

Law's Wish: the *Minos* on the Origin and the Unity of the Legal Order

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1 The *Minos* Revisited

In the tradition of legal philosophy, the short dialogue *Minos*, or *On Law* has enjoyed the status of a 'classic' in both senses of the term. Recognized as one of the earliest theoretical writings on law in our possession, it has survived as a text 'which people praise and don't read'.¹ Faithfully recorded in many introductions as an important historical document, its philosophical value was generally held to be doubtful. More often than not, this judgment reflected the negative appraisal of classical scholarship, which maintained that, even though Socrates is the main speaker in the dialogue, the *Minos* was not written by Plato. The arguments adduced in support generally amounted to the observation that both its style and its content are not on a par with those works recognized as Platonic. Accordingly, it was dismissed as an imitation by a contemporary, lacking the authority of the master.² In stark contrast, ancient editors and commentators unanimously regarded the *Minos* – as well as a number of other shorter dialogues – as authentic, and included it in the *corpus platonicum*.³ Quite recently, scholarship has turned to wonder whether they were not justified in doing so. One of the principal reasons is that the criteria underlying the received view have been called into question. In general, it is now admitted that the evidence on the basis of which the shorter dialogues were rejected as apocryphal is tenuous

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1 M. Twain, *Following the Equator* (1897), ch. 25.

2 Cf. J. Souilhé, Notice, in: Plato, *Oeuvres complètes* XIII, Paris 1930, p. 81; W.R.M. Lamb, Introduction, in: Plato, *Collected Works*, Vol. XII, Cambridge, Mass. 1927; C.W. Müller, Cicero, Antisthenes und der Pseudoplatonische 'Minos' über das Gesetz, *Rheinisches Museum für Philologie*, Vol. 138 (1995), Nr. 3-4, p. 247-265.

3 The most notable are Aristophanes of Byzantium, who led the renowned Alexandrian library, and Thrasyllus, who classified the dialogues in 'tetralogies' or groups of four. Cf. T.L. Pangle (ed.), *The Roots of Political Philosophy. Ten Forgotten Socratic Dialogues*, Ithaca 1987, p. 1-20.

and unreliable, and hence insufficient to simply refute the ancient view. More important, the question of what constitutes a Platonic dialogue is currently approached in a different way. The traditional scholarly view assumed a clear-cut distinction between philosophical content and literary form, as between an identifiable doctrine, subject to critical logical analysis, and a merely contingent appearance, stylistically meritorious but philosophically irrelevant. Contemporary scholars have rejected this distinction, arguing that understanding Plato as a philosopher is impossible without taking into account the fact that he is a writer of both consummate skill and extreme elusiveness.⁴ As they point out, any attempt to identify his philosophic teaching is mediated by the myriad of rhetorical, poetic and dramatic devices he deploys in his writings. These devices, they argue, should not be regarded as obstacles on the road to understanding his thought, but rather as necessary guideposts, perhaps even as integral parts of the road itself. Hence, any successful interpretation requires painstaking attention to every textual detail, as well as an awareness of the intricate interrelatedness of the dialogues.⁵

In the wake of this development, several attempts have been made to rehabilitate the shorter dialogues, including the *Minos*.⁶ The present paper takes its bearings in this endeavor, with the more specific aim of exploring its potential value for legal philosophy. To this end, I present an interpretative close reading of the text, mindful of such literary characteristics as were mentioned above. It will be argued that the *Minos* offers an intriguing perspective on certain fundamental aspects of law or the legal order, such as its origin and its unity.

- 4 J. Arieti, *Interpreting Plato. The Dialogues as Drama*, Savage, Md. 1991; F. Gonzalez (ed.), *The Third Way. New Directions in Platonic Studies*, Lanham, Md. 1995; R.B. Rutherford, *The Art of Plato. Ten Essays in Platonic Interpretation*, Cambridge, Mass. 1995; C.H. Kahn, *Plato and the Socratic Dialogue. The Philosophical Use of a Literary Form*, Cambridge 1996; J. Gordon, *Turning Toward Philosophy. Literary Device and Dramatic Structure in Plato's Dialogues*, University Park 1999.
- 5 The philosophical importance of the literary dimension of Plato's work was already acknowledged by several commentators of Antiquity, as well as of the Middle Ages. Among them, we find notable Roman readers like Albinus, Cicero and the emperor Julian, but also medieval Islamic and Jewish readers such as Alfarabi, Averroes and Maimonides. Cf. L. Strauss, *Persecution and the Art of Writing*, Glencoe, Ill. 1952.
- 6 Cf. G. Morrow, *Plato's Cretan City. A Historical Interpretation of the Laws*, Princeton 1960; L. Strauss, *On the Minos*, in: *Liberalism Ancient and Modern*, New York 1968; J. Best, *What is Law? The Minos Reconsidered*, *Interpretation* 8 (1980), p. 102-113; Pangle (ed.), *The Roots of Political Philosophy*, p. 1-20; W.S. Cobb, *Plato's Minos*, *Ancient Philosophy* 8 (1988), p. 187-207; C. Bruell, *On the Socratic Education. An Introduction to the Shorter Platonic Dialogues*, Lanham 1999. An early argument for the authenticity of all of the dialogues included in the Alexandrian catalogue can be found in G. Grote, *Plato and the Other Companions of Socrates*, Vol. 1, London 1888. In addition, *The Cambridge History of Greek and Roman Political Thought*, C. Rowe & M. Schofield (eds.), Cambridge 2000, recognizes the *Minos* as an authentic Platonic dialogue. Cf. p. 303-309.

