete account of the main commonalities and differences between Rousseau’s and Plato’s notions of the legislator. The similarities between the former’s législateur and the latter’s nomothetēs are numerous and remarkable. First, as alluded to above, the way in which both philosophers conceive of virtue as related to the legislative task is equivalent. In both notions of the legislator, virtue is fundamentally for the sake of bringing positive benefits to the larger political world. This is far from saying that Rousseau and Plato conceive of virtue in exclusively this instrumental way; rather it is to suggest that this is how they understand its character as related specifically to the lawgiver’s soul. And this is the case most importantly with respect to wisdom, which proves to be choiceworthy primarily for the sake of practice. In Platonic political thought, the cardinal opposition between different ways of life is between the philosophic and the political, and in this study, we have shed light on this distinction. If the philosopher is the figure who contemplates nature and seeks knowledge for its own sake, then the legislator is the one who seeks to know for its utility, so as to change the larger world. The Platonic distinction between philosophy and politics is underlain by one between two different conceptions of virtue, exhibited respectively by the philosopher and the legislator. We see, then, in the nomothetēs, a figure inhabiting Plato’s cosmos that looks conspicuously similar to those modern political characters based on Machiavelli’s interpretation of the armed prophet. And at least as regards his virtue, Rousseau’s législateur is the paradigmatic one.

Second, both Rousseau and Plato stand in stark contrast with Hobbes, who suggests that overwhelming force is sufficient to ensure respect for the law, in that both contend that the legislator must use persuasion in getting the people to accept the laws that he gives. Whether it is by means of persuasion “without convincing” or by using preludes in addition to positive laws so that the people are better disposed to accept the laws, the legislator must be a master of this
art. For both philosophers, the character of persuasion is, at bottom, sub-rational, in two related ways. It communicates primarily in the medium of the affections, namely song. And it aims at communicating with, and thereby having its primary effect on, the affections of the citizens.

This second commonality points directly to a third, which is that both Rousseau and Plato contend that the lawgiver must direct his legislation chiefly at the citizens’ affections. If the problem of legislation is that positive laws fail to accomplish the ends they are set out to accomplish, then the great legislator, if he is ever to solve it, must aim at shaping the citizens’ passions so as to provide sub-rational support for the laws. Both philosophers argue that this figure’s most important task is to give laws that are not written down in a book of statutes but rather are engraved in the passionate part of the soul. For Rousseau these are called mœurs; for Plato, unwritten laws; and for both, they represent the good citizen’s habit of reliably devoting himself to justice. Absent this peculiar sort of legislation, the lawgiver recognizes that he has no hope of successfully achieving the ends of positive legislation, for without it the laws will always be evaded. On Rousseau’s account, good civic mœurs, which are fundamentally habits, are the essence of civic virtue, which is the ardent love of the fatherland stemming from amour-propre. For Plato, on the other hand, unwritten laws are the precondition for mature virtue, which is a set of the correct civic habits in consonance with right reason. But, however true this Platonic teaching on virtue might be for certain exceptional individuals, the Athenian in the Laws puts forward the subtle point that the status of virtue for the ordinary citizen is ambiguous, and that it is likely much closer to Rousseau’s version, the core of which is habit.

As we have seen, the enterprise described in the previous paragraph is, generally speaking, one of soul-craft, which is another way of referring to the function of a regime’s system of civic education. Hence, fourth and finally, the legislator for both Rousseau and Plato is a figure who is capable of developing the correct institutions in and through which individual
men are transformed into good citizens. On the one hand, the lawgiver creates the institutions of public entertainment, broadly understood, because he knows that the qualities of good citizenship are best inculcated by means of games, rites, public ceremonies, etc., which is to say, generally, by the spirit of play. According to both Rousseau and Plato, the holidays and festivals that will be established will tend to be of a religious character. So, it should be clear that the lawgiver, on the other hand, is also the founder of the institutions of civil religion, which are indispensable for ensuring a general degree of respect for the positive laws. Both philosophers agree that religion has this negative function in political life and that divine lawgiving is, at bottom, a species of lawgiving as such, meaning that it falls within the province of the legislator.

All in all, these are striking similarities. Still, they do not tell the complete story, for we have also considered slight differences between the two philosophers’ respective conceptions of the lawgiver. One distinction concerns the question of the use of force in legislation. If Plato’s Athenian indicates that the most effective way of giving laws would be to have a tyrant at the legislator’s disposal, then Rousseau stands in opposition to this view, insofar as he avers that the legislator may not use coercion in achieving his goals. To be sure, the Athenian does not indicate that force is always needed or make a wholesale recommendation of its use—after all, the *nomothetēs* will know how to use persuasion so as to blunt the force of naked law and its attendant penalties—but he seems more willing than Rousseau to entertain it as an option. One factor explaining this difference appears to be a fundamental disagreement as regards the nature of sovereignty. For Rousseau, sovereignty inheres always in the body of the people; it is important, therefore, that individuals freely consent to forming the social body as well as accepting the legislator’s laws. For Plato, however, the sovereign principle is the rule of wise law, or the rule of that law given to the people by a wise legislator. Wisdom or intelligence (*nous*), in this sense, is intended to be supreme. Hence, while he does not eagerly endorse the
use of coercion, the Athenian simply does not rule it out as a possible legislative tool, provided that the “tyrant” is possessed of a certain set of qualities that we looked at in Chapter Three.

That Rousseau is concerned with freedom as the goal of political life is easily appreciated from the preceding comments. The people must consent freely, that is, not from having been forced, to the orders that the legislator gives them, and the people as a whole are to enjoy the sovereign power. This is the fundamental reason why, according to Rousseau, the legislator may not rule after the laws have been given, and that the sign of a true legislator is his willingness to abdicate the throne, as in the examples of Moses and Lycurgus. Rousseau’s keen interest in protecting, and promoting, freedom in political life emerges, furthermore, in his discussion of the appropriate dogmas of civil religion. While it is important that the citizen’s lives are guided by religion, its dogmas must include a prohibition against intolerance to other faiths, provided that those who believe in other religions do not violate the fundamental civil laws. With respect to this last point, specifically, the Athenian disagrees. The legislator must explain which gods the citizens are to worship, the purpose of which explanation being to enjoin the citizens to worship precisely these gods and not others. The Athenian’s generally intolerant views are emblematic of his own understanding of the most important legislative goal, namely friendship among the citizens, and not freedom. It is better for the purposes of friendship that there not be a plurality of religions within the regime, each with its own customs, rites, and ceremonies, but rather a common set of gods which the citizens can worship together. Now it may seem a tension in this account of Rousseau’s political thought to emphasize that the goal of political life is, for him, freedom, since in Chapter Four we considered his views on the need to instill the citizens with a sense of affection for the commonwealth and for one another. Given also what we have seen about the early modern liberal thinkers, especially Hobbes, it seems reasonable to say that Rousseau was the first major modern philosopher to lend so much emphasis to affection in
political life. Still, if he recognizes the affective conditions for getting citizens to live and breathe together as one common body, then he seems unwilling to eschew the end of freedom so dear to liberal philosophy.

Taking these observations together, it becomes necessary to conclude that the two legislators at issue in this study are remarkably, if not unqualifiedly, similar. Rousseau and Plato are generally on common ground on the subject of the lawgiver. More than just shedding light on such commonalities, the present study has put forward a claim about one of the sources of Rousseauan political wisdom. Rousseau’s thought (and, most likely, that of his teacher Montesquieu too) shows a deep Platonic influence in its science of *mœurs*. To be sure, arguments such as this one bear significantly on the question of Rousseau’s Platonism, even if the extent to which they describe Plato’s influence on Rousseau is limited by the fact that the legislator is only one facet of the two philosophers’ political teachings. They generally point to the conclusion that Rousseau’s doctrine of the legislator is, for the most part, Platonic in character.

Finally, and moving to the principal target at which this study has been aiming, perhaps the most important parallel between the teachings of Rousseau and Plato is that they both sketch detailed pictures of the legislator so as to provide a point of access into appreciating the problem of legislation. Both philosophers suggest that the solution to the problem of how to establish healthy political life, given the good legislator’s extreme rarity, is not one to be hoped for. In the essentials, what Rousseau and Plato appear to agree on is a teaching about the limits of law, or the limits of politics. They explain that the purpose of politics tends to be a negative one, in that it tends to be directed at preventing evils from arising in human affairs rather than actively promoting the good life. This means, however, that they agree on the suggestion that the deepest human needs and longings cannot be satisfied by political life. We observed the negative
purposes of positive law most clearly in Chapter Two, insofar as we saw Rousseau and Plato explain that the function of civil law is to mitigate the unfortunate aspects of the human condition.

But this commonality as regards the problem of legislation is truly significant, for it helps to shed light on Rousseau’s situation in the history of political thought. Rousseau appears to be the first modern political philosopher to express a fully formed doctrine of the limits of law, a centerpiece of Platonic political reasoning. If Machiavelli, Hobbes, Spinoza, and Locke all suggest that the political problem is soluble, in ways that we considered in Chapter One; and if Montesquieu, even while recognizing that nonpolitical conditions can limit the laws available to a people, is hopeful that liberal institutions can issue in a reasonable solution to the problem, i.e. a liberal political society devoted to commerce; then Rousseau suggests that the problem of giving laws to a particular people is a permanent one, which is, in the final estimation, insuperable. In short, a robust teaching on the limits of law emerges forcefully in the modern world by means of Jean-Jacques Rousseau. That this so closely resembles the Platonic understanding of the limits of political life suggests one more way in which Rousseau can be said to be influenced by his ancient predecessor.

To be sure, both philosophers indicate that a well-designed system of public education could go some lengths to shape human beings into citizens suited to the laws that a good legislator will give. Stating the point in general terms, if the positive laws can do only so much, then education is expected to do the rest. What is necessary is that citizens develop the proper civic habits that are best able to support political life under the regime’s laws, and that they come to see themselves as part of a common body politic, linked to the other citizens by means of a common good. But the institutions of public education have to be, of course, the right ones. Only exceptional human beings appreciate what these institutions are and can therefore design
them effectively. Only exceptional human beings can inspire the people to participate in them. And the educative process of these institutions can take place only over the long-term. The dilemma that any legislator faces is that the people would have to be, before the laws, what they ought to be by means of the laws, that is, by means of the system of education he will establish. To think of civic education as the perfect solution to the problem of legislation, then, would be misleading, and Rousseau and Plato wish to teach this. In sum, what both philosophers indicate is that the lawgiver surely must do what he can to shape men into good citizens, but that he must always be sensitive to the limits to such shaping inherent in the people’s social condition. To believe that a legislator, even the ablest one, can give human beings whichever form he likes, à la Machiavelli’s armed prophet, for instance, is to misconceive that which a legislator is capable of doing. It is to misconceive what is possible in the political world. In this profound teaching about the possibilities available for political life, Rousseau and Plato are allies.
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