2 Law as Discovery

The *Minos* opens with Socrates asking a nameless companion: ‘what is the law for us?’ (313a).⁷ In this respect, it differs from other Platonic dialogues on at least two accounts. To begin with, it is unusually abrupt: habitually, Socrates raises his characteristic question – ‘what is ...?’ – after the reader has been introduced to the occasion, as well as to the participants.⁸ In the *Minos*, contextual data are kept to the barest minimum. As a result, we are unaware of what precedes: Socrates’ question seems to appear out of the blue, seizing upon the companion. Only in the course of the dialogue do we learn something about the companion, as will become apparent.

Second, the question itself is atypical. As distinct from all other Platonic dialogues, Socrates adds the words ‘for us’ (*hèmin*). This gives rise to a certain ambiguity: does his query point to the law in general or rather to the law to which ‘we’ in particular are subject? In the latter case, ‘for us’ must be interpreted as a so-called ethical dative or dative of feeling, indicating that the object is regarded with personal interest. In a sense, this is highly appropriate: law always involves the interests and the commitment of a first person plural, a ‘we’ expressing a collective’s relationship to itself.⁹ Hence, it is somewhat puzzling that, when the companion responds by asking him what sort of laws he is referring to, Socrates silently drops the dative and explains that his question regards ‘law as a whole’ (313b: *to pan*), that which all laws have in common, or that which is characteristic of law as law. He thus implicitly raises the problem whether the perspective of the theoretical observer and the perspective of a subject can at all be dissociated if the question is to be addressed successfully.¹⁰

In his answer to the general question, the companion shows himself to be something of a relativist. For he rejoins somewhat defiantly: ‘what else would law be, Socrates, except the things that are lawfully accepted [or ‘recognized as lawful’] (313b: *ta nomizomena*)?’ His use of the plural suggests that he is aware of the variety and variability, not only of the things the law sanctions, but also of the recognition that is requisite for it to be binding. Socrates, however, argues against this definition by means of a curious analogy: just as there is a difference between a faculty (hearing, speech, or

7 References are to the Stephanus edition. With slight alterations, I use the English translation by T.L. Pangle, in: Pangle (ed.), *The Roots of Political Philosophy*, p. 53-66.

8 Compare, for example, the opening of the *Laches*, the *Symposium* or the *Republic*.

9 Cf. B. van Roermund, *Sovereignty Popular and Unpopular*, forthcoming in: N. Walker (ed.), *Sovereignty in Transition*, Oxford 2003.

10 Cf. Strauss, *On the Minos*, p. 66; Pangle (ed.), *The Roots of Political Philosophy*, p. 53; Cobb, *Plato’s Minos*, p. 203. This problem is a permanent possession of legal philosophy, as becomes apparent from the work of reputed contemporaries like H.L.A. Hart and Hans Kelsen.

sight) and the end result of applying it (the things that are heard, spoken, or seen), there is a difference between law and the things that are lawfully accepted. The companion concurs, though hesitantly. Undaunted, Socrates pursues his analogy: assuming that law is a faculty, he asks, is it a kind of perception, a science, a discovery, or perhaps an art, 'since for us art is presumably a discovery of things' (314b)?

Although Socrates does not immediately answer his own question, the analogy as such merits closer examination: by presenting law as a faculty, he draws our attention to the fact that law as a general norm entails a judgment concerning what is good and what is just, but also concerning what is real. This judgment is not merely something outside of us with which we are passively confronted, but also something inside of us, by means of which we actively perceive, construe, judge, and investigate the world, including our own selves.¹¹ Inasmuch as it both reflects and authorizes views and opinions circulating in society, law is always at once a 'law in the soul'.¹² This may explain Socrates' paradoxical suggestion that 'for us' law is an art and that art is a discovery, by which he blurs the distinction between making and discovering. By the same token, he raises the question regarding the artisan, and thus anticipates the discussion of the lawgiver at the end of the dialogue.

The companion's second attempt to define law shows that he has only partially fathomed the turn the inquiry has taken. Furthermore, it strengthens the initial impression that the authority of law has become questionable to him. For he asserts that, as a whole, law 'most likely' is the decree of the city (314c: *dogma poleôs*), that is, the end result of the exercise of a faculty. Socrates immediately offers a paraphrase of this definition that is more congruent with his own view of law as a constructive faculty: 'What you're saying, it seems, is that law is political opinion [or 'opinion of the city'] (314c: *doxa politikè*).'¹³ Although the companion approves, Socrates, strangely enough, goes on to refute the companion's *original* definition. By means of yet another analogy, he argues that law, like wisdom and justice, must be regarded as something noble and pursued as something good.¹³ Consequently, bad and useless decrees cannot properly be called laws, so that law cannot 'without qualification' be defined as a decree of the city. As an alternative, Socrates then begins to develop his own definition.

11 A similar, though not identical, understanding occurs in Hans Kelsen's definition of the legal norm as a 'Deutungsschema'. Cf. H. Kelsen, *Reine Rechtslehre*, 1. Aufl., Aalen 1994, p. 4-5.

12 This view is developed more fully by Plato in the *Laws*, 644e-645c. Cf. M.S. Kochin, *Gender and Rhetoric in Plato's Political Thought*, Cambridge 2002, p. 27-31.

13 Markedly, Socrates does not equate law with wisdom and justice in this passage, just as he does not equate justice and law-abidingness (314c-e).

Returning in part to his earlier suggestion, he submits that law is not a decision but ‘some kind of opinion’ (314e: *doxa tis*). This choice of words is apposite: since there are bad and useless opinions, by the same reasoning, law cannot ‘without qualification’ be defined as an opinion of the *city*. Although he doesn’t specify *whose* opinion it is in that case, Socrates adds that law must be worthy and true opinion. True opinion, he adds, is ‘discovery of what is’, that is, of unchangeable being.

Thus, we are led to expect Socrates’ own definition to be that ‘law is the discovery of what is’. However, our expectations are only partially fulfilled: in fact, Socrates says that ‘law wishes (*bouletai*) to be discovery of what is’ (315a). The companion fails to notice this peculiar qualification: he takes Socrates to say that law *is* the discovery of what is.¹⁴ Not surprisingly, he strongly objects: if this is the case, then our laws should be unchanged and unchangeable. Socrates, however, immediately reiterates his own qualified definition twice, pointing out that it is compatible with variability: if humans do not always use the same laws, this is because they ‘are not at all times capable of discovering what the law wishes – what is’ (315a). Notice that Socrates gives a different explanation than what we are entitled to expect: he attributes variability, not to the *law’s* failure to fulfill its wish, but to the *human* incapacity to do so by discovering what is. True opinion, it seems, is a faculty rarely if at all within human reach.¹⁵ Still, even this explanation is able to account for the variability of laws.

His elucidation notwithstanding, Socrates provokes the companion by suggesting that they investigate whether laws really do change. The companion, unaware that he is being taunted, seizes the bait: he pursues his point with a long discourse on the differences in laws regulating sacrifice and burial. These laws vary not only between Greeks and barbarians, but also among the Greeks, and even within one Greek city: the laws of present-day Athens, he argues, are not only different from, but also superior to both its own earlier laws and to barbarian laws.¹⁶ In response, Socrates makes an astonishing move, determinative of the remainder of the dialogue. Pretending to cede the companion’s point, he proposes that they try a diffe-

14 Souilhé, who argues against Platonic authorship on the grounds that ‘L’esprit simpliste du Minos n’a pas su saisir toute la complexité, toutes les nuances de la pensée platonicienne’, is oblivious of this particular *nuance* (Souilhé, Notice, p. 82). Cobb, who does notice it, minimizes its importance (Cobb, Plato’s Minos, p. 204), but fails to account for the fact that Socrates emphasizes *wishes* three times. Cf. Strauss, On the Minos, p. 67; Bruell, On the Socratic Education, p. 10.

15 Cf. Strauss, On the Minos, p. 67.

16 As Seth Benardete points out, the example is significant: sacrifice and burial are practices that distinguish man as such from the gods on the one hand, and from animals on the other. S. Benardete, Plato’s ‘Laws’. The Discovery of Being, Chicago 2000, p. 139-140.

rent approach to the question in the hope of reaching agreement (315d-e). In the discussion that ensues, however, he offers a protracted defense of the *unqualified* definition of law, the one strongly opposed by the companion ('law is the discovery of what is'). Why does Socrates press on with a definition of law that is so clearly not his own, in the face of the companion's determined resistance to boot?

A plausible answer is that Socrates has opted for a deliberate rhetorical strategy, with a view to counteracting the companion's candid relativism and legal scepticism.¹⁷ For the latter's two definitions of law betray certain doubts about the binding and authoritative character of law. Taken together, they imply that law is whatever a political community chooses to establish as law at a given time and place, and hence that it is impossible to raise the question of how to distinguish between good and bad or just and unjust laws.¹⁸ Socrates' qualified definition, on the contrary, does involve some kind of measure, even though at this point it is difficult to conceive its ramifications. Moreover, it doesn't exclude but rather presupposes a certain regard for law as a more or less successful attempt to discover what is. Accordingly, Socrates, by means of appropriate analogies, gradually increases the distance between law and the political community, accentuating the stability of the former and the changeability of the latter. In view of the undeniable variety and changeability of laws, he then submits his qualified definition. The companion, however, remains totally impervious to the crucial proviso and irremediably preoccupied by the changeability of laws. It is probably with a view to this obstinacy that Socrates decides on his peculiar tactic, choosing to defend with equal persistence the unqualified definition, in order to restore the companion's regard for law. As readers, however, we must not forget that his qualified definition remains as an unsolved problem.

3 Expert Justice: Three 'Defenses' of Law

In his first defense of the unqualified definition of law, Socrates argues that everyone everywhere and always believes (315e: *nomizein*) that the just (or beautiful or real) things are just (or beautiful or real), and that the unjust (or ugly or unreal) things are unjust (or ugly or unreal). On the basis of this universal belief, he concludes that whoever errs concerning what is, also errs concerning the lawful (*nomimos*). The argument, however, is obviously questionable. In the first place, the agreement Socrates invokes is purely

17 Cf. Strauss, *On the Minos*, p. 68; Cobb, *Plato's Minos*, p. 192; Bruell, *On the Socratic Education*, p. 9.

18 Cf. Bruell, *On the Socratic Education*, p. 9; Best, *What is Law?*, p. 107; Cobb, *Plato's Minos*, p. 191.

formal and even tautological, for it remains silent as to the content: there is no universal agreement as to *what* particular things are just, beautiful or real. Moreover, the conclusion is not so much a deductive proof as a restatement of the unqualified definition, and hence a *petitio principii*.¹⁹ Not surprisingly, the companion is not at all convinced, and he reiterates his objection: laws are always changed and reversed, 'among us and among the others' (316b). However, he fails to notice that Socrates' fallacious demonstration does obliquely point to two unchanging characteristics of laws: they always and everywhere introduce a distinction between things that are just and things that are unjust, and they always present these things as being always just or always unjust, regardless of the changes they may undergo. In this respect, Socrates explains, they are like pieces in a board game, which remain the same while changing positions (316c). Abruptly, and without explaining how we should conceive of the board itself, he then turns to offer his second defense of the unqualified definition.

This time, Socrates limits the circle of universal agreement. Writings on a certain subject, he has the companion concede, belong to an art (*technè*). They are written by knowers (*epistèmones*) who, as knowers, always and everywhere agree in their judgments on the subject of their knowledge. Insofar as they write about their subject as they hold it to be, their writings may be said to be laws on the subject (i.e., they are the fruits of the discovery of what is). As examples of arts, Socrates mentions medicine, farming, gardening, cooking and politics. Laws in the proper sense of the term are writings composed by knowers of politics, the art of ruling a city. Moreover, knowers will always write the same things about the same (immutable) things, and their writings will be regarded as lawful (*nomimos*). Whoever writes different things about the same things will be regarded as unknowing (*anepistèmonas*) and her writings as lawless (*anomos*). Hence, what is invariably correct (*orthos*) in writings about just and unjust things and about the ordering of the city is kingly (*basilikos*) law, and this alone deserves the name of 'law' (317b).

One implication of this argument is that the laws of democratic Athens, which the companion said are always being reversed, are lawless and hence are no laws at all. Surprisingly, the companion does not protest, in spite of his avowed predilection for Athens.²⁰ Having secured his assent on these points, Socrates then concludes that they were correct in agreeing that law is the discovery of what is. To this, the companion responds 'so it appears' (317d): he obviously remembers – as we should – that there was no such

19 Notice that Socrates tacitly shifts from using the plural (*ta onta*, 'the things that are') in the premiss to using the singular (*to on*, 'what is') in the conclusion (316b).

20 Cf. Strauss, *On the Minos*, p. 69.

agreement at all, even though his resistance seems to have diminished somewhat by Socrates' appeal to experts. Socrates, however, goes on to supply the third defense of the unqualified definition of law, seemingly oblivious of the companion's qualms.

In this defense, he continues his approach of law as an art. Some arts, he assumes, involve the ability to distribute (*dianeimai*) something to something else (like seeds to the soil or musical notes to a musical instrument). Whoever has knowledge of distributing is a good distributor, and her laws and distributions are correct (*orthos*). However, in the course of the argument, Socrates silently shifts from speaking of such laws and distributions as are merely correct regarding something uniform and inanimate, to such laws and distributions as are *good* (*agathos*) or even the best (*aristos*) for those diverse animate beings among whom distribution takes place (animals and humans). Only the latter distributions, Socrates implies, take into account the differences between individuals. Within this category, he further distinguishes between laws or distributions that are good for individual (animal and human) bodies and those that are good for individual (human) souls. In the former case, the best laws are those of the shepherd or those of the trainer, whereas in the latter case the best laws are those of the king. Only in this latter case, Socrates indicates, do laws truly take into consideration individual differences: judged by their bodies, even humans are merely a herd.²¹

The best laws, the true laws, those of the king as distinguished from those of either the trainer or the shepherd, distribute to each individual soul what is good for it. Socrates virtually corners the companion into agreeing with this view – 'declare it!' (318a: *phati*) – and, when the latter does so, explicitly praises him.²² This remarkable *modus operandi* compels us to scrutinize his suggestion with particular attention. A moment's reflection suffices to see that the requirement set by Socrates can be met by no existing law: no written law can be specific enough so as to cater to each individual soul's particular needs in each particular situation. Whereas in the second defense, true law had to be unchanging in order to be acceptable to the knowers, in the third defense true law must be changeable to the extreme.²³ The high improbability, not to say impossibility, of this arrangement is expressed for-

21 Cf. 318a: the trainer (*paidotribês*), who distributes food to human bodies, is most able to 'rear the human herd'.

22 The first time Socrates praises the companion occurs when the latter responds that all knowers always and everywhere agree (316d). Apparently, Socrates attaches great importance to these two contentions.

23 As Strauss suggests, this may explain why Socrates no longer refers to writing: it would condemn the king to incessant oral legislation with an unlimited variety in time and place. Cf. Strauss, *On the Minos*, p. 70.

cefully in Plato's *Statesman*, not by Socrates, but by a philosophic Stranger from Elea conversing with him:

[L]aw would never be capable of comprehending with precision for all simultaneously the best and the most just and enjoining the best, for the dissimilarities of human beings and of their actions and the fact that almost none of the human things is ever at rest do not allow any art whatsoever to declare in any case anything simple about all and over the entire time.' (*Statesman*, 294a-b)²⁴

In spite, or perhaps because of its impossibility, Socrates' third defense does point to another unchanging characteristic of law. It intimates that, in distinguishing between what is just and what is unjust, the essence of law is *suum cuique tribuere*, assigning to each his due. At the same time, it reveals that this is impossible: strictly speaking, *suum cuique* would require a separate law in each individual case. As a general norm, however, every law necessarily abstracts from individual differences and equalizes the unequal. In this respect, it entails, as Bernhard Waldenfels puts it, 'eine unausweichliche Ungerechtigkeit'.²⁵ By carrying *suum cuique tribuere* to its extreme, as it were, Socrates reveals the inevitable injustice, the 'in-difference' inherent in all written law.

4 Minos: The Origin of Law

Taken at face value, Socrates' requirement seems to entail that the best laws, to the extent that they are at all possible, cannot simply be human laws. This partly explains why, at this point, he abruptly twists the conversation towards a discussion of the semi-divine king and lawgiver Minos. This discussion, in fact a continuation of the third defense of the unqualified definition of law (cf. 321b), takes up the remainder of the dialogue, so that it may be regarded as an independent third part. The laws of Minos, indeed, go a long way in meeting some of the requirements set to the best laws in both the second and the third defenses: being very old, they approach the immutable, and they are held to be of superhuman origin. Moreover, by drawing an analogy between Minos and the mythical flute-playing satyr Marsyas, whom he calls a musical 'lawgiver' whose tunes 'alone move and reveal those who are in need of the gods' (318b), Socrates

²⁴ Cf. Plato, *Statesman*, 295b.

²⁵ B. Waldenfels, *Ordnung im Zwielicht*, Frankfurt a. M. 1987, p. 94.

intimates that Minos' laws are capable of giving to each soul its due.²⁶ In fact, he argues, their divine origin is the principal reason for their remarkable durability.

The companion, however, points out that Minos, a stranger from an Athenian perspective, has a reputation of savagery, harshness and injustice. After all, as Socrates later admits, he did wage a war against Athens and, being victorious, imposed tribute on that city. However, Socrates dismisses this reputation as a myth created by the Athenian tragedians, and sets out to disprove it by invoking the much older and more venerable authority of Homer and Hesiod. Quoting and interpreting a passage from the *Odyssey* where Minos is said to have been the confidant (*oaristès*) of Zeus, he argues that Minos was the only child of Zeus to have been educated by him in the cave of Zeus. Some claim that this 'education' consisted of drinking and playing, but, Socrates asserts, they are refuted by the fact that there is a Minoan law prohibiting inebriation. Surely, Minos would not have acted contrary to what he enacted or believed (*nomizo*). Rather, the intercourse with Zeus consisted in dialogues 'with a view to education in virtue' (320b), the result of which are the Cretan laws. The origin of Minos' bad reputation in Athens, Socrates explains, is the fact that he incurred 'our' hatred and 'our' desire for revenge for having imposed 'on us' (Socrates uses the first person plural thrice) the well-known tribute of sending fourteen Athenian youths to Crete every year, to be sacrificed to the Minotaur. However, his goodness and law-abidingness are proven by his unchanged (*akinètoi*) laws, which are the work of someone who 'discovered well the truth of what is, in regard to organizing a city' (321b). With this remark, Socrates concludes the third defense of the unqualified definition of law.

The exceptionally strong personal emphasis Socrates puts on the point of 'education in virtue' – 'as I say' (320b) – requires us to carefully scrutinize his speech. Closer inspection reveals many aspects to be doubtful. To begin with, the passage from the *Odyssey* he appeals to as his basic evidence is attested by Homer himself to be part of a string of 'lies like the truth', spun by 'the wily Odysseus' in order to conceal his identity to his wife Penelope.²⁷ Moreover, Socrates' rebuttal of those who detract Minos is curiously circular and incomplete. The argument for the contention that Minos didn't legislate contrary to his beliefs is that he was educated in virtue, but the only evidence for the latter contention – absent in Homer – is that he didn't legis-

26 Cf. Plato, *Symposium*, 215b-d, where Socrates is likened to Marsyas by Alcibiades, and praised for excelling Marsyas in precisely this ability 'to make one possessed and reveal those who are in need of gods'. It should be kept in mind that *nomos* is the Greek word for both 'law' and 'song' or 'tune'.

27 Cf. Homer, *Odyssey*, XIX, 174.

late contrary to his beliefs. Moreover, it fails to address either the actual allegation – drinking as such – or the concomitant allegation, that of playing together with Zeus. As a result, the suggestion – present in Homer – that the meeting was rather an amorous and intoxicated get-together remains intact.²⁸ What transpires in Socrates' account is that the austere Cretan laws originated in an occasion that was, to put it mildly, less than austere. By token of his ironically delicate treatment, he offers us a glimpse of what Giorgio Agamben has called 'the paradox of sovereignty': in the act of legislating, the legislator is not subject to the law he enacts, but at the same time he is compelled to claim that he is, in order to have the law accepted.²⁹

In the same vein, Socrates' apologetic explanation of Minos' reputation of cruelty silently confirms what it purports to refute. For why did Athens resent 'those tributes', if not because they were excessively cruel?³⁰ Finally, the stability of Minos' laws is attributed to his discovery of what is regarding the organization of a city. As that discovery must have been part of the highly questionable 'education' by Zeus (whom Socrates had called a 'sophist' (319c)), the credibility of this contention relies wholly on that of the education. In this respect, it should be noted that no mention whatsoever is made of the stringent requirements set to the *suum cuique* at the beginning of the third defense: the Cretan law concerning inebriation can hardly be called a case in point.

The finale of Socrates' defense thus raises the doubts it attempts to dispel. Hence, it is not surprising that the companion is only partially convinced. When Socrates concludes that Minos succeeded in discovering what is, he responds: 'you seem to me, Socrates, to have uttered a likely account' (321b). Similarly, he concurs only conditionally with Socrates' conditional inference – 'If I say what is true' – that the Cretan laws are the oldest: 'they appear to be' (321b). What should surprise us, however, is that he emphatically concurs – 'by all means' (*panu men oun*) – when Socrates goes on to praise Minos both as a lawgiver and 'shepherd of men' – just as Homer declared the good general (*stratêgon*) to be 'shepherd of peoples' (321c). Rather than by Minos' nomothetic capabilities, the companion seems to be persuaded by the evocation of his military prowess. Once again, Socrates allows the other,

28 Benardete, Plato's 'Laws', p. 5-6.

29 'The paradox of sovereignty consists in the fact that the sovereign is, at the same time, outside and inside the juridical order.' G. Agamben, *Homo Sacer. Sovereign Power and Bare Life*, tr. D. Heller-Roazen, Stanford 1998, p. 15. For a more general formulation, see B. Waldenfels, *Verfremdung der Moderne*, Göttingen 2001, p. 139: 'Das Ereignis des Ordnungsstiftung ist nicht selbst Teil der gestifteten Ordnung.' Cf. H. Lindahl, *Sovereignty and the Institutionalization of Normative Order*, *Oxford Journal of Legal Studies*, 21, 2001, p. 165-180. In the *Laws*, the Stranger opens his critical examination of the Cretan and Dorian laws with a discussion of drunkenness and drinking-parties. Cf. Plato, *Laws*, 639-650.

30 Plato, *Laws*, 706a-b. Cf. Bruell, *On the Socratic Education*, p. 14; Strauss, *On the Minos*, p. 73.

darker side of Minos' renown as a lawgiver, which he had studiously excluded from his argument, to transpire very discreetly. Even the best law, it seems, cannot dispense with somehow being backed up by violence, force unconstrained by law, nor with denying or negating this violence in order to establish itself as law.³¹

Having finally secured the agreement of the companion, Socrates suddenly returns to the point in his third defense that led up to his discussion of Minos: the issue of the laws of the king, those that are best for the souls of humans. With a strong and apposite oath – 'in the name of Zeus, the god of friendship!' (321c) – he takes up the question he had left suspended there, that of legislation. Supposing that the best lawgiver regarding the body, in order to make it better, distributes the right food – so as to make it grow – and the right toils – so as to make it stronger –, what must the best lawgiver regarding the soul distribute to it in order to make it better?³² In response, the companion confesses he can no longer say. Clearly, he realizes that applying the analogy can only beg the question: distributing the right food and toils to the soul requires that one know what is good for it. Remarkably enough, Socrates shows himself equally unable to answer: all he is able to conclude is that it is 'shameful for the soul of either of us to be manifestly ignorant' (321d) regarding what is good and what is bad for the soul. On this aporia, the dialogue ends.

5 The Spurious Unity of the Legal Order

With this admission of ignorance, the ultimate defense of the unqualified definition of law collapses: Socrates had set out to show that Minos' laws are the best laws, but the discussion reveals that they are unable to specify how and what the best lawgiver should legislate, thus calling in question the entire result.³³ However, we should keep in mind that this result, like the

31 In the Laws, the Athenian Stranger exhibits a similar discretion when describing the law of the city as the golden cord by which the gods draw human beings towards virtue. His account markedly abstracts from the imperative, coercive and punitive aspects of law: 'So a man must always cooperate with the noble drawing of law, for judgment, though a noble thing, is as gentle and free from violence as noble' (Plato, Laws, 645a). Cf. Benardete, Plato's 'Laws', p. 46; T.L. Pangle, Interpretive Essay, in: The Laws of Plato, tr. T.L. Pangle, New York 1980, p. 401; J. Derrida, Force de loi. Le 'Fondement mystique de l'autorité', Paris 1994.

32 At this point, moreover, we learn that the companion is of advanced age, like Socrates (321d). The latter, it seems, complied with the Greek view that the law should only be discussed by older citizens in private and in the absence of the young. Cf. Plato, Laws, 634e-635a.

33 In this respect, the Minos is reminiscent of the Republic, in which the best city is constructed parallel to the order of the soul. Near the end, Socrates admits that they have pursued their project all along without knowing the true nature of the soul, without having examined with the aid of reason 'what it is like when it has become pure' (Plato, Republic, 611b-c).

discussion that precedes it, is predicated on the assumption that law is the discovery of what is. Socrates offered a rhetorical defense of that assumption vis-à-vis the companion, by which he brought him to realize his ignorance on the crucial point.

Thus, we are led back to the qualified definition he abandoned in favor of the rhetorical defense: law *wishes* to be discovery of what is. As Socrates observed, this definition is compatible with the changeability and variety of laws: it implies that the wish of no law is ever completely fulfilled, or that every law is a more or less successful attempt at discovery of what is. Moreover, as he remarked in addition, this is mainly due to the fact that humans are not always capable of discovering what is. His final avowal of fundamental ignorance regarding what is good for the soul – knowledge of which is the primary requirement for the best laws – seems to exemplify this view.

Nevertheless, the aporetic ending, in connection with Socrates' definition of law, does lay bare a fundamental characteristic of every legal order: its inherent claim to unity is deeply problematic and lacks justification. Leo Strauss articulates this difficulty as follows: 'whereas in the case of man, justice, dog, the one (man as such, justice as such, dog as such) is of higher dignity than the many (the individual men, just things, dogs); in the case of law the one (the universal rule) is of lower dignity than the many (the assignment of the proper food and toil to each man's soul) and in fact spurious.'³⁴ For a legal order to be truly one, all-inclusive and perfectly just, it would have to be based on complete knowledge of what is good and bad for each individual soul, so as to be able to give every soul its due. This would require that it originate in the successful discovery of what is. The *Minos* as a whole, however, suggests that these conditions are not readily fulfilled. Perfect knowledge of what is good for the soul is not available, and even the best legal order traces its origins to something that cannot be incorporated within it, to a foundation that permanently withdraws. As a result, no legal order is able to fulfill the requirement of *suum cuique tribuere* in its strict, comprehensive sense: it can neither give to *each and every* soul its due, nor what is due to each and every soul. Like its claim to unity, its claim to admi-

34 Strauss, *On the Minos*, p. 73. The spuriousness of the unity of law is underscored by Socrates' fanciful rendering of the legend of Minos. As we have seen, his account of Zeus' 'education' of Minos, as it were the birth certificate of the Cretan laws, is deeply ironic. Second, it is noteworthy that, at the end of his defense, Socrates praises both Minos *and* his brother Rhadamanthus as the best lawgivers, i.e., two instead of one, whereas previously he had explicitly demoted Rhadamanthus to the inferior rank of a judge (320c). Third, in praising Minos and Rhadamanthus, he calls them 'pasturers and shepherds of men' (321b-c), suggesting that even their laws nevertheless treat humans as a uniform herd.

nister justice is therefore inevitably limited and exclusive: it can only uphold itself as 'our law' in opposition to the claims of other legal orders.³⁵ On the other hand, Socrates' avowal of ignorance does provide something of an answer to the final question: their shared ignorance regarding what is good and what is bad for the soul is shameful (*aischron*) for their souls, he notes. The implication is that acquiring knowledge on this matter is their most pressing task. Thus, Socrates could be taken as pointing the companion to philosophy, after having counteracted his legal skepticism. In fact, his qualified definition of law already intimated as much: for, as he surely must have been aware, the 'wish to be discovery of what is' is an epithet that can be applied to philosophy with no less justice. Taken together, moreover, the definition and the avowal of ignorance may be said to typify the Socratic approach to philosophy, which refuses to dissociate the attempt to discover what is from the attempt to discover what is good and what is bad.³⁶

Still, Socrates' emphasis on *wishes* is no less appropriate to philosophy than to law: the philosophic attempt to discover what is and what is good is never entirely successful, and the knowledge arrived at is knowledge of ignorance. As Seth Benardete argues, however, the companion's imperviousness to Socrates' qualified definition of law is indicative of the profound difference between philosophy and law on this point: 'Philosophy surely knows that it cannot achieve what it wants, but law apparently cannot know it, and though it is as much a failure as philosophy, it would take its failure as its success and turn what it gets into what it wants and pass off its own inventions for the discovery of what is.'³⁷ For law to know that it cannot achieve what it wants, it would have to face the ineradicable element of violence that is inherent in its proper foundation, and that it must deny in order to establish itself as the opposite of violence. Law may be true opinion (314e), but it is nevertheless opinion, i.e., a claim to knowledge that is always in need of substantiation.

From this perspective, philosophy's reflective wish to be discovery of what is appears to provide a measure by which law's unreflective wish can be critically assessed. As Socrates makes clear by his conduct toward the companion, however, this requires that law's wish be taken with all due seriousness. Within these confines, the *Minos* can justifiably be interpreted as a defense of natural law. Still, we shouldn't forget that, although the dialogue

35 As Benardete remarks, the opening of the *Minos* suggests that 'a horizon-free definition of law was scarcely possible. The laws are always going to be our laws'. Benardete, *Plato's 'Laws'*, p. 195. Cf. Bruell, *On the Socratic Education*, p. 9.

36 Plato, *Phaedo*, 96a-100a.

37 Benardete, *Plato's 'Laws'*, p. 2.

provides an answer to the question 'what is law?', it fails to answer the question 'what is good legislation?'. In order to give law its due, the *Minos* must be supplemented by a critical discussion of this issue. A fine example of just such a discussion can be found in Plato's *Laws*, where an Athenian Stranger examines the 'oldest and best' Minoan laws of Crete and Sparta, and subsequently undertakes to legislate for a new city to be founded in Crete. Perhaps it is no accident that the ancient commentators regarded the *Minos* as a prelude to the *Laws*.³⁸

Samenvatting

De dialoog *Minos, of over de wet* werd in de Oudheid beschouwd als een dialoog van de hand van Plato, maar door de moderne klassieke filologie als apocrief verworpen. Onder andere om die reden figureerde de tekst in de rechtsfilosofische traditie tot nog toe als een klassieker met een grote historische, maar beperkte theoretische waarde. Recent filologisch onderzoek noopt echter tot een herziening van dit oordeel. Niet alleen wordt de *Minos* opnieuw als authentiek erkend, maar in de exegese van Plato's werk als geheel heeft zich een paradigmawissel voltrokken. In toenemende mate wordt onderkend dat de retorische, poëtische en dramatische aspecten van de dialogen een cruciale rol spelen bij het ontsluiten van hun filosofische inhoud. Tegen de achtergrond van die ontwikkeling onderneemt deze bijdrage een gedetailleerde lectuur van de *Minos*, toegespitst op de retorische strategieën van de gesprekspartners. Bij nader toezien, zo wordt geargumenteed, blijkt de dialoog een verrassend rechtsfilosofisch potentieel te bezitten. De tekst biedt niet alleen een interessant perspectief op essentiële kenmerken van het recht, maar brengt ook enkele fundamentele problemen ter sprake, met name wat betreft de oorsprong en de eenheid van een rechtsorde.

38 Cf. Strauss, *On the Minos*, p. 65; Pangle, *Interpretive Essay*, p. 511 n. 1; Benardete, *Plato's 'Laws'*, p. 195. According to Cobb, the style of the *Minos* 'is much like the style of the late dialogues', such as the *Laws*. Cf. Cobb, *Plato's Minos*, p. 188.